

ANDHRA PRADESH ELECTRICITY REGULATORY COMMISSION
4th Floor, Singareni Bhavan, Red Hills, Hyderabad 500 004

R.P.No.19 of 2015 in O.P.No.19 of 2014
Dated: 28-05-2016

Present
Sri Justice G. Bhavani Prasad, Chairman
Dr. P. Raghunath, Member
Sri P. Rama Mohan, Member

Between:

Eastern Power Distribution Company of
Andhra Pradesh Limited (APEPDCL)
Rep. by its Chairman & Managing Director
P & T Colony, Seethammadhara, Visakhapatnam - 530 020 ... Petitioner

A N D

-Nil- ... Respondent

The review petition has come up for hearing finally on 20-02-2016 in the presence of Sri P. Shiva Rao, learned Standing Counsel for the petitioner, Sri Ch. Brahmanandam, DE/APPCC/APSPDCL, Sri T.V. Surya Prakash, GM/PPA/APEPDCL representing the petitioner, Sri Vishal Gupta, Advocate representing Indian Wind Power Association (IWPA), Northern Region Council and Sri K. Gopal Choudary, Advocate. After carefully considering the material available on record and after hearing the arguments of parties present, the Commission passed the following:

ORDER

A petition for review of the order in O.P.No.19 of 2014 dated 05-06-2015.

2. O.P.No.19 of 2014 was decided in respect of the present review petitioner and the Southern Power Distribution Company of Andhra Pradesh Limited with reference to their request for taking the Financial Year 2012-13 as the base year for Non-Conventional Energy generation with 0.5% increase per annum for the control period which leads to reduction in the limit of percentage of energy to be procured from Non-Conventional Energy sources and deferring the penal provision for non-fulfilling the obligation under Regulation 1 of 2012 of this Commission. Considering the grounds raised and the objections expressed by different

stakeholders, this Commission concluded that there are no strong and convincing reasons to override or ignore the statutory mandate of Section 86 (1) (e) or the National Policy or National Plan of Action or decisions of Appellate Tribunal for Electricity, Ministry of Government of India concerned and the prevailing public opinion and the public policy. While noting the possibility of compliance with the mandatory regulations within a reasonable time, the petition was accordingly dismissed.

3. However, the present petitioner now submits that in the years 2012-13, 2013-14 and 2014-15, the achieved percentage of renewable energy consumption was only 1.52%, 1.39% and 1.22% with the achievements being far short of the targets in respect of both solar and non-solar consumption. The petitioner submitted that it has only two solar power projects and no wind power projects allotted to it and the seventeen renewable energy generators in the jurisdiction of the petitioner are not able to supply power to the targeted PLF. There are no wind power projects in the jurisdiction of the petitioner compared with Southern Power Distribution Company of Andhra Pradesh Limited. The upcoming renewable energy capacity is also low for the petitioner. Hence, the petitioner requested for exemption from purchase of Renewable Energy certificates for 2012-13 to 2016-17 and to fix the RPP0 targets for the petitioner from FY 2015-16 to FY 2021-22, as shown in the table below:

	FY 15-16	FY 16-17	FY 17-18	FY 18-19	FY 19-20	FY 20-21	FY 21-22
Solar	0.75%	1.00%	1.25%	1.50%	1.75%	2.00%	2.25%
Non solar	1.75%	2.00%	2.25%	2.50%	2.75%	3.00%	3.25%
Total	2.50%	3.00%	3.50%	4.00%	4.50%	5.00%	5.50%

Otherwise, the purchase of Renewable Energy certificates will result in increase of retail tariff burdening the consumers. A public notice of the petition was placed on the website of the Commission and the website of the petitioner calling for responses/objections from interested persons/shareholders.

4. On 28-11-2015, it was noted that the result of this petition will necessarily have an impact on the Southern Power Distribution Company of Andhra Pradesh Limited concerning compliance with the provisions of Regulation 1 of 2012 and the orders of this Commission in O.P.Nos.19 and 18 of 2014. Hence, a notice was issued to it to appear before this Commission to make their submissions relating to the reliefs claimed herein vis-à-vis the orders passed in O.P.Nos.19 and 18/2014.

5. The Southern Power Distribution Company of Andhra Pradesh Limited filed its submissions stating that it made all efforts to comply with the Renewable Power Purchase Obligations in accordance with Regulation 1 of 2012 as stated in the Annexed statement for FY 2012-13 to 2015-16. The percentage of energy so purchased increased from 2.04 in FY 2012-13 to 7.69 in FY 2015-16. The inability of the NCE generators to maintain the targeted PLF and unavailability of RE generators in the licensee area were the reasons for non-compliance during the first two years. The anticipated RE generation capacity addition from 2014-15 to 2021-22 is 15,310 MW out of which 15,249 MW will be in the jurisdiction of Southern Power Distribution Company of Andhra Pradesh Limited. The Renewable Power Purchase Obligation was complied from FY 2014-15 and it was requested to exempt the Southern Power Distribution Company of Andhra Pradesh Limited from RPP0 and purchase of RE certificates from the FYs 2012-13 and 2013-14, keeping in view the excess purchases during 2014-15 and 2015-16.

6. The New and Renewable Energy Development Corporation of Andhra Pradesh in its objections stated that in tune with the policies of the State and Central Governments, National Tariff Policy for Solar Power and National Action Plan for Climate Change for overall RPO trajectory including solar power, they already requested the Commission to fix the target at all levels to encourage investments in the next five years to reach 8% of solar power and 14% of overall renewable power by the FY 2019. They addressed a detailed letter dated 28-05-2015 to the Commission in this regard and the petition is against the policies of the State and Central Governments. Hence, the views of the State Government were requested to be obtained before a decision.

7. Sri M. Venugopala Rao, Senior Journalist and Convenor of the Centre for Power Studies in his submissions was critical of the reforms in the power sector and called the targets fixed by the Commission for renewable power purchase obligations to be subjective and unrealistic. While the generators of the renewable energy units have no obligation to sell their power to the distribution companies at the rates fixed by the Commission, the distribution companies are under an obligation to purchase renewable power. He referred to the manner in which an additional burden of ₹836 crores was imposed on the distribution companies and the consumers for the five year period from 2004-05 to 2008-09 and the concept of renewable energy certificates was criticized as a perverse by product of the reform process conceptually and practically and the petitioner was justified in seeking exemption from purchasing such certificates for the period from 2012 to 2017 and to fix the targets afresh from 2015 to 2022. The objector desired either the competitive bidding route or route of inviting expression of

interest with further negotiations for reduction of tariff in view of the emerging market trend of competitive tariffs for renewable energy gradually coming down.

8. The Indian Wind Turbine Manufacturers Association in its objections referred to the relevant provisions of the statute and the regulations and complained that the distribution companies are continuously falling short of the targets even when the Renewable Energy Certificates are readily available at power exchange at floor price. The whole purpose of the REC mechanism is to overcome the non-availability of renewable energy sources and the Forum of Regulators in their report for policies for renewable energy specifically stated at 2.4.2 that the renewable purchase obligation should be maintained at minimum of 5% by 2010 as suggested in the National Action Plan on Climate Change and the procurement obligation should be specified in terms of purchase of energy which should increase by 1% every year till it reaches 10%. In fact the National Action Plan on Climate Change envisages a target of 15% by 2020 and in fact this Commission did not increase the percentage in the draft regulation from 2014 to 2019. Hence, it is requested to reject the petition and impose a penalty for non-compliance with the obligations.

9. The Indian Wind Energy Association in its objections referred to the order of the Commission in O.P.No.19 of 2014 itself as answering the grounds raised by the petitioner. The period of limitation for review prescribed by Regulation 49 of the Andhra Pradesh Electricity Regulation ^{by Commission} (Conduct of Business) Regulation ^S 1999 as 90 days expired more than 50 days prior to the filing of the review petition and whether any application for condonation of delay has been filed is not known. There was no error apparent or ignorance of material fact and the recent

judgments of the Appellate Tribunal for Electricity were extracted in detail to claim that plenty of Renewable Energy Certificates are available at floor price which could have been easily purchased by the petitioner. Any impact on retail tariff due to purchase of the certificates is negligible and a separate provision should have been made in the petition for Annual Revenue Requirement. The clear violation of the regulations in redetermination of the targets for the past and future cannot be made which transgresses the scope of review. Any order of the Commission will have an extra territorial effect on the National REC market and the Renewable Energy Sector. Any relaxation will become precedent and any such discretion is extremely limited which can be exercised only in exceptional circumstances as held by the Appellate Tribunal for Electricity. Hence, it is requested to reject the review petition, to refuse any exemption or waiver and to impose the prescribed penalty. It was also requested not to modify the targets and to make a compliance verification of the obligation.

10. The Indian Wind Power Association, A.P. State Council, in its objections stated that the Renewable Energy Certificates issued under the Central Commission Regulations of 2012 are valid instruments for fulfilling the renewable purchase targets and the certificates are available in the markets during the relevant periods. Referring to the judgment of the Appellate Tribunal for Electricity dated 20-04-2015, it was stated that the petitioner be directed to comply with the obligations by purchasing the certificates at forbearance price. The future targets may be fixed at 15% of the total energy consumption by 2020.

11. The Indian Wind Power Association, Northern Region Council in its objections stated that the impugned order is a well considered order and the

order makes it clear that the distribution companies were in a position to comply with the obligation. The petitioner never raised any objection before the Regulation 1 of 2012. A huge REC inventory is available in the market, which are traded on minimum floor price and the statutory obligation has to be discharged. The impact of purchase of RECs may work out only to ₹0.05 per unit. The Appellate Tribunal for Electricity in its judgment dated 20-04-2015 issued comprehensive directions to all the State Commissions and the Hon'ble Supreme Court in its judgment dated 13-05-2015 upheld the right of the Commission to issue directions even to non-licensees. There is a surplus availability of RECs at the market floor price of ₹1500 per certificate. Hence, the review petition be dismissed.

12. The petitioner in its response stated, in addition to the grounds already raised, that the solar generators were not able to maintain the targeted PLF and that there are no wind developers located in its jurisdiction.

13. The New and Renewable Energy Development Corporation AP Limited filed the copy of all the resolutions passed and adopted at the conference of the Power Ministers of the States and Union Territories on 6th and 7th November, 2015. Resolution No.23 states ^{that} the States should seek RPOs in line with and as envisaged in the National Action Plan on Climate Change and devise mechanisms for RPO compliance. The Power Exchange India Limited, in its letter dated 14-12-2015 referring to the fulfillment of the RPO targets from 01-04-2012 being a condition under clause 9 of the UDAY Scheme to which the Government of Andhra Pradesh consented, offered to help the petitioner to comply with the target as REC inventory is available in plenty.

14. The petitioner in the additional submissions on 17-12-2015 stated that it entered into a Power Purchase Agreement with NTPC Limited for 250 MW under Phase-1 from the proposed 1000 MW Ultra Mega Solar Power Park at N.P. Kunta in Anantapur District and its share of 35% comes to 87.5 MW. In future also it will get its 35% share in the balance 750 MW. Hence left over percentage of the obligations may be ordered to be complied with in the coming years from 2017-18 in addition to the existing obligation.

15. The petitioner made further additional submissions on 29-01-2016 stating that it entered into Power Purchase Agreements with selected bidders Eaama Estates Pvt. Ltd. and VBC Solar Projects Ltd for 3 MW each. It also entered into Power Purchase Agreement with NREDCAP for purchase of 1 MW solar power from canal top solar power projects on the main canal at Gollavanithippa. It also entered into a Power Purchase Agreement with M/s. Zindal Urban Waste Management Limited for purchase of 15 MW power from waste to energy projects at Thangudupalli, Visakhapatnam District. It also addressed APPCC for allocating solar and wind power share, apart from conducting an EXPO for encouraging solar roof top generators. It also got approval of the Commission for the guidelines for solar roof top power plants. The APPCC also allocated 1000 MW of solar power from NTPC proposed plants at Gani, Kurnool District and accordingly, the petitioner entered into a Power Supply Agreement with NTPC for purchase of 1000 MW bundled solar power on 2 MW of solar and 1 MW of thermal basis on 08-01-2016. It also entered into a Memorandum of Understanding with APGenco for purchase of 35% share of 500 MW from the proposed solar power plant at Tadiparti. That apart, the petitioner is willing to purchase the solar power from the 2 MW plant to be set up at Toorputallu, 5 MW from canal bund SPV power

plant on Polavaram right. The petitioner thus stated that the Power Purchase Agreements entered and to be entered will achieve an addition of 1400 million units plus renewable energy which will comfortably help to achieve the left over RPP obligation for 2012-13 to 2015-16, commencing from 2016-17.

16. In its further additional submissions dated 20-02-2016, the petitioner stated that Southern Power Distribution Company of Andhra Pradesh Limited also did not achieve the RPP obligation from 2012-13 to 2014-15. Hence, the petitioner cannot purchase renewable energy from it, while purchase of RECs will be an additional burden to the consumers. Government of Andhra Pradesh prescribed targets for solar roof top to the petitioner from 2015-16 to 2021-22, an addition of 23.37 MU of renewable power will come ^{from} for energization of 3,100 solar agricultural pump sets. With the Power Purchase Agreements entered into and to be entered into, the petitioner will achieve the obligation including the left over obligations for the earlier years very comfortably from 2016-17.

17. Sri P. Shiva Rao, learned Standing Counsel and Sri G.V. Brahmananda Rao, learned counsel for the petitioner, Sri Vishal Gupta, learned counsel for the some of the objectors, Sri Hemanth Singh, learned counsel representing IWEA, Sri K. Gopal Choudary, learned counsel and different officers of the parties and Sri M. Venugopala Rao, learned objector were heard.

18. The point for consideration is whether the request of the petitioner for grant of time for achieving the RPP obligations for the years 2012-13 to 2016-17 deserves any consideration in fact and law and if it so deserves, how the relief should be moulded in respect of the petitioner and the Southern Power Distribution Company of Andhra Pradesh Limited in accordance with law.

19. Section 86 (1) (e) of the Electricity Act, 2003 prescribes that State Commission shall discharge the function of specifying for purchase of electricity from renewable sources of energy, a percentage of the total consumption of electricity in the area of the distribution licensee. The appropriate Commission shall be guided by the promotion of co-generation and generation of electricity from renewable sources of energy while specifying the terms and conditions for the determination of tariff under Section 61 (h) of the Electricity Act, 2003. The Central Government while preparing the national electricity policy and tariff policy should have renewable sources of energy also as a basis, among other things under sub-Section (1) of Section 3 of the Electricity Act, 2003 and the national electricity policy guides the endeavours of the appropriate Commission to promote a development of the market in power as per Section 66 of the Electricity Act, 2003.

20. Under these statutory provisions, the Central Electricity Regulatory Commission made the terms and conditions for recognition and issuance of Renewable Energy Certificates for Renewable Energy Generation Regulations, 2010 for the development of the market in power from non-conventional energy sources by issuance of transferable and salable credit certificates. Significantly the Central Electricity Regulatory Commission retained for itself the power to relax the regulation by a general or special order, of course, for reasons to be recorded in writing and after giving an opportunity of hearing to the parties likely to be affected. This power is exercisable even on its own motion by the Commission apart from on an application by an interested person.

21. Following suit, the Andhra Pradesh Electricity Regulatory Commission made Renewable Power Purchase Obligation (Compliance by Purchase of Renewable Energy/Renewable Energy Certificates) Regulations, 2012 (1 of 2012) by which the Commission prescribed a quantum of not less than 5% of the consumption of energy by every distribution licensee as mandatorily purchasable from renewable energy sources during each of the years from 2012-13 to 2016-17. The Commission also, made the purchase of renewable energy certificates issued under the Central Regulations as amended from time to time, as fulfillment of the prescribed Renewable Power Purchase Obligation. A minimum of 0.25% out of 5% Renewable Power Purchase Obligations shall be procured from solar generated energy. Regulation 3.1 in the last proviso left the liberty to the Commission to revise the percentage targets for any year as deemed appropriate on its own motion on recommendation of the State Agency or on an application from the obligated/eligible entity. The regulations also give the power to the Commission to remove difficulties suo-motu or on an application by reviewing or adding or amending or altering the regulation or passing appropriate orders for removing any such difficulty. In addition to the power under Regulation 9, Regulation 10.1 also makes it clear that nothing in the regulations shall be deemed to limit or otherwise affect the power of the Commission to make such orders as may be necessary to meet the ends of justice or to prevent abuse of process of the Commission.

22. In fact, in exercise of the power for removing difficulties under Regulation 9 of Regulation 1 of 2012, purchase of renewable energy certificates in the year following the year of default was permitted as one time measure and carry forward of surplus renewable energy certificates from the purchase year to the

subsequent year to consider the same as meeting the obligation was also allowed as one time measure by a letter of the Commission to the AP Transco dated 17-07-2014 (Lr.No.APERC/Secy/Dir (Eng)/DD (Trans)/F:E700:28/2013). It is thus clear from the provisions of the Central and State Regulations and the past event that while compliance with the Renewable Power Purchase Obligation by purchase of either renewable energy or renewable energy certificates is the general rule, there can be justifiable and reasonable exceptions within the permissible legal limitations so as to mould the discharge of such obligation appropriately in any relevant year or years to meet the ends of justice, of course, without any total erasure of or exemption from the Renewable Power Purchase Obligation.

23. The Forum of Regulators in its report on Policies on Renewables in November, 2008 based on the report of a working group noted that in Andhra Pradesh obligation to Renewable Energy was applied to Open Access and Captive consumers to the extent of their outsourcing. On a detailed consideration of the feasibility of introducing Renewable Energy Certificates mechanism, the report opined that a suitable mechanism like Renewable Energy certificates is necessary to promote the Renewable Energy sources as envisaged in the Nation^{al} Action Plan on Climate Change and in its ^{recommendations} ~~representations~~, the report~~s~~ desired the MNRE to study developing a model to operationalise RE certificates, the legal sanctity of which also should be examined.

24. The report on development of conceptual framework for Renewable Energy Certificate mechanism for India submitted to the Ministry of New and Renewable Energy in pursuance of a study made by ABPS Infra was intended to enable the stakeholders to purchase Renewable Energy in a cost effective manner. One of

the possible objectives was recognized as increased flexibility for participants to carry out Renewable Energy transactions while the purchase of Renewable Energy certificates is deemed as purchase of power generated from Renewable Energy sources in India and internationally, Renewable Energy generator will issue the Renewable Energy certificates in proportion to the energy fed into the grid and making such certificates tradable instruments which incentivizes such generator. While the report recognizes Andhra Pradesh to be one of the few States which imposed a Renewable Power Purchase Obligation on Open Access/Captive consumers, the National Action Plan for Climate Change which conceived increasing the share of Renewable Energy in total electricity consumption in the Country led to the REC framework primarily used for improving the financial viability of the Renewable Energy projects. The detailed report cautions that it is necessary to decide the non-compliance penalty such that it ^{meets} ~~meets~~ the objective of RPS compliance as well as protect the interest of the obligated entities. Thus, the way forward was concluded to be undertaking significant capacity building activity apart from the discharge of responsibilities by the Central and State Electricity Regulatory Commissions.

25. The note on Renewable Energy certificates mechanism filed by the learned counsel Sri Vishal Gupta makes a detailed reference to the Constitutional Scheme for Protection of Environment, Judicial dicta appreciating the obligation to procure Renewable Energy, the statutory back drop and the evolution of REC framework as an incentive or as a tool for sharing the cost of generation basically intended to promote Renewable Energy generation. The Appellate Tribunal for Electricity in its judgment in O.P.No.1 of 2013 and batch dated 20-04-2015 dealt with the request of wind energy generators for enforcing compliance of

Renewable Purchase Obligations by the distribution licensees and other obligated entities. While erstwhile Andhra Pradesh Electricity Regulatory Commission did not file any submissions before the Appellate Tribunal for Electricity, the Appellate Tribunal noted that a number of State Commissions are monitoring compliance of the RPO regulations by the obligated entities as per their regulations. It also noted that some of the State Commissions have been allowing carry forward of the RPO even though Renewable Energy certificates are available, in violation of their regulations. The Appellate Tribunal directed that ^{The} State Commission shall give directions regarding carry forward/review in RPO and consequential order for default of the distribution licensees/other obligated entities as per the RPO regulations and if the REC mechanism is recognized as a valid instrument to fulfill the RPO, carry forward/review should be allowed strictly as per the provisions of the regulations keeping in view availability of Renewable Energy certificates. The Appellate Tribunal also held that the provisions of the regulation like power to relax and power to remove difficulties should be exercised judiciously under exceptional circumstances as per law and should not be used routinely to defeat the object and purpose of the regulations. The Appellate Tribunal for Electricity in its judgment in Appeal No.258 of 2013 and Appeal No.21 of 2014 dated 16-04-2015 dealt with a request by the Indian Wind Power Association to set aside the waiver of the shortfall in meeting the RPO by an order of Gujarat State Commission and referring to CERC Regulations, 2010, the Appellate Tribunal noted the REC mechanism to provide an alternative mode to Renewable Energy generators for recovery of their costs making the purchase of Renewable Energy certificates to be deemed as purchase of Renewable Energy. It also noted that in case of genuine difficulty to comply with the RPO because of

non-availability of certificates, the obligated entity can approach the Commission for carry forward of compliance requirements to the next year. The Appellate Tribunal also observed that the State Commission should give directions regarding relaxation of RPO and consequential order for default by the distribution licensee as per the RPO regulations. With reference to the State regulations under consideration, the Appellate Tribunal held that the State Commission may revise the targets due to supply constraints or facts beyond the control of the licensee for reasons like inadequate capacity addition in a resource rich State where the anticipated capacity addition did not happen. The Appellate Tribunal also observed that non-availability of Renewable Energy certificates may not always be a pre-condition for exercise of power to revise under the regulation. The option to fulfill the RPO either by procuring Renewable Energy in physical form or by REC or partly by both has to be exercised on economic principles.

26. The erstwhile Andhra Pradesh Electricity Regulatory Commission in its order on Retail Supply Tariffs for FY 2013-14 dated 30-03-2013 directed the distribution companies to purchase Renewable Energy certificates from market sources to the extent of deficit.

27. The facts and issue need to be examined in this background and even in the Original Petition No.19 of 2014, the distribution companies pointed out that there is an inadequacy of the quantities covered by the Power Purchase Agreements entered into by them by that time to meet the prescribed RPO. It is not disputed that REC inventory lying unsold is much more than what should be purchased by the two distribution companies of the State and the unacceptability of the request for exemption from the mandatory obligation was made clear in the orders on

O.P.Nos.19 and 18 of 2014. The petitioner, apart from referring to the unavailability of the Renewable Energy to the extent of the percentage prescribed during the relevant periods, is in effect and substance now requesting for carrying forward the deficiencies in the relevant years to FYs 2017-18 to 2021-22 though the request in the petition was expressed as also for an exemption for the relevant periods. In the replies to the objections of various stakeholders, the specific request was to fix the Renewable Power Purchase Obligation targets for the petitioner. Though the ground that purchase of such certificates will lead to increase in retail tariff burdening the consumers may not be strong though real, the petitioner also claimed that some solar developers are not selling energy to the petitioner preferring to sell through Open Access. While the claim of the petitioner that there is no generation of such quantum of Renewable Energy within its territorial jurisdiction as would be sufficient to meet the prescribed obligation is not factually in serious dispute, the petitioner in its additional submissions dated 17-12-2015 further stated about the Power Purchase Agreement with NTPC Ltd., for 35% of 250 MW solar power and specifically requested that in addition to the Renewable Power Purchase Obligation in the coming years from 2017-18, the petitioner may be directed to comply with the left over percentage of the unfulfilled obligation for the FY 2012-13 to FY 2016-17 which comes to 562.79 million units for the FYs 2012-13, 2013-14 and 2014-15. In its further additional submissions filed on 29-01-2016, the petitioner further stated about the Power Purchase Agreements entered into by it or the Southern Power Distribution Company of Andhra Pradesh Limited on its behalf apart from other steps taken by it to promote solar roof top power generation etc. It also stated about 4 proposed agreements for purchase of solar power, the total of which would achieve 1400

million units of Renewable Energy which will cover the left over obligation for 2012-13 to 2015-16 and obligation for future years as shown in the table enclosed. Finally in its additional submissions on 20-02-2016, the petitioner stated about the inadequacy of the amount allowed in 2013-14 by the Commission for purchase of the left over units and in view of the targets fixed by the Government of Andhra Pradesh for solar roof-top and the already entered and upcoming Power Purchase Agreements, the efforts of the petitioner to fulfill the obligation is believed to yield results from 2016-17. From the above narration, it is clear that the generation of Renewable Energy within the territorial jurisdiction of the petitioner was inadequate for fulfilling the Renewable Power Purchase Obligation imposed on it by Regulation 1 of 2012 even if the entire Renewable Energy was purchased by it. It is also clear that given the policies of the State Government, directions given by it to the distribution companies and the circumstances pointed out by the petitioner, the strong probability of it being able to meet not only the RPPO for the future but also the backlog is not unreal or unfounded.

28. The situation of the other distribution company Southern Power Distribution Company of Andhra Pradesh Limited in the State is much better as per its submissions dated 17-12-2015 and from 2014-15, the Renewable Power Purchase Obligation has been complied with by it. It also referred to the excess energy purchases made during 2014-15 and 2015-16 as covering the shortfall during 2012-13 and 2013-14. The details given in the annexure to its submissions indicate that the claims of the Southern Power Distribution Company of Andhra Pradesh Limited are probably true and whatever deficit was there in the first two years was covered by the end of 2015-16 and it is not seeking any exemption or relaxation concerning the obligation for any years from 2016-17. Therefore,

though the Southern Power Distribution Company of Andhra Pradesh Limited was also a party to O.P.Nos.19 and 18 of 2014 and the orders therein, the consideration herein can be confined to the consideration of the request of the petitioner alone. In so far as the default committed by Southern Power Distribution Company of Andhra Pradesh Limited in 2012-13 and 2013-14 is concerned, the principle followed by the Appellate Tribunal for Electricity in Appeal No.24 of 2013 referred to in para 27 of the judgment in Appeal No.258 of 2013 dated 16-04-2015 clearly appears to be relevant, reasonable and justifiably applicable. In that case, the Appellate Tribunal did not interfere with the findings of the State Commission regarding carry forward of shortfall in RPO for FY 2011-12 to FY 2012-13 since both the FYs and the following year 2013-14 were already over and at that stage, the clock should not be turned back and carry forward of RPO could not be reversed. Southern Power Distribution Company of Andhra Pradesh Limited has claimed to have covered the deficit for two years in the subsequent years as shown in the annexure to its written submissions and instead of putting the clock back at this distance of time, the compliance of the RPO on the whole between 2012-13 and 2015-16 can be considered as satisfactory compliance and by an implied ratification of coverage of the carried forward shortfall in the subsequent years, the Southern Power Distribution Company of Andhra Pradesh Limited need not be subjected to any adverse consequences under Regulation 1 of 2012 in respect of shortfall for the FYs 2012-13 and 2014-15.

29. Reverting back to the Eastern Power Distribution Company of Andhra Pradesh Limited, the present petitioner, the validity of regulation framed by Rajasthan Electricity Regulatory Commission similar to Regulation 1 of 2012 of this Commission was analysed in detail and upheld by the Hon'ble Supreme Court in CA

4417 of 2013. The constitutionality, legality and enforceability of Regulation 1 of 2012 therefore cannot be in doubt but the default in meeting the Renewable Power Purchase Obligation by the petitioner from 2012-13 to 2014-15 in not purchasing the Renewable Energy certificates does not appear to be calling for any penal action and can be the subject of a permissible appropriate corrective measure. The prayer in O.P.No.19 of 2014 was in effect and substance for an amendment of the provisions of Regulation 1 of 2012 and the same had to be unambiguously rejected for the detailed reasons stated in the order of this Commission. The request now is not for negating the RPO obligation in full or in part but only postponing its compliance to future years from the defaulting years. Though the prayer also seeks exemption from purchase of Renewable Energy certificates for 5 years from 2012-13 to 2016-17, such a prayer becomes superfluous and unnecessary when the request is for carrying forward the RPPO to future years with a promise to meet such obligation for those years also regularly while clearing the backlog. What all Regulation 1 of 2012 or its statutory and philosophical background required is that the prescribed percentage of energy consumption for each year shall be met either by purchase of Renewable Energy or Renewable Energy certificates or by both means put together. If such a mandatory obligation is sought to be performed in the subsequent years, such carrying forward cannot be termed as an exemption from such an obligation. If such carry forward is permitted and Renewable Energy required to be purchased for the running years and deficit years is purchased from time to time without any deficit or default, there need or can be no further obligation of purchasing any energy certificates again for the defaulting years.

30. However, what is insisted is that such carry forward is impermissible when Renewable Energy certificates are very much available to be purchased. The object of environment protection is better ensured by purchase of more Renewable Energy in the permitted years meeting the combined requirement of running percentage and the defaulted percentage than by compelling the petitioner to purchase Renewable Energy certificates for the past years which will not lead to any further generation of Renewable Energy by the seller of those certificates in the defaulting years or the subsequent years. When the Regulations have been enacted in order to effectuate the object of promotion and generation of electricity from Renewable Energy sources of energy as against polluting sources of energy as observed by the Hon'ble Supreme Court in CA 4417 of 2015 and batch, permitting the default in the years before the present to be condoned by purchase of Renewable Energy in future years will be effectuating the fulfillment of the constitutional mandate in a better fashion.

31. Sri P. Shiva Rao, learned Standing Counsel for the petitioner also referred to M.P. Electric Vs Maharashtra Electricity Regulatory Commission (2008 ELR APTEL135) wherein the Appellate Tribunal referred to the principle that a regulatory asset should be created only as an exception for reasons like natural cause or force majeure and the creation of regulatory assets was not allowed in that case due to miserable financial condition of the distribution company. The petitioner is stated to be in no better financial condition but the question here is the implementation of a mandatory regulation made in discharge of constitutional and statutory obligation, purpose and scheme.

32. Incidentally, the objection about the non-maintainability of a review petition, more so at this distance of time beyond limitation prescribed by Regulation 49 of APERC (Conduct of Business) Regulations, 1999 has to be adverted to. It is true that the petition has been very much beyond the period of 90 days prescribed by Regulation 49 and no application for condonation of any delay in filing the petition has been filed. Section 94 (1) of the Electricity Act, 2003 gives the same powers to the Commission for review as are vested in a civil court but a review means a re-examination or reconsideration. Hon'ble Apex Court in RP Nos.235 to 578 of 2011 and batch decided by the judgment dated 02-07-2012 that a review literally or even judicially means re-examination or reconsideration. What the petitioner seeks herein is not re-examination or reconsideration of the refusal in O.P.No.19 of 2014 or O.P.No.18 of 2014 to make a change in the language or effect or contents of the provisions of Regulation 1 of 2012 but rescheduling of the compliance with the Renewable Power Purchase Obligation in the years 2012-13 to 2016-17 to future years. Even in respect of a review, the Hon'ble Supreme Court noted that exceptions both statutorily and judicially can even be carved out to correct accidental mistakes or miscarriage of justice for rectifying the court's order to avoid abuse of process or miscarriage of justice. The Hon'ble Supreme Court noted that rectification of an order thus stems from the fundamental principle of justice to be above all. The Hon'ble Supreme Court also referred to a review being possible for any other sufficient reason also. Thus a review may lie when it is necessary to do so for the sake of justice, of course within the limitations of law. However much emphasis need not be laid on the nature of the petition or the period of limitation, notwithstanding the petition being styled as a review petition, as what is sought for in the petition

followed by additional submissions made by the petitioner from time to time is that the petitioner be permitted to achieve the Renewable Power Purchase Obligation for the years 2012-13 to 2016-17 along with the prescribed Renewable Power Purchase Obligation for the next five years from the FY 2017-18 to FY 2021-22. The request is definitely within the jurisdiction and power of the Commission which is conferred such power and jurisdiction by the various statutory and regulatory provisions earlier referred to, though it is clear from the decisions of the Appellate Tribunal for Electricity that such power has to be exercised judiciously under exceptional circumstances as per law.

33. The petitioner has no wind power projects within its jurisdiction and was allowed only 2 solar power projects earlier. The Renewable Energy generators were claimed to be unable to supply power. The petitioner furnished details of the Power Purchase Agreements entered into and it will enter into for purchase of significant quantities of solar and waste power, apart from its efforts to promote solar roof top generation in a big way. Any minor discrepancies in the submissions made from time to time notwithstanding, there is no reason to suspect the truth or *bona fides* of the claims of the public utility and it can also be taken judicial notice of that the Government of Andhra Pradesh has declared solar and wind policies in 2015 which the petitioner is bound to follow and comply. While the availability of Renewable Energy certificates for complying with the mandatory obligations is a significant ground to question the petitioner's failure to comply with the RPO in the relevant years themselves, the same need not be deemed as conclusive foreclosing any other options for the petitioner, which is also suffering along with the State, the unsettling consequences of the bifurcation of the State and consequently the electricity industry. The division of the assets and liabilities

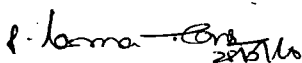
or the rights and obligations following the bifurcation is still unconcluded. The difficulty of the petitioner in meeting the Renewable Power Purchase Obligation from purchase of Renewable Energy certificates arising from or attributable to such extraneous factors over which the petitioner had no control also can be taken note of. The financial condition of the petitioner is undoubtedly extremely difficult if not miserable due to causes over which it has no control. As the language of Regulation 1 of 2012 does not make non-availability of Renewable Energy certificates, an unexceptionable pre-condition for carrying forward, the request of the petitioner can receive sympathetic consideration, more so when it relates to a past default, does not specifically prejudice the rights or interests of any specific stake holder or Renewable Energy generator and promotes production of more green energy in the coming 5 years, if the prescribed percentage and backlog percentage were purchased each year. Such a reasonable course of action is no violation of any national or state policy or binding legal provision or principle and will balance the interests of the consumers, the petitioner and the need for protection of environment.

34. The Regulation 1 of 2012 is of application for the years from 2012-13 to 2016-17 and an appropriate regulation for compliance with the obligation to purchase Renewable Energy or Renewable Energy certificates will be made by this Commission in accordance with law without leaving any vacuum between the end of the Multi Year Tariff/Control Period and the beginning of next such period. Whatever obligation is created by such a regulation has to be unexceptionally complied with by the petitioner each year without seeking any excuses in view of various submissions made now, whereas any deficit in meeting Renewable Power Purchase Obligation each year from 2012-13 to 2016-17 shall also be met in each

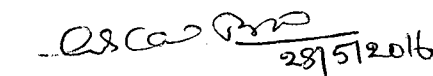
year of the next such period of 5 years commencing from 2017-18. Any default will attract the penal consequences prescribed by Regulation 1 of 2012 or its successor regulation. If such arrangement of carry forward were permitted, it will be in the interests of justice on an overall view of the facts and circumstances including the interests of the petitioner, the consumers, the Renewable Energy generators and the environment.

35. Therefore, the deficit in meeting the Renewable Power Purchase Obligation under Regulation 1 of 2012 of this Commission by the petitioner for the years 2012-13 to 2016-17 shall be met by purchase of Renewable Energy or Renewable Energy certificates in each corresponding year from 2017-18 to 2021-22 respectively. This carry forward of the Renewable Power Purchase Obligation is in addition to the Renewable Power Purchase Obligation which the petitioner has to discharge each year under the corresponding regulation of this Commission to be made in succession to Regulation 1 of 2012 for the years 2017-18 to 2021-22. Any default by the petitioner in discharging the Renewable Power Purchase Obligation concerning any of the years from 2012-13 to 2021-22 will result in the petitioner becoming liable for the prescribed consequences for such default under Regulation 1 of 2012 or its successor regulation of this Commission. The petition is ordered accordingly. No costs.

This order is corrected and signed on this the 28th day of May, 2016.


P. Rama Mohan
Member


Dr. P. Raghu
Member


Justice G. Bhavani Prasad
Chairman

RP No. 19/2015 in
OP No. 19/2014

Website:

The fair order after correcting typographical errors is placed on the website of the Commission withdrawing the copies of order earlier placed on the website of the Commission on 28/5/16.

The fair order after correcting typographical errors is being communicated to you in continuation of the copies of order already communicated to you earlier in which these corrections were not carried out.