

**BEFORE THE ANDHRA PRADESH ELECTRICITY REGULATORY
COMMISSION**

**AT ITS OFFICE AT V FLOOR, SINGARENI BHAVAN, RED HILLS,
HYDERABAD**

O.P.No.3 of 2020

In the Matter of:

Regulation No. 3 of 2020, Second Amendment to APERC (Terms and Conditions of Open Access) Regulation No. 2 of 2005.

- 1. Sri Lakshmi Ganapathi Engineering Works**
- 2. Srinivasa Cotton & Oil Mills Private Ltd.,**
- 3. Viswateja Spinning Mills Private Ltd.,**
- 4. Rambhadra Industries Private Ltd.,**
- 5. Jyothirmaye Textiles Private Ltd.,**
- 6. Vasundhara Cotton Mills Private Ltd.,**
- 7. Sri Anantha Lakshmi Spinning Mills (P) Ltd.,**
- 8. Ranganayaka Spinning Mills Private Ltd.,**
- 9. Praveen Spinners (India) Private Ltd.,**
- 10. Tirumala Cotton & Agro Products Private Ltd.,**

....Objectors

Preliminary Submissions / Issues / Objections / Suggestions

1. The Objectors here are Spinning Mills in the State of Andhra Pradesh who have set up wind-based Power Projects within Andhra Pradesh for their captive use.

Brief Background:

2. It is submitted that in 1986, the State of Andhra Pradesh formed the NREDCAP (Non-conventional Energy Development Corporation of Andhra Pradesh Limited') with the objective of *inter alia* promoting, developing and encouraging implementation of non-conventional/ renewable energy projects sponsored by both State and Central Governments. Thereafter, in 1992, India became a party to the UN Framework Convention on Climate Change which requires the parties to the Convention to undertake ambitious efforts to combat climate change and stabilize greenhouse gas concentrations. It is well known that unsustainable practices all over the world in the generation of energy through conventional sources have led to global warming. The heavy reliance on fossil fuels and inefficient and outdated

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coal-fired power plants is one of the main reasons for the energy sector's high contribution to global greenhouse gas emissions. This not only elevates global temperatures but seriously impacts air quality and human health. Once this fact was recognized globally, the signatories of the United Nations Framework Convention on Climate Change (UNFCCC) through the Kyoto Protocol and the Paris Agreement undertook to take measures to move away from conventional generation and towards development of renewable energy as the role of renewable energy solutions in mitigating climate change is proven. Transitioning to renewable energies supports significant progress on the Paris Agreement on climate change.

3. It is humbly submitted that in May 2003, the GoI enacted the Electricity Act, 2003 ("Act") and by way of the Act repealed the Indian Electricity Act, 1910, the Electricity (Supply) Act, 1948 and the Electricity Regulatory Commissions Act, 1998. The salient features of the Act *inter alia* included deregulation of the generation sector, several checks and balances that would mitigate regulatory uncertainty, provisions to attract/ enable viable private investment in the electricity industry and promotion of co-generation and generation of electricity from renewable sources of energy. The Act expressly recognizes the need to provide promotional measures in relation to co-generation and generation of electricity from renewable sources of energy. This principle is enshrined in the Preamble read with sections 61(h) and 86(1)(e) of the Act.
4. It is submitted that in February 2005, the MoP, GoI notified National Electricity Policy ("NEP") under Section 3(1) of the Act, which requires the Central Government to formulate, *inter alia*, the National Electricity Policy '*for development of the power system based on optimal utilization of resources such as coal, natural gas, nuclear substances or materials, hydro and renewable sources of energy*'. The NEP was framed keeping in view the concerns of the world community for environment, sustainable development and other related topics, and in relation to generation from renewable sources, and states as follows

"5.12 CO-GENERATION AND NON-CONVENTIONAL ENERGY SOURCES

5.12.1 *Non-conventional sources of energy being the most environment friendly there is an urgent need to promote generation of electricity based on such sources of energy. For this purpose, efforts need to be made to reduce the capital cost of projects based on nonconventional and renewable sources of energy. Cost of energy can also be reduced by promoting competition within such projects. At the same time, adequate promotional measures would also have to be taken for development of technologies and a sustained growth of these sources.*

5.12.2 *The Electricity Act 2003 provides that co-generation and generation of electricity from non-conventional sources would be promoted by the SERCs by providing suitable measures for connectivity with grid and sale of electricity to any*

person and also by specifying, for purchase of electricity from such sources, a percentage of the total consumption of electricity in the area of a distribution licensee. Such percentage for purchase of power from non-conventional sources should be made applicable for the tariffs to be determined by the SERCs at the earliest. Progressively the share of electricity from non-conventional sources would need to be increased as prescribed by State Electricity Regulatory Commissions. Such purchase by distribution companies shall be through competitive bidding process. Considering the fact that it will take some time before non-conventional technologies compete, in terms of cost, with conventional sources, the Commission may determine an appropriate differential in prices to promote these technologies."

The afore-quoted extracts of the NEP make it clear that the thrust of the NEP is upon the use of non-conventional sources of energy to augment generation of power including generation of green energy.

5. It is humbly submitted that the State of Andhra Pradesh was one of the pioneer states in the country to take on power sector reforms as early as 1998. Significant investments were made for building up generation capacity, strengthening transmission and distribution network, industrial feeder segregation, loss reduction and improving quality of power supply. As a result of various initiatives that were taken up during the reform period (1998-2004), energy deficit was brought down to a mere 1.5% as compared to All India Energy deficit of 7.1% during FY 2003-04. However, owing to certain factors, the States' performance in the power sector deteriorated over a period of time and by the year 2013, the energy deficit of the 1st respondent increased to 17.6%. The requirement of electricity, i.e. both energy and peak demand increased significantly in Andhra Pradesh from the level of 50437 MU & 7400 MW in FY 2015-16 to 62602 MU and 9659 MW in FY 2018-19. The State of Andhra Pradesh has therefore, been looking for ways to augment energy generation on fast-track basis so as to bridge the substantial gap between demand and supply of power.
6. It is submitted that in view of the limited conventional energy sources, the increasing environmental pollution, shorter gestation period of renewable power projects as compared to conventional power projects, the State of Andhra Pradesh consciously took measures to promote generation of energy from renewable sources to meet the growing demand for power in an environmentally sustainable manner. It is common knowledge through various studies conducted and published by reputed agencies and admissions of the State of Andhra Pradesh in its policies on renewable energy that Andhra Pradesh has good potential for promotion of renewable energy projects, particularly solar and wind power projects. That in furtherance of the afore stated and more specifically in view of the State's

commitment to promote non-polluting sources of energy, the State of Andhra Pradesh on 11.04.2008 by way of G.O.Ms. Nos. 48 and 99 issued '*Policy for Development of Wind Power in Andhra Pradesh*' ("**2008 Wind Power Policy**"). The operative period of the 2008 Wind Power Policy was 5 years from the date of issuance thereof, unless/superseded or modified by any other order. The objective of the 2008 Wind Power Policy was to encourage optimum utilization of the available wind power potential in the State by facilitating adoption of state of art technology through private participation. Under the said Policy, the tariff for upcoming wind power projects that would be set up during the operative period of the Policy would be firm at Rs.3.50 per unit and the tariff would be applicable for a period of 10 years from Commercial Operation Date, subject to approval of the Andhra Pradesh Electricity Regulatory Commission ("**APERC**"). The tariff for the period 11th year to 20th year would be as fixed by APERC.

7. It is respectfully submitted that the intra state transmission and wheeling of electricity is regulated by the Andhra Pradesh Electricity Regulatory Commission (Open Access Terms and Conditions), Regulations, 2005 issued by the Andhra Pradesh Electricity Regulatory Commission as amended from time to time. The said regulation requires the generators such as the petitioner who supply the power generated through their power plants to enter into Long Term and Short Term Open Access agreements with the respective DISCOM for supply to its consumers. Regulation 17.1 of the un-amended Regulation stipulates that the open access users connected to the transmission/distribution system shall pay the transmission charges and/or wheeling charges to the DISCOM. Further, 17.3 of the said Regulation provided for payment of cross-subsidy surcharge to the DISCOM as determined by the Andhra Pradesh Electricity Regulatory Commission from time to time. Subsequently, in exercise of its power under Sections 181 of the Electricity Act, 2003 read with Section 86(1)(e) and Sections 66 and all other enabling powers, the Andhra Pradesh Electricity Regulatory Commission issued the Regulation 2 of 2014, i.e., the Second Amendment to Andhra Pradesh Electricity Regulatory Commission (Interim Balancing and Settlement Code for Open Access Transactions), Regulations, 2006 namely Andhra Pradesh Electricity Regulatory Commission (Interim Balancing and Settlement Code for Open Access Transactions), Second Amendment Regulations, 2014. By way of the said Regulation the definition of Banking was included below the clause 2(C) of the Principal Regulation which defines Banking as a facility through which the unutilized portion of energy (under underutilized or excess generation over and above scheduled wheeling) from any of the three renewable generation sources namely Wind, Solar and Mini-hydel during a billing month is

kept in a separate account and such energy accrued shall be treated in accordance with the conditions laid down in the Appendix-3. It is pertinent to note that this amendment has been brought in with the primary objective of encouraging and boosting generation of electricity through renewable sources.

8. It is respectfully submitted that the 2008 Wind Power Policy provided limited incentives such as allocation of government land for setting up wind power projects and concessional wheeling and transmission charges and did not allow banking of wind energy. It was for this reason and the low tariff of Rs.3.50 per unit that the 2008 Wind Power Policy failed to attract the desired investments in the State between the period 2008 and 2012 and was only able to add a total capacity of only 110 MW in the State. In view of the above, and especially post the bifurcation of the State into the State of Andhra Pradesh and the State of Telangana in June, 2014, the State of Andhra Pradesh felt it necessary to come out with a new comprehensive policy for promotion of wind power.
9. It is submitted that, subsequent to the expiry of the 2008 Wind Power Policy, on 13.02.2015, the State of Andhra Pradesh by way of G.O.M. No. 9, issued another wind power policy to achieve its target of 4,000MW wind power capacity addition ("**2015 Wind Power Policy**"). The operative period of the 2015 Wind Power Policy was 5 years from the date of issuance thereof, unless/ superseded or modified by any other order. The 2015 Wind Power Policy specifically records that owing to (i) the economical nature of the wind power, in comparison to the conventional power sources; (ii) the huge wind power potential in the State; (iii) rising power requirements and (iv) clean energy considerations, the State of Andhra Pradesh decided to 'promote wind power generation in a big way'. It is in consideration of the foretasted decision that the objectives of the 2015 Wind Power Policy were decided, which included to (i) encourage, develop and promote wind power generation in the State with a view to meet the growing demand for power in an environmentally and economically sustainable manner; (ii) attract private investment to the State for the establishment of large wind power projects; and (iii) promote investments for setting up manufacturing facilities in the State, which could generate gainful local employment.
10. It is respectfully submitted that the Operative Period for the policy was for a period of five (5) years and/ or shall remain in force till such time a new policy is issued and it was provided that the Wind Power Projects (WPP) that are commissioned during the operative period shall be eligible for the incentives declared under this policy, for a period of ten (10) years from the date of commissioning - unless otherwise the period is specifically mentioned for any

incentive. To enable wind power capacity addition in the State, the following incentives among others were provided for Eligible Developers for those projects setting-up during the operative period :

b) Transmission and Distribution charges for wheeling of power

Transmission and Distribution charges shall be exempted for wheeling of power generated from Wind Power Projects for captive use/third party sale within the State.

c) Energy Banking:

Banking of 100% of energy shall be permitted during all 12 months of the year. Banking charges shall be adjusted in kind @ 2% of the energy delivered at the point of drawal....

Energy injected into the grid from the date of synchronization to Commercial Operation Date (COD) will be considered as deemed energy banking.

The unutilized banked energy shall be considered as deemed purchase by the DISCOMs at the pooled power purchase cost as determined by the APERC for the applicable year. Energy settlement shall be done on monthly basis.

11. It is humbly submitted and pertinent to point out that the 2015 Wind Power Policy was issued after detailed discussions with various stakeholders including but not limited to Transmission Corporation of Andhra Pradesh Limited, APDISCOMs, NREDCAP, Wind Power Developers and Associations. Further, it must also be stated that pursuant to the 2015 Wind Power Policy, the State of Andhra Pradesh was able to attract significant investment from foreign and domestic investors and add an impressive 2800 MW to its capacity as against the addition of 110 MW under the earlier 2008 Wind Power Policy.
12. It is respectfully submitted that the State of Andhra Pradesh, exercising its powers under the provisions of Section 108 of the Electricity Act, 2003, requested the Andhra Pradesh Electricity Regulatory Commission to adopt and issue necessary Regulations / Orders for giving effect to the Andhra Pradesh Solar Power Policy, 2015 and the Andhra Pradesh Wind Power Policy, 2015. Having regard to the views/suggestions/comments received and the request made by the Government of Andhra Pradesh, in exercise of Powers vested with it under section 181(1) of the Electricity Act, 2003 read with Sections 39 (2) (d) (ii), 40 (c) (ii), 42 (2), 42 (3), 42 (4) and 86 (1) (e) of the Electricity Act, 2003 (Central Act 36 of 2003) and all other powers enabling in this behalf including those conferred by the Andhra Pradesh Electricity Reform Act, 1998 (State Act 30 of 1998) and the Andhra Pradesh Reorganization Act, 2014 (Central Act 6 of 2014), the 4th Respondent by Andhra Pradesh Electricity Regulatory Commission (Terms and Conditions of Open Access) (First Amendment) Regulation, 2016 made the following Amendments to the Principal Regulation viz., Andhra Pradesh Electricity

Regulatory Commission (Terms and Conditions of Open Access) Regulation, 2005 (Regulation No.2 of 2005) and stated that the Regulation shall be deemed to have come into force with effect from 12.02.2015 in respect of Wind Power Projects commissioned during the operative period of the Andhra Pradesh Wind Power Policy, 2015 i.e., from 12.02.2015 to 11.02.2020. The relevant amendments to the present case are as under:

Amendments to Para 17.1 of Principal Regulation

a. The following proviso shall be added a second proviso to Para 17.1(i) ZA

"Provided further that the Transmission and Wheeling charges shall be exempted for wheeling of power generated from such Solar and Wind Power Projects and for such operative periods as mentioned in G.O.Ms.No.8, Dated 12-02-2015 and G.O.Ms. No. 9, Dated 13-02-2015 respectively for only captive use / third party sale within the State."

....

c. The following proviso shall be added as the second proviso to Para 17.1 (iii)

"Provided further that the Cross Subsidy Surcharge and additional surcharge shall be exempted for third party sale if the source of power is from such Solar Power Projects set up within the State as mentioned in G.O.Ms. No. 8, Dated 12-02-2015 for a period of five (5) years from the date of commissioning of such projects."

13. It is respectfully submitted that in pursuance to the aforesaid Wind Policy, 2015 brought in by the State of Andhra Pradesh and based on promises and assurances provided under policy directives, the objectors' have conceived Wind Power Projects with an installed capacity of approximately 2.0 MW each and above with a total cost outlay of about Rs.5 Crores per MW, essentially for their captive use.

14. Objections and Grounds for withdrawal of the proposed amendments:

- a) The Andhra Pradesh Electricity Regulatory Commission pursuant to G.O.Ms.No.35 dated 18.11.2019, by way of the proposed Amendment Regulation intends to delete the amendments made to the Principle Regulation at paras 17.1 by the Andhra Pradesh Electricity Regulatory Commission issued APERC (Terms and Conditions of Open Access) (First Amendment) Regulation 2 of 2016 thereby withdrawing exemptions to transmission and wheeling charges, cross subsidy surcharge and distribution losses to wind generators. Firstly G.O.Ms.No.35 dated 18.11.2019 neither deals with the

incentives extended under Andhra Pradesh's Wind Policy, 2015 nor it purports to interdict with any incentives granted therein, and it only omits or seek amendment to A.P Wind Policy, 2018, therefore any reference to said GO purporting to initiate the present proceedings is misconceived. Secondly the present Amendment is impermissible as afore said exemptions have been granted by way of the First Amendment which was pursuant to the State of Andhra Pradesh's Wind Policy, 2015 categorically exempting/extending incentives for a period of ten years from the date of commencement of the project within the operative period. Therefore, as the Objectors have commissioned their projects within the operative period, they are entitled to avail such exemptions for a period of 10 years.

- b) The State of Andhra Pradesh has issued Wind Policy, 2018 superseding the Wind Policy, 2015 and the incentives granted under the Wind Policy, 2015 were neither altered nor have taken away the incentives granted to those power projects such as the objectors who have already commissioned the plants and therefore the G.O.Ms. No. 35 dated 18.11.2019 issued by the State of Andhra Pradesh amending the Wind Policy, 2018 will neither have any bearing nor affect the incentives extended to them under the Wind Policy, 2015. Hence, the Andhra Pradesh Electricity Regulatory Commission on such premise of the issuance of G.O.M.S. No. 35 by the State of Andhra Pradesh cannot withdraw the exemptions by the proposed Amendments.
- c) It is settled position of law that even if a policy is not statutory and binding in nature, so long as the policy has created a legitimate expectation in the minds of those to whom it applies, the State of Andhra Pradesh and the Andhra Pradesh Electricity Regulatory Commission will have to abide by such a policy and the Regulation made pursuant thereto. The Objectors in making investments and setting up Wind Project in the State of AP have acted *inter alia* on the basis of the promise and representation made by the State of Andhra Pradesh by way of the Wind Policy, 2015 and Andhra Pradesh Electricity Regulatory Commission issued APERC (Terms and Conditions of Open Access) (First Amendment) Regulation 2 of 2016, legitimately expect that having altered their position and making investments towards setting up of wind power projects, would continue to act on the Policies and Regulation.
- d) That the proposed Amendments, more particularly, withdrawal of transmission charges, wheeling charges and cross subsidy surcharge besides withdrawal of banking facility are hit by the Principle of Promissory Estoppel and Doctrine of

legitimate expectation which also operate in the delegated legislative field. Therefore, as the Regulations are in the nature of subordinate legislation made in exercise of powers under Section 86(1)(e) read with Section 181 the Hon'ble Commission cannot bring in the proposed amendments as they are hit by the Principle of Promissory Estoppel as held by the Hon'ble Supreme Court in a catena of decisions.

- e) That the G.O.Ms. No. 35 dated 18.11.2019 issued by the State of Andhra Pradesh amending Wind Policy, 2018, has prospective effect, and it apply to only those projects which are set up after 18.11.2019, either under the regime of Wind Policy, 2018, as it purports to amend the same or up coming projects, and at any rate can not have retrospective application, and that too for the projects set up under AP Wind Policy, 2015, which is not even, whispered in the said GO.
- f) The purported reasons for bringing in the proposed amendments apart from the GO.Ms.No.35 are that the Distribution Companies, APEPDCL and APSPDCL have submitted representations to make appropriate amendments to the Regulation in view of the present RPPO of 30% being much higher than the required RPPO of 15 % under Regulation 1 of 2017 and further that smooth integration of the 8515 MW of solar and wind power which is variable in nature with the Grid is a difficult task and that presently the promotion of Renewable Power is not warranted. Firstly assuming the Discoms are achieving 30% RPPO as against 15 % prescribed in the Regulation 1 of 2017, it is to be seen that said Regulation only prescribes minimum percentage and not the maximum, and secondly the said purchase is from NCE Generators through feed in Tariff as determined by this Hon'ble commission, therefore the said reasons have no nexus with the curtailment or withdrawing of existing incentives. All the aforesaid reasons are factually incorrect besides being on misplaced assumptions. Firstly, the incentives given under the 2015 Policy as ratified by the Regulation 1 of 2016 are availed only by a small fraction of the total generated RE capacity in the state, as objectors understand i.e., around 300 MW out of the total generated capacity of 7800 MW and that too the incentives are availed by small generators who will not be in a position to continue if the incentives are removed as they will be exposed to huge financial burden. The generation of 8515 MW is by the generators who have entered Power Purchase Agreements with the DISCOMs which is based on Feed-In Tariff and no wheeling and transmission charges or Cross subsidy

surcharge apply to those generators, and therefore these reasons are totally extraneous and have no nexus with the proposed exercise. Be it as it may, without conceding, even assuming if the aforesaid reasons are true, they cannot be fathomed to be material and substantial grounds to amend the Regulations removing the exemptions. There is no nexus between the reasons for amendment and the objectives that are sought to be achieved. In fact, the equity and public interest weigh in favour of the small renewable generators as they are providing green and clean energy which benefits the environment which is legislatively mandated under Section 86(1)(c) apart from being in line with the State's avowed obligation to the Country and the World at large. This Hon'ble Commission is legislatively bound to promote the NCE generation and the Discoms can't plead such promotion is not envisaged and unwarranted.

- g) The investments made by the Objectors for setting up the renewable power project at the relevant time were necessarily funded by financial institutions. Such funding was factored in by them to determine the rate of return in order to service any loans taken for such purpose. Any such forced '*withdrawal*' of incentives through the proposed amendments, especially the policy exemptions the term whereof is 10 years, would necessarily affect the servicing of loans by the Objectors to the financial institutions, which has a cascading effect not only on them but the public exchequer as well. Thus, any such exercise at this stage would be highly detrimental to the Objectors and the public exchequer as well as the electricity regime in the State of AP, as well as set a bad precedent for the rest of the country.
- h) The withdrawal of incentives to the Objectors will not serve any public interest and may have a small incremental impact on the DISCOMs and consumer tariff but it will severely affect the viability of the wind power projects. It may be noted that proposed amendments may have severe cascading effects as the Objectors cost of operation of their textile units would substantially increase and they would be at a disadvantaged position and will be out of competition with other neighbouring states as they will not be able to compete on the pricing thereby putting them on a higher risk.
- i) The impact and consequences because of the proposed amendments are:

PROPOSED TRANSMISSION AND WHEELING CHARGES AT 33 KV LEVEL FOR 2.1 MW WIND GENERATOR:

Financial year	Wheeling charges	Transmission charges (Rs)	Total cost per KW	Total charges per	Expected generation	Cost per unit
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	(Rs)		/Month (Rs)	2.1 MW (Rs) payable		(Rs)
2019-2020	61.61	119.28	180.89	45,20,000	40,00,000	1.13
2020-2021	64.11	138.88	202.99	50,80,000	40,00,000	1.27
2021-2022	69.34	154.54	223.88	56,40,000	40,00,000	1.41
2022-2023	75.44	173.79	249.23	62,80,000	40,00,000	1.57
2023-2024	79.48	188.38	267.86	67,20,000	40,00,000	1.68

- j) Transmission and wheeling charges are imposed on the basis of installed capacity for a conventional power plant in which PLF is 70-80%, Whereas PLF for solar and wind power plants is 20-25% only.
- k) Due to withdrawal of wheeling and transmission charges, the monetary loss will approximately be Rs. 57 Lakhs per annum. Further, due to withdrawal of banking each wind unit produced excess energy of 15% will become inadvertent in the peak seasons which will result in a monetary loss of Rs. 21 Lakhs per annum. In addition to this, the cost of maintenance charges would be around Rs. 27 Lakhs and auxiliary consumption charges will be Rs. 2 Lakhs and the total effective out-flow per year will be approximately Rs. 1.07 crores for each 2.1 MW Plant which the members of the Objectors' Association will not be in a position to bear.

15. For the foregoing objections, facts and circumstances, it is therefore humbly prayed that the Hon'ble Commission may withdraw the proposed Regulation No. of 2020, Second Amendment to APERC (Terms and Conditions of Open Access) Regulation No. 2 of 2005 in the interest of justice.

Date: 08.03.2020

Place: Hyderabad


COUNSEL FOR THE OBJECTORS