

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)**

**IA No. 1258 & 1260 of 2020 IN
APPEAL No. 126 of 2020**

Dated : 12th August, 2021

**Present: Hon'ble Mrs. Justice Manjula Chellur, Chairperson
Hon'ble Mr. Ravindra Kumar Verma, Technical Member**

In the matter of:

Tata Power Renewable Energy Limited

C/o The Tata Power Company Limited,
Corporate Centre, B Block,
34, Sant Tukaram Road, Carnac Bunder,
Mumbai – 400 009, Maharashtra

....Appellant

VERSUS

1. Andhra Pradesh Electricity Regulatory Commission

Through its Secretary
4th Floor, Singareni Bhawan,
Red Hills, Hyderabad – 500 004

2. Andhra Pradesh State Load Despatch Centre

Through the Chairperson/ Chief Engineer
3rd Floor, APSLDC Building,
Vidyut Soudha, Gunadala,
Vijaywada, Andhra Pradesh – 520 004

3. Transmission Corporation of Andhra Pradesh

Through the Chairperson
Vidyut Soudha, Gunadala,
Eluru Road Vijaywada, Andhra Pradesh – 520 004

4. Wind Independent Power Producers Association

Through Authorized Signatory,
6th Floor, Tower 4A, DLF Corporate Park,

DLF Phase -III, MG Road,
Gurgaon, Haryana – 122002.

....Respondent(s)

Counsel for the Appellant(s) : Mr. Sajan Poovayya Sr.Adv.
: Mr. Shri Venkatesh
: Mr. Vikas Maini
: Mr. Ashutosh Kumar Srivastava
: Mr. Suhael Buttan
: Mr. Abhiprab Singh

Counsel for the Respondent(s) : Mr. Puneet Jain
: Mr. Ardhendumauli Kumar
Prasad for R-2 & 3
: Mr. Nishant Kumar for R-4

ORDER

(PER HON'BLE MRS. JUSTICE MANJULA CHELLUR, CHAIRPERSON)

1. The instant appeal being Appeal No. 126 of 2020 is filed by the Appellant challenging the legality, validity and propriety of the interim Order dated 14.07.2020 passed by the Andhra Pradesh Electricity Regulatory Commission (for short "**State Commission / Commission / APERC**") in IA Nos.7, 8 and 9 of 2020 in Original Petition No. 54 of 2019. The said O.P. was filed by the Appellant against Respondents seeking directions to restore the 400 KV *Uravakonda* Sub-Station ("**Uravakonda SS**") and revise the curtailment instructions issued to RE generating companies including the Applicant.

2. Pertinently, along with the instant Appeal, the Appellant had also filed I.A No. 980 of 2020 seeking direction for Respondent No. 2/ APSLDC and Respondent No. 3/ APTRANSCO to revise its curtailment schedule and allow a minimum of 79.522% of evacuation from Urvakonda SS. By its order dated 11.09.2020, this Tribunal observed that the evacuation at 70% as directed by the State Commission seems to be justified and did not pass any direction in favour of the Applicant.

3. Facts leading to filing of the present appeal and interim applications, in nutshell are as under:

On 03.06.2017, Respondent No.2-APSLDC issued directions restricting power evacuation for each IPP connected to 400 kV *Urvakonda SS* to 67% due to available evacuation capacity. Accordingly, the Applicant's Wind Power Plant was restricted to 67 MW out of installed capacity of 100 MW. Subsequently, on 12.10.2017, Respondent No.3-APTRANSCO commissioned 315 MVA ICT-4 at *Urvakonda GSS*, instead of the planned 500 MVA. On 21.11.2017, Respondent No.3-APTRANSCO vide its Order directed 72.93% evacuation to all IPPs, including the Appellant.

4. On 23.05.2018, pursuant to a Meeting between Respondent No.2-APSLDC and various Wind Power Generators, Applicant's generation

capacity was restricted to 72.5% instead of agreed 90%. Thereafter, various curtailment instructions were issued during September 2018 to February, 2019. However, on 24.02.2019, Respondent No.3-APTRANSCO revised curtailment from 70.47% to 55.13% for all Wind Generators due to outage availed by 315 MVA ICT-4 to 500 MVA.

5. On 18.04.2019, the Applicant-TPREL by its letter informed Respondent No.2-APSPDCL that due to insufficient evacuation capacity at Uravakonda SS, Nimbagallu wind plant is continuously running on power curtailment mode on the instructions from APTRANSCO and APSLDC, and for the period from April 2017 to March 2019, there has been generation loss of 32.66 MUs, which corresponds to a revenue loss of Rs.17.44 Crores and Respondent No.2 was requested to compensate the said loss. Thereafter, vide its letter dated 14.05.2019, Respondent No.3-APTRANSCO revised the curtailment from 55.13 % to 79.52% for all wind generators due to capacity addition in *Uravakonda SS*.

6. A review meeting of the Energy Department, chaired by the Chief Minister of the State of Andhra Pradesh was convened. A Committee by name, HLNC was constituted to '*review, negotiate and bring down the high wind and solar energy purchase prices*' ("**GoAP Order**").

7. On 12.07.2019, various Wind Energy Generators received letters from Respondent No.2-APSPDCL directing them to reduce Tariff to Rs.2.43/- per unit and to submit revised monthly power supply bills, failing which, it is stated that the PPAs would be terminated. Aggrieved by GoAP Order dated 01.07.2019 and letter dated 12.07.2019, various Wind and Solar Power Developers approached the High Court of Andhra Pradesh by way of a Writ Petition being *W.P (C) No. 9844 of 2019* titled as "*Renew Power Ltd vs State of Andhra Pradesh & Ors.*" On 25.07.2019, the Hon'ble High Court stayed the operation of the GoAP order and letter dated 12.07.2019. Thereafter, there was phenomenal rise in the curtailment instructions issued by Respondent Nos. 2 & 3 APSLDC & APTRANSCO. On 01.08.2019, various Wind Generators filed I.A.s in the abovesaid Writ Petition. On 01.08.2019, the Hon'ble High Court, after hearing the parties passed order with the following observations:

"Having regard to the facts and circumstances of the case and submission of learned counsel, perused the record. This Court prima facie satisfied that the petitioner has shown sufficient cause for grant of interim direction.

Accordingly, there shall be an interim direction directing APTRANSCO/SLDC to discharge its statutory functions fairly and refrain from arbitrary curtailment of power generation by the power generating projects. The APTRANSCO further directed to adhere to the undertaking given to this court that written justification for curtailment of power will be informed on weekly basis in the website of

TRANSCO as required under point 4.3.8.1 Grid Code, pending further orders in the writ petition.”

[Emphasis supplied]

8. Thereafter, APTRANSCO/APSLDC has continued to curtail power on alleged tripping of ICTs at the *Uravakonda SS*. Again, on 17.08.2019, Respondent No.3-APTRANSCO revised curtailment from 79.52% to 55.13% for all Wind Generators due to tripping of 500 MVA ICT-4. Curtailment was further revised from 55.13% to 30.74% vide letter dated 27.08.2019 of Respondent No.3-APTRANSCO to Respondent No.2-APSLDC. Respondent No.4-Wind Independent Power Producers Association filed a Petition before Respondent No.1-APERC, being O.P. No. 54 of 2019 along with I.A. No. 18 of 2019 seeking directions against the Respondents and to constitute a Committee to enquire/investigate into the veracity of reasons for curtailment.

9. On 14.07.2020, the State Commission passed the Impugned Order. The relevant extracts of the Impugned Order are reproduced as under:-

“Considering the fact that Borampalli-Kalyandurg line is going to be charged within two months according to Sri. P Shiva Rao, Learned Standing Counsel and that presently evacuation is permitted at about 67% of the capacity, we feel that in the interest of justice, respondents shall allow evacuation at 70% till a new line is charged. Respondents are directed to make every endeavor to complete the same and charge the line not later than two months from today as submitted by Sri. P. Shiva Rao.”

10. Thereafter, on 19.07.2020, Respondent No.2 issued a Backing Down Notice to all RE Generators in the State of Andhra Pradesh. On 20.07.2020, in anticipation of the reduction in demand, Respondent Nos.2 and 3 observed that since it is still necessary to reduce injection of power to the grid, the exact quantum will be intimated during the day depending on real time operations. From 19.07.2020 to 23.07.2020, Respondent Nos.2 and 3 had been constantly backing down the Applicant's generation. In fact, during certain time blocks, Respondent Nos. 2 and 3 had only permitted 4% of generation of power. During the said period, only one curtailment notice has been issued on 19.07.2020 for the curtailment imposed on 20.07.2020. Similarly, on 24.08.2020, Respondent Nos.2 and 3 issued another Backing Down Notice on the alleged low demand for 25.08.2020. On the same day, Respondent Nos.2 and 3 issued a "Curtailment Proforma" for the State of AP and directed backing down from 10% to 50% for all RE generators connected to *Uravakonda, Jammlamadugu, Goot RS, Kalyandug, Kadapa, AP Carbides, Yerranguntla, Hindupur, Ramagiri, Tadipatri* Sub- Stations. While issuing such instructions, Respondent Nos.2 and 3 have not followed the requirements of IEGC and had violated the "Must Run" status of the Applicant without any reasons. Similarly, on 25.08.2020, 30.08.2020,

03.09.2020, 09.09.2020, 12.09.2020, 13.09.2020, 14.09.2020 and 15.09.2020.

11. The case of the Applicant is that despite the Impugned Order and the Order dated 11.09.2020 passed by this Tribunal directing Respondent Nos.2 and 3 to ensure that 70% of the power from the Applicant is evacuated, Respondent Nos.2 and 3 have indulged in backing down the Applicant's generation to the tune of 95%, permitting only 5% of generation in certain time blocks, even violating the directions of the State Commission.

I.A. No. 1258 of 2020

12. During the pendency of the Appeal, the Applicant has taken out Interim Application No.1258 of 2020 seeking the following reliefs:

- (a) "Allow the present Application;
- (b) Direct Respondent No. 3 & 4– APTRANSCO & APSLDC to immediately and without any delay revise schedule of curtailment to 70% in terms of the Order passed by this Hon'ble Tribunal during the pendency of the present Appeal;

And/Or

- (c) Pass such other order(s) as the Hon'ble Tribunal may deem just in the facts of the present case."

I.A. No. 1260 of 2020

13. The Applicant has taken out Interim Application No.1260 of 2020 for discovery of documents under section 120 (2) (b) of the Act read with order 11 Rule 12 of the Civil Procedure Code.

14. According to the Applicant, Respondent Nos.2 and 3, in complete disregard to the State Commission's Order and in order to impose curtailment, used a blanket cover of grid stability/insecurity and no additional reasons, as such, are provided. According to the Applicant, such backing down is for economic considerations and without following the provisions of the IEGC. Therefore, Respondent Nos.2 and 3 have not only violated the specific Order passed by this Tribunal but have clearly violated Regulation 5.2 (u) and Regulation 6.5 (11) of the IEGC.

15. Further, this Tribunal in Appeal No. 197 of 2019 vide its order dated 26.08.2020 has directed that the information pertaining to backing down/curtailment duly submitted by the Licensee therein to be analysed by Power System Operation Corporation ("**POSOCO**"). Therefore, for proper adjudication of the instant appeal, it is also necessary to direct POSOCO to examine the aforesaid relevant information submitted by Respondent Nos.2 and 3 pursuant to the present Application.

16. Learned counsel for the Appellant has filed written submissions contending that the principal issue raised in these applications is that

when this Tribunal is seized of the matter and has passed an Order, Respondent Nos.2 and 3 cannot take shelter under purportedly a new reasoning and frustrate the order passed by this Tribunal. It is submitted that on one or the other reason, the Appellant has been subjected to unreasonable curtailment. From the very beginning, APTRANSCO/APSLDC has been taking the plea of 'grid security' either on account of transmission contracts or demand/supply imbalance to back down generation from 'must run' plants. Further, Respondent Nos. 2 & 3 have contended that the issue of curtailment is not the subject matter of the present proceedings. In this regard, it is submitted that the said contention is misconceived and misleading since in O.P. No. 54 of 2019 as well as in the present Appeal arbitrary backing down of plants and curtailment is the fundamental issue.

17. It is submitted that by invoking Section 120 (3) of the Electricity Act, 2003, the present I.A. No. 1258 of 2020 has been filed by the Appellant/Applicant in view of the frequent curtailment instructions issued by Respondent Nos. 3 & 2, APTRANSCO/APSLDC, despite the order of this Tribunal dated 11.09.2019, wherein it was directed that 70% evacuation from Appellant/ Applicant's project shall be maintained. It is settled law that this Tribunal has the power to execute the interim directions/orders passed by it. In this regard, learned counsel refers to the

Judgment of this Tribunal dated 31.05.2018 in E.P. No. 3/2018 in Appeal No. 41 of 2018 – “*HNPCL v. APERC & Ors.*” and submits that this Tribunal can direct APTRANSCO/APSLDC to comply with the order dated 11.09.2019, otherwise, the purpose of passing the said Order would become redundant.

18. The issue of curtailment is pending before the Hon’ble Andhra Pradesh High Court and the subject matter of the present proceeding is limited to the evacuation from Urvakonda Substation. In this regard, it is submitted that the issue of curtailment was always the subject matter of the present proceedings. In fact, O.P. No. 54 of 2019 was filed by Wind Independent Power Producers Association before APERC seeking relief from arbitrary curtailment instructions issued by APTRANSCO/APSLDC on the ground of grid security and more specifically the transmission constraints at 400/220 kV Urvakonda Grid Substation. Even in the instant appeal, issue of arbitrary curtailment by Respondent No.2 and 3 is raised in addition to the issue that the Appellant’s Project is a must run plant and it should not be subjected to curtailment.

19. Alleging that the data submitted by APTRANSCO/APSLDC vide Reply dated 13.09.2020 prima-facie establishes that curtailment has been done on commercial basis. In the same time blocks, when the evacuation from Appellant/ Applicant’s Project was in the range 1%-30%,

APTRANSCO/APSLDC were scheduling power from Energy Exchange at a cheaper rate.

20. In view of the above, it is clear that even though the Applicant's wind power project was being curtailed to over 96%, the evacuation from thermal power plants were in the range of 70-100%. The same is in clear violation of the must run status granted to RE Generators including the Applicant.

21. It is submitted that Section 79(1)(h) of the Electricity Act provides that the Central Commission has to specify Grid Code having regard to the grid standards. Section 86(1)(h) of the Act authorizes the State Commission to specify the State Grid Code consistent with the IEGC specified by the Central Commission under section 79(1) of the Act. Therefore, once the Central Commission notifies IEGC, the said IEGC then is applicable upon all participants of the grid including State Commission under Section 86(1)(h). Further, even the AP Grid Code (AP Code of Technical Interface) at Regulation 1.10 provides that IEGC will precede the provisions of AP Grid Code. Further, the Hon'ble Supreme Court in "*Central Power Distribution Co. & Ors vs. CERC*"(2007) 8 SCC 197, has also categorically held that the State Grid Code is subservient to the Central Grid Code. The conjoint reading of the Act, IEGC and AP Grid Code, makes it clear that Respondent No.2 and 3 are directed to maintain

Technical Minimum of their State Units at 55% MCR and in fact the Respondents have ensured that a much higher quantum of power is evacuated from State owned generating stations to the detriment of the Applicant.

22. It is further contended that Respondents-APTRANSCO/APSLDC curtail RE power and promote their own State Generation for economic consideration since there is no provision in the PPA to compensate RE Projects in the case of backing down. Further, the Respondents to ensure that least expensive power is procured, curtail RE power at a higher tariff (Rs. 4.84 Per Unit in case of Applicant) when the Energy Charges of TPPs is lower than the total cost of RE Power. When the Energy Charges of TPPs are lower and there is lack of overall demand in the grid, for economic considerations the Respondents indulge in rampant backing down of RE generation and operate their own State Power Plants/IPPs at a much higher Plant Load Factor ("**PLF**").

23. This Tribunal on 28.09.2020 had directed Respondents-APTRANSCO/APSLDC to provide data pertaining to backing down of thermal and renewable generating stations along with explanation/reasons for such backing down, Respondents-APTRANSCO/APSLDC vide their reply dated 30.09.2020, have merely submitted the data and no explanation for such backing down has been

provided. Except making a bald averment that backing down was done due to grid security, nothing is brought on record to show that the issue of grid security was there during such days. There may be fluctuations in demand and supply and the same cannot be taken as a reason for curtailing the RE generation of the Applicant to the tune 99% in certain time blocks.

24. Learned counsel for the Appellant submits that despite the instructions of Ministry of Power, and Ministry of New and Renewable Energy, Government of India, on many occasions, that RE Power is ‘Must Run’ and ought not to be curtailed for any economic reasons, the State of AP and especially the Respondent No.2 and 3 have not paid any attention to such instructions and have resorted to issuing backing down instructions. Further, APERC (Terms and Conditions for Tariff Determination for Wind Power Projects) Regulations, 2015 provides that Respondent No.2-APSLDC is bound to curtail other sources of power before curtailing wind energy, in view of the “must-run’ status granted to it, and its preclusion from ‘Merit Order Despatch’. That apart, Rule 4 of Draft Electricity (Change in Law, Must-run status, and other Matters) Rules, issued by MoP on 01.2.2020, recognises the must-run status of RE Generators including wind power generators and mandates that such generators shall not be subjected to curtailment on account of merit order

dispatch or any other commercial consideration, and in the event of curtailment of such generators, compensation shall be payable by the procurer to the generator at the rate prescribed under the PPA. Therefore, it is crystal clear that the issue of power curtailment faced by the RE Generator, such as the Applicant, has been recognized at the highest level.

25. For the foregoing reasons, it is prayed to take cognizance of the conduct of APTRANSCO/APSLDC and appoint an independent authority/entity to analyze the data furnished by APTRANSCO/APSLDC.

26. Learned counsel for Respondent No.2 has filed written submissions alleging that the arrangement made by the State Commission allowing evacuation at 70% was until the new Borampalli-Kalyandurg line was charged. However, aggrieved by the said order dated 14.7.2020, the Appellant preferred the present appeal along with an I.A. No. 980 of 2020 seeking direction for Respondent No. 2/ APSLDC and Respondent No. 3/ APTRANSCO to revise its curtailment schedule and allow a minimum of 79.522% of evacuation from Urvakonda SS. This Tribunal has disposed of the said application by order dated 11.9.2020.

27. Learned counsel contends that the scope of this appeal is limited to consideration of the correctness of the interim order dated 14.7.2020 passed by the Commission.

28. Learned counsel contends that in view of the order of this Tribunal dated 11.09.2020 upholding the interim arrangement set up by the Commission, nothing survives for consideration in this appeal. Further, the interim arrangement in terms of the order of the Commission dated 14.07.2020 as well as this Tribunal's order dated 11.09.2020 was until the commissioning of 220 kV Borampalli kalyanadurg line. The said line has since been charged and has become operational, nothing survives in this appeal. Further, subsequent to the order of this Tribunal dated 11.09.2020, no backing down directions have been issued by the Respondent No.2-APSLDC on account of power transmission infrastructure constraints.

29. Contending that the Appellant appears to have been aggrieved by general back down instructions of Respondent No.2-APSLDC issued for the safety, security and integrity of the Grid to maintain frequency within the permitted band of 49.90 Hz – 50.05 Hz, learned counsel submits that the said instructions were issued on account of demand-supply mismatch, since when the supply of electricity exceeds demand that would result in heating up the grid and would lead to tripping.

30. Learned counsel points out that the issue pertaining to veracity of the curtailment directives is outside the scope of the present proceedings and the issue relating to general back down instructions on account of frequency management constitute a separate cause of action, which cannot be adjudicated or decided by this tribunal as an original jurisdiction, that too in an appeal, which is filed against the interim order.

31. Learned counsel further points out that Section 33(1) empowers Respondent No.2-SLDC to issue necessary directions to the electricity generators to ensure efficient operation of the grid and that the said directions are binding on the generators. If there arises any dispute regarding the veracity of the directions issued by Respondent No.2-SLDC, the same has to be adjudicated only by the State commission i.e., APERC as provided under section 33 (4) of the Act.

32. Learned counsel submits that the general back-down instructions have been issued for all wind power generators throughout the state irrespective of the substation through which they are evacuating and attached to the grid. It is submitted that these general back-down instructions were issued:-

- (i) Prior to the time when infrastructure constraints arose at *Urvakonda SS.*
- (ii) During the period when curtailment directives were issued on account of infrastructure constraints at *Urvakonda SS.*

- (iii) During the period when interim arrangement ordered by the APERC was in force.
- (iv) During the period after the order dated 11.09.2020 was passed by this Hon'ble tribunal.

33. Any grievance with regard to general back-down instructions issued by Respondent No.2-APSLDC could be agitated as a separate cause of action by instituting appropriate proceedings before the State Commission under section 33 (4) of the Electricity Act, 2003. In case, such proceedings are initiated, the State Commission would decide the same and the parties would have appellate remedies before this Tribunal.

34. So far as the averment of the Appellant made in IA No. 1258 of 2020 for discovery of documents under section 120 (2) (b) of the Act read with order 11 Rule 12 of the Civil Procedure Code is concerned, it is submitted that the necessary documents have already been filed by the Respondents in compliance of the directions issued by this Tribunal vide order dated 28.09.2020.

35. With regard to the prayer of the Appellant for consideration of the data provided by the Respondents by POSOCO, it is submitted that no reference can be made to POSOCO for consideration of data relating to the curtailment directives issued by Respondent No.2-APSLDC since in relation to the very same issue, the said organisation has taken up an

adversarial position against Respondent No.2-APSLDC, and the proceedings initiated by APDISCOMS vide Diary No 239 of 2020 dated 28.01.2020 before the State Commission espousing the cause of renewable energy generating companies in the State of Andhra Pradesh is pending adjudication.

36. If this Tribunal comes to a conclusion that the issues raised by the Appellant do not constitute a separate cause of action, then this Tribunal may refer the issue of adjudication of reasons of curtailment for the period from 11.09.2020 to 28.09.2020 to the State Commission for adjudication in terms of Order 41 Rule 25 CPC.

37. In view of the above submissions, it is submitted that the applications in IA Nos. 1258 of 2020 and 1260 of 2020 may be dismissed as devoid of any merits.

38. Learned counsel for Respondent No.4 has filed written submissions. In brief, the submissions are as under:

39. Learned counsel points out that it has filed O.P. No.54 of 2019 in the context of the actions and omissions by Respondent Nos. 2 & 3-APSLDC & APTRANSCO in curtailing the injection of power by the Wind Energy Generators into the Grid, seeking specific orders from the State Commission. The State Commission instead of dealing with all the issues raised in O.P. No.54 of 2019 restricted itself to the singular issue of non-

completion of the Borampally-Kalyandurg line and passed the Impugned Order permitting curtailment by Respondent Nos. 2 & 3 APSLDC and APTRANSCO till completion of the above line. The Impugned Order is an unreasoned order since the larger issue of curtailment, allegedly on the ground of 'grid security', despite the 'Must Run' status of Wind Energy Generators was conspicuously overlooked by the State Commission despite going into the root of the issues before it. Since one of the affected members, i.e., the Appellant has preferred the instant appeal, Respondent No.4 has not filed any separate appeal and it is totally supporting the case of the Appellant.

40. Contending that though the Borampally-Kalyandurg line has been commissioned as on 21.09.2020, the curtailment continues in the name of 'grid security' in spite of this Tribunal's Interim Order dated 11.09.2020 directing that till such time Borampalli - Kalyandurg line is commissioned at least 70% power from the Uravakonda Substation is to be evacuated. Learned counsel submits that the members of Respondent No4, including the Appellant are being subjected to unreasonable, unjustifiable and rampant curtailment despite the 'Must Run' status of Wind Energy Generators. It is pointed out that from the very beginning Respondent Nos. 2& 3-APSLDC & APTRANSCO have been taking the opaque plea of 'grid

security' either on account of transmission contracts or demand/supply imbalance to back down generation from 'must run' plants.

41. O.P. No. 54 of 2019 was filed before the State Commission seeking relief from frequent arbitrary curtailment instructions which were imposed by Respondent Nos. 2 & 3-APSLDC & APTRANSCO on wind power projects connected to Urvakonda Substation. It was also mentioned in the Petition that Respondent Nos.2 & 3- APSLDC & APTRANSCO are acting in contravention of the Electricity Act by issuing curtailment instructions without any cogent reasoning. The State Commission while admitting the O.P. 54 of 2019 passed a detailed interim order on 11.09.2019 recording that restoration of ICTs at the Urvakonda Substation requires immediate attention and the other issues raised in the petition shall be dealt with at a later stage. Therefore, it is evident that the issue of curtailment was always the subject matter of the proceedings before the State Commission, which was completely overlooked by the State Commission.

42. Till now Respondent Nos. 2 & 3-APSLDC & APTRANSCO have not explained the reasons for backing down. When this Tribunal by its Order dated 28.09.2020 in the instant Appeal had directed Respondent Nos. 2 & 3- APSLDC & APTRANSCO to provide data pertaining to backing down of thermal and renewable generating stations and also directed to provide

day-wise explanation for backing down along with specific grid security reasons, the Respondents have merely submitted the data for backing down and have not provided the date wise explanation for backing down. Respondent Nos. 2 & 3-APSLDC & APTRANSCO have made a bald averment that backing down was done due to grid security, but there is nothing on record to show that the issue of grid security was involved during such days.

43. Learned counsel contends that the actions of Respondent Nos. 2 & 3 are in contravention of must run status of Wind Energy Plant. However, Respondent Nos. 2 & 3-APSLDC & APTRANSCO are acting in grave violation of the overall scheme of the Electricity Act and the Policies/Regulations framed thereunder. Ministry of Power, Government of India, even during the lockdown, had repeatedly emphasised that RE Power is 'Must Run' and ought not to be curtailed for any economic reasons. However, the State of Andhra Pradesh have not paid any heed to such dictates issued by the MoP.

44. Pointing out that this Tribunal in a plethora of cases, has recognised the importance of promotion of renewable energy under the scheme of the Electricity Act, learned counsel refers to the following judgments.

- i. Judgment dated 26.04.2010 in Appeal No. 57 of 2010, titled ***M/s Century Rayon vs. MERC & Ors.***

- ii. Judgment in the case of ***Rithwik Energy vs. Transmission Corporation of Andhra Pradesh 2008 (ELR) (APTEL) 237:***

45. Further, the Hon'ble Supreme Court in ***Hindustan Zinc Ltd. v. Rajasthan Electricity Regulatory Commission, (2015) 12 SCC 611*** has held that the purpose of import of Section 86 (1)(e) is to sub-serve the mandate of Article 21 of the Constitution of India read with Article 51 A (g).

46. The primary reason for curtailment of power has been the lack of sufficient evacuation capacity at the Uravakonda Substation. A wind power project can generate revenue only upon generation and supply of power unlike a thermal plant where the concept of "Declared Capacity" is prevalent for recovery of the investment. Renewable energy projects are prescribed a single part tariff, and therefore, no fixed charges are paid in case of backing down/ curtailment of power. That it is in such context that "must-run" status of Wind Energy Projects must be ensured. In the absence of enforcement of must-run status, i.e. in the event of curtailment of energy, Wind Energy Projects, such as the members of WIPPA, ought to be compensated for the loss in generation and loss in revenue to ensure viability of the Projects and growth of the sector.

DISCUSSION & DECISION

47. The main prayer in IA No. 1258 of 2020 is for a direction to Respondent Nos. 2 and 3 – APSLDC and APTRANSCO to revise scheduled curtailment to 70% in terms of orders passed by this Tribunal dated 11.09.2020 ensuring 70% of the power from Applicant/Applicant's plant is evacuated.

48. IA No. 1260 of 2020 is filed seeking a direction to appoint POSOCO as an expert to look into the documents to be produced by Respondent Nos. 2 and 3 – APSLDC and APTRANSCO for making an enquiry into whether the backing down power from Appellant's plant is due to safety reasons or for economic considerations in the teeth of provisions of IEGC.

49. The main grievance of the Applicant/Appellant in the appeal seems to be that the APSLDC and APTRANSCO are extending different treatment to wind independent generators while showing preference to thermal plants and state owned generating plants. The Original Petition No. 54 of 2019 is still pending before the State Commission. IA Nos. 7, 8 and 9 were filed before the State Commission by the original petitioner. Challenging the legality and validity of orders on interim applications, the present appeal is filed.

50. It is seen that all along the Wind Independent Power Producers' Association is raising grievance for not restoring the 400 KV Uravakonda Substation, which was the main reason for curtailment instructions issued to RE generating companies including the Appellant/Applicant. It is noticed that after commissioning of 315 MVA ICT-4 at Uravakonda GSS instead of planned 500 MVA, again there was problem of restricting evacuation capacity, thereby Applicant's wind power plant had to restrict its supply to 67 MWs out of installed capacity of 100 MWs. Subsequent to 12.10.2017, with the commissioning of 315 MVA at Uravakonda GSS, APTRANSCO issued orders directing 72.93% evacuation to all IPPs including the Appellant. Based on the agreement arrived on 23.05.2018, though it was agreed 90% evacuation of power from wind power plants between September 2018 to February 2019, again curtailment instructions were issued restricting the same to 72.5% so far as Applicant/Appellant is concerned. There was further revised curtailment on 24.02.2019 to 55.13% for all wind generators on the ground of outage availed by 315 MVA ICT-4 to 500 MVA. Several requests were made to Respondents contending that there has been generation loss amounting to 32.66MUs, which corresponds to revenue loss of 17.44 crores. Subsequently, because of addition of capacity at Uravakonda Sub-Station, it was revised to 79.52% from 55.13%.

51. According to Applicant/Appellant in spite of above position, there was substantial increase in the curtailment of power only from renewable sources, which on certain occasions was 100% also. A meeting in the presence of Chief Minister of Andhra Pradesh, Energy Department, was also held on 26.06.2019, wherein the decision was taken to review, negotiate and bring down high wind and solar energy purchase prices. Pursuant to the said meeting, letters were received from APSPDCL directing the wind generators to reduce tariff to Rs.2.43/- per unit and submit revised monthly bills. They even approached High Court of Andhra Pradesh aggrieved by the said direction, which came to be stayed by the High Court of Andhra Pradesh. The Appellant/Applicant complains that this led to phenomenal rise in the curtailment instructions issued by Respondent Nos. 2 and 3, which compelled them to approach High Court of Andhra Pradesh again. On 01.08.2019, the High Court passed the following order:

“Having regard to the facts and circumstances of the case and submission of learned counsel, perused the record. This Court prima facie satisfied that the petitioner has shown sufficient cause for grant of interim direction.

Accordingly, there shall be an interim direction directing APTRANSCO/SLDC to discharge its statutory functions fairly and refrain from arbitrary curtailment of power generation by the power generating projects. The APTRANSCO further directed to adhere to the undertaking given to this court that written justification for

curtailment of power will be informed on weekly basis in the website of TRANSCO as required under point 4.3.8.1 Grid Code, pending further orders in the writ petition.”

[Emphasis supplied]

52. Subsequent to this order, when curtailment of power continued on the alleged tripling of ICTs at Uravakonda SS, which ultimately came down to 30.74% from 27.08.2019, they approached the Respondent Commission in the original petition.

53. According to the Appellant/Applicant, between 19.07.2020 to 23.07.2020 there is constant backing down of power so far as Appellant is concerned. At times, it went down to 4% of generation of power. But there is a complaint that only one notice was issued for curtailment. On 25.08.2020 Respondent Nos. 2 and 3 issued curtailment proforma for the state of Andhra Pradesh and directed backing down from 10% to 50% for all RE generators connected to Uravakonda, Jammlamadugu, Goot RS, Kalyandug, Kadapa, AP Carbides, Yerranguntla, Hindupur, Ramagiri, Tadipatri Sub- Stations.

54. Regulations that mandate Wind Power as ‘Must Run’ are as under:

- (A) Regulation 5.2(u) of the Indian Electricity Grid Code Regulations, 2010 (“IEGC”) notified by the CERC, provides as under:

“System operator (SLDC/ RLDC) shall make all efforts to evacuate the available solar and wind power and treat as a must-run station. However, System operator may instruct the solar /wind generator to back down generation on consideration of grid security or safety of any equipment or personnel is endangered and Solar/ wind generator shall comply with the same. For this, Data Acquisition System facility shall be provided for transfer of information to concerned SLDC and RLDC.”

(B) Regulation 6.5(11) of the IEGC provides:

“11. Since variation of generation in run-of-river power stations shall lead to spillage, these shall be treated as must run stations. All renewable energy power plants, except forbiomass power plants, and non-fossil fuel-based cogeneration plants whose tariff is determined by the CERC shall be treated as ‘MUST RUN’ power plants and shall not be subjected to ‘merit order despatch’ principles.”

55. According to Applicant, while issuing the said instructions, Respondent Nos. 2 and 3 in the teeth of IEGC requirement have violated “Must Run” status of the Applicant without any reason whatsoever. The curtailment proforma is as under;

S.No	Date	Range of Curtailment
1.	25.08.2020	10-30%

		[Ref APSLDC/08/RE/36]
2.	30.08.2020	20-70% [Ref APSLDC/08/RE/37]
3.	03.09.2020	30% [Ref APSLDC/09/RE/02]
4.	09.09.2020	20-50% [Ref APSLDC/09/RE/04]
5.	12.09.2020	20-90% [Ref APSLDC/09/RE/07]
6.	13.09.2020	40-90% [Ref APSLDC/09/RE/09]
7.	13.09.2020	30-90% [Ref APSLDC/09/RE/08]
7.	14.09.2020	20-95% [Ref APSLDC/09/RE/10]
8.	15.09.2020	30-70% [Ref APSLDC/09/RE/11]

56. This gave rise to file the present Applications. Direction on 11.09.2020 by this Tribunal directed that 70% of the power from Applicant's plant has to be evacuated. Respondent Nos. 2 and 3 have indulged in backing down the power from Applicant's wind plant to an extent of 95%, while only 5% of generation of power could be evacuated in certain time blocks. According to them, this is in complete derogation of IEGC provisions so also directions of this Tribunal in its Order dated 11.09.2020 and even the directions of the State Commission. The Appellant/Applicant contends that if Respondents 2 and 3 are directed to produce essential documents revealing the date of backing down instructions with specific reasons for different periods, as stated in the application, so also backing down instructions issued, if any, to thermal generating stations, grid frequency data and power purchase summary for the same period i.e., 14.7.2020 to 15.09.2020, it would come to light the actual intension of Respondent Nos. 2 and 3 in issuing such backing down instructions. They place reliance on the decision of this Tribunal in Appeal No. 197 of 2019 dated 26.08.2020, wherein this Tribunal directed that the information pertaining to backing down/curtailment is to be analysed by the Power System Operation Corporation (POSOCO). If such instructions/directions are given and if the same are being analysed by POSOCO, according to the Applicant, the real purpose beyond the curtailment of power would be evident that It was only for economic

considerations the Respondents Nos. 2 and 3 flouted the provisions of IEGC and the directions issued by this Tribunal and Commission from time to time.

57. According to Applicant, the so-called plea of 'grid security' raised by Respondent Nos. 2 and 3 for backing down generation from 'Must Run' plants is incorrect and not true. They also contend that the subject matter in OP as well as the present appeal, the fundamental issue is curtailment of generation from these 'Must Run' plants. This Tribunal issued directions on 11.09.2020 to evacuate power up to 70% from the Appellant's project and the same shall be maintained, but in spite of it, they have not complying with the same.

58. As against this, the Respondents contend that the curtailment is not the subject matter of the present proceedings and the Applicant is trying to mislead the Tribunal stating that it is the subject matter in the present proceedings.

59. According to Respondents, the Applicant is trying to mislead this Tribunal stating that the issue raised in the present application is the subject matter of Writ Petition before the High Court of Andhra Pradesh, therefore, proceedings is limited only to evacuation from Uravakonda SS. This is totally denied by the Applicant contending that from the beginning

the grievance of the Applicant is curtailment of generation, which is the subject matter in the proceedings.

60. On perusal of records it is seen in OP No. 54 of 2019 at the instance of wind Independent Power Producers Association, the petitioner is seeking relief from arbitrary curtailment instructions issued by Respondent Nos. 2 and 3 on the ground of grid security and particularly transmission constraints at 400/220 KV Uravakonda Grid Substation. This is evident from ground 'e' raised in the Petition and so also the relief para. From the reliefs sought in the present appeal also we note that the issue of arbitrary curtailment by Respondent Nos. 2 and 3 is raised in addition to the issue that the Appellant/Applicant's project is a Must Run plant, therefore it should not be subjected to any curtailment.

61. In response to our directions, certain data was produced by Respondents-APTRANSCO and APSLDC by its reply dated 30.09.2020, which establishes that there has been curtailment. According to the Applicant/Appellant, this is done only on commercial basis since at the very same time the thermal generating stations were running above their technical minimum, so also when evacuation from Appellant's plant was between 1% to 30%, Respondents-APTRANSCO and APSLDC were scheduling energy from exchange at a cheaper rate. They place data

analysis for one day i.e., 13.09.2020 for the time block from 05:00 hours to 09:45 hours, which reads as under:

- (a) The generation output allowed from Appellant/ Applicant's wind power project ranged from 4 % to 30%.
- (b) In the same time blocks, the generation output from AP state owned generating stations is as follows:
 - i. **Krishnapatnam (SDSTPS Unit 1 and Unit 2)** – The available capacity is 1300 MW (out of 1600 MW) and the generation output ranges from 1073 MW – 1101 MW. Further, the average generation output is **83 % of the available capacity**.
 - ii. **VTPS (Unit 1 to Unit 6)** - The available capacity is 945 MW (out of 1260 MW) and the generation output ranges from 677 MW – 691 MW. Further, the average generation **output is 72 % of the available capacity**.
 - iii. **VTPS Unit 7** – The available capacity is 475 MW (out of 500 MW) and the generation output ranges from 328 MW – 343 MW. **Further, the average generation output ranges is 70 % of the available capacity**.

- iv. **RTTP (Unit 1 to Unit 6)** - The available capacity is 1299 MW (out of 1650 MW). However, the said generating units have been kept under reserve standby.
- (c) In the same time blocks, the generation output from IPP is as under:
- i. **VGTS -II** - The available capacity is 160 MW (out of 172 MW) and the generation output is 163 MW. Further, the average generation output is over **100% of the available capacity**.
 - ii. **GVK** - The available capacity is 65 MW (out of 216 MW) and the generation output is 61.24 MW. Further, the average generation output is over **94% of the available capacity**.
 - iii. **SPEC** - The available capacity is 52 MW (out of 208 MW) and the generation output is 52 MW. Further, the **average generation output is over 100% of the available capacity**.
 - iv. **LANCO** - The available capacity is 110 MW (out of 368 MW) and the generation output is 109 MW. Further, the average generation output is around 99% of the available capacity.

- (d) In addition to the above, during the same time blocks, the APTRANSCO/APSLDC has scheduled approximately 300 MW of power from Power Exchange at an average cost of Rs. 2.20/kWh, which is much cheaper than the cost of energy supplied from Applicant's wind power project.
- (e) Further, APTRANSCO/APSLDC has scheduled around 270 MW – 570 MW of power from Power Exchange during the time block of 18:15 to 23:00 hours. During the said time block the evacuation permitted from Applicant's wind power project was in the range of 31.55% to 54%.

62. The above data for one day, *prima facie*, goes to show that there was curtailment of 96% of power generation from Appellant's wind project, whereas there was evacuation of power from thermal plants between the range of 72% 100% apart from purchasing power at a cheaper price from Power Exchange. *Prima facie*, we note that though Respondent Nos. 2 and 3 claim that they are maintaining much higher technical minimum for its state owned thermal power stations, it seems it is in violation of IEGC 2020. Section 79(1) (h) of Electricity Act provides that the Central Commission has to specify Grid Code having regard to the grid standards. Again 86(1)(h) of the Act authorises the State Commission to specify the State Grid Code consistent with IEGC specified by the Central

Commission. Hence, we are of the opinion that once IEGC gives the specification, the State Commission under Section 86(1)(h) has to specify the state Code, which should be consistent with IEGC specified by the Central Commission. When IEGC is applicable to all stake holders of the Grid, there is no exception and that the State Commission is also obliged to follow the same. We also note that AP Grid Code (AP Code of Technical Interface) i.e., Regulation 1.10 of AP Grid Code provides that provisions of IEGC will precede the provisions of AP Grid Code. In that view of the matter, the Respondents- APTRANSCO and APSLDC by virtue of Section 86(1)(h) read with Regulation 1.10 of AP Grid Code must follow the provisions of IEGC. This was recognised in the judgment of the Hon'ble Supreme Court in "*Central Power Distribution Co. & Ors vs. CERC*" (2007) 8 SCC 197, by opining that State Grid Code is subservient to the Central Grid Code. In that view of the matter, it is not open to the Respondents-APTRANSCO and APSLDC to contend that PPA provides for a higher technical minimum. It is well settled law that the terms and conditions of PPAs entered into between the parties must adhere to the Regulations framed under the Electricity Act, since the terms and conditions are to be in line with the provisions of the Act and Regulations made thereunder. Therefore, totally disregarding the mandate that these renewable generating stations must maintain 'Must Run' status, if Respondents adopt a methodology to promote their state

owned generation for economic consideration, and if such methodology conflicts with the provisions of the Act, IEGC and AP Grid Code, the same cannot be allowed to continue. It is also noticed that there is no provision in the PPA to compensate RE projects whenever there is backing down. Therefore, the enthusiasm of the Respondents to procure least expensive power should not be at the cost of curtailing RE power whenever they find energy charge of thermal power plants is much cheaper than the total cost of RE energy. We are of the opinion that in view of the 'Must Run' status granted to RE projects including the Applicant's Wind Power Project, it cannot be precluded from Merit Order Despatch. The Rules brought in by MoP on 01.02.2020, after recognising the 'Must Run' status of RE generators, mandates that such generators should not be subjected to curtailment on account of Merit Order Despatch or for any other commercial consideration. It even says that in the event of curtailment of such generations, compensation has to be paid by the procurer to the generator as per the rate prescribed under the PPA. Therefore, in the light of recognition extended to the RE generators at the highest level and so also in the light of conjoint reading of IEGC and AP Grid Code, we are of the opinion that in terms of earlier directions of this Tribunal dated 11.09.2020, there has to be evacuation of power at least to the extent of 70% from the Applicant's Wind Power Project pending disposal of the above appeal.

63. Respondents contend that the issues raised in the present application cannot be entertained and the same has to be raised before the State Commission.

64. It is seen that immediately after 11.09.2020 order of this Tribunal, from 13.09.2020 extreme curtailment of power was shown to RE energy. RE generation is a 'Must Run' system. We are of the opinion, since curtailment is continued only to RE energy where as Thermal Plants are not suffering such curtailment, the real cause for such backing down of power from RE source must be examined, otherwise the very order dated 11.09.2020 becomes purposeless.

65. Since curtailment in question is adopted immediately after 11.09.2020 order, *prima facie*, it looks like, the Respondents are bent upon curtailing power from RE generators. Therefore, we are of the opinion that in the interest of justice, the above applications have to be entertained here, since the issue seems to be continuation of the issue raised and adjudicated upon in the order dated 11.09.2020 by this Tribunal.

66. We are also of the opinion that analysis of the data furnished for one day i.e., just two days after the order of this Tribunal dated 11.09 2020, *prima facie*, goes to show that there is disparity and discrimination

extended to Appellant's wind power plant when compared to thermal power plants in the state of Andhra Pradesh. *Prima facie*, it looks like that though the power was required at a particular point of time, the Respondent Nos.2 and 3 preferred power from thermal power plants and also purchased at times power from Power Exchange. This goes to show that it was not on account of grid safety, which was the only reason all along. Therefore, we are of the opinion that the instant Applications deserve to be allowed. Accordingly, we pass the following order:

IA No. 1258 of 2020 is allowed and we direct as under:

- i) We direct Respondent Nos. 2 and 3-APSLDC and APTRANSCO to revise the schedule of curtailment i.e., evacuation of power at least up to 70% in terms of Order dated 11.09.2020 passed by this tribunal pending disposal of the appeal.

IA No. 1260 of 2020 is allowed and we direct as under:

- i) We direct the Respondent 2 and 3 to produce the following documents within two weeks from the date of receipt of copy of this order with a copy to POSOCO.
 - a) Backing down instruction with specific reasons for the period of 14.07.2020 to 14.09.2020;

- b) Backing down instructions issued to thermal generating stations for the period of 14.07.2020 to 15.09.2020;
 - c) Grid Frequency Data for the period of 14.07.2020 to 15.09.2020;
 - d) Power Purchase summary for the period of 14.07.2020 to 15.09.2020.
- ii) We direct POSOCO to make detailed verification of the data after considering the contentions raised by the parties and submit report to the Tribunal within four weeks after receiving data and documents and indicate whether there was intentional curtailment of scheduling of power by the Respondents/APSLDC or whether it was on account of grid safety measure or otherwise taken by APSLDC as contended by the Respondents.
- iii) We also direct that definite statement “was there any fair and justifiable curtailment of power from all generators, both renewable and non-renewable, the actual generation and injection of energy” has to be analysed and placed before this Tribunal.
- iv) Both the parties shall cooperate and assist POSOCO to comply with our direction in conducting enquiry. In other

words, whatever further data and details POSOCO requires, parties shall furnish the same to POSOCO.

67. List the matter on 11.10.2021.

68. **Pronounced** in the Virtual Court on this the 12th day of August, 2021.

(Ravindra Kumar Verma)
Technical Member

(Justice Manjula Chellur)
Chairperson

REPORTABLE / ~~NON-REPORTABLE~~

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