

ANDHRA PRADESH ELECTRICITY REGULATORY COMMISSION
4thFloor, Singareni Bhavan, Red Hills, Hyderabad 500004

**MONDAY, THE FIFTH DAY OF
TWO THOUSAND AND TWENTY TWO**

:Present:

**Justice C.V. Nagarjuna Reddy, Chairman
Sri P. Rajagopal Reddy, Member
Sri Thakur Rama Singh, Member**

**O.P.No.40 of 2022
&
O.P.No.50 of 2022**

Between:

Southern Power Distribution Company of Andhra Pradesh Limited, Petitioner
Rep. by its Chairman & Managing Director,
Beside Srinivasa Kalyana Mandapam, Tiruchanoor Road,
Tirupathi – 517501.

AND

None Respondent

The Original Petitions have come up for final hearing on 02-11-2022 in the presence of Sri P. Shiva Rao, learned Standing Counsel for the Petitioner, and upon considering the material available on record and after hearing the submissions of the learned counsel, the Commission passes the following:

COMMON ORDER

1. APSPDCL (for short “the petitioner”) filed these petitions, seeking Renewable Energy Certificates (RECs) for the Financial Year 2019-20 & FY 2020-21 under sections 61, 66, 86(1)(e) of the Electricity Act 2003 read with Regulation 1 of 2017 of APERC (Prescribing the obligation for the purchase of Renewable Power and its compliance by the purchase of Renewable Energy/Renewable Energy Certificates), as per the directions of this Commission in the Retail Supply Tariff Order dated 30.03.2022 for the FY 2022-23 to file an appropriate petition to get the Renewable Energy Certificates as per its eligibility complying with the Hon’ble APTEL’s orders in this regard.
2. After the OPs were numbered, notices were published in the Commission's website, calling for objections from the general public. No objections have been received on the date fixed for hearing. We have heard the O.Ps in detail. As the issue involved is common in both the petitions and only financial years are different, the two petitions are being considered together. The short question for consideration is, whether the petitioner is entitled to be eligible for Renewable Energy Certificates for Financial Year 2019-20, and Financial Year 2020-21 under the RE Certificates Regulation of 2010 of the Central Commission (CERC) and its amendments from time to time, which is adopted by this Commission to the extent of criteria to be followed for recommending RECs, and in the light of the decision of the Honourable APTEL in A.No 99 of 2020 & O.P No 2 of 2020 that this Commission ought not to have recommended the petitioner RE Certificates (RECs) for the performance year FY 2018-19 in view of its non-compliance of the first proviso of clause 5(1A) of the CERC Regulations (hereinafter called “Regulation”) i.e., the deficit in solar energy procurement for previous FY 2017-18 against the target specified by the Ministry of Power.
3. Clause 5(1A) of the Regulation contemplates inter alia for compliance of statutory requirements to obtain RECs by a distribution licensee as under:
“5 (1A) A Distribution licensee shall be eligible to apply for registration with the central agency for issuance of and dealing in certificates if it fulfils the following conditions:

(a) It has procured renewable energy, in the previous financial year at a tariff determined under Section 62 or adopted under section 63 of the Act, in excess of the renewable purchase obligation as may be specified by the appropriate Commission or in the National Action Plan on climate change or in the tariff policy whichever is higher.

Provided that the renewable purchase obligation as may be specified for a year by the appropriate Commission should not be lower than that for the previous financial year.

Provided further that any shortfall in procurement against the non-solar or solar power procurement obligation set by the appropriate commission in the previous three years, including the shortfall waived or carried forward by the said Commission shall be adjusted first and only the remaining additional procurement beyond the threshold renewable purchase obligation-being that specified by the Appropriate Commission or in the National Action Plan for climate change or in the tariff policy, whichever is higher shall be considered for issuance of RECs to the distribution licensees.

(b) It has obtained a certification from the Appropriate Commission, towards procurement of renewable energy as provided in sub-clause (a) of this regulation.”

4. The important findings and operative portion of orders Dt.20.08.2020 of Hon'ble APTEL in A.No 99 of 2020 & O.P No 2 of 2020 is as under:

27. The definition of 'year' in both the Regulations means it is a Financial Year. Therefore, 'year' and 'financial year' in both the Regulations mean one and the same.

28. In neither of the Regulations nowhere it says definition of Financial Year would be as provided in the Income Tax. Therefore, Financial Year in the common parlance would mean from 1st of April of a year ending with 31st of March of the next year. The complaint of the Appellant is that the APSPDCL had a shortfall in the consumption of renewable energy (solar) for FY 2017-18 as against prescription under the Regulations. However, State Commission and Central Agency totally ignored the letter dated 26.11.2019 of SLDC informing the State Commission that there is shortfall or deficit in the RPPo compliance by APSPDCL for the FY 2017-18. Therefore, according to them, the very issuance of recommendation of the State

Commission, which is the foundation for an action by the Central Agency is in total defiance of the procedure contemplated.

Reading of the Regulations of 2010 makes it clear that if an obligated entity seeks RECs for a relevant year/performance year i.e., FY 2018-19 in terms of Regulation 5(1A)(a), the distribution licensee must establish that it had procured renewable energy in the previous Financial Year i.e., FY 2017-18 in excess of its purchase obligation at a tariff determined under Section 62 or adopted under Section 63 of the Act. Apparently, the Tariff Policy of 2016 specified non-solar target at 9.50% and solar target at 4.75 %. This is not in dispute. The records clearly indicate that for the FY 2017-18, APSPDCL had achieved its RPO obligation of solar energy only to an extent of 4.07% as against tariff policy target of 4.75%. The shortfall in solar energy procurement is about 6,81,109 MWh in the FY 2017-18. Therefore, the first condition is, in the previous financial year to the performance year the purchase of RE Certificates must be in excess of RPO in terms of sub-Regulation (a) of Regulation 5(1 A). The first proviso to this sub-regulation says such RPO specified for the performance year cannot be lower than the RPO fixed for the previous year.

29. Second proviso to sub-regulation (a) of 5(1A) further imposes a duty on the recommending authority and so also Central Agency to take note of any shortfall in procurement of non-solar or solar procurement obligation in the three previous years to the performance year including any shortfall which was either waived or carried forward by the Commission in those three years. If such shortfall is noticed, such shortfall must be first adjusted and only the balance excess/additional procurement beyond the threshold RPO can be taken into consideration for issuance of RE Certificates. Therefore, it is clear that the obligated entity must not only comply with sub-regulation (a) but also the conditions provided in both provisos thereunder.

30. According to Respondents, the obligated entity can apply for RECs only after completion of the performance year i.e., FY 2018-19. According to them, they could apply any time after 31.03.2019 and not earlier. Therefore, according to them, since the application for RECs was made in 2019, previous Financial Year has to be taken as FY 2018-19. We fail to understand the logic or rationale behind said stand of the Respondent/Discom, State Commission and Central Agency. The understanding of the

Financial Year in terms of definition would mean the year of performance for which RECs are sought. Even if application is made subsequent to 31.03.2019, the relevant performance year cannot be different than the year in which the consumption of renewable energy has to be seen in terms of Regulation 5(1A)(a) of 2010 Regulations. In other words, even if the distribution licensee seeks RE Certificates subsequent to 31.03.2019, one has to assess or consider the compliance of renewable energy purchase obligation only for the year 2018-19. The reference to previous Financial Year in Sub-Regulation (a) would mean previous Financial Year to the performance year. In this case, performance year is Financial Year 2018-19 and one has to see whether Respondent/Discom has purchased RE Certificates in excess of RPO between 01.04.2017 to 31.03.2018. Therefore, the year of performance or financial year for which RECs sought for by the Discom cannot be anything but 2018-19. In terms of Regulation (a) of 5(1 A), previous Financial Year would mean FY 2017-18. We are of the opinion that on the controversy so far as interpretation of Regulation 5(1A) and the meaning of previous financial year, there is no possibility of having two different views.

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33. *From the facts of the present case, it is seen that on account of Government Order dated 01.10.2019 there was change so far as entitlement of RECs for FY 2017-18. This change resulted in re-adjustment of solar energy. If there was no such variation, RECs for FY 2017-18 so far as solar, it was not deficit. But with there-adjustment on account of Government Order dated 01.10.2019 there was deficit of solar procurement.*

operative portion

- i. We are of the opinion that the certificates already sold by APSPDCL which were obtained for the performance of the financial year 2018-19, need not be disturbed.*
 - ii. So far as balance disputed RECs issued and unsold for the financial year of 2018-19, the Central Agency shall initiate revocation proceedings and cancel/ revoke the registration accordingly in terms of Regulation of 2010.*
5. The petitioner's main grounds/justifications in support of its plea, are as under:
- i. The order dt. 20.08.2020 of Hon'ble APTEL has been made about the already sold Renewable Energy Certificates, and also as to the balance unsold

Renewable Energy Certificates for the FY 2018-19 by him but not about subsequent years. Thus, in respect of subsequent years, the said order of APTEL has no effect and therefore, the procedure in vogue needs to be followed for FY 2019-20 and FY 2020-21 years, without reference to the said order of APTEL.

- ii. The petition has regularly paid the annual accreditation fees for APSLDC and annual registration Fees for NLDC every year up to the financial Year 2022 - 23. The same has been acknowledged by the said agencies. Therefore, its registration is live with the nodal agency NLDC under the REC certificates mechanism.
 - iii. The annual status report on compliance of Renewable Power Purchase Obligation (RPPO) submitted to the Commission by the state agency i.e APSLDC by letters dated 04.02.2022 & 27.07.2022 for Financial Year 2019-20 & Financial Year 2020-21 respectively, fortifies the petitioner's compliance of statutory requirements to get RECs.
 - iv. The petitioner filed civil appeal no 256-257 in the Hon'ble Supreme Court on the orders of the Hon'ble APTEL.
6. As there is no order of Hon'ble Supreme Court on the civil appeal of the petitioner as of now, we examined the petitioner's procurement of RE as certified by the nodal agency APSLDC with reference to the CERC regulations as interpreted by the Honourable APTEL in the above discussed order to determine the entitlement of the petitioner for RECs recommendation.

Criteria to be followed as per the Hon'ble APTEL's order:

- (i) If the distribution licensee seeks RECs for a relevant year/performance year, in terms of Clause 5(1A)(a), it must establish that It has procured renewable energy, in the previous financial year at a tariff determined under Section 62 or adopted under section 63 of the Act, in excess of the renewable purchase obligation as may be specified by the appropriate Commission or in the National Action Plan on climate change or in the tariff policy whichever is higher.
- (ii) The renewable purchase obligation specified for a relevant Year/performance year by the Andhra Pradesh Electricity Regulatory Commission shall not be not lower than that for the previous financial year