

ANDHRA PRADESH ELECTRICITY REGULATORY COMMISSION
4th & 5th Floors, Singareni Bhavan, Red Hills, Hyderabad-500 004

O.P (SR) No. 14 of 2011

Dated: 06.01.2012

Present

Sri A. Raghotham Rao, Chairman
Sri C.R.Sekhar Reddy, Member

In the matter of

Indian Wind Energy Association (InWEA)
Through its Secretary registered office at
PHD House, 3rd Floor, Asian Games Village,
August Kranti Marg, New Delhi – 110 016.

.... Petitioner

AND

Transmission Corporation of Andhra Pradesh Ltd (APTRANSCO)
Vidyut Soudha, Khairathabad, Hyderabad.

..... Respondent

This petition coming up for hearing on 24.08.2011, Sri. Arijit Mitra,
Advocate for the petitioner present. The Commission passed the following:

ORDER

This petition is filed by the petitioner seeking modification of the guidelines in the order dated 30.02.2010, for evacuation of power from Wind Power Projects in Andhra Pradesh in line with CEA Regulation, in pursuance of Regulations 6 (4) and Regulations 49 of APERC (Conduct of Business) Regulations, 1999 and APERC (Conduct of Business) Amendment Regulations, 2000 and Section 94 (1) (f) of Electricity Act, 2003 and making the following submissions.

- a) The State Commission shall discharge under Section 86 (1) the following functions, namely:-
“to promote Generation of electricity from renewable sources of energy by providing suitable measures for connectivity with the grid”

- b) Providing flexibility of choice of conductor enabling Wind Energy Generators to evacuate more power at 33 kV from the same line consequently resulting in optimum utilization of Electric lines as well as curtailment of extra cost for the wind generators are suitable measures for connectivity with the grid that the Commission is mandated to provide under Section 86 (1) (e) of the 2003 Act.
- c) It is technically feasible to evacuate higher capacity in terms of MW using conductors which allow higher line loading in Amp, rather than restricting it to 10 MW. For example with conductor such as ACSR Panther or AAAC Panther allows wind energy generators to easily inject 15 to 25 MW power at 33 KV.
- d) The Commission can sustain the change in policy where it would have properly balanced the legitimate expectation of the wind energy generators as against the need for a change.
- e) The Central Electricity Authority (CEA) is required to notify Regulations under Section 73 (b) read with Section 177 (2) (e) specifying the technical standards for construction of electrical plants electric lines and connectivity to the grid.
- f) Accordingly, the Central Electricity Authority (Technical Standards for Construction of Electrical Plants and Electric Lines) Regulations, 2010 (hereinafter referred to as "CEA Regulations 2010") came to be notified. There is no reason why CEA Regulations 2010 should not be binding. In sharp contrast, the discretion under Section 61 (a) to "be guided by" the principles and methodologies specified by the Central Commission for determination of the tariff is not present in regard to CEA Regulations 2010.
- g) As far as the petitioner is aware, to date, no change has been made by the Parliament to the CEA Regulations 2010.
- h) The CEA Regulations 2010 have binding force, as they are statutory in nature. It is delegated legislation enacted under the powers conferred upon CEA by the primary legislation i.e., under Section 73 (b) read with Section 177 (2) (e) of the 2003 Act.
- i) The Hon'ble Supreme Court has held in its judgment dated March 15, 2010 in PTC India Ltd Vs. CERC [reported in AIR 2010 SC 1338]

that a Regulation stands on a higher pedestal vis-à-vis an order (decision) in the sense that an order has to be in conformity with the regulations.

- j) The Commission's order dated 30.03.2010 is required to be aligned to the CEA Regulations, 2010.
- k) The validity of the CEA Regulations, 2010 cannot be tested in any proceedings before this Commission.
- l) This Commission is empowered in law to review its order dated 30.03.2010 in terms of Section 94 (1) (f) of the 2003 Act read with Regulation 49 of the APERC (Conduct of Business) Regulations, 1999 (hereinafter referred to as the "Conduct of Business").
- m) The CEA Regulations 2010 were notified on 20th August, 2010. Thus, the requirement to review this Commission's order dated 30.03.2010, arises much after the limitation period of 90 days specified under Regulation 49 of the Conduct of Business, in any case. However, an issue would arise as to whether this Commission would allow its said order dated 30.03.2010 to continue particularly when it is apparent on the fact of records that the said order is contrary to the CEA Regulations, 2010.
- n) There has been a change in law subsequent to the notification of the CEA Regulations, 2010 which necessitate the review of this Commission's order dated 30.03.2010.
- o) The primary concern of this Commission is to implement the justice of the legislation contained in the CEA Regulations, 2010.
- p) The time of 90 days specified under Regulation 49 of the Conduct of Business, to file review petition can be extended under Regulation 59 thereof.
- q) Even under Section 5 of the Limitation Act, an application may be admitted after the prescribed period if the applicant satisfies the Court that he had sufficient cause for not making the application within such period.
- r) The following Regulations sufficiently empower this Commission to admit the present petition and to review or modify its aforesaid order

dated 30.03.2010 even though the limitation period for filing review may have expired.

55. Saving of inherent power of the Commission.

(1) Nothing in these Regulations shall be deemed to limit or otherwise affect the inherent power of the Commission to make such orders as may be necessary for meetings the ends of justice or prevent the abuse of the process of the Commission.

(2) Nothing in these Regulations shall bar the Commission from adopting a procedure, which is at variance with any of the provisions of these Regulations, if the Commission, in view of the special circumstances of a matter or class of matters and for reasons to be recorded in writing deems it necessary or expedient.

(3) Nothing in these Regulations shall, expressly or impliedly, bar the Commission to deal with any matter or exercise any power under the Act for which no Regulations have been framed, and the Commission may deal with such matters, powers and functions in a manner it thinks fit.

- s) Even with the introduction of safeguards against delay in the process, in an occasional case delay occurs which is inexplicable in normal / exceptional circumstances.
- t) In such exceptional circumstances, delay must be visited with consequences and the interest of the stakeholders must be protected.
- u) The petitioner has made out sufficient cause for condonation of delay in filing the present petition.

2. The petitioner filed this petition with a request to modify the guidelines of the Commission in its existing order dated 30.02.2010, for evacuation of power from wind power projects in line with Central Electricity Authority (Technical standards for construction of electrical plants and electric lines) Regulations 2010, this will enable the feasibility and choice to wind power projects in a more efficient way for evacuation of more wind power into the system.

3. The petitioner has also mentioned in their petition at para 15 that the petitioner admitted even after the prescribed period, if the applicant satisfies the

court that he had sufficient cause for not making the application within such period. He has also relied upon a ruling reported in 2005 (3) SCC 752, (1984) SCC 1744.

4. In addition to that and in support of his contention raised in the petition they have relied upon a ruling reported in 2010 SCC (1338) in which it was held that

“CERC (Central Commission) is a decision making as well as regulation making authority, simultaneously. Section 79 delineate the functions of the Central Commission broadly into two categories mandatory functions and advisory functions. Tariff regulation, licensing (including inter-State trading licensing), and adjudication upon disputes involving generating companies or transmission licensees fall under the head “mandatory functions” whereas advising central government on formulation of national electricity policy and tariff policy would fall under the head “advisory functions”. In this sense, the central commission is the decision making authority. Such decision making under S.79(1) is not dependant upon making of regulation under S.178 by the central commission. Therefore, functions of central commission enumerated in S.79 are separate and distinct from function of central commission under S.178. ;the former is administrative / adjudicatory function whereas the latter is legislative. The central commission is empowered to take measure / steps in discharge of the functions enumerated in S.79(1) like to regulate the tariff of generating companies, to regulate the inter-State transmission of electricity, to determine tariff for inter-State transmission of electricity, to issue licenses, to adjudicate upon disputes, to levy fees, to specify the grid code, to fix the trading margin in inter state trading of electricity, if considered necessary, etc.”

5. The main contention of the petitioner is that the modification of the guidelines is only to enable the feasibility and also choice to wind power more efficient manner and also for evacuation of more wind power in to the system.

6. Now the Commission has to see that how far the said modification would encourage the wind power projects in the State of AP. This is sufficient to hold

that there is a primary point which has to be heard by the Commission in a full fledged manner and it is not a petition which has to be thrown out at the threshold.

7. We are of the considered opinion that this is a policy guidelines issue that needs to be looked into in detail as it has a bearing on the scope for development of the renewal power sector and it is a fit case to number the same by assigning O.P. Number and place it before the bench after giving notices to both sides.

This order is corrected and signed on this 6th day of January, 2012

Sd/-
(C.R.SEKHAR REDDY)
MEMBER

Sd/-
(A.RAGHOTHAM RAO)
CHAIRMAN

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