

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
AT NEW DELHI**

(APPELLATE JURISDICTION)

APPEAL NO. 280 OF 2014

Dated: 13th October, 2015

**Present: Hon'ble Mr. Justice Surendra Kumar, Judicial Member
Hon'ble Mr. I.J. Kapoor, Technical Member**

IN THE MATTER OF

Andhra Pradesh State Load Dispatch Centre

Transmission Corporation of Andhra Pradesh Limited,
Vidyut Soudha, Khairatabad,
Hyderabad-500082

..... Appellant

VERSUS

1. Andhra Pradesh Electricity Regulatory Commission

4th & 5th Floors, 11-4-660, Singareni Bhavan,
Red Hills,
Hyderabad-500004

..... Respondent

2. M/s Roshni Powertech Private Limited

Registered Office No. 1071,
Road No. 44, Jubilee Hills,
Hyderabad-500016

..... Respondent/Petitioner

Counsel for the Appellant ... Mr. Anand K. Ganesan
Ms. Swapna Seshadri
Ms. Mandakini Ghosh

Counsel for the Respondent(s)... Mr. K.V. Mohan
Mr. K.V. Balakrishnan for R-1

Mr. Shridhar Prabhu, Sr. Advocate
Mr. Ananthanarayana M.G. for R-2

J U D G M E N T

PER HON'BLE JUSTICE SURENDRA KUMAR, JUDICIAL MEMBER

1. The instant Appeal under Section 111 of the Electricity Act, 2003, has been preferred by Andhra Pradesh State Load Dispatch Centre (in short, the '**Appellant**'), against the Orders, dated 12.8.2013, passed by the Andhra Pradesh Electricity Regulatory Commission (in short, the '**State Commission**') in OP No. 56 of 2013, by which the State Commission has held that M/s Roshni Powertech Private Limited, Respondent No. 2/petitioner herein, is liable to be received accreditation under the Renewable Energy Certificate (REC) mechanism for receiving RECs against the power supplied by them to the state distribution licensees through the trading licensee, M/s Power Transmission Corporation India Limited (**PTC**). The State Commission has determined/decided to grant accreditation to Respondent No. 2/petitioner despite acknowledging that the power being supplied from the Respondent No. 2 to the distribution licensees is at a rate higher than the pooled power purchase cost of the distribution licensees which is not envisaged under the REC mechanism.

2. The main grievance of the Appellant in this appeal is that the State Commission has committed illegality in the impugned order, dated 12.8.2013, in directing the Appellant to grant M/s Roshni Powertech Private Limited, Respondent No. 2 herein, accreditation under the Renewable Energy Certificate (REC) mechanism evolved by the Central Electricity Regulatory Commission (in short, the '**Central Commission**') under the CERC (Terms and Conditions for recognition and issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulations, 2010 (in short, '**CERC (REC) Regulations, 2010**'), and the State Commission, as per the APERC Renewable Power Purchase Obligation (Compliance by purchase of Renewable Energy/Renewable Energy Certificates) Regulations, 2012 (in short, the '**APERC RPO Regulations**').

3. According to the Appellant, the impugned Order is passed in direct violation of the APERC RPO Regulations and, the CERC REC (Second Amendment) Regulations, 2013. The main contention of the Appellant is that the State Commission has failed to pierce the veil and acknowledge the true nature of the sale through PTC which is effectively a sale to the distribution utilities of the state at a price which is higher than the distribution utility's pooled cost of power. The sale of electricity by a RE generator to a distribution utility at a price, which is higher than its pooled cost of power will disentitle such RE generator from obtaining accreditation under the APERC RPO Regulations. Further, the terms of power supply between the parties clearly established that Respondent No. 2 was supplying both energy and environment component to the distribution utilities through PTC and could not make a double claim on the energy component by getting RECs issued against the same

4. The relevant facts for the purpose of deciding this Appeal are as under:

- (a) that the Appellant is a State Load Despatch Centre instituted under Section 31(1) of the Electricity Act, 2003. The Appellant is the State Agency under the CERC REC Regulations, 2010 as designated by the State Commission to act as an agency for accreditation and recommending the renewable energy projects for registration and to undertake such functions as may be specified under Section 86(1)(e) of the Electricity Act 2003.
- (b) that the Respondent No. 1 is the State Electricity Regulatory Commission (State Commission) constituted under the A.P. Electricity Reform Act, 1998. The State Commission is empowered to discharge functions under various provisions of the Electricity Act, 2003.
- (c) that the Respondent No. 2 is a Renewable Energy Generator for generation of renewable power using biomass fuel. It has set up a 6 MW power plant in District Krishna. The fuel for

generation of electricity is only agricultural waste. The Respondent No. 2 achieved commercial operation of its unit in September, 2001 and had entered into a Power Purchase Agreement for supply of power to one of the Distribution Companies in the State of Andhra Pradesh.

- (d) that the Respondent No. 2 has been selling power under Open Access through PTC under a Power Trading Agreement (PTA) since October, 2008 pursuant to termination of Power Purchase Agreement (PPA) with Distribution Company. The Respondent No. 2 had alleged that it is suffering and incurring huge losses due to increase in input costs, further aggravated by the unfavourable sale prices.
- (e) that section 86(1)(e) of the Electricity Act, 2003 requires the State Commission to specify renewable purchase obligation (RPO) for the obligated entities for the encouragement of renewable energy sources keeping in view the need for energy security of the country. However, each state may not have adequate generation from RE sources to meet the levels of RPO mandated by the State Commission. Hence, the concept of REC assumes significance. This concept seeks to address the mismatch between availability of RE sources and the requirement of the obligated entities to meet their renewable purchase obligation.
- (f) that under the REC mechanism, cost of electricity generation from renewable energy sources is classified as cost of electricity generation equivalent to conventional energy sources and the cost for environmental attributes.
- (g) that RE generators, like Respondent No. 2, will have two options: (a) either to sell the renewable energy at preferential tariff, or (b) to sell electricity generation to distribution companies/third parties and environmental attributes

associated with RE generations separately to obligated entities. The environmental attributes can be exchanged in the form of RECs. REC could be purchased by the obligated entities to meet their RPO under Section 86 (1) (e) of the Electricity Act. Purchase of REC would be deemed as purchase of RE for RPO compliance.

- (h) that on 14.1.2010, the Central Commission enacted the CERC REC Regulations, 2010, which were amended vide Notifications, dated 29.9.2010, and 10.7.2013.
- (i) that on 21.3.2012, the State Commission enacted the APERC RPO Regulations, 2012 which came into force from 1.4.2012.
- (j) that as per the CERC REC Regulations, the State Commission was mandated to designate State agency for accreditation for RPO compliance and REC mechanism at State level
- (k) that on 23.4.2012, the Respondent No. 2, a RE generating company, filed its application for accreditation for issuance of RECs under the APERC RPO Regulations.
- (l) that on 31.5.2012, the Andhra Pradesh Distribution Licensees (DISCOMs) had accepted the offer of PTC to supply electricity from the generating station of the Respondent No. 2 and the tariff for the supply was fixed at Rs. 5/- per unit, which was much higher than the Pooled Power Purchase Cost.
- (m) that on 20.9.2012, the Respondent No. 2 filed a representation as per Regulations 3.5.4 of the CERC REC Regulations, and stated that a RE generator, who sells power under Open Access through trader, is eligible for REC and it is immaterial what price it is realizing from sale. The Respondent No. 2 requested the Appellant (State Load Dispatch Centre) to process the application with high urgency and arrange for registration of its generating unit as per APERC RPO Regulations.

- (n) that on 11.12.2012, the Appellant wrote to State Commission requesting for a clarification as to whether distribution utilities were eligible to meet their RPO for the energy purchased from generators through traders @ of Rs. 5/- per unit which is more than preferential tariff and adhoc notional pooled cost of Rs.2/- per unit or whether the RE generators were eligible for accreditation to receive RECs for the power injected into the grid.
- (o) that on 2.1.2013, the State Commission responded to Appellant's letter clearly stating that only the Appellant being the state agency for accreditation can decide issues related to accreditation.
- (p) that on 13.2.2013, the Appellant examined the application of Respondent No. 2 and determined that the said application for accreditation did not fall within the provisions of Regulation 6 (b) of the APERC RPO Regulations as the Respondent No. 2 had been selling power to the distribution utilities through a trader at a cost more than the pooled cost of power purchase.
- (q) that on 13.5.2013, the Respondent No. 2 filed a petition, being Petition No. 56 of 2013, before the State Commission, seeking a declaration that its plant is eligible for accreditation as per Regulation 6 (b) (ii) of the APERC RPO Regulations as it is selling power to a licensee as per Electricity Act, 2003 and, the trader in turn is selling the power from the Respondent No. 2 to the distribution utilities of the state through a transparent bidding process.
- (r) that on 10.7.2013, the Central Commission enacted the CERC REC (Second Amendment) Regulations, 2013 which had introduced a change in the Regulations that a RE generator is eligible for RECs if it does not sell electricity generated from the

plant, either directly or through trader, to an obligated entity for compliance of the RPO by such entity.

- (s) that on 12.8.2013, the State Commission passed the Impugned Order directing the Appellant to issue the certificate of accreditation to Respondent No. 2, which has been assailed before us in this Appeal.

5. We have heard Mr. Anand K. Ganesan, the learned Counsel for the Appellant, Mr. K.V. Mohan, the learned counsel for the Respondent No.1 and Mr. Shridhar Prabhu, the learned senior counsel for the Respondent No.2 and gone through the written submissions filed by the rival parties. We have deeply gone through the evidence and other material available on record including the impugned order passed by the State Commission and written submissions.

6. The only issue for our consideration is ***whether a RE Generator, like Respondent No.2, by a transaction of selling power to the distribution licensee through a trader at a price higher than the average pooled power purchase cost can claim accreditation and REC benefits?***

7. The following contentions have been made on behalf of the Appellant on the said issue:

- (a) that the Appellant, being the State Agency and responsible for granting accreditation, cannot be forced to follow a misguided and misconceived precedent.
- (b) that the impugned order has set an erroneous precedent in the State wherein several renewable power developers have now come forward seeking accreditation even though they are supplying power to the distribution licensee at a higher price than the pooled power purchase cost of the distribution licensee.

- (c) that as per the purchase order, dated 31.5.2012, for supply of power for the period from 1.6.2012 to 30.5.2013, the tariff for supply of power from Respondent No. 2 to the state distribution licensee is Rs. 5/- per unit. The pooled cost of power is Rs.2/- per unit for the same period. In fact, this tariff of Rs. 5/- per unit is higher than the preferential tariff payable to the renewable energy generators in the State.
- (d) that the Respondent No. 2 was supplying power to the distribution licensee at a tariff higher than the pooled power purchase cost which was mentioned by the Appellant in its various communications with the State Commission and in its letter, dated 13.2.2013, and also during the hearing of the impugned petition before the State Commission.
- (e) that the learned State Commission has wrongly applied Regulation 6(b)(ii) of the APERC RPO Regulations without proper appreciation of the facts dealing with the supply of power from a generator to a distribution utility through an intermediary/ trading licensee.
- (f) that the State Commission has wrongly held in the impugned order that if a RE generating company sells electricity generated by it to any other licensee (other than a distribution licensee) or to an open access consumer at a mutually agreed price, or through power exchange at market determined price, the RE generator will be eligible for accreditation. However, in this case, the Respondent No. 2 was supplying power to a trading licensee who in turn was supplying power to the distribution utilities of the state. In such an event, the power purchase agreement between RE generator and trading licensee, i.e. PTC cannot be viewed in isolation. The same PPA has to be analysed along with the corresponding back-to-back Power Supply Agreement (PSA) between PTC and Distribution utilities. Therefore, even though there is no direct commercial

relationship between the RE generator and distribution utility, the fact that the distribution utility is ultimately the beneficiary of the renewable energy power cannot be ignored.

- (g) that the State Commission has failed to appreciate that, even though, a RE generator is free to have a commercial relation with a trading licensee without necessarily getting the tariff regulated by the appropriate commission, when the generator is supplying power to a trader who in turn is supplying power to a distribution licensee, the appropriate commission will have the jurisdiction to determine the tariff of the generating company.
- (h) that the State Commission has erred in not acknowledging the import of the corresponding power sale agreement between the trading licensee and the distribution utility in the peculiar facts of the present case.
- (i) that the REC Scheme is as under:-
 - (a) that the REC Regulations are framed by the Central Commission including setting of the eligibility criteria etc.
 - (b) that the State Commission is mandated to designate State agency for accreditation for RPO compliance and REC mechanism at State level.
 - (c) that only accredited projects can register for REC at Central Agency. The Central Agency would issue REC to RE generators for specified quantity of electricity injected into the grid.
 - (d) that the price of electricity component of RE generation would be equivalent to the weighted average power purchase cost of the Distribution Company including

short term power purchase but excluding renewable power purchase.

- (e) that REC would be issued for the environmental component of the renewable energy power and be liable to be exchanged within the forbearance price and floor price which would be determined by the Central Commission in consultation with the Central agency and Forum of Regulators from time to time.
- (j) that Regulation 5 of CERC REC Regulations, 2010 is extracted as under:-

“5. Eligibility and Registration for Certificates:

(1) A generating company engaged in generation of electricity from renewable energy sources shall be eligible to apply for registration for issuance of and dealing in Certificates if it fulfills the following conditions:

- a. it has obtained accreditation from the State Agency;*
- b. it does not have any power purchase agreement for the capacity related to such generation to sell electricity at a preferential tariff determined by the Appropriate Commission; and*
- c. it sells the electricity generated either (i) to the distribution licensee of the area in which the eligible entity is located, at the pooled cost of power purchase of such distribution licensee, or (ii) to any other licensee or to an open access consumer at a mutually agreed price, or through power exchange at market determined price.”*

- (k) that so far as the state of Andhra Pradesh is concerned, the State Commission has framed the APERC RPO Regulations, 2012, Regulation 6 of which provides as under:-

Regulation 6 of APERC REC Regulations, 2012:

“Eligibility and Registration for Certificates:-

A generating company [including a Captive Power Producer (CPP)] in Andhra Pradesh engaged in generation of electricity from renewable energy sources shall be eligible for obtaining accreditation from the State Agency if it fulfills the following conditions:

a) It does not have any Power Purchase Agreement for the capacity related to such generation to sell electricity at a tariff determined by the Commission from time to time for sale of energy to a distribution licensee;

and b) It sells the electricity generated either (i) to the distribution licensee in the State of Andhra Pradesh at the pooled cost of power purchase, or (ii) to any other licensee or to an open access consumer at a mutually agreed price, or through power exchange at market determined price.”

- (l) that the second amendment to CERC REC Regulations introduced a change in the regulations that a RE generator is eligible for RECs if it does not sell electricity generated from the plant, either directly or through trader, to an obligated entity for compliance of the RPO by such entity.
- (m) that the CERC REC Regulations specifically prohibit a person from selling electricity at a price exceeding the pooled cost of power purchase of the distribution company to get RECs. Further, the second amendment clearly states that the power being supplied directly or indirectly but taken for RPO Compliance will not be eligible for issuance of RECs.
- (n) that the purpose of the REC mechanism is to provide an alternative to the renewable generators, (a) either to sell electricity at the preferential tariff; or (b) supply electricity at or lower than the pooled power purchase cost and take the benefits of renewable power by way of RECs.
- (o) that In the present case, the Respondent No. 2 is by an indirect transaction seeking to take a preferential tariff as well as RECs, which is impermissible.
- (p) that it is a well settled position that what cannot be done directly, cannot be done indirectly as held in *Jagir Singh vs Ranbir Singh (1979) 1 SCC 560* and in the *State of T.N. vs K. Shyam Sunder (2011) 8 SCC 737*

- (q) that when the Respondent No. 2 is prohibited from supplying electricity at a price exceeding the Pooled Power Purchase Cost and take the RECs at the same time, the above cannot be achieved by the Respondent No. 2 indirectly by supplying power to the distribution licensee through a trader. The entire cost of the electricity goes to the generator/Respondent No. 2 and only a marginal trading margin of a few paise is retained by the trader/PTC.
- (r) that the distribution licensee is the beneficiary of the electricity and the Respondent No. 2, the beneficiary of the tariff cannot be ignored. PTC, being purely a trader, is not even grid connected and only acts as a commercial settlement intermediary.
- (s) that the basic premise of the impugned order and also the contention of the Respondent No. 2 that the Respondent No. 2 is not concerned or connected with the purchase order is misplaced.
- (t) that in the present case, the Respondent No. 2 and PTC have agreed that they will sell both the energy and environment component of its RE generation to the distribution utility who will use the power towards satisfaction of its RPO under the said APERC RPO Regulations. Therefore, the Respondent No. 2 cannot once again claim RECs against the environmental attributes of the power being supplied to the Distribution utilities.
- (u) that under Regulations 6(b)(i) of the APERC RPO Regulations, a RE generator supplying power to a distribution utility at the pooled power purchase cost is only eligible for accreditation. In the present case, it cannot be denied that the power from Respondent No. 2 is ultimately being supplied to the distribution licensee through an intermediary at a price which

is much higher than the pooled cost of power purchase. Therefore, the entire purpose of the REC mechanism is defeated if the Respondent No. 2 is allowed to obtain RECs by effectively supplying power to a distribution licensee at a price higher than the pooled power purchase cost by merely circumventing its power through an intermediary.

- (v) that the State Commission has failed to appreciate the true nature of the transaction being from the Respondent No. 2 to the distribution utilities, with PTC only being an intermediary trading agency. By introducing PTC, the Respondent No. 2 ought not to indirectly get the benefit which is not permissible directly. The sale of electricity by a RE generator at a price higher than its pooled cost of power will disentitle such RE generator from obtaining accreditation under the APERC RPO Regulations. Further, the terms of power supply between the parties clearly establish that Respondent No. 2 was supplying both energy and environmental component to the distribution utilities through PTC and could not make a double claim on the energy component by getting RECs issued against the same.
- (w) that the impugned order of the State Commission amounts to giving undue benefits to the generating companies such as the Respondent No. 2, who by cleverly introducing an intermediary, is enjoying power at a rate higher than the average pooled power purchase cost and also take the REC benefits. This is being done at the cost of the consumers in the State.

8. **Per contra**, the learned senior counsel for the Respondent No.2 vindicated the stand taken by the State Commission in the impugned order and to justify the reasoning given in the impugned order, filed his written statement and taken a plea of non-joinder of the necessary

parties saying that the Discoms in the state of Andhra Pradesh, according to the Appellant, are the beneficiaries in the whole process have not been impleaded as parties to the appeal memorandum, though they are necessary parties. Moreover, the PTC selling power to the APPCC hence, PTC and APPCC, inspite of being necessary parties, have not been arrayed in the appeal memorandum.

9. The main contention of the Respondent No.2, on the aforesaid issue, are as under:

- (a) that the Appellant is neither the owner nor the operator of the Distribution Companies. The Electricity Act, 2003 provides for management of SLDC by a State Transmission Utility (STU) in a transitional phase and, thereupon, transfer of the management of the SLDC to an independent company. However, presently, the SLDCs are being managed by Transmission Licensees which are controlling the management of the DISCOMs too. In the present case also, the SLDC, acting as the State Nodal Agency, cannot have any locus, grouse or cause of action or interest other than to strictly implement the regulations of the State Commission.
- (b) that the Appellant has not shown as to what prejudice, harm or hardship is caused to it if the Respondent No.2 is registered under the REC mechanism.
- (c) that the Appellant is involving itself in the procurement process of the Discoms and indirectly involving actively in directing what tender conditions and stipulations should be put in the tenders.
- (d) that as per the proviso to section 31 of the Electricity Act, 2003, there is an express prohibition for the SLDC for engaging in the business of trading. The said proviso is as under:

“Provided further that no State Load Despatch Centre shall engage in the business of trading in electricity”

- (e) that the registration procedure for the REC framework in the State of Andhra Pradesh is regulated by the State RPO Regulations, 2012. The Respondent No.1 has tested the eligibility requirements of the Respondent No.2 and the untenable action of the Appellant in not registering the Application of the Respondent No.2 on the anvil of the said State Regulations and has held that as per the said Regulations, the Respondent No.2 is entitled for registration of accreditation. The State Regulations alone govern the eligibility conditions for registration and if the Respondent No.2 is eligible under the said APERC RPO Regulations, the parties are bound by it.
- (f) that the Respondent No.2’s energy was offered by PTC India Limited as a licensed Power Trader along with energy from other generators, including the conventional and non-conventional generators. The tender was not for procurement of renewable energy for meeting the RPO obligations and more importantly, and as admitted by the Appellant, there was no stipulation that energy sources under the said tender will entitle the distribution companies to claim RPO benefits. If they claim such benefits from a few suppliers, it amounts to illegal misappropriation and unjust enrichment as they paid the same price even to conventional energy source.
- (g) that the generators, who take the risk of selling in the open market at the market determined rates, should be entitled to be compensated too. In the present case, there are numerous occasions on which the Respondent No.2 has had to stop its generating station because of unviable rates offered/determined through this bid process. Since, the generators, under this mode, are vulnerable to the vagaries of

the market forces; they are made eligible for the RECs. In fact, considering the REC benefits/income only, the Respondent No.2 matched the price of conventional power generators and applied for registration under the REC mechanism.

- (h) that the Appellant has not produced any power sale agreement between a distribution licensee and the trading licensee; all that the Appellant has produced is a purchase order of APPCC.
- (i) that what PTC and DISCOMs have agreed is immaterial and inconsequential. The Appellant has not produced any documentary evidence.

10. **Our consideration and conclusion:**

10.1 We have given above the detailed facts in the matter in hand, points involved and the rival contentions raised by the parties and we do not feel any need to reproduce the same here again. The only issue for our consideration in this Appeal is that whether a RE Generator, like Respondent No.2, by selling power to the distribution licensee through a trader at a price higher than the average pooled power purchase cost, can claim accreditation and REC benefits?

10.2 In the present case, the Appellant is the Andhra Pradesh State Load Dispatch Centre who feels aggrieved by the impugned order on the aspect that the State Commission, by the impugned order, has wrongly and illegally directed the Appellant to grant M/s Roshni Powertech Pvt. Ltd., Respondent No.2 herein, who is a renewable energy generator of 6 MW using biomass fuel, accreditation under the Renewable Energy Certificate (REC) mechanism evolved by the CERC (REC) Regulations, 2010 and the APERC RPO Regulations, 2012.

10.3 The Respondent No.2/petitioner filed the O.P. No. 56 of 2013, under section 86(1)(e) of the Electricity Act, 2003, and Regulations 8(1) and 55(1) of the APERC (Business Rules of the Commission) Regulations, 1999 read with APERC RPO Regulations, 2012, requesting the Commission:

- (a) declare that the petitioner's plant is eligible for accreditation under the APERC REC Regulations, retrospectively with effect from 14.01.2010, and accordingly direct the respondent for taking necessary action for grant of accreditation from the aforesaid date, as well as issue directions to the Central Agency (i.e., National Load Dispatch Centre) for taking on record the revised date of accreditation and take necessary action to ensure that RECs are issued from the aforesaid date;
- (b) declare that the proceedings in the letter No. CESLDC/SEPP/02/F.REC/D.No.54 dated 13.02.2013 of the respondent in rejecting the REC application of petitioner as arbitrary, illegal and abuse of power;
- (c) consequently direct the respondent to grant accreditation to the petitioner forthwith.

10.4 It is evident from the record that the Respondent No. 2 has been selling power under open access through PTC under a Power Trading Agreement (PTA) since October, 2008 pursuant to termination of Power Purchase Agreement (PPA) with Distribution Company. Section 86(1)(e) of the Electricity Act, 2003 requires the State Commission to specify renewable purchase obligation for the obligated entities for the encouragement of renewable energy sources keeping in view the need for energy of the country. Some states may not have adequate generation from RE sources to meet the levels of RPO mandated by the State Commission; hence, the concept of REC assumes significance. This concept seeks to address the mismatch between availability of RE sources and the requirement of the obligated entities to meet their renewable purchase obligation. The RE generators, like Respondent No. 2, have two options; firstly, either to sell the renewable energy at preferential tariff, or secondly, to sell electricity generation to the

distribution companies/third parties and environmental attributes associated with RE generations separately to obligated entities. Thus, the environmental attributes can be exchanged in the form of RECs, which can be purchased by the obligated entities/Discoms to meet their RPO under Section 86 (1) (e) of the Electricity Act, 2003.

10.5 The application for accreditation for issuance of RECs under the APERC RPO Regulations, 2012 was filed by the Respondent No.2 before the State Commission on 23.4.2012 by filing OP No. 56 of 2013. The report further establishes that on 31.5.2012, the Andhra Pradesh Distribution Licensees had accepted the offer of PTC to supply electricity from the generating station of the Respondent No. 2 for which supply tariff was fixed at Rs. 5/- per unit, which was much higher than the Pooled Power Purchase Cost which was Rs.2/- per unit at the relevant time. On 20.9.2012, the Respondent No. 2 filed a representation stating that a RE generator, who sells power under Open Access through trader, is eligible for REC irrespective of the price it is realizing from sale and requested the Appellant (SLDC) to process the application and arrange for registration of its generation unit as per APERC RPO Regulations, 2012. The Appellant (SLDC), in lieu of deciding the said representation of the Respondent No.2, on 11.12.2012, wrote a letter to the State Commission seeking clarification as to whether distribution utilities were eligible to meet their RPO for the energy purchased from Respondent No.2 through traders @ of Rs. 5/- per unit which was more than preferential tariff and adhoc notional pooled cost of Rs.2/- per unit or whether the RE generators were eligible for accreditation to receive RECs for the power injected into the grid. The State Commission, on 2.1.2013, replied to the Appellant stating that only the Appellant, being the state agency for accreditation, can decide issues of accreditation. The Appellant, on 13.2.2013, rejected the said application/representation of the Respondent No.2, a RE generator, on finding that the said application/representation for accreditation did not fall within the provisions of Regulation 6 (b) of the APERC RPO Regulations, 2012 as

the Respondent No. 2 had been selling power to the Discoms through a trader at a cost more than the pooled power purchase cost price.

10.6 It was, in the aforesaid circumstances that the Respondent No.2, being left with no other alternative, had to file the aforesaid Petition No. 56 of 2013, before the State Commission, on 13.5.2013 with the aforesaid prayers.

10.7 We may take note of the fact that it was on 10.7.2013, the Central Commission enacted the CERC REC (Second Amendment) Regulations, 2013, which introduced a change in the Principal Regulations, 2010 that a RE generator is eligible for RECs if it does not sell electricity generated from the plant, either directly or through trader, to an obligated entity for compliance of the RPO by such entity. By the impugned order, the State Commission has, by allowing the said petition, directed the Appellant/SLDC to issue certificate of accreditation to the Respondent No.2, which is under challenge before us on the ground that since the Respondent No.2, a RE generator, has been selling electricity generated by it to the distribution licensees at a rate of Rs.5/- per unit which was much higher than the pooled power purchase cost of Rs.2/- per unit, the Respondent No.2 is not entitled to the said accreditation and ultimately registration for its generating unit as per the APERC RPO Regulations, 2012.

10.8 We are totally in disagreement with the Appellant's contention that the Appellant, being State Agency and responsible for granting accreditation, cannot be forced to issue certificate of accreditation because the learned State Commission has gone through the regulations of the State Commission as well as of the Central Commission and after recording cogent reasons and current findings in the impugned order has passed the impugned order and has legally directed the Appellant/SLDC to issue the certificate of accreditation to the Respondent No.2.

10.9 The impugned order cannot be said to be faulty or illegal just on the ground that the impugned order has allegedly set an erroneous precedent in the state wherein several RE developers are now coming forward seeking accreditation even though they are supplying power to the distribution licensee at a higher price than the average pooled power purchase cost of the distribution licensee. For testing the legality of the impugned order, we deem it proper to reproduce the relevant part of the impugned order, which is as under:

“7. Respondent did not dispute the fact that the petitioner does not have any PPA with any of the A.P. State DISCOMs. According to the petitioner, it is selling power under Open Access through PTC India Ltd under a power trading agreement. In the letter dated 13.02.2013 the respondent mentioned that the petitioner has been selling power to APDISCOM through trader at a cost more than pooled cost of Power Purchase. As per sub-clause (b) of Clause 6 of the Regulation No. 1 of 2012, a generating company (including a CPP) is eligible for obtaining Accreditation from the respondent, if such generating company sells electricity generated by it either (i) to the distribution licensee in the State of Andhra Pradesh at the pooled cost of power purchase, or (ii) to any other licensee or to an open access consumer at a mutually agreed price, or through power exchange at market determined price.

8. As per the Electricity Act 2003, “electricity trader” means a person who has been granted a license to undertake trading in electricity under Section 12 of the said Act. Therefore, any generator which is selling power through a trader (which is a licensee) is eligible to Accreditation. In turn, such trader might be selling the power from the generator to one of the AP DISCOMs. Simply because the trader is selling power to one of the AP DISCOMs, that by itself will not make the generator ineligible for Accreditation.

9. Therefore, the Commission is of the opinion that the petitioner is eligible for Accreditation under Regulation No. 1 of 2012. Respondent is directed to issue accreditation.

10. Accordingly, the petition filed by the petitioner is allowed to the extent as mentioned supra.”

10.10 A thorough analysis of Regulation 6 of the APERC RPO Regulations, 2012 dealing with eligibility and registration for certificate makes it abundantly clear that a generating company including a captive

power producer in Andhra Pradesh engaged in generation of electricity from renewable energy sources shall be eligible for obtaining accreditation from the State Agency on the fulfilment of the following two conditions:

a) It does not have any Power Purchase Agreement for the capacity related to such generation to sell electricity at a tariff determined by the Commission from time to time for sale of energy to a distribution licensee; and

b) It sells the electricity generated either (i) to the distribution licensee in the State of Andhra Pradesh at the pooled cost of power purchase, or (ii) to any other licensee or to an open access consumer at a mutually agreed price, or through power exchange at market determined price.”

10.11 In the case in hand, the Respondent No.2 undisputedly does not have any PPA with any of the distribution licensees in the State of Andhra Pradesh. The Respondent No.2 is selling power under open access through PTC India Ltd. under a power trading agreement to the Andhra Pradesh Discom at a cost more than the pooled power purchase cost.

10.12 As per Regulation 6(b) of the APERC RPO Regulations, 2012, a generating company including CPP is eligible for obtaining accreditation from the Appellant on fulfilling the conditions prescribed in the said Regulation.

10.13 In the case in hand, we find that the Respondent No.2 does not have any PPA for the capacity related to such generation to sell electricity at a tariff determined by the State Commission to the distribution licensee in the state of Andhra Pradesh. Further, Respondent No.2 is selling electricity generated by it to the distribution licensee or to an open access consumer at a mutually agreed price through PTC. We find that all the required conditions have been completely fulfilled by the Respondent No.2.

10.14 On our query, the learned counsel for the Appellant clearly admits that the distribution licensee became ready to purchase RE power generated by the Respondent No.2 at Rs.5/- per unit which was higher than the preferential tariff of Rs.2/- per unit at the relevant time for a period of one year only as there was shortage of power during the relevant period in the state.

10.15 In view of the above, we do not find any merit or substance in the contentions made by the Appellant on the aforesaid issue. We agree to all the findings recorded by the State Commission in the impugned order as we do not find any legal or valid reason to deviate from the said findings recorded in the impugned order. **The issue is accordingly decided against the Appellant and the Appeal is worthy of dismissal.**

ORDER

The instant Appeal, being Appeal No. 280 of 2014, is hereby dismissed without any order as to costs. The impugned order, dated 12.8.2013, passed by the Andhra Pradesh Electricity Regulatory Commission in OP No. 56 of 2013 filed by M/s Roshni Powertech Private Limited, Respondent No. 2 herein, is hereby upheld.

PRONOUNCED IN THE OPEN COURT ON THIS 13TH DAY OF OCTOBER, 2015.

**(I.J. Kapoor)
Technical Member**

**(Justice Surendra Kumar)
Judicial Member**

REPORTABLE/NON-REPORTABLE

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