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Green energy sees red: Andhra govt's move to revisit PPAs sends out all the wrong signals

Updated : September 09, 2019 01:10 PM IST

- > The current Andhra Pradesh regime seems to be poorly advised in going about economising power in the state.
- > Green energy is critical towards ensuring a better quality of life by bringing down pollution, curbing global warming.



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The last month witnessed a lot of movement in the renewable energy (RE) sector in the state of Andhra Pradesh which constituted a 'high-level negotiation committee' with a view to "review, negotiate and bring down the high wind and solar energy purchase prices". By July 12, 2019, distribution companies (discom) of the state issued notices to the RE generators who had binding power purchase agreements (PPAs) with such discoms entered pursuant to a competitive bidding process, and duly approved by the Andhra Pradesh Electricity Regulatory



Commission (APERC), the state regulatory body under the Electricity Act.

What makes this case interesting is that power is being supplied for the past 3-4 years under the binding agreements and now since the tariff of RE is becoming cheaper because of technological advancement resulting in cheaper inputs, discoms want to re-negotiate the tariffs retrospectively and for the remaining period of PPA which is 25 years. Not to mention that such awakening has happened due to the change in the political dispensation of the state. What is striking is that the current regime seems to be poorly advised in going about economising power in the state without taking into account the statutory mandate and policy obligations which necessitated and accelerated the growth of RE in the first place.

It is a settled legal position that concluded PPAs which have been entered into by the parties cannot be revisited except under certain exceptional circumstances, thus forcing RE generations to approach judicial forums. Presently, the notices for renegotiation of tariff have been stayed by the High Court of Andhra Pradesh and the Appellate Tribunal for Electricity in different set of petitions/appeals filed by RE generators. Interestingly, after the stay granted by the High Court of Andhra Pradesh, the discoms seem to have changed its stance as reported in the media. Instead of the earlier stand of unilateral downward revision of tariff at the rate of Rs 2.43 per unit for wind and Rs 2.44 per unit for solar electricity, discoms have now indicated that they will approach the APERC for opening up of the concluded PPAs and redetermination of tariff. Despite such change of approach, obstacles remain in the renegotiation of tariff under a binding PPA as from a legal perspective, the regulatory route for renegotiation of tariff in case of RE and especially in context of competitive bid tariffs is rife with barriers which are in turn cemented with plethora of judicial pronouncements and as stated above can be reopened only in exceptional circumstances which do not seem to exist in the present case.

In times when the country is poised for international funding towards infrastructural sectors, knee jerk reactions by changing political regime at the state or centre level results in low confidence on account of political uncertainties. Green energy needs impetus as it is critical towards ensuring a better quality of life by bringing down pollution, curbing global warming while improving living standards by ensuring power supply to every household.

The notices in the form and manner issued also encroach upon the power and jurisdiction of the State Electricity Regulatory Commissions which have been bestowed with the duty to plan and approve power requirements of the state discoms and to determine purchase tariffs. By issuing ultimatums in the garb of notices to re-negotiate tariffs at the behest of state government, discom has usurped the jurisdiction of the APERC.

The state utilities in Andhra Pradesh were apparently forcibly



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status guaranteed to the RE generators by the Indian Electricity Grid Code. Regarding, such forcible backing down instructions, the RE generators had to approach the High Court. Now upon, the High Court's intervention, the state utilities have assured that backing down will be down only in terms of the Grid Code and the necessary/adequate reasons will be provided for such backing down. Also, there are RE developers who were declared competitive and accordingly, PPAs were entered into with the Discoms which are pending approval before the APERC. However, Discoms have now resiled from such agreements and filed a memo to withdraw the petition for approval of the tariffs for exiting the PPA's. This approach also seems to be legally unsustainable but the cost and effort of fighting such battles by the RE Generators is going to cause lot of bitter taste.

In all the different scenarios, the issue arises as to can a state utility be said to renege on its contractual obligations. It is high time that policymakers adopt a long term vision instead of short term and understand that such going back and forth has very high opportunity costs and push back decades of liberalisation and efforts for foreign investment will completely wash out. Even going by the preliminary views as indicated in the interim orders of the High Court of Andhra Pradesh or APTEL, the state government has to act long term and within the boundaries of legal framework instead of the whims and fancies of changing political face of a state to serve its populist measures which has no basis in sustainability of long term economic goals. The need of the hour is not to just go by what 'political leader' thinks is right, but what actually makes economic sense by analysing the proposed action. In other words, what is proposed is that policy/decision makers need to understand the economic import of any legal measure before thrusting decisions based on motivations which are usually not found on any sound research, legal, political, financial or otherwise.

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