



**TELANGANA STATE ELECTRICITY REGULATORY COMMISSION**  
**5<sup>th</sup> Floor, Singareni Bhavan, Red Hills, Hyderabad-500 004**

O. P. No. 10 of 2017

Dated: 17.07.2018

**Present**

Sri. Ismail Ali Khan, Chairman

Between:-

M/s. Arhyama Solar Power Pvt. Limited,  
Margi Building, Room No. 201 & 202,  
# 8-3-224/4/A/11 & 12, Madhuranagar,  
Yousufguda Main Road, Hyderabad – 500 038.

.... Petitioner.

AND

The Chairman & Managing Director  
Telangana State Southern Power Distribution Company Ltd.,  
Mint Compound, Khairathabad, Hyderabad – 500 063.

.... Respondent.

This petition came up for hearing on 20.06.2017, 16.11.2017, 30.04.2018 and 02.06.2018. Sri. Venkat N.K.K. Consultant along with Sri. G. Ranadheer, Representative of the petitioner appeared on 20.06.2017 and 30.04.2018 and Sri. Venkat N.K.K. Consultant of the petitioner appeared on 16.11.2017 and 02.06.2018. Sri. Y. Rama Rao, standing counsel for the respondent along with Sri. B. Vijaya Bhaskar, Advocate appeared on 20.06.2017 and Sri. Y. Rama Rao, standing counsel for the respondent along with Ms. Pravalika, Advocate appeared on 16.11.2017, 30.04.2018 and 02.06.2018. The petition having stood for consideration to this day, the Commission passed the following:

**ORDER**

M/s. Aryhama Solar Power Private Limited (petitioner) has filed a petition under sec 86 (1) (f) of the Electricity Act, 2003 (Act, 2003) seeking directions to M/s. Southern Power Distribution Company of Telangana Limited (TSSPDCL) to

implement the provisions of Regulation No. 2 of 2006 as amended from time to time and not to levy time of the day charges.

2. The petitioner stated that it is a generating company and has setup a 6 MW Solar Power Plant at Kolanpaka Village, Aler Mandal in Yadadri District. It has entered into a Long Term Open Access Agreement (LTOA) with the TSSPDCL on 02.12.2016 (Renewal), for availing open access facility for the use of distribution network of the TSSPDCL for wheeling of the energy generated from its plant located at Yadadri District to the choice of its consumer located in the service area of TSSPDCL.

3. The petitioner stated that Section 86 (1) (e) promotes cogeneration and generation of electricity from renewable sources of energy. There is a critical issue on which the petitioner has been greatly subjected to distress by the actions of TSSPDCL and is constrained to file this petition under section 86 (1) (f) of the Act, 2003.

4. The petitioner narrated the issue as follows:

- a) In accordance with the applicable provisions of the Andhra Pradesh Electricity Regulatory Commission Interim Balancing and Settlement Code for Open Access Transactions (Regulation No. 2 of 2006) and amendments thereof, the TSSPDCL has to issue the revised HT bills to the off-takers of petitioner, after settlement meetings are concluded, as per the provisions of clause 8.3 read in conjunction with 10.5.
- b) The relevant portions of the said regulation are extracted here under for the sake of convenience.

*Clause 8.3*

“The scheduled energy of a scheduled consumer from an OA generator for each time-block shall be deducted from the recorded energy (in the inter-se order of such generators, as and if intimated by the consumer, in case the consumer is availing of energy from more than one generator) as a first charge. The balance energy shall be deemed to have been supplied by the DISCOM and shall have to be paid for as per the terms of the supply agreement with the DISCOM.”

*Clause 10.5*

“In case of wind and mini-hydel and solar OA generators the actual generation during the month shall be deemed as scheduled energy. For the purpose of settlement in respect of scheduled / OA consumer availing supply from these OA generators, the actual generation during the month will be apportioned for each time block of the month and deviations reckoned accordingly.’

- c) Causing burden on the petitioner, TSSPDCL is levying the time of day charge for the units supplied by the petitioner during 06:00 AM to 10:00 AM and 06:00 PM to 10:00 PM (+ 1 Rs. / unit).
- d) However, as per the provisions in the regulation, after deducting all the units supplied by solar and other open access sources, the remaining units are deemed supplied by the TSSPDCL as it is entitled to bill only on the units supplied by them and not on the units supplied by solar OA generator.
- e) This is gross violation of the provisions under clause 8.3 and 10.5 of Regulation No. 2 of 2006 and amendments thereof.
- f) TSSPDCL as a distribution and retail supply licensee, is obliged as per law and conduct to implement all directions, regulations and orders issued by the Commission under the relevant provisions of the Act 2003.
- g) Whereas the petitioner’s off-taker along with petitioner had put in best efforts to bring this issue to the respondent vide letter dated 13.10.2016, but there has been no response on this letter so far and the respondent has been following its own arbitrary method of billing.
- h) The petitioner is thus constrained to file this petition.

5. The petitioner sought the following reliefs.

“a) Direct the respondents to correct the billing methodology of respondent as per the provisions of Regulation No. 2 of 2006 and amendments thereof, and not to levy time of day charge for the units supplied by solar OA generators.

B) Direct the respondent to refund the entire excess billed amount, in the previous month bills, as per the provisions of Regulation No. 2 of 2006 and amendments thereof.”

6. The respondent has filed counter affidavit stating that as per the monthly energy units allocated by the petitioner, the quantum of 6 MW from the solar project, the time of the day (TOD) units were allowed under open access facility and adjusted against the energy units consumed by their scheduled consumers during the day including peak hours and only peak energy charges are being levied during peak hours, since there is no generation of power by the solar generators during the peak hours.

7. The respondent stated that Clauses 8.3 and 10.5 of Regulation No. 2 of 2006 clearly state that only generation of certain type of generators can be apportioned in all the time blocks during the day, as there is no continuous generation for such generators, but nowhere it is mentioned about adjustment of TOD charges against the energy purchased by the DISCOM at higher cost during the peak hours, while relying on Clauses 8.3 and 10.5 of the Regulation No. 2 of 2006. The respondent further relied on Appendix – 3 of Regulation No. 2 of 2006, (prior to amendment vide Regulation No. 2 of 2014) which is extracted below.

**“APPENDIX – 3**

**Terms and Conditions for banking facility allowed to  
Wind Power and Mini-hydel Power Generators**

1. Banking allowed during all the 12 months.
2. Drawls are subject to the following:
  - (a) The banking year shall be from January to December.
  - (b) The banking charges shall be in kind @ 2% of the energy delivered at the point of injection.
  - (c) Drawls shall be permitted only during the 6-month period, from July to December. The banked energy remaining unutilized as on 31<sup>st</sup> December shall be treated as lapsed.
  - (d) Drawls of banked energy during the peak hours i.e. 06:00 to 09:00 hours and 18:00 hours to 21:00 hours shall not be permitted.

8. The respondent claimed that on review of the adjustment of TOD charges / peak energy charges in respect of HT consumers who are purchasing the solar power as per the Regulation No. 2 of 2006 and clause 10.5 and 8.3, the TOD tariff

adjustment to the extent of energy units consumed during peak hours is not considered in addition to the normal energy charges on the following grounds:

1. The TOD tariff is payable for energy consumed during peak hours by the consumers towards cost of expensive power purchased by the DISCOM during peak hours.
2. The TOD tariff adjustment has been allowed to scheduled consumers only to the extent of actual power generated by the generators during peak hours.
3. In case of solar power generators, there is no possibility of generation during peak hours of 6.00 pm to 10.00 pm and 6 am to 10 am.
4. Accordingly, the adjustment of TOD tariff under open access (Solar power) facility is not allowed on solar generation as the solar power generation would be during the day time (availability of sun light) and the government is facilitating the generators to allocate the energy in all time blocks during the day (24 hours) to their respective consumers to encourage the solar generation. Based on the allocation of the generator, the units allocated were also adjusted on apportion basis against the energy consumed during peak hours except TOD tariff as per Regulation No. 1 of 2013.

9. The respondent has asserted that the DISCOMs have been following all the provisions as per the Electricity Act, 2003 and Regulation No. 2 of 2006 and working as per the orders of the Commission. The bills are being paid as per the tariffs and other orders approved by the Commission from time to time. The respondent sought a direction to the petitioner (solar generator) to comply with the TOD charges during the peak hours.

10. The petitioner filed a rejoinder to the counter affidavit filed by the respondent and stated as under.

- i. The respondent indulged in discrimination when it explained about why ToD (+1 / Unit) adjustment is not considered during ToD (+1 / Unit) hours i.e. (06:00 to 10:00) and (18:00 – 22:00) while wantonly ignoring about giving incentive during ToD (1 / Unit) times i.e., from 22:00 to 06:00 to the consumer. The same points raised by the respondent were rejected with reasons by Vidyut Ombudsman for the State of Telangana in Appeal No. 30 of 2017 who

directed the respondent to correct their billing methodology in respect of supplies made by the solar OA generator i.e., petitioner.

ii. The respondent has not pleaded lack of locus standi in their counter. However, issue of locus standi has been brought up by the counsel for the respondent only after the petitioner has referred to the order of Vidyut Ombudsman in the lines favouring the petitioner during the hearing held on 02.06.2018.

iii. The respondent claimed that since the petition is with respect to billing of energy to consumer, the petitioner has no locus standi. However, the respondent deliberately left out the fact that the issue is with respect to billing of energy supplied by the petitioner and not by the respondent. Hence, it is submitted that the petitioner has locus standi and the respondent should not bill for units supplied by the petitioner to its consumer.

iv. The petitioner has established Locus Standi before this Commission through the documents submitted (1) PPA with consumer, (2) Credit notes raised to consumer, (3) Long Term Open Access Agreement signed with the respondent with requisite extracts vide letter dated 26.10.2017.

v. The Respondent is in clear breach of contractual clause 14.2 of LTOA by the respondent, entered between the petitioner and the respondent from where the petitioner clearly established locus standi. In addition, the consumer of the petitioner is not even a party to the LTOA.

vi. Locus standi of the petitioner i.e., generator, in similar cases was clearly established as noticed below.

a. Hon'ble High Court of Judicature at Hyderabad in its order dated 23.12.2014 vide WPMP No. 48927 of 2014 in WP No. 39035 of 2014, between M/s. Shri Lakshmi Ganapathy Industries Private Limited and respondent and others, passed an interim order "directing the respondents to restrain from levying and collecting wheeling and transmission charges from the consumers of petitioners in respect of power supplied by the generator. The Hon'ble High Court established locus standi of the petitioner i.e., generator and passed order at the instance of the generator only.

b, The Commission in its order dated 07.02.2015 vide I. A. No. 1 of 2015 in O. P. No. 14 of 2015 filed by the petitioner itself against the

respondent and others, passed an interim order directing the respondent to give benefit of exemption of transmission and wheeling charges in favour of the petitioner. Also in the same O. P. No. 14 of 2015 in its final order dated 26.07.2016 the Commission allowed the petition by ordering refund of the wheeling charges collected through electricity bills of consumer of the petitioner i.e. generator. Hence establishing the locus standi of generator in respect of charges levied on the consumer on the power supplied by the generator.

c. The Commission in its order dated 17.01.2017 in O. P. No. 82 of 2015 and I. A. No. 31 of 2015 filed by M/s. Pragati Group against the respondent and others passed an order allowing the petition declaring that the wheeling charges are not liable to be paid on the power supplied to the consumer by the petitioner / generator therein.

d. Thus, the petitioner sought the following reliefs: -

- i) to direct the respondent to correct its billing methodology as per the provisions of Regulation 2 of 2006 as amended from time to time thereof and not to levy time of the day charge for the units supplied by the solar OA generators; and
- ii) to direct the respondent to refund the entire excess billed amount, in the previous month bills, as per the provisions of Regulation No. 2 of 2006 as amended from time to time.

11. I have heard the matter extensively and perused the material placed on record. Heard the arguments of the counsel for both the parties.

12. The following issues arise for a decision:

- (i) Whether the petitioner is entitled to a direction to the respondent / Discom not to levy TOD charges as per the provisions of Regulation 2 of 2006 as amended?
- (ii) Whether the respondent is liable to refund the excess billed amount in the previous months as per the provisions of Regulation 2 of 2006 as amended?
- (iii) Whether the petitioner has locus standi to file the present petition?

13. The learned counsel for the Respondent contended that the petitioner has no locus standi to file the present petition in the Commission and the petitioner ought to

have pursued the cause before CGRF and Ombudsman or any other authority. The question raised in this petition is not about issue of wrong bills or erroneous calculations or wrong categorization of consumers, but about interpretation sought to be given by the Licensee in respect of clauses in the Regulations and their application in terms of agreement between the petitioner and the DISCOM. Thus, the petitioner is found to have locus standi to prefer the present petition.

14. The simple issue in this petition is with regard to levying ToD charges for the power supplied by the licensee during peak hours notified by the Commission in the tariff order for the relevant year being 2016-17, without accounting for the energy supplied by the generator to its consumer during the relevant period. The petitioner is clearly complaining of the infraction made by the licensee in giving effect to the provisions of the regulations applicable to the case.

15. The petitioner in support of its claim is placing reliance on clauses 8.3 and 10.5 of the Regulation No.2 of 2006 and contended that the energy supplied by the generator which should be accounted for in the first place and the balance energy in a time block should only be then taken for billing by the DISCOM. Neither of the parties, inspite of directions from this Commission, have chosen to place the correct picture of the energy delivered for the time period under the issue (TOD) and the actual drawal from the DISCOM apart from the supply of energy by the petitioner. Absence of data on this aspect is definitely an omission for deciding the matter. Thus, this Commission is left with no other option but to decide the matter on the basis of the material available on record.

16. Both parties have relied on the same clauses in the regulations referred to supra, in a way it suits their argument. However, a perusal of the amended clause 8.3 of Regulation 2 of 2006 would show that the Discom should account for the energy supplied by the petitioner / generator in the month and apportion it to the time blocks and thereafter, take into account the balance energy as supplied by the DISCOM. The parties in the present petition are not clear as to whether the conditions in the regulations have been fully and exhaustively complied with. Further, the DISCOM sought to rely on Appendix-3 of Regulation 2 of 2006 in its un-amended form and whereas, the said regulation underwent two amendments later with

substantial amendments vide Regulation No. 2 of 2014, which is extracted below for ready reference.

### **“APPENDIX – 3**

#### **Terms and Conditions for Banking facility allowed to Wind, Solar and Mini-hydel Power Generators**

1. Banking allowed during all the 12 months.
2. Drawls are subject to the following:
  - (a) The Banking year shall be from April to March.
  - (b) Banking charges shall be in kind @ 2% of the energy delivered at the point of drawl.
  - (c) Drawls of banked energy shall not be permitted during the five (5) month period from 1<sup>st</sup> April to 30<sup>th</sup> June and 1<sup>st</sup> February to 31<sup>st</sup> March of each financial year. In addition, Drawl of banked energy during the Time of the Day (ToD) applicable during the peak hours, as specified in the respective Retail Supply Tariff Order, shall also not be permitted throughout the year.
  - (d) The energy banked between the period from 1<sup>st</sup> April to end of 31<sup>st</sup> January of each financial year which remains unutilized as on 31<sup>st</sup> January, shall be purchased by the DISCOMs, as per the wheeling schedule. The energy credited into bank during the month of February & March of each financial year will be carried forward to the month of April of the next financial year for the credit of the banking account for the next year.
  - (e) Generators have to communicate time block wise banked energy withdrawal schedule and allocations to respective Open Access / Scheduled consumers at least ten (10) days before the commencement of billing cycle.
  - (f) The purchase price payable by the DISCOMs for unutilized banked energy will be equivalent to 50% of the Pooled Cost of Power Purchase, applicable for that financial year, as determined by the

Commission under RPPO / REC Regulation (1 of 2012). DISCOMs shall settle such purchase transactions with the generators by 31<sup>st</sup> March of each year.”

17. The respondent referred to appendix,3 to show that the Banked energy cannot be applied / drawn during peak hours / TOD, which is quite different from the present dispute, regarding payment of TOD charges to the generator / consumer.

18. The present dispute is not about distribution of the Banked energy. The dispute is about collection of TOD charges on that portion of energy supplied by the solar power generator by the Discom, which the Petitioner claims it is entitled to. Clause 4.1 of Regulation 2 of 2006 provides for distribution of scheduled energy into each 15 minute block for a day, on a day ahead basis by 10.00AM on the day preceding the commencement of the first time block, for which the wheeling of energy is scheduled.

It is relevant to note the 2<sup>nd</sup> amended (as per Regulation 1 of 2013) proviso to clause 4.1 which is as follows:

*“Provided also that the wind based, solar based or mini-hydel open access generators shall not be required to provide a day-ahead wheeling schedule and the actual electricity injected by them shall be deemed to be the scheduled energy”.*

Further, the amended (regulation 1 of 2013) clause 10.5 of Regulation 2 of 2006 clarifies as to what is the scheduled energy as follows: -

*“In case of wind, Mini-Hyel and Solar OA generators the actual generation during the month shall be deemed as scheduled energy. For the purpose of settlement in respect of scheduled/OA consumer availing supply from these OA generators, the actual generation during the month will be apportioned for each time block of the month and deviations reckoned accordingly.”*

These provisions create a favourable atmosphere for renewable energy sources to set up and operate in the state. Clause 10(5) makes it clear that for settlement regarding supply of energy, the actual energy generated shall be apportioned into each time block of the month and deviations reckoned accordingly.

19. It is clear that dividing generated energy units into each time block is not only for noting deviations, but also to see that the share of the energy of the solar power generator is separated from the time block and to levy TOD charges only on that portion of the energy deemed supplied by the DISCOM/Licensee. Thus, it is also clear that the Discom cannot collect TOD charges from the consumer on the Open Access generator supplied energy in the respective time blocks. Refusing to account for and refund the TOD charges collected from the consumer is untenable and against the provisions of Regulation 2 of 2006.

20. It is brought on record that the incentive offered to the consumers for the energy used during non-peak hours 10:00 P.M to 06:00 AM is not being given while TOD charges are being levied, in violation of Tariff Orders – 2016-17 & 2017-18. The DISCOM is duty bound to follow the Tariff Orders and offer incentive it is commanded.

21. The contention of the petitioner that the DISCOM is not entitled to levy TOD charges on the portion of energy allotted to the blocks covered by TOD timings relating to the energy deemed supplied by the Solar OA generator is against the terms of Regulation No. 2 of 2006 (as amended) is tenable and the contrary argument of the Respondent is found as untenable.

22. The petitioner being the solar power generator is not the agency which shoulders the burden of TOD charges and pays to the DISCOM. There is no specific contract on this aspect and therefore, the petitioner is found not entitled to an order for refund of TOD charges since it is the consumer who paid TOD charges and who is entitled to refund after proper accounting. The issues are answered accordingly.

23. In the result, the petition is disposed-off with the following directions:

(i) The Respondent shall not levy TOD charges to the extent of energy supplied by OA generator in the specified time blocks on the basis of settlement statement determined in accordance with the Regulation No. 2 of 2006 during TOD timings and correct the billing as per the provisions of the Regulation No.2 of 2006 (as amended).

(ii).The petitioner being a generator is specifically not entitled to refund of TOD charges levied by DISCOM as it is the consumer who is entitled for refund.

(iii). The DISCOM is duty bound to offer incentive to the consumer relating to energy consumed during non-peak hours as per the terms of Tariff Orders.

(iv). The bills generated during the relevant period shall be reconciled by the DISCOM with the consumer.

Parties to bear their own costs.

***This order is corrected and signed on this the 17<sup>th</sup> day of July, 2018.***

**Sd/-  
(ISMAIL ALI KHAN)  
CHAIRMAN**

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