



TELANGANA STATE ELECTRICITY REGULATORY COMMISSION
5th Floor, Singareni Bhavan, Red Hills, Hyderabad-500 004

O. P. No. 6 of 2017

&

I. A. No. 21 of 2017

Dated: 31.01.2018

Present

Sri. Ismail Ali Khan, Chairman

Sri. H. Srinivasulu, Member

Between:

M/s. Mytrah Vayu (Godavari) Private Limited,
Registered Office: 8001, Q – City, S. No. 109,
Nanakramguda, Gachibowli,
Hyderabad – 500 032

Petitioner.

And

1. M/s. Southern Power Distribution Company of
Telangana Limited, 6-1-50, Mint Compound,
Hyderabad – 500 063.

2. M/s. Transmission Corporation of Telangana Limited,
Vidyut Soudha, Khairatabad, Hyderabad – 500 082.

... Respondents.

This petition along with an application came up for hearing on 17.06.2017, 20.06.2017, 02.11.2017, 16.11.2017 and 19.12.2017. Sri. Challa Gunaranjan, Counsel for petitioner / applicant was present on 17.06.2017 and 20.06.2017, Sri. K. Gopal Chowdary, Advocate representing Sri. Challa Gunaranjan, Counsel for petitioner / applicant was present on 02.11.2017, Sri. Hemanth Sahai, Senior Advocate along with Ms. Mazag Andrabi, Advocate appearing on behalf of Sri. Challa Gunaranjan, Counsel for the petitioner / applicant was present on 16.11.2017 and Sri. Hemanth Sahai, Senior Advocate along with Ms. Meghana Aggarwal, Advocate representing Sri. Challa Gunaranjan, counsel for the petitioner / applicant was present on 19.12.2017. Sri. Y. Rama Rao, standing counsel for the respondents along with Sri. B. Vijaya Bhaskar, Advocate was present on 17.06.2017 and 20.06.2017,

Smt. Nanditha, Advocate along with Ms. Pravalika, Advocate representing Sri. Y. Rama Rao, Standing counsel for the respondents was present on 02.11.2017, Sri. Y. Rama Rao, standing counsel for the respondents along with Ms. Pravalika, Advocate was present on 16.11.2017 and 19.12.2017. The petition along with the application having stood for consideration to this day, the Commission passed the following:

ORDER

M/s Mytrah Vayu (Godavari) Private Limited (petitioner) has filed a petition under sec 86 (1) (f) of the Electricity Act, 2003 (Act, 2003) seeking directions to the licensees being the Southern Power Distribution Company of Telangana Limited (TSSPDCL) and Transmission Corporation of Telangana Limited (TSTRANSCO) to amend the power purchase agreement (PPA) for the 100.8 MW wind power project in respect of metering arrangement in terms of the Central Electricity Authority (Installation and Operation of Meters) Regulation, 2006 as well as proceedings issued by the Commission by order dated 02.02.2015.

2. The petitioner stated that it is a company incorporated under the provisions of Companies Act, 1956 (Act, 1956), having its registered office at 8001, Q-City, S.No. 109, Nanakramguda, Gachibowli, Hyderabad, Telangana and is engaged in the business of generation and sale of renewable energy. The petitioner is a subsidiary company of M/s Mytrah Energy (India) Limited (MEIL), whose registered office is also located at the same place and it is also in the business of generation and sale of renewable energy.

3. The petitioner stated that the TSSPDCL is incorporated under Act, 1956, having its registered office at 6-1-50, Mint Compound, Hyderabad and is engaged in the business of distribution and supply of electricity in the area of supply mentioned in its license. The TSTRANSCO is incorporated under Act, 1956, having its registered office at Vidyut Soudha, Khairatabad, Hyderabad and is engaged in the business of transmission of electricity in the state of Telangana.

4. The petitioner stated that with a view to promote generation of electricity from wind sources, the erstwhile Government of Andhra Pradesh (GoAP) notified the G. O. Ms. No. 48, Energy (Res) Dept., dated 11.04.2008 and G. O. Ms. No. 99, Energy (Res) Dept., dated 09.08.2008 (Wind Policy) and all the wind projects will be governed by

provisions of the wind policy. Under this policy, the erstwhile GoAP has extended various incentives to the developer of wind energy with a view to promote installation of wind power plants in the state for sale to the DISCOMs of erstwhile Andhra Pradesh on preferential tariff determined by the Commission.

5. The petitioner stated that in pursuance of the aforesaid wind policy, the erstwhile New and Renewable Energy Development Corporation Limited of Andhra Pradesh (NREDCAP) for undivided State of Andhra Pradesh, which is the state nodal agency formed by the state government for the purpose of approving the renewable energy projects, has allotted 100 MW capacity wind power project (Project) in favour of petitioner to be set up at Nazeerabad Village, Parigi Mandal, Rangareddy District, vide letter NREDCAP / WE / Mytrah / 6963 / 2013 dated 11.12.2013. Subsequently at the request of MEIL, the said project was transferred in its name by Telangana New and Renewable Energy Development Corporation Limited, (TNREDCL) which is a group company of MEIL, vide letter TNREDCL / WE / Mytrah / 6963 / 2015 dated 09.02.2015. Accordingly, an agreement was entered with TNREDCL on 19.02.2015 for establishment of 100 MW wind power project.

6. The petitioner stated that then project proponent, that is MEIL, has applied to the erstwhile Transmission Corporation of Andhra Pradesh Limited (APTRANSCO) for connectivity to the project for evacuating the power. The Executive Director Planning, RAC and Reforms, APTRANSCO by the letter dated 19.11.2012 has accorded connectivity approval for the said project. Subsequently APTRANSCO vide letter dated 04.01.2013 has communicated to MEIL, the cost of estimate and supervision charges payable (₹ 233.94 lakhs) thereon for evacuating the power from 33 / 132 KV pooling station at Nazeerabad to 132 / 33 kV Parigi sub station. The details of metering arrangements, evacuation works, etc. that has to be executed by the petitioner have been clearly mentioned in the above said letter. In pursuance of the APTRANSCO letter dated 04.01.2013, MEIL has paid the above said supervision charges for an amount of ₹ 212.65 lakhs (after deducting the TDS amount of ₹ 21.28 lakhs) to APTRANSCO on 28.01.2013.

7. The petitioner stated that as per the above said cost estimates, it has filed all the drawings that is single line diagrams (SLD), electrical layouts, equipment drawings for approval of TSTRNSCO. Subsequently TSTRNSCO has accorded its approval

for the SLD vide letter dated 07.08.2014. In the above said approved SLD of Nazeerabad 33 / 132 KV pooling substation, it was clearly mentioned that the metering arrangement would be on the HV side of the power transformer of the Nazeerabad 33 / 132 KV pooling substation. This is clearly in line with the orders of erstwhile APTRANSCO vide T.O.O (ED / Plg, RAC & Reforms) Ms. No. 10 dated 28.02.2014 as applicable to wind generators having single PPA with DISCOMS. The relevant extracts of the Ms. No. 10 dated 28.02.2014 are as follows:

- “4) The issue of location of interface meters was discussed in the meeting held on 02.01.2014 and as per APERC Regulation No. 4 of 2013 dated 19.07.2013 the following are finalized.
- i) Open access generators (IPPs & MPPs): The location of interface meters (Main, check and standby energy meters) shall at the interconnection point where the ownership of the either parties changes that is if the line is owned by APTRANSCO the metering shall be at developer’s end and incase the line is owned by the developer metering shall be at APTRANSCO / DISCOM substation.
 - ii) Wind Generators:
 - a) Total capacity is single PPA with DISCOMs: The location of interface meters (Main, Check and Standby) shall be at Generator Pooling Station (HV side of Transformer) and respective agreement conditions”.

8. The petitioner stated that in view of the above said T.O.O (ED / Plg. RAC & Reforms) Ms. No. 10 dated 28.02.2014 and the SLD approval of TSTRANSCO dated 07.08.2014, it has gone ahead and completed the construction of the 33 / 132 KV Nazeerabad pooling substation by spending an amount of ₹ 30 crores. The construction of the said pooling substation was done in accordance with the approved SLD.

9. The petitioner stated that the Commission in order to effectively implement the provisions of section 55 (3) of Act, 2003 and CEA (Installation and operation of meters) Regulation, 2006 (CEA regulation) made under Sec 55 (1) of Act, 2003, issued proceeding No. TSERC / Secy / 13 / 2015 dated 02.02.2015, which issued directives on issues concerning with the ownership of meters, costs, installation and location of

meters as applicable to generating companies and licensees. In para 11 of the said proceedings the Commission directed that the generating stations shall install all interface meters as per the clause 7 (1) (1) of the CEA Regulations. The relevant extracts of the proceeding No. TSERC/ Secy / 13 / 2015 dated 02.02.2015 are as follows:

“11.0 Location of interface meters for generating stations / captive power plants

The Commission has considered the following provisions as are mentioned in the regulation issued by the CEA which are extracted hereunder:

Clause 7 (1) (1) of CEA Regulation:

Main meter – on all out going feeders of Generating Station.

Check meter – on all out going feeders of Generating Station.

Standby meter – (i) High voltage (HV) side of generator transformer

(ii) High voltage (HV) side of all station auxiliary transformers”.

10. The petitioner stated that the TSSPDCL vide letter dated 03.01.2015 has called upon the petitioner for signing of the model PPA as approved by the erstwhile APERC and insisted the petitioner to sign the PPA on or before 31.03.2015 as the applicable tariff of Rs. 4.70/- per unit was going to expire on 31.03.2015 as determined by the erstwhile APERC through its order in O. P. No. 13 of 2012 dated 15.11.2012. In the said model PPA, the relevant clauses which were objectionable to the petitioner are extracted as follows:

“1.6. Designated substation: means 132 / 33 KV SS at Parigi in Ranga Reddy District of TSTRANSCO.

1.11. Inter connection point: means the point or points where the project and the TSTRANSCO's / DISCOM network or interconnected. For this project, interconnection point is at the designated sub-station. The metering for the project will be provided at the interconnection point as per Article 4.1. As indicated in the preamble of this Agreement, interconnection point for this project is at designated sub-station.

....

1.13 Metering Point: means points where metering shall be provided for project and shall be as follows:

(i) Common meter provided at the interconnection point for purposes of recording of delivered energy of the project;

(ii) Individual meter provided at project's switchyard;

(iii) Metering point shall include two separate sets of 0.2s class accuracy electronic tri-vector meters as specified in Article 4.1, main meter installed by the wind power producer and the check meter installed by the DISCOM and both sealed by the DISCOM, having facilities to record both export and import of electricity to / from the grid.

....

4.1 The wind power producer shall install main meters of static type 0.25 class accuracy at the metering point and the DISCOM shall install check meters of static type at the same point and of the same accuracy. The main meters and check meters will each consist of a pair of export and import meters with facility for recording meter readings using meter recording instrument. For the purpose of uniformity the wind power producer shall follow metering specification as developed by the DISCOM from time to time.”

11. The petitioner stated that it by letter dated 10.03.2015 sought clarification on metering arrangement in as much as in the model PPA the definition of designated substation did not deal with the wind power project as IPP having total capacity as single PPA with DISCOMs. Therefore, the petitioner requested to treat the 33 / 132 KV Nazeerabad pooling substation as designated IPP substation which would be in line with CEA Regulations on installation and operation of meters and the proceedings No. TSERC /Secy / 13 / 2015 dated 02.12.2015 of the Commission. It has also informed that since it has already commenced project construction and in order to achieve financial closure, having no other alternative has agreed to sign the PPA. The TSSPDCL has again insisted upon it vide letter dated 23.03.2015 to sign the model PPA, without considering its request to change the metering arrangement as per the prevailing CEA / TSERC guidelines.

12. The petitioner stated that subsequently without even changing the relevant metering arrangement clauses as described above the petitioner was compelled to enter into PPA and it signed the same on 26.03.2015, without being in the position of exercising free consent to the same. In the preamble of the said signed PPA at para 4 it is mentioned that the project would be connected to designated substation that is 132 / 33 KV Parigi substation and that project will have metering on the feeder at the

designated substation. In terms of the above referred clauses as per the signed PPA, the interface meters have to be provided at designated substation which is 132 / 33 KV Parigi substation which is the interconnecting point. As per clause 11.7 of the PPA, schedule – I, II, III & IV attached thereto, constitutes entire agreement between the parties. Schedule – IV is the “guidelines on power evacuation from wind power projects in Andhra Pradesh” forming the part of present PPA. The relevant extracts on metering arrangement in the said guidelines are as follows:

“3(ii) (b) for wind power projects coming as individual projects:

Metering shall be provided at designated APTRANSCO / DISCOM SS. The DISCOM officers and wind power producer’s representative shall take joint meter readings every month. The DISCOM will make payment for the energy recorded by the meter provided at SS.”

13. The petitioner stated that the guidelines referred as above provide for metering arrangement at designated APTRANSCO / DISCOM SS, which in the present case is 132 / 33 kV Parigi substation. This is contrary to CEA Regulations on installation and operation of meters, the proceedings No. TSERC /Secy / 13 / 2015 dated 02.02.2015 of the Commission and T.O.O (CE / Plg, Comml & Coord) Ms. No. 5 dated 23.03.2015 issued by TSTRANSCO, which direct the generators to provide interface metering arrangement on outgoing feeders of generating station. In the present case the 33 / 132 KV pooling station at Nazeerabad Village is the outgoing feeder of the generating station. Therefore, the PPA clauses 1.6, 1.11, 1.13 and 4.1 to the extent of providing the metering arrangement at the designated substation mentioned therein should be modified to the extent as explained above.

14. The petitioner stated that the Chief General Manager (Comml & RAC) of TSSPDCL addressed letter dated 01.04.2015 to Chief Engineer / Plg TSTRANSCO requesting to arrange the revised drawing approval (accorded by the erstwhile APTRANSCO vide letter dated 07.08.2014) for shifting of the metering arrangement from generator 33 / 132 KV pooling station to 132 / 33 KV Parigi substation at 132 kV side. Thereafter, the Chief Engineer, (Plg, Comml & Coordn), TSTRANSCO replied to CGM (Comml & RA), TSSPDCL vide letter dated 25.05.2015 opining that the metering arrangement for the project were in accordance with the proceedings No. TSERC / Secy / 13 / 2015 dated 02.02.2015 of the Commission and were adopted by

TSTRANSCO through T.O.O (CE / Plg, Comml & Coord) Ms. No. 5 dated 23.03.2015 issued by TSTRANSCO. The TSTRANSCO also opined that the proceedings issued by the commission were latest and have requested to take up the issue with the Commission for amendment of the PPA regarding location of meters.

15. The petitioner stated that it was pursuing for amendment of PPA but the TSSPDCL was awaiting instructions of the Commission. Meanwhile the TSSPDCL by being in dominant position has insisted the petitioner to furnish an undertaking for shifting of the metering arrangement in case of any clarification that may be issued by the Commission. Having no other alternative, it has agreed to furnish an undertaking on 18.03.2016 to the TSSPDCL. The relevant extracts of the undertaking are as follows:

- i) We will shift the billing meters from 33 / 132 kV pooling substation to the designated substation i.e., 132 / 33 kV Parigi within 3 months from the date of clarification issued by Hon'ble TSERC.
- ii) We will abide by the rules and regulations of TSERC, TSTRANSCO and TSSPDCL from time to time.
- iii) Failing to shift the billing meters from 33 / 132 kV pooling substation to the designated substation i.e., 132 / 33 kV Parigi within 3 months from the date of clarification issued by Hon'ble TSERC. The TSPCC / TSDISCOM can hold power purchase payments till installations of the same."

The CGM (Comml & RAC) TSSPDCL by letter dated 02.04.2016, addressed to the Commission, has sought clarification on location of the meters for the said project. The Commission has replied by letter dated 29.04.2016, informing that it had already clarified the issue of location of meters in the similar case through a letter dated 31.12.2015 and further directed the TSSPDCL to take necessary action to duly install the interface point in accordance with the CEA regulations.

16. The petitioner has stated that on 03.06.2016 the TSSPDCL has again insisted it to shift the billing meters (main, check and standby meters) from the 33 / 132 KV pooling substation to 132 / 33 KV Parigi designated substation on or before 28.07.2016, else failing to comply as per the undertaking, the TSSPDCL has threatened to withhold the power purchase payments till the installation of billing

meters as per their requirement. On 20.07.2016 once again the TSSPDCL informed it to shift the metering arrangement or else threatened to withhold the power purchase payments till the installation of billing meters.

17. The petitioner stated that while pursuing the amendments to the PPA, it has alternatively in the meanwhile explored the possibilities of providing metering at 132 / 33 KV Parigi substation. In this regard the Chief Engineer, Metro Zone, Erragadda, TSTRANSCO vide letter dated 02.08.2016, has clearly clarified to the TSSPDCL that the metering arrangement has been made by it in accordance with the proceedings No. TSERC / Secy / 13 / 2015 dated 02.02.2015 of the Commission and T.O.O (CE / Plg, Comml & Coord) Ms. No. 5 dated 23.03.2015. They have also informed that there is no sufficient space available at 132 / 33 kV Parigi sub-station for accommodating the said metering arrangements.

18. The petitioner stated that as the issue of amendment to PPA is not resolved by the TSSPDCL, it has proactively addressed a letter dated 28.09.2016, to the Commission for necessary directions and sought clarification on the above metering arrangements. The Commission by letter dated 05.10.2016 has replied back to it, informing that the issue raised by it needs to be adjudicated and therefore it was advised to approach the Commission through an appropriate petition. It therefore is constrained to file the present petition seeking an amendment to terms of PPA dealing with evacuation and metering arrangement for the project.

19. The petitioner stated that on 06.01.2016, TNREDCL has sanctioned an additional wind capacity of 0.8 MW to it, vide proceeding No. TNREDCL / WE / Mytrah / 6963 / 2015, for generation of power on commercial basis to match with the petitioner's aggregate machine capacity of 100.8 MW (48 machines x 2.1 MW) wind power project. To this effect it has entered into an agreement with TNREDCL on 06.01.2016. Subsequently on 03.12.2016, it and TSSPDCL have entered into a draft "First Amendment Agreement" to the already signed PPA, dated 26.03.2015, for supply and purchase of additional 0.8 MW power from the same wind project at Nazeerabad Village, Parigi Mandal, Ranga Reddy District. Hence the preamble 2 of the original PPA, shall now be read as "Whereas, the wind power producer is setting up the new and renewable energy project that is 100.8 MW (48 x 2.1 MW)".

20. The petitioner stated that it was clearly mentioned in the clause 9 of the said amended agreement dated 03.12.2016 that “this amendment is effective from the date of execution of this agreement that is on 03.12.2016. The other clauses of articles and schedules of the power purchase agreement dated 26.03.2015 shall remain unaltered”. Since the clauses regarding metering arrangement are also unaltered in the amended agreement and remains same as that of PPA dated 26.03.2015, it therefore prays the Commission for amendment of the terms of PPA dated 26.03.2015 and the subsequent first amendment agreement dated 03.12.2016, dealing with evacuation and metering arrangement for the project to be in accordance with the proceeding No. TSERC / Secy / 13 / 2015 dated 02.02.2015 of the Commission and T.O.O (CE / Plg., Comml & Coord) Ms. No. 5 dated 23.03.2015, issued and adopted by TSTRANSCO.

21. The petitioner stated that through present petition, it seeks to amend the PPA clauses 1.6, 1.11, 1.13 and 4.1 in relation to evacuation and providing of meters on the ground that the 33 / 132 KV pooling substation at Nazeerabad Village, alone shall be interface point that is the outgoing feeder of generating station as per clause 7.1.1 of CEA Regulation read with proceedings No. TSERC / Secy / 13 / 2015 dated 02.02.2015 issued by the Commission which have been adopted by TSTRANSCO, T.O.O (CE / Plg., Comml & Coord) Ms. No. 5 dated 23.03.2015 and not the 132 / 33 KV Parigi substation. Therefore, the designated substation as mentioned in PPA should be the 33 / 132 KV pooling substation at Nazeerabad Village. It acting in furtherance to the CEA regulation and the evacuation scheme and drawings approved by the TSTRANSCO has constructed the project and provided metering arrangement at 33 / 132 KV pooling substation, Nazeerabad Village. So, for all the billing purposes, the metering point is the Nazeerabad pooling substation alone. As per the order dated 30.03.2010 in O. P. No. 40 of 2010 of erstwhile APERC the EHT line leading from pooling substation up to 132 / 33 KV Parigi, substation would vest with TSTRANSCO and the TSTRANSCO incur O and M on the same. It is clearly understood between the parties and as well as the statutory regulations support such an understanding that the metering arrangement should be provided at pooling substation. Therefore, the clauses / terms of PPA stipulating otherwise is contrary to the applicable regulations and proceedings of the Commission and cannot have overriding effect and hence the same need to be amended. It is well settled principle of law that the statutory

regulations and orders of the Commission made in exercise of powers vested in it under the statutory provisions of the Act, have overriding effect on any contractual terms agreed between the generator and licensee in the PPA and such terms would be void in law. It therefore prays the Commission to hold that clauses 1.6, 1.11, 1.13 and 4.1 to be inconsistent, contrary to CEA Regulation and proceedings of the Commission in so far as location of interface meter are concerned and direct the TSSPDCL to enter into appropriate amended agreement.

22. The petitioner has sought the following prayer in the petition.

“In the aforesaid circumstances, the petitioner company therefore prays that the Hon’ble Commission may be pleased to declare the terms of the PPA dated 26.03.2015 (and subsequent “First Amendment Agreement”, dated 03.12.2016) entered between petitioner and respondent, in so far as clauses 1.6, 1.11, 1.13 and 4.1 dealing with evacuation and metering arrangement to be void as being contrary to CEA (installation and operation of meters) Regulation, 2006 and Proceedings No. TSERC / Secy / 13 / 2015 dated 02.02.2015 of this Hon’ble Commission by holding that the 33 / 132 KV polling substation at Nazeerabad village to be the interface point that is the outgoing feeder of the petitioner’s wind power project for the purpose of providing metering arrangement and consequently direct the 1st respondent to enter into amended PPA by suitably amending clauses 1.6, 1.11, 1.13 and 4.1 of PPA dated 26.03.2015 and subsequent “First Amendment Agreement”, dated 03.12.2016.”

23. The respondents No. 1 and 2 have filed their counter affidavit stating that at the outset, the main reliefs sought for / prayer of the petitioner in O. P. No. 6 of 2017 are: “i) To declare the terms of the PPA dated 26.03.2015 (and subsequent “First Amendment Agreement”, dated 03.12.2016) entered between petitioner and respondent, in so far as clauses 1.6, 1.11, 1.13 and 4.1 dealing with evacuation and metering arrangement to be void as being contrary to CEA Metering Regulation, 2006 and TSERC proceedings vide No. TSERC / Secy / 13 / 2015 dated 02.02.2015.

ii) To declare that the 33 / 132 KV polling substation at Nazeerabad (village) to be the interface point, i.e., the outgoing feeder of the petitioner's wind power project for the purpose of providing metering arrangement.

iii) To direct the 1st respondent to enter into amended PPA by suitably amending clauses 1.6, 1.11, 1.13 and 4.1 of PPA dated 26.03.2015 and subsequent "First Amendment Agreement", dated 03.12.2016."

24. It is stated that the petitioner had concluded PPA (subsequently First Amendment Agreement) with TSSPDCL for establishing 100.8 MW wind power plant at Nazeerabad (V), Parigi (M), Rangareddy District for sale of such energy at Rs. 4.70 per KWH for a period of 25 years.

25. As per the Clause at 1.28 of PPA, the metering shall be located at the designated sub-station of STU, which is 132 / 33 KV Parigi Sub-station. The contention of the petitioner is that the metering arrangement shall be at 33 / 132 KV Nazeerabad Pooling Sub-station in terms of CEA Metering Regulation 2006 and also TSERC proceedings dated 02.02.2015 as against the PPA provision at designated Sub-station that is 132 / 33 KV Parigi Sub-station, which is the inter-connecting point, which is alleged to be contrary to CEA Regulation 2006 on metering and therefore prayed the Commission to hold that the Clauses 1.6, 1.11, 1.13 and 4.1 to be inconsistency in so far as location of interface meter are concerned and further sought directions to TSSPDCL to enter into an appropriate amended agreement.

26. The petitioner also contended that it was compelled to enter into PPA, which was signed by it on 26.03.2015, without being in the position of free consent to the same.

27. It is stated that the section 10 of the Indian Contract Act, 1872 deals with the conditions of enforceability of a contract, which states that when a contract is entered into without the free consent of the party, it is considered as a voidable contract, which ceases to be enforceable by Law. Therefore, the very contention of the petitioner needs to be examined by the Commission before going into merits of the case.

28. Further, it is also pertinent to state that the petitioner had furnished an undertaking dated 22.03.2016 to TSSPDCL on commissioning the wind power project,

wherein the petitioner agreed to the conditions, in consonance with PPA dated 26.03.2015, with NCE PPA No. 215 / 2015, the same are extracted at para 15 of this order.

29. This Commission has issued clarification to the TSSPDCL on location of billing meters in respect of petitioner's wind power plant that "it should be carried out as per PPA conditions, which has in similar to Solar PPAs, coming through bidding route" vide its Lr. Nos. TSERC / SECY / DIR (Engg) / DD (Trans) / location of Meters / FE; 700:121 / D. No. 236, dated 29.04.2016 and Lr. No. TSERC / SECY / Dir (Engg) / DD (Trans) / location of Meters / FE; 700:121 / D. No. 951, dated 31.12.2015.

30. Now coming to PPA provisions, the existing long term PPA dated 26.03.2015 (and its subsequent amendments) entered into between the petitioner and TSSPDCL is sacrosanct and neither the TSSPDCL nor the petitioner is allowed to modify the conditions as stipulated in the Articles of PPA therein, unless it is agreed by both the parties and also with prior approval of this Commission as stipulated in Article 11.2. The relevant article of PPA is reproduced below:

"11.2 No oral or written modification of this agreement either before or after its execution shall be of any force or effect unless such modification is in writing and signed by duly authorized representatives of wind power producer and the DISCOM, subject to the condition that any further modification of the agreement shall be done only with prior approval of Telangana State Regulatory Commission. However, the amendments to the Agreement as per the respective orders of TSERC from time to time shall be carried out."

31. Besides the above, the relevant Articles of PPA, on location of meters, interconnection point at 132 / 33 KV Parigi substation, are reproduced below:

"1.6 Designated substation: means 132 / 33 KV at Parigi in Rangareddy District of TSTRANSCO.

1.11 Interconnection Point: means the point or points where the project and the TSTRANSCO's / DISCOM network are interconnected. For this project, interconnection point is at the designated Sub-station. The metering for the project will be provided at the interconnection point as per Article 4.1, as indicated in the preamble of this Agreement, Interconnection point for this project is at designated substation.

1.13 Metering Point: means points where metering shall be provided for project and shall be as follows:

- (i) Common meter provided at the interconnection point for purpose of recording of delivered energy of the project;

.....

4.1 The wind power producer shall install main meters of static type 0.2s class accuracy at the metering Point and the DISCOM shall install check meters of static type at the same point and the same accuracy.

.....

32. Also, it is pertinent to mention that the Schedule – IV attached thereto with the PPA constitutes the part of entire PPA between the petitioner and TSSPDCL, which deals with the “Guidelines on power evacuation from wind power projects in Andhra Pradesh (as adopted by Telangana State). The said guidelines are extracted at paragraph 12 of this order.

33. In view of the above provisions, it is amply clear that the interconnection point for installing the billing energy meters shall be at designated substation, that is 132 / 33 KV Parigi substation. Accordingly, the petitioner was addressed to shift the energy meters from pooling SS to the designated substation.

34. Though the petitioner has agreed to shift the billing meters from pooling substation to 132 / 33 KV Parigi substation at the time of commissioning the wind power project, it is now disputing the provisions of PPA and also the undertaking.

35. The TSSPDCL stated that, coming to the constraints, the petitioner raised an issue that as per the zonal Chief Engineer, Hyderabad-Metro letter dated 02.08.2016, there is no sufficient space available at 132 / 33 KV Parigi substation for accommodating the said metering arrangement. In such a case, the petitioner should have willingly agreed to allow deduction of line losses computed based on length of line and other parameters but not forthcoming.

36. Further, the TSSPDCL vide letter dated 20.05.2017, upon considering the undertaking dated 10.05.2017 furnished by the petitioner, has issued directions to the

accounts wing to release the pending payments to the petitioner by deducting the approved transmission line losses in respect of past payments and future billings.

37. In the light of the above submissions and facts put forth above, the TSSPDCL prayed for dismissal of the petition as devoid of merits and award the costs on the petitioner. Consequently the Commission may dismiss the I. A. No. 21 of 2017 filed by the petitioner as infructuous.

38. The petitioner filed an application in I. A. No. 21 of 2017. The applicant stated that the above said O. P. has been filed by the petitioner / applicatn under Sec 86 (1) (f) of the Act, 2003 read with Conduct of Business Regulation, 2 of 2015, for declaring the terms of the PPA dated 26.03.2015 and subsequent "First Amendment Agreement", dated 03.12.2016 entered between applicant / petitioner and TSSPDCL in so far as clauses 1.6,1.11, 1.13 and 4.1 dealing with evacuation and metering arrangement to be void as being contrary to CEA (Installation and operation of meters) Regulation, 2006 and proceedings No. TSERC / Secy / 13 / 2015 dated 02.02.2015 of the Commission by holding that the 33 / 132 KV polling sub-station at Nazeerabad village to be the interface point that is the outgoing feeder of the petitioner's wind power project for the purpose of providing metering arrangement and consequently direct the TSSPDCL to enter into amended PPA by suitably amending clauses 1.6,1.11, 1.13 and 4.1 of PPA dated 26.03.2015 and subsequent "First Amendment Agreement", dated 03.12.2016.

39. The applicant stated that the Commission has the requisite powers and jurisdiction to grant interim reliefs during the pendency of the present proceedings and plenary inherent powers in accordance with Sec 94 (2) of the Act, 2003 read with Conduct of Business Regulation, 2 of 2015.

40. The applicant further stated that the main plea in O.P. is installation of meters for evacuating the power generated from it's wind power project. As per the CEA (Installation & Operation of Meters) Regulation, 2006 read with proceedings No. TSERC / Secy / 13 / 2015 dated 02.02.2015 issued by the Commission and proceedings of TSTRANSCO in T.O.O (CE / Plg, Comml & / Coord) Ms. No. 5 dated 23.03.2015, the generating station should install all interface meters on outgoing feeders of generating station. In its case the outgoing feeder of generating station is

the 33 / 132 KV, Nazeerabad, pooling sub-station. However, the model PPA specified the metering to be installed at 132 / 33 KV sub-station at Parigi, which is about 3.5 km from pooling sub-station. Though it has informed to TSSPDCL that the proposed metering arrangement in the model PPA was not as per the CEA Regulations and proceedings of the Commission, it was made to sign PPA informing that the matter would be taken up with the Commission for appropriate clarification.

41. The applicant stated that it in the meanwhile it completed the project and also installed the meters at pooling sub-station and when petitioner approached TSSPDCL for getting synchronization approval of project with the state grid then TSSPDCL has insisted it to give an undertaking on 22.03.2016 that it would shift the metering from pooling sub-station to Parigi sub-station within 3 months upon clarification from the Commission, failing which the TSSPDCL can withhold power purchase payment till such installation.

42. The applicant further stated that the Commission has provided clarification stating that metering has to be provided in accordance with CEA metering principles by its letter dated 29.04.2016. The CEA metering principles categorically specify that interface meters shall be on outgoing feeders of generating station. Though the clarification is very much clear still the TSSPDCL insisted for changing meter as otherwise threatened to withhold the power purchase payments which necessitated the applicant to approach the Commission.

43. The applicant stated that the TSSPDCL through Chief General Manager (Commil & RAC) by letter dated 31.01.2017 informed that unless interface meters are shifted from pooling sub-station to Parigi sub-station in terms of PPA and further that in terms of undertaking dated 22.03.2016 the power purchase payments are kept on hold till installation of meters at Parigi sub-station. The TSSPDCL under the terms of PPA has no power or authority to withhold the power purchase bills without any reason and withholding of payments is totally arbitrary and illegal. The instructions of Chief General Manager (Commil & RAC) dated 31.01.2017, the Dy. CCA (PP&S) has illegally withheld the payments of the petitioner to the tune of Rs. 21.75 crores for the generation period from January, 2017 to March, 2017.

44. The applicant / petitioner has sought the following prayer in this application.

“In light of the averments made under the present application read with the petition, it is most humbly prayed that this Hon’ble Commission be pleased to: ‘Direct the respondents to release the withheld payments to the tune of Rs. 21.75 crores immediately and to pay the monthly power purchase bills regularly in terms of PPA dated 26.03.2015 as amended on 03.12.2016 till the Hon’ble Commission gives suitable directions to the Respondent No. 1 on the O. P. No. 06 of 2017 filed by petitioner’.”

45. The petitioner in the original petition has filed a memo giving detailed submissions for filing additional documents and requesting for considering the interim application. The contents are as follows.

a) The Commission in exercise of powers under section 181 of Electricity Act, 2003, Andhra Pradesh Electricity Reforms Act, 1998 and Andhra Pradesh Reorganization Act, 2014 issued Telangana State Regulatory Commission (Adoption) Regulation, 2014 i.e., Regulation No. 1 of 2014 published in the State gazette on 10.12.2014, specifying that all the regulations, decisions, directions or orders, all the licenses and the practice directions issued by the erstwhile Andhra Pradesh Electricity Regulatory Commission (Regulatory Commission for states of Andhra Pradesh and Telangana) as in existence as on the date of the constitution of the Telangana State Electricity Regulatory Commission and in force, shall mutatis-mutandis apply in relation to the stakeholders in the State of Telangana including this Commission and shall continue to have effect until duly altered, repealed or amended.

b) The erstwhile APERC exercising powers under section 61 (h), 62, 86 (1) (a) and 86 (1) (e) of Electricity Act, 2003 has determined the preferential generic levelised tariff for Wind Power Producers which enter into PPA’s between 15.11.2012 and 31.03.2015 as Rs. 4.70 ps per unit vide its orders dated 15.11.2012 in O. P. No. 13 / 2012. Further the then APERC also approved model Power Purchase Agreement format in respect of Wind Power Producers coming under cluster scheme and as well as Wind Power Producers for single developer connected to Designated Sub-Station vide its orders dated 30.03.2010 in O. P. No. 40 of 2010.

c) As the then Joint Commission i.e., APERC (Regulatory Commission for the States of Andhra Pradesh and Telangana) was receiving number of proposals for approval of individual Power Purchase Agreements executed between Wind Power Producers and DISCOM's, having regard to earlier orders dated 15.11.2012 in O. P. No. 13 of 2012, whereby preferential generic levelised tariff over 25 years was determined and orders dated 03.03.2010 in O. P. No. 40 of 2010, which approved the format of model Power Purchase Agreement, practice directions were issued vide Lr. No. E – 801 (K) / Dir – Engg / JD (PPP) / D. No. 771 / 2014 – 01 dated 01.08.2014, that Power Purchase Agreements executed between DISCOM's and Wind Power Producers in the approved model format upto 31.03.2015 shall be deemed to have been regulated by the Commission and no separate consent from the Commission shall be required, however the DISCOM's were required to file copy of signed Power Purchase Agreement to Commission for record only. Accordingly, the petitioner and 1st respondent signed PPA dated 26.03.2015 for its 100 MW wind power project at Nazeerabad (V), Parigi (M), Ranga Reddy District which is in accordance with approved model format. In terms of the directions of APERC (Regulatory Commission for the States of Andhra Pradesh and Telangana) as ratified by this Commission, it is learnt that 1st respondent forwarded the aforesaid signed Power Purchase Agreement copy dated 26.03.2015 to this Commission vide its letter dated 08.04.2015, which fact was brought to the notice of the Commission in the hearing held on 20.06.2017. Therefore, by virtue of the letter dated 01.08.2014 issued by the APERC (Regulatory Commission for the States of Andhra Pradesh and Telangana) which has been adopted by this Commission under Regulation 1 of 2014, the petitioner's project and the consequent Power Purchase Agreement dated 26.03.2015 is deemed to have been regulated and consented by this Commission.

d) It is also pertinent to mention that the capacity of the aforesaid project was enhanced from 100 to 100.8 MW and draft amendment agreement was forwarded for consent of this Commission vide Lr. No. CGM (Comml.) / SE (IPC-1) / F. Mytrah 100 / D. No. 1599 / 16, dated 03.12.2016. The Commission granted the consent vide Lr. No. L45 / 2 / DD (LAW) – 1 / D. No. 792 dated 03.01.2017 and accordingly the amendment to the PPA was carried out.

Therefore, the petitioner deems it necessary to bring the above facts to the notice of this Commission and place the above referred documents on record in the interest of justice.

46. The respondents filed written submissions stating that during the hearings held on 17.06.2017 and also on 20.06.2017, in the matter of petition filed by M/s. Mytrah Vayu (Godavari) Private Limited in O. P. No. 06 of 2017, the Commission has directed the respondents to submit:

- i) The detailed report on necessity of pooling substation cluster concept pertaining to wind power projects in the State of Telangana and
- ii) The reason for TRANSCO in issuing evacuation approvals and consent for schematic diagram to provide billing meters at petitioner's pooling substation i.e., 33 / 132 KV Nazeerabad Substation.
- iii) Period required to shift the billing meters from petitioner's pooling substation to the designated grid substation of TSTRANSCO i.e., 132 / 33 KV Substation Parigi in Ranga Reddy District.
- iv) Detailed calculation sheet for arriving the line losses, so as to apportion the same to the petitioner's wind plant, while processing the monthly power purchase bills, without actually shifting the meters.

47. With regard to clarifications sought by the Commission on the necessity of pooling substation the following is submitted:-

- i) The erstwhile APERC in O. P. No. 40 of 2010 dated 30.03.2010 had notified guidelines on evacuation of power from wind based power projects in the combined State, which is filed as Annexure-1 and also approved the model wind PPA as Annexure-2.
- ii) The erstwhile APERC, while fixing the generic levellised tariff at Rs. 4.70 / KWH for wind based power projects, directed the parties to adopt the same to execute the agreements as per the Commission's approved PPA format.
- iii) The wind power evacuation guidelines issued in O. P. No. 40 of 2010 consist of the following for wind projects coming up under the cluster scheme.
 - a) Laying of 33 KV feeder for evacuation of power from all wind projects in a site.

- b) Construction of extra high tension pooling substation (EHT SS) (Receiving / Pooling SS) for pooling the total wind power and stepping up to next higher voltage level.
- c) 400 KV or 220 KV or 132 KV EHT line for interfacing pooling SS to existing nearest TRANSCO grid substation.
- iv) The wind power projects up to a combined capacity of 10 MW at 33 KV level are set up by individual developer by inter-connecting their projects at the nearest DISCOM sub-station, where the main meter / check meter is installed for billing and accounting purpose. Whereas higher capacity wind projects (above 10 MW) are connected to grid at 132 KV level / 33 KV level of 132 / 33 KV substation as per the grid connectivity guidelines issued by Central Electricity Authority (CEA) New Delhi and as adopted by TRANSCO and also the capacities as notified by the Commission.
- v) Generally, the wind projects are set up under a cluster scheme, where low capacity individual wind turbines / generators are connected as a group, which combinedly deliver their aggregated power to a 33 KV Bus, which power is again stepped up to 132 KV / 220 KV level at a common pooling substation and again from the pooling substation get inter-connected to a grid substation by a 132 KV / 220 KV double circuit line.
- vi) As regards the location of billing meter, the erstwhile Commission had specified guidelines for individual projects owned by single generator as well as for cluster projects developed by single developer but having multiple PPAs / Multiple generators.
- vii) This Commission has adopted all the Regulations of erstwhile Commission vide Regulation No. 1 of 2014, which are in force, as on the date of notification.
- viii) The petitioner's wind project comes under the category of individual project owned by single generator having single PPA with DISCOM.
- ix) As per the aforesaid guidelines, the metering shall be located at the designated substation (132 / 33 KV Parigi SS) of TSTRANSCO.
- x) Further, this Commission has also clarified vide letter dated 29.04.2016 in respect of the petitioner's project that the location of billing meter shall be carried out as provided in the PPAs of solar generators.

48. With regard to the issuance of evacuation approval by TSTRANSCO allowing metering at pooling substation, the following is submitted by the TSSPDCL.

- i) The grid connectivity approvals are being issued by TSTRANSCO as per the CEA Metering Regulations 2006 on installation of metering.
- ii) Since the petitioner's project is connected to TRANSCO's grid substation, TRANSCO is authorized to issue connectivity approval. While giving connectivity approvals, location of meters is also examined in the single line diagram submitted by generators and TRANSCO would ensure the location of meters in terms of existing Metering Regulations.
- iii) However, the parties to the PPAs shall decide on the location of the meters as these are commercial agreements and TRANSCO's role is limited in this regard.

49. Regarding the time period required to shift the billing meters from petitioner's pooling substation to designated grid substation (i.e., 132 / 33 KV Parigi Substation), it is stated that TRANSCO will examine the feasibility of shifting in 2 months, upon application filed by the applicant and also after receipt of the estimated amount from the applicant.

50. With regard to apportioning of the line losses to the petitioner's company without shifting the billing meters from their pooling SS to TRANSCO SS, the respondents seek the orders of the Commission to deduct the approved transmission loss (%) as per the transmission tariff order in respect of past payments and also apply to the future billing till the billing meters are shifted to the designated substation (as per the Article 2.2 of the PPA).

51. In this context, it is pertinent to state that a similar case has arisen in a case between GRIDCO (Orissa Trading Company) and M/s. Nava Bharat Ferro Alloys in Appeal No. 246 of 2006, wherein the Hon'ble Appellate Tribunal for Electricity (APTEL) passed its order dated 06.03.2009, as to the location of billing meter whether at grid substation or at the generating switch yard. The Hon'ble APTEL, inter-alia, held the following:

"21).

The agreement for buying and selling is commercial agreement. The question as to which meter will provide the data for the purpose of such billing is a matter

of agreement between the parties. If the parties agree that the billing be done at Meramundali grid sub-station and this agreement is not in conflict with the CEA Regulations, there is no reason why the agreement should not be given effect to. The Commission worked under the misconception that the CEA Regulation No. 7 does not permit metering at the end of the transmission licensee's Sub-station. Once the Commission has found that the agreement between the parties was for metering at the Meramundali grid sub-station and the same has not been challenged by NBFAL (generating company- Respondent No. 1) there is no need to disturb the arrangement simply because CEA Regulations have come into force.

.....

22)

It was for the parties to consider, while fixing the per-unit-price of electricity, as to who had to bear the cost of the loss. The price at which the power would be purchased by OPTCL / GRIDCO is not in dispute.

.....

24)

We conclude by saying that the parties had agreed for metering of purchase of power by GRIDCO at Meramundali Sub-station and that this agreement continued to be in-force and to be valid despite the CEA Regulations coming into operation in March 2006. Hence the impugned order requiring metering at CGP (Captive Generation Plant) w.e.f. 01.04.2006 has to be set aside.”

By holding as above, the Hon'ble APTEL allowed the appeal filed by GRIDCO and permitted the Billing Meters at GRID Sub-station.

52. As per the rationale of the aforesaid order of APTEL, the wind guidelines notified by erstwhile APERC in the year 2010 in O. P. No. 40 of 2010 were not challenged by any wind developer, hence they attained finality. The Hon'ble APTEL further held that there was no conflict in the PPA with location of the meter at grid sub-station under CEA Metering Regulations and hence there was no need to disturb the arrangements.

53. With regard to obtaining of consent of this Commission for the PPA, it is stated that the TSSPDCL vide letter dated 07.04.2015, furnished the copy of the PPA

executed with the petitioner to this Commission for record in line with approved Model PPA guidelines for wind power projects in the State. The TSSPDCL has merely acted upon as per the directions issued by the erstwhile Commission in the letter dated 01.08.2014 had already been approved by the then Commission including the Model PPA format, which has been the basis for executing the PPA with the petitioner. Therefore, the TSSPDCL stated the same to this Commission but without any disrespect.

54. In the light of above facts, it is submitted that there are no merits in the contention raised by the applicant / petitioner in the petition regarding the location of the billing meters, which ought to be installed at the designated substation as per the PPA signed, hence it is prayed that the petition be dismissed with costs.

55. The petitioner has filed written submissions stating that the instant written submissions are being filed by the petitioner before this Commission on the limited issue of location of 'Interface Metering'.

56. The petitioner craves leave of this Commission to reiterate certain facts that are apposite for the adjudication of the present dispute.

a) 05.01.2011 - Mytra Energy (I) Limited (MEIL) applied to erstwhile Andhra Pradesh New and Renewable Energy Development Corporation Limited (NREDCAP) for allotment of 100 MW wind power project to be set up at Nazeerabad (Project).

b) 11.12.2013 - NREDCAP allotted 100 MW project to MEIL.

c) 07.08.2014 - Transmission Corporation of Telangana Limited (TSTRANSCO) approved the SLD of Nazeerabad 33 / 132 KV pooling substation of the project. The SLD approval identified billing metering at 132 KV side of Nazeerabad pooling station of the project. The petitioner states that it was the bonafide understanding of the petitioner as well as the TSTRANSCO that metering arrangement will be at the generators end. This understanding is reiterated and conclusively demonstrated by letter dated 25.05.2015 issued by TSTRANSCO to TSSPDCL. Relevant extracts of the letter dated 25.05.2015 are reproduced herein below.

“As per the proceedings the location of the meters is at the Generator End”

d) March 2016 – In furtherance of the SLD approval, MEIL initiated the process for installation of meters on 132 KV side of the Nazeerabad pooling station of the project. The petitioner states that it has incurred INR 20 lakhs approximately on procurement and installation of meters along with instrument transformers at the location specified in the SLD approval. Further, if the petitioner is finally directed by this Commission to shift its meters, the petitioner will have to incur further cost of 3 Crores approximately.

57. In view of the afore stated facts, the petitioner prays that –

(a) The petitioner may be allowed to continue use of the existing metering arrangement that is all interface meters on 132 KV side of the Nazeerabad pooling station of the project; or

(b) Alternatively, for billing purposes the losses may be computed for the 132 KV line of approximately 4 kilometers in a predetermined manner to be reduced from the readings at the existing meters.

58. The petitioner filed written submissions stating that the instant written submissions are being filed by the petitioner before this Commission on the limited issue of 'release of pending payments along with interest'. The petitioner craves leave of this Commission to reiterate certain facts that are apposite for the adjudication of the present dispute.

i) Further to the dispute regarding location of meters, TSSPDCL stopped making payments to the petitioner from January, 2017 onwards. Thereafter, the petitioner filed an interim application vide I. A. No. 21 of 2017 in the instant petition for release of payments withheld by TSSPDCL.

ii) 29.06.2017 – This Commission was pleased to issue order in I. A. No. 21 of 2017, whereby TSSPDCL was directed to release 75% of the payments due to the petitioner for power supplied from January, 2017 to May, 2017 subject to the petitioner's undertaking to shift the meters from Nazeerabad to the Parigi substation.

iii) 20.10.2017 – TSSPDCL made the payments after a delay of approximately 4 months despite specific direction of this Commission and aforesaid undertaking being given by the petitioner.

iv) 30.11.2017 - This Commission by way of its order directed TSSPDCL to release 100% of the payments from June, 2017 to October, 2017 after deduction of the amount calculated towards line losses. The petitioner has made several requests to TSSPDCL for release of the payments, however no attempt whatsoever has been made by TSSPDCL towards release of the amount due to the petitioner.

v) Clause 5.2 of the PPA clearly provides that in case of delay by TSSPDCL in making payments to the petitioner, TSSPDCL is liable to pay interest at SBI rates plus one percent. In this regard, it is stated that as TSSPDCL released the payments due from January, 2017 to May, 2017 in October, 2017 and is yet to release payments due from June, 2017 till date, TSSPDCL becomes liable to pay interest on the entire amount due to the petitioner from January, 2017 onwards.

VI) In this respect, it is pertinent to point out that the Hon'ble Supreme Court of India in Nabha Power Limited v. Punjab State Power Corporation Limited (order dated 05.10.2017 in Civil Appeal No. 179 of 2017), directed the payment of 12% simple interest on late payments, if any, to be paid to the Appellant, despite the Appellant not having raised this claim in appeal before the Hon'ble Appellate Tribunal for Electricity. Further, in Chairman, Tamil Nadu Electricity Board & Anr. V. M/s. Indian Wind Power Association & Ors. , (order dated 08.07.2016, in I. A. No. 4 of 2016 in Civil Appeal No. (S). 2937 of 2014) the Hon'ble Supreme Court upheld the award of 10% simple interest per annum on outstanding amounts.

59. In view of the afore stated facts and submissions, it is prayed that the Commission may:

(a) Direct that TSSPDCL to release all payments due to the petitioner, with interest as per the aforementioned orders of the Hon'ble Supreme Court, and

(b) Direct TSSPDCL to make regular payments henceforth.

60. We have heard the interlocutory application alongwith the main petition on the days mentioned in the preamble to the order. Lengthy arguments were advanced on both the sides. The representatives of the parties also assisted the Commission in understanding the factual matrix of the case and the action taken by them. Before we

embark upon elucidating our findings, we deem it appropriate to recall and record our observations while passing orders on the interlocutory application twice during the pendency of the original petition. This is intended and necessitated squarely because of the parties making lengthy factual submissions both in writing and also oral by the parties in order to record the complete pleading in the case as has been extracted in the preceding paragraphs.

Order dated 29.06.2017 in I. A. No. 21 of 2017

“12. We have heard the counsel for the parties and perused the material on record. The arguments as set out at the time of hearing are recapitulated below. The counsel for the petitioner stated that the petition is filed questioning the provisions in the PPA with regard to metering arrangements as being contrary to the regulation relating to the metering issued by the CEA. The petitioner also sought interim directions to the DISCOM for the release of amounts payable to it towards power purchases.

It is stated that the issue arose because provisions made in the PPA are contrary to the regulation issued by the CEA which has been clarified by the Commission in its proceedings. It is also stated that the petitioner has made metering arrangements at the pooling sub-station of its generation and the DISCOM is insisting on fixing meters in the transmission sub-station, as the same is not shifted, the amount towards the energy bills from January, 2017 is withheld. The amount is not paid to the petitioner and therefore it is in financial constraint. The petitioner is inclined to receive amount pending disposal of the main issue to the extent of 96% as accepted by the licensee after deducting the alleged transmission losses.

The counsel for the petitioner also stated that the licensee after correspondence and informing it that a petition is filed before the Commission, has agreed to release the amount but insisted in writing that the petitioner should give an undertaking to the effect that it will undertake shifting of metering arrangements from pooling sub-station to 132 KV transmission sub-station. In order to facilitate itself for payment of the amount, the petitioner has furnished an undertaking.

The counsel for the respondent stated that the power purchase agreement was entered in the year 2015 and the petitioner is seeking amendment of clause 1.6 in the PPA to bring it line with CEA regulation. The petitioner itself has agreed and established the metering arrangements as approved by the Commission in

terms of the proceedings of the licensee as approved by the transmission and distribution licensee. The amount has been withheld as the petitioner has itself agreed to shift the metering arrangements. The licensees have also required the generator to give an undertaking and forego amount towards line losses and they were prepared to release the amount due to the petitioner.

The Commission sought to know from the petitioner whether the PPA has been consented by the Commission. The licensee stated that as per the directions of erstwhile APERC which had directed that the PPA entered with the wind projects may be treated as deemed approval once it had been entered in accordance with the model PPA notified by it at the relevant time.

The Commission sought to know from the respondent as to what is the time required for undertaking the metering at the transmission sub-station. The counsel for the petitioner replied that the petition would complete the process within two months. The representative of the licensee replied to the said statement, that the DISCOM would require two months time from the date of approval by TSTRANSCO, whose representative was not present in the hearing. He also stated that he would contact and appraise his senior management and also obtain instructions from TSTRANSCO on the issue and report back to the Commission. However, he stated that the TSTRANSCO has to approve the metering and from thereon at least two months is required for completion of the works.

The counsel for the petitioner stated that the petitioner has got the losses assessed by a third party, whose findings show that there will be a loss of 0.1916 compared to the claim of the DISCOM. He stated that for the present, the Commission may consider allowing the interim application and direct the licensee to pay about Rs. 28 crores. It is his case that the petitioner has spent about Rs. 30 crores towards line and metering which the licensees ought to have done, instead collected supervision charges of Rs. 2.5 crores and left the matter to be executed by the developer.

The Commission observed that the licensee should immediately make payment and also report to the Commission the period required for undertaking metering of the project as per the PPA. The matter was adjourned for reporting payment period and also time required for erection of metering.

In the continued hearing the counsel for the petitioner stated that the matter was adjourned on the earlier occasion at the behest of the counsel for the respondent, who sought to report to the Commission with regard to the time that is required for installing meters at the choice of the place identified by the licensee. He also stated that pending adjudication with regard to location of meters in the main petition, the Commission may direct the licensee to release the payments due towards power supplied for the period January, 2017 to May, 2017. He sought to rely on the arguments made in the earlier date of hearing. The counsel for the respondent sought further time with regard to clarifying the issue of the time required for shifting of the meters as there are several administrative procedures, which need to be followed between transmission and distribution licensees. It is also imperative on the respondents to undertake the shifting of the meters in accordance with the agreement as per directions of the Commission and regulations in vogue. He also stated that though approximately two months time is required, unless the transmission licensee clears the same and decision is taken by the management of the DISCOM then only actual period starts.

To a particular question as regards obtaining consent to the power purchase agreement with the petitioner, the counsel for the respondent stated that the erstwhile Joint Regulatory Commission for A. P. and Telangana had by letter dated 01.08.2014 required licensees to enter into agreement in line with the model PPA provided by them and no further action is required from the Commission, Pursuant thereto, the licensee entered into PPA with the applicant and forwarded it to the Commission in April, 2015 for favour of record. At this stage, it was observed by the Commission that PPA provisions on interface metering have to be required to be examined in respect of the consideration set out between the parties. Hence, the respondent is directed to submit the PPA for consent of the Commission. Since, the tariff is the prime component of the PPA, it had directed each PPA signed by the licensee to be sent for the Commission's approval. The PPA in the present case is not consented by the Commission and therefore, the payment of amounts or cognizance of the dispute cannot be entertained, however, as power had already been drawn by the licensee and payments were effected for some time, the same is not fair on the part of the licensee to withhold further amounts.

Considering the submissions of the rival parties, the licensee is directed to release the payment of 75% of the amounts due to the applicant from January, 2017 to May, 2017 subject to the PPA to be scrutinized and consented by the Commission as well as the issue pending in this petition.

From the arguments, it is clear that while the core issue in the original petition requires detailed hearing, the interests of the applicant can be safely protected upon directing the licensee to disburse part of the amount due to keep the project going. It is in this situation that we are inclined to direct the licensee to release payment of 75% amount due towards the power drawn from the project for the period from January, 2017 to May, 2017. However, the payment by the licensee pursuant to the above directions is subject to the condition that the petitioner is willing to undertake shifting of the meters from 33 /132 KV Nazeerabad sub-station to 132 /33 Parigi sub-station. The order is also subject to final outcome of the issue raised in the original petition.

13. This order shall be complied with within a period of two weeks as the licensee itself had agreed to release the amounts as early as 22.05.2017. Office is directed to obtain fresh date of hearing as and when the other matters are likely to be listed for hearing.”

Order dated 30.11.2017 in I. A. No. 21 of 2017

“The counsel for the applicant made detailed submissions in the matter while prayer for interim order extension for a further period in I. A. No. 21 of 2017, wherein earlier the Commission directed the respondents for payment of 75% of the amount due upto May, 2017. Now four months have passed by and no amount is being released from June, 2017 onwards till date for the power already supplied. The reason offered is that the applicant had earlier given an undertaking that it would shift the meters to the location mentioned in the PPA instead of the location where the applicant had been installed. It is the contention of the applicant that the shifting of meters involved losses in transmission and distribution, which the applicant has pegged it at 0.1% whereas the licensee is assuming it to be around 4%.

7. The counsel for the applicant stated that the respondents could as well have allowed the meters installed already to remain as it is and further permit installation of check meters at the new point and paid him the charges for the

supply after deducting losses as differentiated by the readings of both the main and check meters. The respondents are not coming forth to accept this proposal. The applicant is ready to install meters and has made a request for permitting it to install check meters at the location as suggested by the respondents. The application for such change of location of the meters made by the applicant is not disposed of even after four months of making such application have elapsed.

8. The counsel for the applicant in this I. A. stated that the applicant is filing additional documents in support of factual and legal issues. He has explained each of the additional documents and read out the relevant portions of the same, with which we are now not concerned at this stage. The counsel for the applicant emphasized the fact that the tariff determination is exclusive forte of the Commission under the provisions of the Act, 2003. While determining the generic tariff the Commission rightly adopted MYT regime and did not distinguish the capacity for such tariff to be applicable.

9. According to the applicant, the investment made is dependent on the factors like promissory estoppel and legitimate expectation. It is also dependent on consistent policy on investments, definite returns on such investments and risk free environment. It is also the case of the applicant that though the erstwhile Commission passed orders determining the tariff by a judicial order, it could not have issued any communication contrary to the said order subsequently. The scope of the Act, 2003 enables determination of the tariff by the Commission and to provide for such conditions for applicability of the tariff. It is the case of the counsel for the applicant that PPA had been entered with the licensee primarily to avail the benefit of the subsisting tariff at the relevant time, may be hurriedly in the circumstances obtained at that point of time. Across the board the MYT regime adopted by the Commission would not provide for capacity and it is for a specific period where the projects are envisaged to be established in that period only. Therefore, the applicant was rightly acting on the tariff. The proposition now sought to be made is that the Commission may consider passing fresh orders for payment and hear the matter finally on the next date of hearing. The licensees may also be directed to consider and clear the proposal for shifting of the meters or allow installation of check meters at new location for ascertaining losses.

10. The counsel for the respondent sought to emphasize that the licensee has made payment as per the directions of the Commission upto May, 2017, but the applicant having given an undertaking is yet to take steps in terms of the directions of the Commission to shift the meters. On the aspect of not giving clearance by the construction company, upon instructions from the officer present in the Court, he stated that he would look into and require the transmission company to take steps for clearing the application pending with them on the issue of the meters. He is of the view that unless shifting of meters happens no payment can be made to the applicant for the power supplied.

11. While being aghast about the action of the licensees both transmission and distribution, we sought to know as to what pleasure the licensees were deriving by not according the permission to shift the meters as well as make payment of the amount due to the applicant from June, 2017 and onwards even after Commission's directions. We also observe that the licensee can release the amount to the extent upto 100%, but after deducting the amount that the licensees consider the amount towards losses. We are also of the opinion that the aspect of losses may be hammered out by having mutual discussion in the matter.

12. Keeping the rival contentions in the fore front, we direct the licensees to pay the amount due to the applicant from June, 2017 to October, 2017 and continue to do so until the matter is heard finally and orders are passed on it. We require the parties to report by the next date of hearing, the steps taken in respect of shifting of the meters as well as consensus arrived at in respect of line losses.

13. The order on payment of amounts as directed above shall be complied with within a period of 21 days from the date of this order. Office is directed to list the matter on 19.12.2017 for final hearing.”

61. While the tenor and events over the past hearings are reflected in the above said order with reference to the conduct of the parties, the last hearing had different sequence of events and the action of the parties was required to be analyzed in terms of the pleadings that have been set forth in the case. In order to appreciate the arguments, we deem it appropriate to reproduce the daily order for the hearing on 19.12.2017, which is as below.

“The senior counsel appearing for the petitioner stated that the Commission had directed in its order dated 30.11.2017 about the payment of amount due within 21 days from the date of the order and also directed the parties to the petition to hammer out a solution in respect of the alleged losses on line in view of metering at the sub-station of the licensee instead of the pooling sub-station of the generator. He also stated that the request made by the petitioner for giving permission to shift the metering from the pooling sub-station to the licensee sub-station was accorded only the previous day by intimating the estimated cost and required expenditure for the purpose. He also brought to the notice of the Commission that meters were already available in the sub-station, which can be converted to regular meters, as they are at present being utilized, according to the licensee for reading purposes only.

The senior counsel for the petitioner sought to emphasize the fact that the petition arose on the issue of metering and its location and nothing more. In fact, the said factum was recorded by the Commission in its order dated 29.06.2017. It is stated that the respondents are seeking to enforce the conditions of the PPA contrary to the regulation of the CEA and orders of this Commission insofar as metering is concerned. He prayed for disposal of the case expeditiously as the matter has been hanging in interlocutory stage itself. The counsel for the respondents stated that he has some more time to comply with the directions of the Commission insofar as payment is concerned, as they have physically received the order only around 06.12.2017. In respect of the metering availability in the sub-station, on the instructions he has stated that the said meters are for the purpose of reading only to know the input and output of current and nothing more. He also stated that the necessary permission for shifting of the meters has been given and it is now for the petition to take action to install meters at the TRANSCO sub-station itself. On the query of the Commission, as to how long it will take to establish the meters, he stated that the time taken ordinarily is about 3 months. On the query of the Commission, as to why it was not permitted earlier, the petitioner was asked to install meters within one month of the request made by it, but the petitioner came with the plans after six months, that caused the delay. It is also their case on this issue that there was space constraint for metering bay at Parigi sub-station, which has been now resolved by them. The Commission wanted to know as to how

far wiring and at which voltage has to be made for shifting the meters. The reply came from the counsel for the respondents that the distance is about 50 meters and the line is at 132 / 33 KV.

The counsel for the respondents further stated that the issue of metering arose primarily for the reason that the Commission issued orders on metering in January, 2015 and later on clarification sought by the distribution company, the Commission clarified that the metering shall be in accordance with the metering location adopted for solar projects. In fact, the petitioner had itself given an undertaking that the amounts payable to it may be withheld till shifting of metering is completed. That being the case, it is now turning around and stating that the DISCOM was withholding amounts unnecessarily. The PPA being binding on the parties, the petitioner ought to have approached the Commission at first instance for amending the PPA inline with the Commission's orders, but did not do so. He concluded by saying that the issue of metering may be resolved once and for all in the matter so that the petitioner is estopped from moving the Commission time and again on this issue.

The counsel for the petitioner has pointed out that the petitioner was at no fault and sought to go by the provisions of the PPA. Therefore, he is before the Commission seeking amendment of the clauses of the PPA relating to the metering and designated sub-station, which the respondents hitherto should have taken action. On the alleged violation of the contract under the Contract Act as contended by the licensee, he is of the view that there is no necessity for cancelling the contract as parties have worked out their rights and liabilities under the contract and have to continue to do so as the same are not opposed to general principles of the contract. Further the petitioner is not inclined to wriggle out of the contract just because it was signed under duress as heavy investments are made in the project, which cannot be put back.

The Commission having heard detailed arguments sought to know from the petitioner in what period of time, the metering arrangement as sanctioned by the TRANSCO would be completed. Reply came from both the parties it may be at higher side of six months from the work being started immediately that is the next day of hearing. It was made clear to the parties that there will be no further hearing in the matter. The parties are directed to file their written

submissions by serving a copy on the other side within a period of one week. Accordingly, the matter is reserved for orders.”

62. From the pleadings as set out in the earlier paragraphs and the orders as has been extracted above, the issues that squarely emerge for consideration are as below.

- a) What is the correct position of location with regard to the installation of meters and its requirement in terms of the applicable law?
- b) What is the action required by the parties in rectifying the provisions of the PPA entered by them if the same are contrary to the law?
- c) Whether the licensee is correct in invoking dominant position in withholding the payments for the power drawn by it in the teeth of the controversy of non-agreement of the location of the meters?

63. We must at the outset record the fact that the issue brought for the adjudication in this petition is of a very insignificant nature and at the same time in the mammoth exercise of regulation, installation of meters and dispute on the same is a very trivial issue. With the same breath we also express the dismay that such an issue has been made to take several twists and turns by both the parties, needless to add that the consensus ad-idem arrived at in the PPA has been negated by the actions or inactions of both the parties.

64. As recorded in the pleadings set forth earlier, the Act, 2003 requires installation of meters under section 55 and for which the Electricity Act, 2003 seeks to empower the Central Electricity Authority to frame the regulations on the subject and accordingly, the regulation required for the purpose has been made by the CEA in its regulation, namely, CEA Metering Regulation, 2006 as amended from time to time, the latest amendment being in the year 2014. To give effect to the said amendments, the Commission initiated action and notified the proceedings referred to in the pleadings by the parties in its order dated 02.02.2015 and the licensee also notified a circular on 23.03.2015. Inasmuch as the said PPA was executed between the parties on 26.03.2015 much after the issuance of the proceedings by this Commission. The proceedings were given by the TSERC on 02.02.2015 and the relevant provisions relating to location of meters are reproduced as under:

“11.0 Location of interface meters for Generating Stations / Captive Power Plants

The Commission has considered the following provisions as are mentioned in the regulation issued by the CEA which are extracted hereunder:

Clause 7(1)(1) of CEA Regulation:

Main meter – on all out going feeders of Generating Station

Check meter – on all out going feeders of Generating Station.

Standby meter – (i) High Voltage (HV) side of Generator Transformer

(ii) High Voltage (HV) side of all station auxiliary transformers”

Thus, before entering into the PPA by the parties, the TSERC has issued the proceedings wherein the Regulation issued by the CEA was incorporated and clarified about the location of meters. It is an error on the part of the parties to PPA dated 26.03.2015 to ignore the proceedings of Commission dated 02.02.2015.

65. It is also relevant to state that from the pleadings as noted by us that the licensee sought to enforce the decision of the Commission also by its action of issuing internal proceedings bringing forth the orders of the Commission while enforcing metering arrangements in order to draw power from the generators of various sources of energy. At this stage, it is also relevant to recapitulate the fact that both the parties were conscious of the orders issued by the Commission on the subject of the meters and that the power developer had consciously reminded the licensee about the said order as well as its own proceedings on the subject by letter dated 10.03.2015 before entering into PPA on 26.03.2015. Thus, the generator and the licensee were fully aware that CEA regulations are applicable to location and installation of meters before entering into the PPA.

66. On the other hand, the parties to this litigation sought to indulge in controversial action of dragging the Commission on regulatory side in respect of the misunderstanding / confusion generated between themselves by seeking clarification, when the licensee itself stood by its proceedings adopting the orders of the Commission. By such action, the petitioner sought to redress its grievance and to fall in line with the law, the licensee sought to jettison the issue instead of resolving the

same at their end. The resultant position is that the parties have obtained a clarification through the Commission's letter dated 29.04.2016, which runs contrary to the consensus shown in the agreement initialed by them. In the given gamut of factual situation, location of meters would have been best left to be settled in terms of the PPA. Rather seeking clarification on the provisions of the regulation of CEA and then seeking to enforce such clarification in the context of the provisions of the PPA was nothing short of amending the PPA itself without obtaining the consent from the Commission, which is the requirement in the PPA. At the same time, insisting to enforce the provisions of the PPA by the distribution licensee and abdication by the transmission licensee on providing the meters at one place instead of the other where it is installed has added confusion and misery to the developer.

67. Clause 7.1.1 of the metering regulation of CEA provided specific parameter for installing meters by the generators. This clause is very much available on the statute book prior to the model PPA of the then Commission. Insofar as wind projects are concerned, the model PPA provided for one form of metering, which is contrary to the said regulation. Neither of the licensees choose to set at right or seek Clarification of the then Commission about subsisting clause on metering and its modification in the model PPA in line with the same. Despite the fact that TSERC has clarified the location of meters in its proceedings dated 02.02.2015. At this juncture we may gainfully refer to M/s. PTC India Limited Vs. CERC case wherein decision is rendered by a constitutional bench consisting of five judges of the Hon'ble Supreme Court. The Hon'ble Supreme Court was pleased to observe that the agreement between the parties shall have to be in line with the regulations issued by the competent authority including the Commission and clauses in the PPA, if they are running contrary to the said regulations, would automatically give way to the provisions in the regulation and such clauses take the position in the agreement as against the proposed clauses in the agreement itself. That being the position of law and that there being the action on the part of this Commission to issue clarificatory proceedings on the issue of meters, the agreement entered subsequently should have been framed to encapsulate the relevant provisions in the PPA itself without any demur more so after the proceedings of this Commission dated 02.02.2015.

68. Inasmuch as when the DISCOM sought clarification by letter dated 02.04.2016 on the issue of metering of wind projects, the Commission had sent a reply to the licensee stating –

“With reference to your letter cited 1 above, I am directed to inform you that clarification on location of meters was issued vide this office letter 2nd cited above and the same holds good. Further action may be taken duly analyzing the inter face point in accordance with CEA metering principles.”

The basis for the said reply was letter dated 31.12.2015 of the Commission itself, which is as follows:

“With reference to the Lr 5 cited above and further discussions held on 14.12.2015 in Commission office, I am directed to communicate the following revised clarification on location of Meters for Solar Generators coming through Bidding route.

Location of Meters for Solar Generators coming through Bidding route shall be carried out as per PPA conditions which is in line, i.e. principle of CEA regulations.”

The reply dated 31.12.2015 by the Commission was in respect of the Solar generators and not regarding the wind generator. However, the letter dated 02.04.2016 of TSERC is with reference to the wind generators and clarifies that CEA metering principles are applicable. Having received the communication from the Commission, which runs contrary to the PPA, the distribution licensee ought to have brought to the notice of the Commission that the clarification was sought in a specific case and not for generic application of the principles of metering, if any ambiguity existed in the clarification given by the Commission. Even before obtaining clarification from the Commission, the licensee obtained undertaking from the developer as has been extracted at paragraph 15 of this order and then sought the clarification from the Commission on 02.04.2016. This situation has made the whole mess of the problem. This has resulted in a situation where solution is shown even before the problem is mitigated by the competent authority.

69. It is contention of the parties that on one hand the petitioner signed the PPA and on the other hand also gave undertaking to shift the metering arrangement. Whereas, the licensee insisted on signing the PPA as provided in the model given to them by the erstwhile APERC and without satisfying itself about the suitability of the

provisions in the PPA, which run contrary to this Commission's orders, later the licensee sought further clarification from the Commission behind the back of the developer. Though, the Commission on its part has communicated its views on metering arrangement as has been stated earlier. The licensee and the generator ought to have incorporated the order of the TSERC dated 02.02.2015 in the PPA dated 26.03.2015.

70. We are afraid, we will be running the risk of interfering with the day to day working of the licensee instead of regulating it on the macro basis, if we were to accept the contention of the petitioner, as also which is opposed to the settled law pronounced by the Hon'ble Appellate Tribunal and Hon'ble Supreme Court in several judgments that the PPA is sacrosanct document between the parties. Moreover, prima facie the Commission is expected to discharge the functions and powers as are assigned to it under the Act, 2003. It is not expected that it would function as a super body to the licensees by becoming headquarters / head office or run their functions by hand holding them. Thus, in our view the actions of the parties need appropriate and suitable corrections on the aspect of metering arrangement. Having come to the said conclusion, that the position of metering arrangement on application of law is that the regulations of CEA have to be scrupulously followed. To support our thought we may gainfully referred to section 55 (2) of the Act, 2003, which is as below.

“55 (2) For proper accounting and audit in the generation, transmission and distribution or trading of electricity, the Authority may direct the installation of meters by a generating company or licensee at such stages of generation, transmission or distribution or trading of electricity and at such locations of generation, transmission or distribution or trading , as it may deem necessary.”

To give effect to this provision only, the CEA Metering Regulation, 2006 as amended from time to time is placed on the statute book exercising the power conferred under section 177 (2) (c) of the Act, 2003. When a regulation is occupying the field and provides for certain mechanism any other document including but not limited to the order of the Commission shall be set forth in terms of such regulation only. Therefore, the correct position for installation of meters by the generator in the case would be pooling substation of the generator, which is the outgoing terminal for power evacuation to the transmission or distribution licensee. The question (a) above is answered accordingly.

71. Consequently, the second issue that arises for consideration is whether any relief could be given to the parties to rectify the PPA, if the same is contrary to law. From the facts narrated earlier and the events that have occasioned between the parties are not such that the same could not be tinkered with. It is relevant to notice at this stage, that the petitioner squarely conceded one aspect that in view of the signing of the PPA, which provided for a particular location for metering arrangement. At the risk of repetition, it has to be stated that it has also given an undertaking to the effect that it will shift the metering arrangement from the point of installation at present to the TRANSCO substation. As observed at para 57 of this order, the petitioner made alternative submission stating that for billing purposes the line losses may be computed at 0.1%, whereas, the licensee contended at 4% for retaining the meters at the generator end. Thus, both the parties were of the view that transmission loss / line loss arising between Nazeerabad and Pargi should be borne by the generator, if meters have to be retained at the present place.

We have considered the submissions of both the parties very carefully. The provisions of the PPA dated 26.03.2015 cannot be contrary to the provisions of Section 55(2) of the Electricity Act, 2003 and the CEA regulations. The parties to the PPA should follow the CEA regulations on metering location. In accordance with the provisions of Section 55(2), the petitioner is entitled to follow the regulations of CEA and retain, the meters at the present location i.e., generator's end. The licensees are entitled for claiming the transmission loss / line loss between Nazeerabad and Parigi i.e., upto designated substation of licensee. The Commission directs the petitioner and the respondents to resolve the quantum of transmission loss / line loss in terms of percentage by holding consultation with each other and settle the issue mutually and amicably. This Commission does not intend to fix a percentage of transmission loss / line loss as they differed on the percentage of line loss / transmission loss without a proper study. The present clauses in the PPA relating to metering location run contrary to the CEA regulations. Therefore, the petitioner and the respondent are hereby directed to make necessary amendments to the PPA dated 26.03.2015 and submit the same for the approval of this Commission.

72. The petitioner submitted an undertaking to the respondents for shifting of meters and also initiated the steps in that direction. In case the parties are not able to

resolve the percentage of transmission loss / line loss, we alternatively suggest as an exceptional case to protect the investment of the petitioner and to avoid holding of future bills by the licensee which disrupts the business of the petitioner, the location of meters be shifted to Pargi (designated substation of licensee). The licensee is not free from the blame as it has ignored the proceedings of this Commission dated 02.02.2015 and while entering into PPA it ought to have changed the provisions of PPA in line with the proceedings of TSERC dated 02.02.2015. In fact, in the hearing held on several days, the petitioner chose to agree to the suggestion of the Commission that it has to adhere to the terms of the PPA and as such has made an application for permitting it to install meters to which the TRANSCO accorded permission. Coming to the cost part of it , it is our view that since the petitioner has already expended huge amounts of money on this aspect, some relief need to be passed on to it and punish the licensees for the mess created by them. Therefore, the total expenditure incurred for shifting and installation of metering arrangements shall be borne equally by the petitioner, transmission and distribution licensees. It is for the petitioner to follow this suggestion because, the location of meters at present is in accordance with the CEA regulations. We hasten to add that since the parties have committed themselves to comply with the PPA terms at the time of hearing and stated before us that a maximum of time of six months is required to complete the exercise of shifting the meters including laying of necessary lines and plant, the said period shall be strictly adhered to from the date of this order, though it is a fact that the parties were willing to count the time from the date of hearing on 19.12.2017. While issuing the above suggestion, we make it clear that this arrangement solely for the reason that the developer had already incurred substantial amounts towards metering arrangement and has also committed itself to forego payment for the energy supplied to the extent of losses till the shifting of metering takes place. To repeat it is for the petitioner to accept this suggestion.

73. Arising out of the facts and actions noticed by us through the pleadings and our findings mentioned above is another issue of dominant position recognized by the Act, 2003. The act of dominance may arise in the case of agreement entered or abusing the dominant position causing adverse effect on competition. Before proceeding to advert to the facts in this case, we may gainfully notice the provision in the Act, 2003, which is extracted below.

“60. Market domination:- The Appropriate Commission may such issue directions as it considers appropriate to a licensee or a generating company if such licensee or generating company enters into any agreement or abuses its dominant position or enters into a combination which is likely to cause or causes an adverse effect on competition in electricity industry.”

74. On a careful examination of the facts, we notice that the licensees sought to exercise dominance over the developer in the form of insisting on adherence to the PPA conditions contrary to law and not facilitating for adherence of the same knowing fully well that the same cannot be done in the circumstances at the relevant time. It is noticed that the PPA has been signed with model PPA as a basis as approved by the then APERC. Subsequently, when this Commission modified and issued proceedings in respect of metering installation, they gave effect to the said order by issuing internal proceedings, however, when a developer asked for clarification, they refused to give any reply. The developer installed the meters in terms of metering regulation of the CEA, whereas the licensees insisted on shifting the metering arrangement to the designated substation of TSTRANSCO without making any facilities for the same as they were acting according so, as according to them the said action was on the basis of approval given by the Commission and acceptance made by APTRANSCO of the line diagram.

75. We also notice that it has been discussed by the transmission and distribution licensees in their internal correspondence placed on record by either of the parties that the designated substation had no place for installing the metering arrangement of the project of the developer and that the metering installation made by the developer at its terminal is in conformity with the CEA Regulation. They fail to approach the Commission to modify the PPA in terms of the orders of the Commission on metering arrangement post signing of the PPA to bring it inline in accordance with law and yet went on to insist compliance of the PPA by forcing the developer to give undertaking to that effect that it will take steps to shift the metering arrangement to the TSTRANSCO substation.

76. From the sequence of events and the submissions at the time of hearing, as recorded by us in the orders dated 29.06.2017 and 30.11.2017 in the interlocutory application, the licensees choose to withhold the amounts due to noncompliance of

the terms of the PPA as well as willingness given by the developer itself, while drawing the power and enjoying it merrily. All these events go to show that the licensees have acted in a manner of abusing their position as a sole transmission and distribution licensees in the garb of the thinking that the power generated by the developer cannot be sold elsewhere and has to invariably be procured by them only.

77. It was left to us while hearing this petition and the interlocutory application by the petitioner that we have to set right firstly the payment aspect and secondly ensuring the settlement of location of meters which have been brought to this Commission for adjudication. Prime facie the events and actions do constitute an act of dominance as envisaged in section 60 of the Act, 2003. Therefore, insofar as this petition is concerned we mince no words that the action of the licensees ought to be castigated and therefore, we warn the licensees not to take any such action, which runs contrary to the provisions of the Act, 2003 in any case in future.

78. As a passing reference, the parties on both sides sought to canvass applicability of Contract Act and violation thereof in their actions and inactions. Suffice it to state that the main relief in this case does not revolve around the basic principles of contract. Prima facie the only situation that one could notice is that the acceptance of the offer under duress and compulsion by the petitioner for its own reasons and the counsel for the petitioner unwittingly conceded the fact and is not agitating the issue. It is also the case of the petitioner that the commitment was obtained under duress, which is also not contested by the petitioner in this petition. In any event, in either of the case the contract could have been voidable and not void. That being the case, we do not propose to dwell into the same in detail in this case.

79. The petitioner sought to rely on certain documents filed in support of his case during the course of hearing. While majority of the documents including the Reorganisation Act, 2014 have little or no bearing on the facts of the present case except to support one or two situations, they do not alter the findings reached by us. Inasmuch as the issue raised in the petition is substantially posterior to many of the documents and such documents may or may not influence the facts of the case except for the sake of arguments of binding nature of the decisions of the erstwhile APERC in facilitating this Commission to have basis for believing in the action or subsequent

documents including the power purchase agreement. Therefore, we do not wish to elaborate our reasoning on the said documents filed on 16.11.2017 by the petitioner.

80. Before parting with this case, we must place on record our deep felt anguish for actions and inactions of the parties on both sides on a trivial issue. While efforts are being made by the State of Telangana to encourage ease of doing business by providing necessary mechanism to attract investments and generate employment and to stand in forefront of economic development, litigation like this, in which investment is partly huge and massive would deter other investors and thereby the sheen of ease of doing business is lost. We also place our disapproval that the licensees have posed litigation and consequently wasted the valuable regulatory time of the Commission, which is otherwise hard pressed to take up several aspects of regulations had to be bogged down in adjudicating the issues, which could have been at first instance settled between the parties and if not, then the course of litigation is in any case available to them. With these words, we dispose of the petition, but without any costs. Consequently, the interlocutory application on the file of this Commission is also closed.

This order is corrected and signed on this the 31st day of January, 2018.

**Sd/-
(H. SRINIVASULU)
MEMBER**

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

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