TELANGANA STATE ELECTRICITY REGULATORY COMMISSION
HYDERABAD.
5th Floor, Singareni Bhavan Lakdikapul Hyderabad 500004

O. P. No. 47 of 2018

Dated: 02.01.2019

Present:
Sri Ismail Ali Khan, Chairman.

Between

M/s. Dubbak Solar Projects Private Limited,
Regd. Office at Crown Plaza,
1st Floor, Today Hotels, NH 8, Gurgaon – 122 001. .... Petitioner.

AND

1. The Chairman & Managing Director,
   Transmission Corporation of Telangana,
   Vidyut Soudha, Somajiguda, Hyderabad – 500 082.

2. Southern Power Distribution Company of Telangana Ltd.,
   Corporate Office, # 6-1-50, Mint Compound,
   Hyderabad – 500 063. …. Respondents.

This petition came up for hearing on 06.09.2018, 29.09.2018, 27.10.2018, 09.11.2018 and 24.11.2018. Sri. Challa Gunaranjan, Advocate for the petitioner appeared on 06.09.2018 and 09.11.2018, Sri. Sai Phanindra Kumar, Advocate representing Sri. Challa Gunaranjan counsel for the petitioner appeared on 29.09.2018 and 27.10.2018, Sri. Y. Rama Rao, Standing Counsel for the respondent along with Ms. M. Pravalika, Advocate appeared on 06.09.2018, 29.09.2018, 27.10.2018, 09.11.2018 and 24.11.2018. The petition having stood over for consideration to this day, the Commission passed the following:

ORDER

This petition is filed under Sec.86 (1) (e) (f) of the Electricity Act, 2003 (Act, 2003) seeking the directions that the units fed into grid by the petitioner's 8 MW solar

plant from the date of synchronization that is 08.06.2016 to the date of long term open access (LTOA) agreement that is 18.11.2016 as deemed to have been banked or in alternative to pay at the rate of Rs. 6.78 / unit.

2. The petitioner stated that it is a company incorporated under the provisions of the Companies Act, 2013, inter alia engaged in generation and sale of electricity and has established 8 MW solar power plant at Dharmajipet Village, Dubbak Mandal in Siddipet District, Telangana. The 1st respondent is the nodal agency appointed by the Commission under clause 5 of Regulation No. 2 of 2005 for the purpose of granting open access on a long term basis. The 2nd respondent is the distribution licensee operating in whose area of the petitioner's project and its consumers are located.

3. The petitioner stated that pursuant to A. P. State Reorganization Act, 2014 the state of Telangana was formed with effect from 02.06.2014. The Government of Telangana (GoTS) issued Solar Power Policy, 2015 (solar policy) with the object of developing solar park(s) with the necessary utility, infrastructure facilities to encourage of developers to set up solar power projects in the state. It is further stated that section 86 (1) (e) of the Act, 2003 and para 5.12.1of National Electricity Policy (NEP), it is very much evident that the legislature specifically recognized the need for encouragement of generation from renewable energy sources and also mandates the Commissions to promote and encourage such companies.

4. The petitioner stated that inspired by the above policies and assurances of the government, it established an 8 MW solar power plant at the above mentioned location. It has completed the erection and installation of the solar power plant and the same has been synchronized with the grid in the presence of officials of the respondents on 08.06.2016. The commissioning certificate was however issued by the officers of respondents on 13.06.2016. Since the commissioning and synchronization of the plant the energy generated by the petitioner's solar power plant is fed into grid and the 2nd respondent is utilizing the same. It is pertinent to mention here that as per the solar policy particularly clause 11 (e) the energy injected into the grid by the solar power projects intended for captive or 3rd party sale from the date of synchronization till granting open access approval, will be considered as deemed banked energy. The clause 11 (e) is extracted hereunder.

"11 (e) Power Scheduling and Energy Banking:

For captive / third party sale, energy injected into the grid from date of synchronization to open access approval date will be considered as deemed energy banked."

5. The petitioner stated that it immediately after receiving commissioning certificate applied for LTOA approval vide application dated 21.06.2016 to the 1st respondent nodal agency in terms of Regulation No. 2 of 2005. Clause 10.6 of the said regulation specified that application received during the calendar month shall be considered for the purpose of LTOA within 30 days if LTOA sought for does not require any further system strengthening. The proviso speaks that in case the nodal agency does not issue the approval within 30 days of closure of window, the application shall be deemed to have been allowed. Clause 10.6 of the said regulation is extracted below:

"10.6: Based on system studies conducted in consultation with other agencies involved including other licensees, if it is determined that Long Term Open Access sought can be allowed without further system strengthening, the Nodal Agency shall, within 30 days of closure of a window, intimate the applicant of the same.

Provided that in the absence of any response or intimation from the Nodal Agency to the applicant within 30 days of closure of window, then such application shall be deemed to have been allowed open access by the nodal agency in terms of such application."

6. The petitioner stated that it has applied for LTOA specifying the exit point at user end and the voltage level at which power is sought to be transmitted along with source of feeding for exit point. Admittedly the existing system between the company and its consumer is more than sufficient to satisfy the requirement under the application. Though the 1st respondent did not respond within 30 days that is 30.07.2016 and in terms of clause 10.6 the application is deemed to have been accepted, the petitioner through letters dated 03.08.2016, 08.08.2016 and 29.08.2016 respectively reminded the 1st respondent to grant approval.

7. The petitioner stated that ultimately 1st respondent by letter dated 01.11.2016 granted the approval for LTOA and requested the petitioner to comply the conditions

mentioned therein for entering into agreement. The petitioner immediately on the very same day submitted the demand drafts for Rs.2,80,085/- and Rs.35,000/- towards security deposit on account of wheeling charges and imbalance in supply and consumption of electricity besides the state load despatch centre (SLDC) charges. The 1st respondent again took 17 days to execute LTOA agreement which was entered on 18.11.2016. As per the said agreement, it is allowed open access enabling it to sell the power to its consumer for a period up to 30.06.2024 from 18.11.2016. It is pertinent to mention here that the power fed into the grid since the date of synchronization that is 08.06.2016 till LTOA agreement was entered that is 18.11.20169, has been utilized by the 2nd respondent for its benefit, however, is treated as inadvertent power. It has fed 56,12,300 units as per the joint meter readings during the said period.

8. The petitioner stated that Regulation No. 2 of 2006 specifies balancing and settlement of energy in respect of open access transactions. By amendment to the said regulation vide Regulation No. 1 of 2013 solar energy has also been recognized as renewable power considering the policy of the state government and accordingly even with respect to solar power the banking facility was allowed in terms of the conditions specified in Appendix – III. The state of Telangana has issued new Solar Policy with specific objectives and extended various incentives, one of which envisaged that the projects intended for captive / 3rd party sale who inject energy to the grid from their synchronization till approval of open access shall be treated as deemed banked energy. Being attracted by various incentives and policy directives envisaged in the above policy many projects including the petitioner have set up the projects acting upon the said assurances and promises.

9. The petitioner stated that in fact the Commission translated the object and intent of the said policy into Regulation No. 1 of 2017, which inter alia in clause 7 of Appendix – III of the said regulation extended the benefit of claiming units fed into the grid from the date of synchronization till date of grant of open access approval treating them as banked energy. Clause 7 of Appendix – III is extracted herein for the ready reference.

Appendix – III

7. For third party sale, the energy injected into the grid from the date of synchronization till the date prior to captive consumption to open access approval date will be considered as deemed banked energy.

10. The petitioner stated that the Commission, as recently, on 18.04.2018 while determining the cross subsidy surcharge and additional surcharge for FY 2018-19 in its amendment order had considered the object and purport of solar policy which came into effect from 01.06.2015 and duly adopted the said policy, exemption was granted on levy of cross subsidy surcharge and additional surcharge to such of those projects which have come into effect during the operative period. The Commission has also made reference to one of the incentives enumerated in the policy that is banking of 100% energy to be permitted. Since in the present case the petitioner is also claiming the benefit of scheduling of banked energy or alternatively to compensate for the units injected into the grid from commissioning till LTOA for the reasons mentioned above basing on the solar policy. This Commission, by applying the very same analogy, may be pleased to extend the benefit of solar policy to the petitioner as well.

11. The petitioner stated that in view of the policy directives of the state government as well as the regulation of this Commission, it is entitled for the units fed into the grid from the date of synchronization till LTOA agreement as the said units are deemed to be banked. It has made several oral requests to the respondents to treat the said units as banked energy and allow them to utilize for which there is no response of whatsoever.

12. The petitioner stated that without prejudice to its earlier contention of claiming the units to be deemed to have been banked also as an alternative, requested the respondents to compensate for the units which are fed into the grid by paying at the rate of average power purchase cost of solar (NCE energy) during the relevant year, even for which there is no response. As stated earlier from the date of synchronization till the date of approval of LTOA application, it is only because of delay in issuance of commissioning certificate, the petitioner could not submit the LTOA application immediately and secondly though clause 10.6 of Regulation No. 2 of 2005 prescribes 30 days time limit for grant of LTOA approval by 1st respondent for no reason 1st respondent instead of granting the approval before 30.07.2016, with

an inordinate delay of almost 90 days granted approval only on 01.11.2016 and thereafter it took 17 days after compliance of conditions under the approval for entering the LTOA agreement. All the said inordinate delays are solely attributable to the 1st respondent or 2nd respondent and therefore, it cannot be made to suffer. The power fed into the grid is not a gratuitous act and question of treating the same as inadvertent energy does not arise and therefore, the respondents are bound to pay for the units which they have admittedly utilized and derived benefit.

13. In these circumstances and facts and reasons stated above, the petitioner has sought the following reliefs in the petition -

> "to declare that the units fed into grid by the petitioner's 8 MW solar plant from the date of synchronization that is 08.06.2016 to the date of LTOA agreement that is 18.11.2016 are deemed to have been banked in terms of Telangana Solar Power Policy, 2015 and Regulation No. 1 of 2017 and consequently direct the respondents to wheel the said banked energy to the petitioner's consumer under LTOA dated 18.11.2016 or in alternative direct the 2nd respondent to pay for the 56,12,300 units at the rate of Rs. 6.78 per unit amounting to Rs. 3,80,51,394/- with 12% interest."

14. The Transmission Corporation of Telangana Limited (TSTRANSCO) being the respondent No. 1 filed counter affidavit denying all the allegations made in the petition filed by the petitioner, which is as below.

i. In reply to the prayer of the petitioner, it is stated that any policy issued by the state government has to be adopted by the licensees as per the terms and conditions or regulations formulated by the Commission that is at state level it is the state ERC. But until the issuance of Regulation No. 1 of 2017 by Commission, there are no specific orders / regulations issued for effecting the banking facility during the non-agreement period. Hence, the solar policy cannot be adopted by the respondents without any specific directions or orders from Commission. Hence, the respondents could not act as per the aforesaid clause and acted as per the existing regulation which does not speak about deemed banking facility from the date of synchronization to the date of open access approval.

iiI. Further, it is stated that in the Regulation No. 1 of 2017 the Commission has clearly mentioned that the regulation shall come into force from the date of its publication in the gazette of state of Telangana and the regulation was published in the gazette on 25.03.2017. As the petitioner's solar plant was synchronized on 08.06.2016 that is much before the effective date of Regulation No. 1 of 2017, it is not entitled for deemed banking of energy facility from the date of synchronization to the date of open access approval.

iv. It is stated that solar policy came into effect from 01.06.2015. As per the policy, the clause 11 (e) related to banking details is as follows:

> "For captive / third party sale, energy injected into the grid from date of synchronization to open access approval date will be considered as deemed energy banked.
>
> The unutilized banked energy shall be considered as deemed purchase by DISCOM(s) at average pooled power purchase cost as determined by TSERC for the year."

However, any policy issued by the state government has to be adopted by the licensees as per the terms and conditions or regulations formulated by the Commission at the state level. But until the issuance of Regulation No. 1 of 2017 by Commission, there are no specific orders or regulations issued by the Commission for effecting the banking facility during the non-agreement period. Hence, the respondents could not act as per the aforesaid clause and acted as per the existing regulation which does not speak about deemed banking facility from the date of synchronization to the date of open access approval.

v. It is stated that as per the clause 10.6 of the Regulation No. 2 of 2005

> "Based on system studies conducted in consultation with other agencies involved including other licensees, if it is determined that long term open access sought can be allowed without further system strengthening, the Nodal Agency shall, within 30 days of closure of a window, intimate the applicant(s) of the same."

However as per the instructions of the state government, during that period hectic system studies activities were going on in TRANSCO for giving 24 hours power supply to the agricultural sector and the TSTRANSCO was more

concentrated on those studies. Hence there was some delay in processing the LTOA application of the petitioner.

vi. It is stated that the allegation that the 1st respondent again took 17 days time to execute LTOA agreement is wrong as the 1st respondent is not a signatory to the LTOA agreement. By issuing the LTOA approval the role of 1st respondent as a nodal agency ends there itself. Therefore, any delay in concluding LTOA agreement by 1st respondent as alleged by the petitioner does not arise.

vii. Regarding the clause 11 (e) of the TSSP – 2015 dated 01.06.2015 who are covered under the said policy and can avail other benefits as per the regulations but the facility of deemed banked energy from the date of synchronization to the date of open access agreement can be availed by the solar power developers who have synchronized their solar power plants on or after 25.03.2017 only (i.e., Regulation No. 1 of 2017 effective date being 25.03.2017).

viii. It is stated that the petitioner has referred to the Commission order dated 18.04.2018 which is regarding exemption of cross subsidy surcharge and additional surcharge and further, the Commission has addressed the matter of banking of 100% of energy shall be permitted for all captive and open access / scheduled consumers during all 12 months of the year, but the same did not address the banking of energy or compensation of energy by DISCOM shall be facilitated for the energy injected by the generator from the date of synchronization to the open access approval. Further, it is stated that as the scheduled / open access consumers will come into picture only after entering into any valid STOA / LTOA agreement. After execution of LTOA / STOA agreement only 100% banking facility can be extended to the open access / scheduled consumers.

ix. Hence, the following is stated with regard to the petitioner's claim:

a) The petitioner's request to consider the energy injected from the date of synchronization to the date of open access approval as deemed banked energy and compensation of the same by TSSPDCL cannot be considered, as there is no proviso or order / regulations as issued by Commission for providing deemed banking facility from the date of synchronization to the open access approval date prior to 25.03.2017.

b) Further, the solar policy at clause 11 (e) which is related to banking cannot be adopted in absence of the specific direction or orders from the Commission.

c) In addition, the Regulation No. 1 of 2017, which facilitates banking of energy from the date of synchronization to captive consumption to open access approval date which shall be applicable to the solar power plants that are synchronized after the date of issuance of Regulation in the gazette dated 25.03.2017. As the petitioner has synchronized their 8 MW power plant on 08.06.2016 which is much prior to the date of issuance of Regulation No. 1 of 2017, the generator cannot be entertained to earn fruitful flexibilities given under the Regulation No. 1 of 2017 under retrospective basis.

15. The Southern Power Distribution Company of Telangana Limited (TSSPDCL) the respondent No. 2 has filed counter affidavit stating as follows.

i. It is stated that the section 42 (3) of the Act, 2003 stipulates that

"Where any person, whose premises are situated within the area of supply of a distribution licensee, (not being a local authority engaged in the business of distribution of electricity before the appointed date) requires a supply of electricity from a generating company or any licensee other than such distribution licensee, such person may, by notice, require the distribution licensee for wheeling such electricity in accordance with regulations made by the State Commission and the duties of the distribution licensee with respect to such supply shall be of a common carrier providing non-discriminatory open access."

In the light of the above proviso, the then state Commission that is APERC had formulated the Regulation No. 2 of 2005 to facilitate open access facility for the applicants willing to avail open access from the intrastate transmission or distribution network. The said regulation is adopted by the Commission vide Regulation No. 1 of 2014. The regulation is applicable for the state of Telangana.

ii. It is stated that the then APERC has issued Regulation No. 2 of 2005, determining the terms and conditions for open access. Clause (5) of

Regulation No. 2 of 2005 deals with nodal agency which is the processing entity. The same reads as follows:

> "For all long-term open access transactions, the Nodal Agency for receiving and processing applications shall be the State Transmission Utility (STU)."
>
> "For short-term open access transactions, the Nodal Agency for receiving and processing applications shall be the State Load Dispatch Centre (SLDC)."

iii. It is stated that the petitioner has applied to nodal agency for grant of long term open access (LTOA) and the nodal agency has forwarded the application vide letter dated 20.09.2016 requesting to issue necessary feasibility for intrastate long term open access for transmission of 8 MW power from the petitioner's solar power plant located at Dharmajipet (V) in Dubbak (M), Medak District to M/s. Mylan Laboratories Ltd., HT. SC No. MDK-694 at 33 KV level located in IDA Pashamailaram (V) in Patancheru (M) in TSSPDCL under third party for the period up to 30.06.2024.

iv. It is stated that accordingly, TSSPDCL has initiated its process of verification of technically feasibility for study of system stability and reliability which was being carried out for the intrastate LTOA transaction according to the applicable rules and regulations formulated by Commission for transmission of open access power from the generating point [located in Medak (Now Siddipet) District] to the consumer exit points M/s. Mylan Laboratories Limited. HT. SC No. MDK-694, which is located in Medchal Division under third party usage.

v. It is stated that for convenience the procedural methodology or rules set forth for carrying feasibility analysis vide clause (9) of the Regulation No. 2 of 2005 is extracted below.

> "6. Criteria for allowing open access to transmission and / or distribution systems.
>
> 6.1. The long term open access shall be allowed in accordance with the transmission planning criterion and distribution planning criterion stipulated in the State Grid code and / or the Distribution Code and / or Indian Electricity Rules as the case may be."

vi. It is stated that as per the above regulations formulated by the Commission and as per the request of the petitioner, the process of verification of feasibility for providing long term open access facility was initiated by TSSPDCL, which is a lengthy and time consuming process invoking lot of man power. For convenience the same is narrated below.

> "New open access consumer willing to avail open access power under inter / intrastate LTOA, feasibility has to be verified at various levels, Viz., verification of line / feeder capacity, verification of transmission and distribution capacity, verification of substation feasibility, verification of metering provisions as per CEA norms and Commission proceeding orders at the consumer end to avail open access power, verification of compatibility check of the installed ABT meters with the EBC software. The process also involves verification of design margins and margins available for spare transmission or distribution network where information of the whole transmission or distribution network is to be gathered at various levels."

vii. Based on the technical feasibility study, it was observed that the developer has commissioned and synchronized its solar power plant under solar park cluster mechanism and upon thorough analysis of the mechanism of cluster basis, it is found that the injecting point of the developer 8 MW, M/s. Dubbak Solar Projects Private Limited and another developer 2 MW M/s. Rays Power Infra Private Limited is the same and energy generated from both the generators is injected into the interface point at 132 / 33 KV Habsipur SS and to arrive at the procedural methodology for segregation and consideration of only 8 MW power which is being wheeled under LTOA as open access power was analysed in view of the load flows and grid stability and the LTOA transaction was communicated as feasible and accordingly, nodal agency has accorded approval for transmission of 8 MW power from the petitioner's solar power plant at 33 KV level in TSSPDCL under third party sale for a period from the date of agreement to 30.06.2024. Accordingly, TSSPDCL has entered into LTOA agreement with the developer on 18.11.2016 for the period from 18.11.2016 to 30.06.2024.

viii. It is stated that the petitioner at para (6) has stated that 56,12,300 units injected from the date of synchronization that is 08.06.2016 to open access

agreement date 18.11.2016 which is considered as inadvertent power. It is stated that Regulation No. 2 of 2006 this Interim Balancing and Settlement Code, 2006 is applicable to open access generator. Clause 10.3 deals with the settlement of energy for OA generator at entry point and the same is extracted below.

> "The underdrawals by Scheduled Consumers and / or OA Consumers shall have impact on the Generator and on the DISCOM in whose area of supply the exit point is located. Such underdrawals at exit point shall be treated as inadvertent energy supplied by the generator to the DISCOM(s) and shall not be paid for by the DISCOM."

ix. Clause 10.3 is amended vide the Regulation No. 2 of 2014 being Second Amendment to (Interim Balancing & Settlement Code of Open Access Transactions) follows as

> "Provided that, such under drawals shall be treated as input into Banking in accordance with clause 2 (c) (2), if such energy is sourced from wind, solar and min-hydel generators."

x. Regulation Nos. 2 of 2006 and 2 of 2014 do not speak about consideration of energy injected from the date of synchronization to open access approval to be considered as banked energy, but clarifies that for the unutilized energy injected or allocated to the scheduled consumers which was earlier considered as inadvertent energy shall be treated as banked energy. But, the said clarification is applicable to the energy which is injected during the LTOA agreement period.

xi. It is stated that solar power policy came into effect from 01.06.2015. Clause 11 (e) of the policy relates to banking details and the same reads thus:

> "All SPPs shall be awarded must-run status that is injection from solar power projects shall be considered as deemed to be scheduled."
>
> For captive / third party sale, energy injected into the grid from date of synchronization to open access approval date will be considered as deemed energy banked.
>
> The unutilized banked energy shall be considered as deemed purchase by DISCOM(s) at average pooled power purchase cost as determined by TSERC for the year."

xii. Any policy issued by the state government has to be adopted by the DISCOM as per the terms and conditions or regulations formulated by the Commission at the state level it is the state ERC. No specific orders / regulations are issued by the Commission relating to the banking facility during the non-agreement period. Hence, the TSPP-2015 policy cannot be adopted by TSSPDCL without any specific directions or orders from the Commission. Therefore, TSSPDCL could not act as per the aforesaid clause and have acted as per the existing regulation which does not speak about the deemed banked energy for the period from the date of synchronization to the date of open access approval.

xiii. Further, the definition of banking of energy as per Regulation No. 2 of 2014 reads as follows.

> "c (2) "Banking" means a facility through which the unutilized portion of energy (underutilization or excess generation over and above scheduled wheeling) from any of the three renewable generation sources namely wind, solar and mini-hydel, during a billing month is kept in a separate account and such energy accrued shall be treated in accordance with the conditions laid down in Appendix-3 of the Regulation."

Therefore, in the absence of LTOA agreement, the matter of allocation / scheduling of energy to the open access / scheduled consumer will not arise. Consequently the question of banking of energy during the non-agreement period does not arise.

xiv. Further, Regulation No. 2 of 2014 also detailed that the unutilized banked energy from the date of open access agreement shall be purchased by DISCOM at 50% pooled power purchase cost only. Therefore, the claim of petitioner to compensate the units fed into the grid during the non-agreement period at the rate of 100% average pooled power purchase cost during the relevant year is against the applicable regulations. As a matter of fact, there are no regulations or orders issued by the Commission to consider such energy (injected from the date of synchronization to the date of open access approval) as deemed banked and settlement of such banked energy in the way the petitioner has claimed.

xv. The petitioner has synchronized its 8 MW on 08.06.2016 under solar policy, but the said policy shall not be applicable to the project of the petitioner since the said policy is not approved by the Commission. The applicable regulation existing at the time of synchronization of the 8 MW solar plant are Regulation No. 2 of 2006 and its amendment No. 1 of 2013 and No. 2 of 2014, which is silent about the deemed banked energy.

xvi. It is stated that the Commission has issued Regulation No. 1 of 2017 that is the Third amendment to (Interim Balancing and Settlement Code for Open Access Transactions) Regulation 2 of 2006 on 22.03.2017. Para (6 to 8) of Apendix-3 of the regulation are extracted below.

> "For captive generator, the energy injected into the grid from date of synchronization shall be considered as deemed banked energy.
>
> For third party sale, the energy injected into the grid from the date of synchronization till the date prior to captive consumption to open access approval date will be considered as deemed banked energy.
>
> The unutilized banked energy shall be considered as deemed purchase by DISCOM(s) at the average pooled power purchase cost as determined by TSERC for the relevant year."

It is stated that in the Regulation No. 1 of 2017 the Commission has clearly mentioned that the regulation shall come into force from the date of its publication in the gazette of state of Telangana. The regulation was also published in the gazette on 25.03.2017.

xvii. It is stated that as per clause 11 (e) of the solar policy, the solar power plants that are synchronized after issuance of TSPP-2015 that is 01.06.2015 are covered under the said policy and are injecting the solar generated energy into the grid, but the banking service can be availed or deemed banked energy can be facilitated to the solar power developers who have synchronized their solar power plants after 25.03.2017(that is Regulation No. 1 of 2017 effective date begin 25.03.2017).

xviii. The energy injected from the date of synchronization to the date of open access approval cannot be adjusted to the account of the scheduled consumer nor cannot be claimed as banked energy is to be compensated by TSSPDCL as per regulations in force by the solar power developers who have synchronized their plants before 25.03.2017, as there are no applicable

regulations for availing such facility under retrospective basis. Though the TSPP-2015 has provided such banking facility from the date of synchronization but the policy cannot be implemented by TSSPDCL as there are no specific directions from the Commission.

xix. It is stated that the petitioner has referred to the Commission's order dated 18.04.2018 which is in respect of exemption of cross subsidy surcharge and additional surcharge and further, the Commission has addressed the matter of banking of 100% of energy to captive and open access / scheduled consumers during all 12 months of the year, but the same cannot made applicable to banking of energy or compensation of energy by DISCOM in respect of the energy injected by the generator from the date of synchronization to the date of open access approval for the reason that the scheduled / open access consumers will come into picture only after execution of valid STOA / LTOA agreement. After execution of LTOA / STOA agreement only 100% banking facility can be extended to the OA / scheduled consumers. Thus the contention raised by the petitioner in these paras becomes untenable and hence deserves no consideration.

xx. It is stated that any regulation or order issued by the Commission shall be applicable from the date of publication in the gazette unless and until date of applicability is specifically mentioned otherwise. Hence, the said Regulation No. 1 of 2017 shall come into force after its publication in the gazette and therefore the applicability of terms and conditions set forth in the regulation cannot be applied retrospectively.

16. The petitioner has filed a rejoinder to the counter affidavits of the respondent Nos. 1 and 2 and stated therein as follows.

a. It is stated that argument that there are no regulations / orders to consider energy pumped before entering the OA agreement as banked energy while respondent No. 1 does consider open access application until solar plant is synchronized. The petitioner is cornered in the whole process and there was no level playing field provided for the petitioner as enshrined in Act, 2003 to provide non-discriminatory open access provisions.

b. It is stated that there are no provisions either in CERC or the Commission's regulations regarding treatment of energy injected post

synchronization / COD, till the date of open access agreement except for the guidelines of solar policy. In such a case, the petitioner is put in a situation of loss for no fault of it but solely due to the lack of provisions of treatment of such energy in any regulations. In this context the Commission is mandated to promote cogeneration and generation of electricity from renewable source of energy in terms of 86 (1) (e) of the Act, 2003.

c. It is stated that the clause 15 of principal Regulation No. 2 of 2006 provided that in case of any difficulty in giving effect to any of the provisions of the regulation, the Commission may by general or special order issue appropriate directions to open access generators, schedule consumers, OA consumers. The transmission and distribution licensee(s) etc. to take suitable action not being inconsistent with the provisions of the Act, 2003, which appear to the Commission to be necessary or expedient for the purpose of removing difficulty.

d. All other objections of respondent No. 1 are addressed below as those are almost same that of objections of respondent No. 2.

e. It is stated that policy directives given by government through its orders and polices has to be taken in positive spirit by respondents rather than the nature of their legal status to their own advantage.

f. It is stated that the respondents have undermined the solar policy in spite of great emphasis laid by the Commission with regards to SCOD extension letters granted to solar developers by GoTS under competitive bidding route in several petitions inter alia O. P. No. 16 of 2018 (M/s. Rewanchal Solar Power Private Limited Vs. respondents) by allowing several such petitions.

g. It is stated that while petitioner had set up the project in the state of Telangana based on the solar policy notified by the state government, it is absolutely necessary to ensure the incentives announced in the policy are implemented on the ground to not only boost the investor confidence but also create trust on governmental policies released by the duly elected governments.

17. a) It is stated that as per the submission made by respondent No. 2, respondent No. 1 had forwarded the application to issue necessary feasibility

to respondent No. 2 only on 20.09.2016, which is almost after 3 months. It is pertinent to note that any studies of respondent No. 1 would only start after obtaining the necessary reports from respondent No.2. However, respondent No. 1 failed to do a simple forwarding of the application in the guise of studies as per the instructions of government. It is stated that on the one hand respondent No. 1 says that the approval of the petitioner's application was delayed due to study activities conducted upon the instructions of the state government and on the other hand it says that it is not bound to implement the government policies which are contradictory in nature. It also appears to the petitioner that the whole concept of nodal agency is not taken in positive spirit by the respondents. It is stated that the nodal agency has to coordinate with stakeholders to ensure timely issuance of the approval. In the present case, there is not even a single reference to the time frame to expedite the approval, in any of the letters called for obtaining reports from the stakeholders by the respondents.

b) It is stated that the question of transmission or distribution planning after submission of LTOA application by the petitioner does not arise because such transmission and distribution planning criterion was already done by the respondent No. 2 during the grant of technical feasibility to establish the solar plant at entry point. In addition, there is no additional requirement of studies at exit point because the open access is granted within the contracted maximum demand (CMD) of the exit point, the studies for which were already done by the respondent No. 2 while releasing respective HT service.

(i) In this context it is pertinent to refer to the technical feasibility application of the respondent No. 2, related to entry point, which clearly stipulates that the project feasibility approval shall be granted as per provisions of solar policy. As a matter of fact, the technical project approval of the petitioner was granted in pursuance to such application made by the petitioner.

(ii) In addition, the Secretary to Government Energy Department, Telangana Secretariat vide its letter No. 645 / Budget.A2 / 2015-1 dated 10.06.2016 made solar policy applicable with a copy to the Commission. In fact, according to the directions of GoTS under section 108 of the Act, 2003, in respect of the solar policy, the Commission had passed several orders,

inter alia, order dated 31.12.2016 in O. P. No. 78 and 79 of 2015 relating to wheeling charges waiver for solar projects under the said solar policy.

c) It is stated that as a matter of record, all information requested by the respondents from the field, after many internal circulations, is readily available with the respondents. In fact, the application of petitioner for LTOA is not accepted by the respondent No. 2 (nodal agency for LTOA) unless and until petitioner submits the certified copies of compatibility check of ABT meters at both entry and exit points. Other studies such as design margins / spare capacities in the transmission and distribution network were already done by the respondent No. 2 before even LTOA application is filed. This anomaly was noted by the then Chairman and Managing Director of TSTRANSCO and consequently an order was released on 31.12.2013 to process the application based on reports already available with the respondents and not to seek the same reports again and again from field. However, this order was never implemented as on date by the respondents for unknown reasons. Though the respondents admit that these delays are due to inherent process issues, only the petitioner is put to loss. In fact, till date the petitioner fails to understand the concept of supplying free power to the respondents till the grant of open access approval and the power to issue the said approval lies with the respondents only. This brings about inherent contradiction in the interest of the parties involved and also against spirit of provisions of Competition Act, 2002. In such case, the Commission may pass an appropriate order, effecting to nullify such contradiction in the interests of the parties involved.

d) It is stated that the respondent No. 2 took 17 days for entering LTOA even after communication of approval on 01.11.2017 in spite of the fact the petitioner has submitted all requisite demand drafts on the very next day of approval, putting the petitioner to loss for no mistake / delay from its side.

e) It is stated that the respondent No. 2 would like to take shelter of absence of provision in the regulation. The consideration of open access application only after synchronization of plant and absence of treatment of energy till grant of open access, by ignoring provision of solar policy, had put petitioner in helpless state by giving enormous arbitrary power to respondents. It is pertinent to note that in similar petitioner in O. P. No. 82 of 2015 licensee has

chosen to accede to the prayer of the petitioner to compensate due to the delays of respondents, which is captured in the record proceedings of this Commission dated 09.08.2016.

f) It is stated that it is fact that the energy produced from the date of synchronization till the date of LTOA approval fed into the grid and respondents unjustly enriched enjoying the benefit of non-gratuitous act of the petitioner due to the said energy and it is not proper on the part of the respondents that they are not accountable for the same. When there is no provision which prevents the petitioner to avail the incentives or benefits given under a government policy, respondents cannot deprive the petitioner in availing the same. It is reiterated that the NCE projects like that of the petitioner's project established in view of the assurances and benefits given by the central and state governments issuing policies while discharging their duties under the Act, 2003 cannot be deprived of the benefits under these policies issued by the government when it is issued with regard to a particular kind of projects. It is stated that the respondents are not justified in depriving the petitioner from availing the benefit of deemed banked energy provided in solar power policy issued by GoTS even though petitioner's project is established within the control period of the said policy.

g) In this context, it is pertinent to refer to O. P. No. 39 of 2018 dated 14.08.2018 between M/s. Zuka Power Private Limited and Special Chief Secretary / Energy Department, respondents, inter alia several other similar petitions allowed by the Commission, wherein the matters were heard and decided in light of the extension of SCOD letter issued by GoTS through letter dated 23.08.2017 of Energy Department. Whereas, in the current petition, the petitioner is only seeking implementation of promises made in the policy, which is issued by GoTS much before implementation of the project.

h) It is stated that it is contradicting its own statement made in point 16 by referring to Regulation No. 1 of 2017 stating here that having LTOA agreement is a pre-condition for scheduling banking of energy. In this context, it is pertinent refer Maharashtra Electricity Regulatory Commission (MERC) in Case No. 44 of 2014, between M/s. Green Energy Association and MSEDCL & MEDA.

At para 3, 4, Facts of delay by distribution utilities was provided.

At para 23, M/s. MERC directed the distribution utilities to provide credit notes for the generation from date of synchronization till open access agreement period due to delay caused by distribution utilities.

i) It is stated that the petitioner's claim is for deemed banked energy which it is lawfully entitled.

j) It is not correct to state that the Commission has not approved the solar policy. The intention of the Commission is evident from the press release dated 06.08.2016 calling from comments and suggestions. However, due to administrative delays in the release of final order was delayed. It is further stated that the NCE projects like that of the petitioner has been established relying on the basis of the government policies both state and central governments and the incentives announced by them to encourage the establishment of such projects. The petitioner's project is one of such project established in the state of Telangana and in such scenario respondents cannot deny the applicable benefits provided under the government policies. The petitioner since has generated and fed power into grid during the period of execution of LTOA process and there is inordinate delay in granting approval, dehors the incentives that the petitioner is entitled for under solar policy read with Regulation No. 1 of 2017, independently is legally entitled compensation for the energy utilised by the Respondent No. 2 this claim is independent and in alternative to the claim of benefits under claimed by the petitioner under solar policy and Regulation No. 1 of 2017.

k) It is stated that the contention of respondent No. 2 that it cannot implement provisions of solar policy without specific directions from the Commission cannot be agreed as respondent No. 2 had passed an order vide letter No. CGM (Comml & RAC) / SE (IPC) / F. SPP-2015 / D. No. 679 / 15 dated 30.07.2015 duly exempting supervision charges from 01.06.2015 that is from the date of commencement of operation of solar policy, in line with provisions thereof without any specific order from the Commission. It is also the duty of respondent No. 2 as a public sector undertaking to act in accordance with policy direction of duly elected state government. However, it seemed that the respondent No. 2 never pursued with any agency to implement provisions of the policy instead started taking shelter of lack of documentation against the spirit of the policy.

l) In exercise of powers and functions u/s 86 (1) (e) of the Act, 2003, it is always open for the Commission to issue appropriate orders to achieve the object enshrined under the Regulation No.1 of 2017, which is made in furtherance to solar policy. The clause 15 of the principal Regulation No. 2 of 2006 provides that in case of any difficulty in giving effect to any of the provisions of this regulation, the Commission may by general or special order issue appropriate directions to open access generators, schedule consumers, OA consumers, transmission licensee(s), distribution licensee(s) etc. to take suitable action not being inconsistent with the provisions of the Act, 2003, which appear to the Commission to be necessary or expedient for the purpose of removing difficulty.

18. Similar cases dealt by other commissions and courts:

a) Before Andhra Pradesh Electricity Regulatory Commission (APERC) in O. P. No. 59 of 2014, between M/s. Hetero Wind Power Pvt. Ltd. and APTRANSCO.

i. At para 5, clause (15) of Regulation No. 2 of 2006 were invoked for just and equitable disposal for the purpose of removing difficulty and allowed the petitioner to utilize the banked energy in the immediate available opportunity.

b) Post facto amendments to wheeling tariff orders were issued by the Commission in O. P. No. 82 of 2015 dated 17.01.2017 between M/s. Pragathi Group and Respondents to give effect to the provision in government solar power policy with regards to wheeling charges.

c) The Commission in O. P. No. 94 of 2015 dated 04.08.2016 between M/s. MLR Industries Private Limited Vs. respondents directed for approving the banking facility for the power exported by the company with effect from the date of synchronization based on government solar policy.

d) The Commission in O. P. No. 16 of 2018 between M/s. Rewanchal Solar Power Private Limited Vs. Respondents, inter alia several other similar petitions, condoned delay in commissioning and waived of several crores of

penalties with emphasis on letters issued by GoTS with regards to such SCOD extensions.

e) Further it is stated that the Hon'ble High Court of Judicature at Hyderabad in its order dated 23.12.2014 vide WPMP No.48927 of 2014, between M/s. Shri Lakshmi Ganapathy Industries Private Limited Vs. respondent No. 1 to 2 herein and others, passed an interim order "directing that the respondents and its subordinate to implement provisions in the government policy."

19. The respondent No.2 being the TSSPDCL has filed a reply to the rejoinder of the petitioner and stated as follows.

i) It is stated that the petitioner himself admitted that there is no provisions either in CERC or Commission regulations with regard to treatment of energy injected post synchronization / COD till the date of open access agreement except for the guidelines of solar policy. In the absence of any provision that the energy injected from the date of synchronization to the date of open access agreement cannot be treated as deemed banked energy. Since, the injection of such energy is without any schedule. The petitioner having done so is estopped from contending to have sustained loss for no fault of it.

ii) It is stated that the petitioner has referred to clause 15 of the principal Regulation No. 2 of 2006 which is reproduced hereunder for reference:

> *"In case of any difficulty in giving effect to any of the provisions of this Regulation, the Commission may by general or special order, issue appropriate directions to Open Access Generators, Scheduled Consumers, OA Consumers, Transmission Licensee(s), Distribution licensee(s) etc., to take suitable action, not being inconsistent with the provisions of the Act, which appear to the Commission to be necessary or expedient for the purpose of removing the difficulty"*

It becomes very much clear from the perusal of clause 15 that the commission may invoke this clause if there is any difficulty in giving effect to any provisions of the Regulation Nos. 2 of 2005 and 2 of 2006 along with subsequent amendments but not to amend the existing Regulation for the benefit of any party taking aid of government policy. It is stated that the petitioner has wrongly interpreted clause 15 to mislead the Commission.

iii) It is stated that the contention of the petitioner that the concept of nodal agency is not taken in positive spirit is untenable being baseless, Clause 5 of Regulation No. 2 of 2005 (Terms and conditions of open access to Intra state Transmission and Distribution network) which deals with nodal agency reads as follows:

> "*The Nodal Agency for all the long term open access transactions is State Transmission Utility (STU) and for short term open access transaction, the nodal agency is State Load Dispatch Centre (SLDC).*"

Similarly, the clause 12 of the said regulation is reproduced below.

> *"Based on the intimation by the Nodal agency to the open access applicant, the applicant shall execute an open access agreement with the concerned Licensee(s)".*

iv) Clause 19.4 of the Regulation No. 2 of 2005 which is in respect of the energy and demand balancing for the open access applicants is reproduced hereunder:

> ***"19.4 Energy and Demand Balancing:*** *All open access users, and the users covered under clause 7.2, shall make reasonable endeavour to ensure that their actual demand or actual sent-out capacity, as the case may be, at an inter-connection does not exceed the Contracted Maximum Demand or allocated sent-out capacity for that inter-connection:"*

Therefore, it is clear that the commission itself directed that the open access capacity shall not be allowed more than contracted maximum demand at the exit point. As per Clause 14.1 of Regulation No. 2 of 2005 for the purpose of carrying out open access feasibility study, DISCOM need to collect the information from various levels and the same is required to be verified. Furthermore, clause 12.3 also clearly states that the open access shall be provided after the applicant fulfils all the requisite formalities including the execution of open access agreement. Clause 12.3 is reproduced hereunder:

> ***"12.3*** *Subject to the capacity being available, the Licensee(s) shall, after the applicant for long-term open access has completed all the pre-requisite formalities, including the execution of open access agreement, make arrangements to provide access to the applicant within the time period specified in the Andhra Pradesh Electricity*

Regulatory Commission (Licensees' Duty for Supply of Electricity on Request) Regulation, 2004 (No. 3 of 2004)."

In view of the above, it is pertinent that DISCOM has always been functioning as per the regulation framed by the Commission at every step with detailed analysis. But the petitioner is trying to misinterpret the role of the DISCOM.

v) In such view of the matter, the petitioner cannot claim the benefit of banking facility as stipulated under the Regulations No. 2 of 2005, 2 of 2006 and its subsequent amendments before entering open access agreement. Since, the applicant till such time is just treated as a consumer or generator of the distribution licensee, but not the open access applicant until it executes open access agreement.

vi) It thus becomes clear that the said regulation is applicable to the open access applicants who shall be eligible to be called or addressed as open access users after entering an open access agreement with the DISCOM. Hence the consumer / the applicant cannot be an open access applicant before entering open access agreement. Consequently, provisions stated of Regulation Nos. 2 of 2005 and 2 of 2006 along with subsequent amendments cannot be made applicable to the applicants who are not termed as open access users.

vii) (a) It is stated that the petitioner has contended that there is no additional requirement of study at the exit points and entry points for the verification of the feasibility of open access transaction. In this regard, it is stated that as per clause 14 of Regulation No. 2 of 2005, the available capacity of transmission and distribution (T&D) networks for allowing open access has to be determined and as per Clause 9.3 of the Regulation No. 2 of 2005 related to allotment of capacity in case of insufficient spare capacity / congestion are required to be ascertained to carryout technical feasibility study for allowing the open access transaction. Any open access transaction, not only deals with the entry and exit points, but it also deals with the overall network feasibility which is an interconnected network for which the licensees shall carry out load flow study, system impact study, etc. taking into account the existing capacity commitments and future projection capacity requirements for open access users, load growth as projected by distribution licensees, growth of generation, network topology and consumption pattern, network investments,

repairs and maintenance programs, etc. to determine the capacity available to accommodate open access transactions. While so determining the capacity available for open access transactions, capacity commitments to all existing users of the network and the system reliability margin shall be deducted.

(b) It thus becomes clear that, huge methodology has to be carried out by the licensee for according permission for open access. Therefore, the contention of the petitioner that there involves no additional information becomes false and incorrect. Moreover, the contention of the petitioner that the information requested by the respondents from the field officers is readily available also becomes false and incorrect. Any open access transaction shall have to be taken up only after receipt of the application from the nodal agency to licensee. Therefore, feasibility reports have to be obtained from the entry and exit points which are located at different points interconnected to the distribution network at different locations.

(c) It is pertinent to mention here that, the utilization of the network keeps on varying from time to time and the verification of metering equipment as per the technical standards or norms of CEA at the entry and exit points also is pertinent, because any malfunctioning or faults may occur at any point of time may result in detriment of the metering equipment and any of the metering equipment may be replaced at any point of time and the same changes need to be recorded for proper and accurate accounting of energy at the entry and exit points. The same information is being collected from the field in phased manner. Thus, the study is carried out in the above manner. Hence, the statement of petitioner that the information was readily available is false and incorrect can be said to have been made for the purpose of gaining wrongfully. The unscheduled injection of energy cannot be termed as banked energy.

viii) The petitioner has the liberty to disconnect from the grid network after synchronization of their solar power plant. The petitioner was not under any obligation to supply power to DISCOM network. The petitioner having injected unscheduled energy which caused disturbance to the grid discipline as it is unscheduled and invariant power which disturbed the schedules of the DISCOM and thereby burdened the DISCOM with UI deviation charges and also many of the generators, who have entered short term PPA are forced to

back down their generating stations due to inadvertent power injection without any scheduling and prior intimation from the generators like the petitioner which is collapsing the demand and generation side management system for which DISCOM is liable to pay penalty charges to the generators which itself explains the huge loss incurred to the DISCOM in the financial status. Hence, the petitioner cannot be contend to have supplied free power till the approval of open access and to state that the respondents have unjustly enriched enjoying the benefit of non-gratuitous act of petitioner due to the energy produced from the date of synchronization till the date of LTOA approval fed into the grid.

ix) It is stated that the commission had passed amendment orders dated 31.12.2016 in O. P. No. 78 and 79 of 2015 amending its order dated 27.03.2015 by adding the following after paragraph 49 of its order dated 27.03.2015:

> "*Provided that the wheeling charges shall not be applicable to the Solar Power Projects as per the directives of the Govt. of Telangana, as given below:*
>
> *Provided further that the Govt. of Telangana shall reimburse the DISCOMs, the sum of money due to the exemption of the wheeling charges to the Solar Power Projects as stated in first proviso to the para 49. In the event of non-reimbursement by the Govt. of Telangana of the wheeling charges so exempted, the DISCOMs shall continue to levy the wheeling charges as applicable before this amendment plus the sum accrued as arrears from such consumers who are exempted under this amended order*."

In view of the said, the order of the Commission that the wheeling and cross subsidy surcharge charges were exempted and the same was made effective. Consequently, all the developers who are eligible to avail the benefit of incentives were exempted from wheeling charges subject to the condition that the exempted wheeling charges amount is reimbursed by the GoTS.

x) Pursuant to the above amendment, even to give effect of the banking facility provided in the government policy, the same has to be directed by the commission duly amending the existing regulation in line with the government policy directives and DISCOM, being a distribution licensee has no role or

action to take up in this regard. DISCOM has to act as per the framed regulations or direction issued by the Commission.

xi) Since, the provision of banking facility for the energy injected into the grid before the open access agreement can be implemented or adopted by DISCOM only with the directions of the Commission and even if it has to adopt upon the directions of Commission, the settlement of such unnecessary energy injected as banked energy shall reflect and impact the sales of DISCOM and which would directly reflect in the true ups of TSSPDCL ARRs and shall finally burden the various categories of consumers of TSSPDCL just because of the generators like the petitioners.

xii) Moreover, though the petitioner was accorded grid connectivity and power evacuation facility approval under solar policy, but the facilitation of banking facility to the open access generators / developers was adopted and extended under the Regulations Nos. 2 of 2005 and 2 of 2006 along with subsequent amendments framed by the Commission but not the solar policy.

xiii) It is stated that the petitioner has stated that consideration of open access application only after the synchronization of plant and absence of treatment of energy till grant of open access has put the petitioner in helpless state cannot be entertained. As per clause 10.1 of Regulation No. 2 of 2005 itself, an open access application has to be submitted to the nodal agency, in the format of application which broadly covers all the details set out in Annexure-1 of the Regulation, wherein, Annexure-1 shall cover the information regarding the following:

(iii) (a) Type of open access required, whether long-term, or short-term.

(b) Capacity in KW or MW required for open access in respect of each consumer.

(c) Point(s) of Entry.

(d) Point(s) of Exit.

(e) Period for which open access is required.

(f) Details of metering arrangements at the entry points and exit points as required under the Metering Code (part of the Grid Code or the Distribution Code, as the case may be) as amended from time to time .

All the aforesaid information cannot be furnished before the synchronization of the solar power plant. Hence, the open access application can be considered only with the above stated information to be furnished in complete format.

xiv) The petitioner has referred to a case in O. P. No. 39 of 2018 dated 14.08.2018 which is related to extension of SCOD to the developers who has subsisting PPAs with DISCOM and are actually involved in sale of power to DISCOM. The order in O. P. No. 39 of 2018 cannot be made applicable to the present case since the same related to extension of SCOD.

xv) The question or point of energy injected before the open access agreement being raised after issuance of Regulation No. 1 of 2017. If the petitioner was aware of the banking facility as per provisions of solar policy, then the petitioner should have approached the Commission at the time of synchronization itself seeking necessary directions.

xvi) Further, the petitioner knew very well that any policy cannot be implemented without the Commission's orders, but it didn't approach the nodal agency or the TSSPDCL immediately after synchronization of the solar power plant and even before entering the open access agreement. The petitioner has never raised the issue of claiming the energy injected into the grid after synchronization till the open access agreement date as deemed banked energy pursuant to the policy, which was effective from 01.06.2015. As a matter of fact, it is clearly known to the petitioner that DISCOM cannot do anything without the direction of the Commission and in the absence of the applicable regulation. Moreover, at the time of entering open access agreement, the petitioner was well aware that the subsisting Regulations No. 2 of 2014 and its subsequent amendments were applicable at that point of time that which facilitated banking facility for the agreement period only, even in the absence of Regulation No. 1 of 2017 (25.03.2017), but the petitioner has not raised the matter of deemed banked energy for the period from the date of synchronization to the date of open access agreement before the Commission.

xvii) The Commission has not issued any regulation or order for providing the banking facility for solar generators from the date of synchronization to open access agreement. In the absence of such regulations, the DISCOM has to follow the existing regulation that is Regulation No. 2 of 2006 and its

subsequent amendments that is 1 of 2013 and 2 of 2014 for providing the banking facility to the petitioner which is not applicable to the petitioner before execution of open access agreement.

xviii) In view of the above, it is clear that banking facility shall be availed as per the conditions of regulation and not as and when the petitioner intends.

xix) Any policy issued by the state government has to be adopted by the DISCOM as per the terms and conditions or regulations formulated by the Commission at state level it is the state ERC. But there are no specific orders / regulations issued by the Commission for affecting the banking facility before the open access agreement period.

xx) Moreover, the petitioner has approached the respondent after the issuance of Regulation No. 1 of 2017 dated 22.03.2017 and also stated that the said regulation is effective from the date of publication in the gazette and the same was published in gazette on 25.03.2017 and moreover regulation cannot be effected on retrospective basis.

xxi) It is stated that Case No. 44 of 2014 between M/s. Green Energy Association and MSEDCL & MEDA deals with the facilitation of energy banking, non- reduction of contract demand, concessional cross subsidy surcharge given to the renewable sources which are wind, bagasse, biomass, small hydro generators but not the solar generators. Hence, the order in Case No. 44 of 2014 cannot be made applicable in the present case as open access approval is not delayed wantedly and there exists proper regulation and orders for facilitation of banking facility for the solar generators after execution of agreement and banked energy is being settled to the developers from the agreement date onwards in fair manner.

xxii) It is stated that as per the powers vested under section 108 of the Act, 2003, the Commission shall be guided by such directions in the matters of policy involving public interest as the state government may give it in writing to the Commission. Based on the such written directions to the Commission regarding the government policy, then such policy shall be adopted by the Commission after conducting public hearing and after obtaining the comments from the stakeholders thereafter shall direct the licensee to implement the adoption policy. But in this procedural methodology, DISCOM has nothing to

do with the government policy but to execute the directions of the Commission issued adopting the government policy.

xxiii) It is stated that the petitioner has contended on the amendments of wheeling tariff orders issued by the Commission and the Hon'ble High Court in the case pertaining to M/s. Pragathi Group and M/s. Shri Lakshmi Ganapathy Industries Private Limited. It is stated that the case deals with tariff orders but not the policy matters moreover to be more precise, the case corresponds to the directions of the Commission in the wheeling tariff order dated 27.03.2015. wherein, wheeling charges collected from NCE generators solar, wind and mini-hydel for the period from 17.05.2014 to 31.03.2015 was refunded as per the wheeling tariff order dated 09.05.2014 issued by the then APERC by adjusting in the subsequent bills. Later wheeling tariff order dated 27.03.2015 issued by the Commission has not facilitated exemption of wheeling charges from 01.04.2015 and applicable charges were collected as per directions only and after issuance of solar policy, which is effective from 01.06.2015, wherein, the wheeling and transmission charges are exempted for captive use within the state. The petitioner will be charged as it is applicable for third party sale. But the same cannot be adopted as there were no directions from the Commission to adopt the policy.

xxiv) It is stated that subsequently, the Commission has issued amendment order dated 31.12.2016 amending its order dated 27.03.2015 by adding the paragraph 49 of its order dated 27.03.2015 and exemption of wheeling charges was facilitated according to the direction and based on the government reimbursement.

xxv) It is stated that the cases referred above by the petitioner are not at all applicable to the facts and circumstances of the present case. On the other hand the order in O. P. No. 14 of 2015 filed by M/s. Arhyama solar Power Private Limited which was disposed on 26.07.2016 by the Commission is applicable to the present case. The relevant portion of the order is extracted below:

"The Commission is inclined to allow the petition to the extent the licensee has refunded the amount towards wheeling charges in respect of the period June, 2014 to March, 2015. The Commission is not inclined to give any directions in respect of the additional period for

which claim is made by the petitioner and not refunded by the licensee in view of the observations made supra".

The Commission in the above case has granted relief to the extent applicable and disposed the case without any further directions thereof. In the present case, as there are no applicable regulations or directions for facilitating energy injected from the date of synchronization to the date of open access agreement on retrospective basis. Hence, the petitioner is not entitled to banking facility till the date of execution of open access agreement.

xxvi) It is stated that the petitioner has not approached nodal agency or TSSPDCL for claiming energy injected into the grid after synchronization of the solar plant, before and after entering into open access agreement for availing banking facility, but approached after issuance of Regulation No. 1 of 2017 only that is after 25.03.2017, though the TSPP, 2015 which was effective from 01.06.2015. The petitioner has not even approached this office earlier referring to the same government policy before 25.03.2017 and afterwards requesting to issue credit of such energy which clearly depicts the intention of the petitioner to claim under the light of the Regulation No. 1 of 2017 which is not applicable to the said petitioner on retrospective basis.

xxvii) It is stated that as per the regulations framed by the Commission, banking facility can be availed as per the terms and conditions set within an agreement entered duly by both the parties and consideration of energy injected from the synchronization date to the open access agreement date as deemed banked energy in the absence of regulation cannot be entertained by the TSSPDCL.

xxviii) Further, the DISCOM is not liable to pay for the energy injected from the date of synchronization to the date of open access agreement at any mutually agreed price without any orders or directions of the Commission, as DISCOM as an individual entity cannot do so, being a licensee is obligated only to supply power non-discrimatively and have to treat all the generators as one class of category of consumers and cannot be inclined as such to a particular group of generators.

20. The petitioner has filed its written submissions and reply to the additional submissions made by the respondents. The petitioner while reiterating the submissions made earlier has also stated as below.

a) The Commission in its order dated 18.4.2018 while amending the order in O. P. No. 21 and 22 of 2017 determining the cross subsidy surcharge and additional surcharge for the F.Y. 2018-19 held that:-

As per Para 8(b) of the AP Solar Power Policy, 2012 effective from 26.09.2012 (Solar Policy, 2012) for solar power projects located (SPP) within the state and selling power to third parties within the state, 100% exemption is provided on the CSS for seven years from the date of implementation of the Policy. As per Para 11 (g) of the Telangana Solar Power Policy, 2015 effective from 01.06.2015 (Solar Policy 2015) for solar power projects (SPP) located within the Telangana state and selling power to third parties within the state, 100% exemption is provided on the CSS as determined by TSERC for five years from the date of commissioning of the SPP. Also, as per para 7 of the Solar Policy, 2012 and Para 11 (e) of the Solar Policy, 2015, banking of 100% of energy shall be permitted for all captive and open access / scheduled consumers during all 12 months of the year. Based on the aforesaid the developers have entered into PPAs with third parties. The solar policies do not specifically mention about AS but to encourage the renewable energy projects established under the Solar Policy 2012 and Solar Policy 2015, AS shall not be levied on such SPPs commissioned during the operative period of the Solar Policy, 2012 and Solar Policy 2015."

b) It is stated that the same method may be adopted in the case of the petitioner herein and allow the deemed banked energy to the petitioner solar power project as provided under solar policy.

c) It is stated that of any policy issued by the government, the Commission can take judicial note and pass appropriate orders in the interest of justice. It is submitted that various Commissions including the Commission passed several orders by taking judicial note of the policies and exemptions.

d) It is stated that the Commission had already considered the issue of banking and made regulation in the year 2017 giving effect to the provisions of the

policy regarding banking. It had also an occasion to deal with the similar situation in O. P. No. 94 of 2015 filed by M/s. MLR Industries Limited.

e) It is stated that the Commission had in O. P. No. 94 of 2015 dated: 04.08.2016 between M/s. MLR Industries Private Limited and respondents directed for approving the banking facility for the power exported by the company with effect from the date of synchronization based on government solar policy.

f) The Commission passed order in O. P. No. 16 of 2018 between M/s. Rewanchal Solar Power Private Limited vs. respondents, inter alia several other similar petitions, condoned delay in commissioning and waived of several crores of penalties with emphasis on letters issued by GOTS with regard to such SCOD extensions. Therefore, the Commission is empowered to grant relief in the facts and circumstances including deemed banked energy even in the absence of the regulation to that extent by the Commission.

g) It is stated that from the date of synchronization till the date of execution of LTOA energy generated and pumped into the grid, which has to be treated as banked energy as per the solar policy of the government. It is further stated that while the petitioner had set up the project in the state of Telangana based on the solar policy issued by the state government, it is absolutely necessary to ensure the incentives announced in the policy are implemented on ground to not only boost the investor confidence but also create trust on governmental policies released by the duly elected governments.

h) It is stated that in the alternative of not allowing banking, the petitioner should be paid for the energy generated and supplied at Rs. 6.78 per unit, which was the rate discovered by the DISCOMs in the bidding. It was admitted by respondent No. 2 herein in O. P. No. 11 of 2016 that average solar bid price that was discovered through competitive bidding was Rs. 6.78 / Unit. Relevant portions of the order is reproduced herein below:

"……The average unit price/unit discovered through 2014 bidding by TSSPDCL for selection of 500 MW was a sum of Rs.6.78 / KWh. Also, the CERC generic tariff for the PV Solar Power Projects for FY2014-15 & 2015-16 was a sum of Rs. 7.72/Unit and Rs. 7.04/Unit respectively……

The TSSPDCL is of the opinion that since the solar power supplied from the solar park at the rate of Rs. 6.49 per unit is lesser than the average bid price

of 2014-15 and is also lesser than the average tariff determined under the subsequent bidding for 500 MW in the state of Telangana which is at Rs.6.78 per unit for which execution time line is April,2016.

It is therefore admitted by respondent No. 2 that the 2014 solar bidding PPA's were sanctioned / PPA's were executed in 2015 and given time till 2016 to commission their respective solar plants, The petitioner also falls in the same category of getting the project sanction in 2015 and commissioning of its plant in 2016 and hence be eligible for compensation of Rs. 6.78 / unit for units that were injected from synchronization to execution of LTOA Agreement.

i) It is stated that section 70 of the Indian Contract Act stipulates that when once the goods kept in one's possession and utilized by them have to be paid for by the person utilizing the same. Therefore, the respondents cannot enrich themselves by utilizing the power generated by the petitioner's power and fed into the 2nd respondent's grid. The petitioner does not have any intent to give the same to the respondents gratuitously. Therefore, respondents are liable to return the same or pay its cost applicable during that period.

j) The petitioner since has generated and fed power into grid during the period of execution of LTOA process and there is inordinate delay in granting approval, dehors the incentives that the petitioner is entitled for under solar policy read with Regulation No. 1 of 2017, independently is legally entitled compensation for the energy utilized by Respondent No. 2. This claim is independent and in alternative to the claim of benefits claimed by the petitioner under solar policy.

21. The petitioner also replied the contentions of the respondent No. 2 in reply to the rejoinder as below.

a) At the outset the lengthy reply filed by the respondent No. 2 to the rejoinder filed by the petitioner is far beyond the contentions raised by it in its counter and the same is not maintainable and the contents of the same were also not adverted during the course of argument. The respondents filed the said affidavit at the fag end of the proceedings due to which the petitioner could not put forth its response before the Commission. However, the petitioner is attempting to give response to the reply of respondent no. 2.

b) It is stated that the respondent No. 2 failed to notice that petitioner is claiming deemed banked energy basing on solar policy and only trying to comment on the part of the statement of petitioner on regulations to invoke is estoppel.

c) In O. P. No. 10 of 2018 between ACME Solar Power Technology Private Limited and respondents, the Commission has condoned a delay in achieving SCOD of 7 months to the petitioner due to force majeure events. However, in the petitioner's case granting approval is well within the control of the respondents and hence respondents are liable for additional damages due to delay from their end. As a whole, there is inherent contradiction in the open access approval process. The petitioner's project was commissioned under open access mode and the power is being fed into the grid. The respondents enjoyed the benefits of such power fed into grid and enriched itself by collecting the value of the power from its consumers and at the same time delayed open access permissions.

d) It is stated that in effect the respondent is submitting that they have no time limitation in granting the open access approvals in the guise of detailed studies that were not required due to the factors mentioned by petitioner in the rejoinder. The petitioner is made to understand from old open access developers that this approach of the respondent prompted members of solar open access developer to approach the government to remove this difficulty, which in turn translated as a provision in solar policy. The respondent No. 2 safely ignored the fact that the basis of the amendment to the regulation is to give effect to the provisions of the solar policy, according to which petitioner is eligible for banking facility for the units so injected, as evident from the objections called by the Commission for the said amendment.

e) It is stated that on one side respondent No. 2 sanctions the project under solar policy and on other hand says that it can only give effect to the provisions of policy as per regulation but acts arbitrarily without regulatory approval while extending supervision charges exemption and quotes it petitioner's generation caused disturbance in the grid. But respondent No. 1 did not allow the petitioner to apply for open access until the synchronization certificate is submitted. This clearly shows the arbitrary

action of the respondent No. 2. In addition, The petitioner was allowed to inject the power into the grid by respondent No. 2 vide its synchronization order, issued by The Chief General Manager (Comml & RAC) / TSSPDCL, based on which synchronization committee had synchronized petitioner's solar plant with grid and caused petitioner to inject generation into grid and continued to cause the petitioner to inject power into their grid by closing their breaker (VCB) in the grid sub-station, which is in the very control of the respondents. Since then every month generation readings were taken and certified by officials of respondent No. 1 and 2 along with petitioner and the same was communicated to corporate offices of respondents. Hence, it is the respondents with the advance knowledge of the generation, utilized the units fed into the grid till grant of open access, by selling them to its consumers. It is relevant to mention here that respondents at no point of time issued any such notice to the petitioner for stoppage of generation of energy.

f) It is stated that petitioner agrees that it is well within the purview of the Commission to direct the respondents as per petitioner's prayer. It appears that respondents reply that they have been only waiting for the Commission directions to implement solar policy banking provisions to the petitioner. In all the SCOD extension petitions of various solar developers, Respondents have admitted that they being state entity are duty bound to observe state government directions and in fact gone over enthusiastic by filing petition on behalf of the developers, in the first instance, for SCOD extensions. However, in petitioner's case there was not even a single reference / pursue with the Commission to cause respective amendments to regulations to give effect to policy provisions, which shows clear discriminatory and arbitrary attitude of respondents against provisions of Act' 2003. It was under the instance and pursue of the solar developers and association the state government caused directions under sec 108 of the Act, 2003.

g) It is stated that it is the contention of the respondent No. 2 that the petitioner has never raised the issue of banking till Regulation No. 1 of 2017 was issued is completely wrong. The petitioner through and as a member of Telangana Open Access Solar Developers Association

(Association) has given several representations to the Commission with regard to speedy disposal of open access applications and also to issue regulation with regard to banking of power vide letter dt. 22.02.2017. The state government vide letter dt. 23.08.2016 issued directions to the Commission under section 108 of Act, 2003 to cause effect to solar policy. In pursuance to the efforts of members of the association GoTS vide letter No.910 / Pr.1 / 2016 dated: 10.11.2016 through Principal Secretary to Government / Energy Department / Telangana Secretariat had issued Direction to TSERC under Section 108 of Act, 2003 in para 3, which is extracted here under for ready reference:

> *"Further, Government issued orders under section 108 of Electricity Act, 2003 on 23-08-2016 vide reference 3rd cited wherein directions were given to TSERC to adopt Telangana Solar Policy 2015 and to make the necessary amendments in regulations/tariff order and also issue orders for its implementation by Telangana DISCOMs and TRANSCO."*

h) It is stated that the Commission shall be guided by state policy under section 108 of the Act, 2003. The same is extracted here under:

"Section 108. (Directions by State Government): *-*

(1) In the discharge of its functions, the State Commission shall be guided by such directions in matters of policy involving public interest as the State Government may give to it in writing.

(2) If any question arises as to whether any such direction relates to a matter of policy involving public interest, the decision of the State Government thereon shall be final."

i) It is stated that in O. P. No. 6 and 7 of 2016 the Commission decided the issues involved therein on the basis of such reference and to the direction issued under section108 of the Act, 2003. In O. P. No. 76 and 77 of 2015 were also decided based on solar policy and made such policy benefits applicable to the generators from 01.06.2015. In fact, at para No. 40 in O. P. No. 94 of 2015 the Commission has taken a judicial notice of solar policy and allowed the original petition of M/s. MLR Industries Private Limited to avail banking facility.

j) In view of the facts and reasons stated above it is therefore prayed that the Commission may allow the above Original Petition as prayed for and

a. Direct the respondents to treat such energy injected as banked energy and allow the petitioner to schedule such energy to its scheduled consumers within one year from the date of order, Or in alternative
b. Direct the respondents to pay for the units injected during the said period at Rs. 6.78 / Unit, which is average purchase price discovered in 2014 solar tender, with appropriate interest.

22. I have heard the counsel for the parties in detail running through several days of hearing. I have perused the material on record as also the detailed cross submissions made twice by the petitioner and the respondents.

23. The short issue that comes for consideration in this petition is with reference to giving credit to the units generated and fed into the grid by the petitioner from the date of synchronization to the date of the long term open access agreement in terms of the policy of the government. The other prayers in the petition hinge upon the relief being granted in the above issue to the petitioner. The questions that arise for consideration are –

a) Whether the petitioner is entitled to bank the energy that is fed into the grid from the date of synchronization of the project to the date of entering into LTOA agreement?
b) If (a) is accepted whether the petitioner is to be allowed to wheel the said banked energy?
c) Whether the relief sought in this petition can be allowed in terms of the Regulation No. 2 of 2017 relating to banking of energy as also in terms of the order passed by this Commission in O. P. No. 94 of 2015?
d) If the banking of energy is allowed, but the same cannot be wheeled to its consumers, does the respondent is required to pay for the same and at what rate?

ISSUE (a):

24. The petitioner stated that the project has been established having due consideration to the policy adopted by the Government of Telangana to encourage establishment of solar projects within the state. The policy announced by the

government provided for several incentives and benefits to the projects being established for solar power generation. The policy envisaged concessions like tax exemption of the State Government, facilitation of infrastructure and banking of energy generated by the solar projects.

25 Admittedly the petitioner has sought synchronization of the project from the respondents and the same was acceded to by them. The date of synchronization as noted by the petitioner is 08.06.2016. It is the case of the petitioner that it has sought open access on 21.06.2016 and the same was required to be granted within 30 days of the closure of the window that is by 30.07.2016. However, the approval has been granted by the transmission company on 01.11.2016 and took another 13 days to execute the agreement that is on 18.11.2016.

26. The petitioner stated that it has fed into the grid energy generated from 08.06.2016 to 18.11.2016, which has been utilized by the 2nd respondent / TSSPDCL. Though it is stated as inadvertent power, it has fed about 56,58,600 units of energy as per the meter readings for the said period. This energy is now sought to be treated as banked energy and allowed to be wheeled to its consumers.

27. Reliance is placed on the amendment regulation being the Regulation No. 1 of 2017, which provided for units fed into the grid as deemed banked energy. It is the case of the petitioner that in terms of the solar policy as also this regulation, the energy fed into the grid should be treated as banked energy. Inasmuch as the Commission while issuing order determining the cross subsidy surcharge and additional surcharge as well as amendment to the said order has taken into consideration the policy of the government for giving exemption from cross subsidy surcharge and additional surcharge to the units that are supplied under open access. The petitioner now seeks to apply the same analogy for the purpose of treating the energy fed into the grid as deemed banked energy.

28. On the other hand, the respondents have contested the same by placing reliance on the Regulation No. 2 of 2005, Regulation No. 2 of 2006 and amendment Regulation No. 2 of 2014. It is also their case that the clause 11 (e) of the solar policy provided for deemed purchase by the DISCOMs at pooled cost, the unutilized

banked energy. In the absence of the specific directions for adopting the policy by the Commission, the TSSPDCL cannot give effect the provisions of the policy.

29. It is also their case that while the amendment regulations of the years 2013 and 2014 did not provide for banked energy, the Regulation No. 1 of 2017 issued by this Commission is prospective in its application. Therefore, the petitioner is not entitled to the benefit as claimed in the petition.

30. At this stage, it is relevant to notice that Clauses 10.5 and 10.6 of Regulation No. 2 of 2005 being the Andhra Pradesh Electricity Regulatory Commission (Terms and Conditions of Open Access) Regulation, 2005, which are as below.

> *10. Procedure of application for Long Term Open Access:*
>
> *". . . . .*
>
> 10.5 All applications received within a calendar month e.g. during 1st April to 30th April, shall be considered to have been filed simultaneously. This window of a calendar month shall keep rolling over i.e. after the expiry of a monthly window, another window of the duration of the next calendar month shall commence.
>
> 10.6 Based on system studies conducted in consultation with other agencies involved including other licensees, if it is determined that long term open access sought can be allowed without further system-strengthening, the Nodal Agency shall, within 30 days of closure of a window, intimate the applicant(s) of the same."

31. From the pleadings narrated above, it is very clear that the petitioner ought to have been granted LTOA by 30.07.2016 instead it has been granted on 01.11.2016 with a delay of about 92 days. While on one hand certain delay can be attributed to the petitioner, the major chunk of delay can be attributed to the licensee. It is clear from the pleadings that the petitioner got synchronized its project on 08.06.2016 and obtained connection certificate after 5 days on 13.06.2016. Likewise, it applied for LTOA after 8 days that is on 21.06.2016. Considering these dates, there is a delay of about 22 days on the part of the petitioner, which cannot be considered for the present relief. At the same time, relief cannot be considered for the period when the application for LTOA was under process till closure of the period under the regulation. However, the period between the date when the LTOA was required to be

allowed and the actual date of LTOA agreement is attributable to the licensees. As such from 30.07.2016 to 18.11.2016 the energy injected into the grid can be treated for the purpose of banking.

32. In view of the discussion, the petitioner is entitled to the relief to the extent that the energy injected between 30.07.2016 to 18.11.2016 shall be treated as banked energy and the rest of the energy injected into the grid shall be treated as inadvertent supply to the grid. Accordingly, the issue is answered in favour of the petitioner to the extent indicated above.

Issue (b):

33. It is appropriate to state that the energy injected into the grid has been considered as banked energy in the above issue and in such circumstances, the banked energy has to be allowed to be drawn by the generator for supplying to the third party consumers, it being a LTOA generator. As the energy generated has already been considered by the licensee, the quantum of banked energy has to be returned to the petitioner as per its scheduled requirement of supply to its consumers. It is relevant to state that the banked energy has to be consumed upto January of the financial year only and as such the present case, even if, the present petition is allowed, the petitioner may not be able to consume the banked energy within the short period now available. Therefore, as a specific instance and one time measure only, the petitioner may be allowed to consume the banked energy within the next 12 months subject to Regulation No. 1 of 2017. Thus, the issue in respect of consumption of the banked energy is answered in favour of the petitioner.

Issue (c):

34. The petitioner sought to canvass and place reliance on Regulation No. 1 of 2017, which provided for energy injected into the grid from the date of synchronization to the date of entering into LTOA agreement to be deemed as banked energy. In support of its case, the petitioner also relied on the solar policy issued by the government, wherein a provision is made though not similar to the one in the regulation. It is the case of the petitioner that the Commission has given effect to the policy of the government in the form of regulation by providing identical provision if not similar in nature in the regulation made subsequently. Therefore, it is entitled to the relief of banking the energy for the period from 07.10.2016 to

19.04.2017 and also either to schedule the energy to its consumers or for payment by the licensees. The petitioner also placed reliance on the order passed by the Commission in O. P. No. 94 of 2015 filed by M/s. MLR Industries Limited, which had banked energy with the licensee and wanted to draw the same, which was not allowed. This Commission had, in the said case, according to the petitioner, recognized the concept of banking energy from the date of synchronization till the date of captive or open access consumption. The licensee, on the other hand, contended that the regulation is prospective in its application and cannot be relied upon by the petitioner. It is also stated that the order passed by the Commission has no application to the facts of the present case, as the said case was relating to in house captive consumption without any agreement and the present case is relating to open access consumption. The licensee also stated that the petitioner is not entitled to the relief in this case, as the DISCOMs are bound by the orders of the Commission, which has not recognized the policy issued by the government. As such, the petitioner cannot have the benefit of banking the energy and wheeling it subsequently in terms of the policy or regulation. The energy injected by the petitioner can be treated as inadvertent power only.

35. The order referred by the petitioner and opposed by the licensee has one distict feature which is not present in this case. In that case the developer was industry and established the plant within its industrial premises, but of a higher capacity than required by it. As such when energy is generated the additional had to be channelled out and as such synchronisation of the power plant wot the grid. However, its intention was to use the same energy in off peak hours by drawing the excess energy already pumped into the grid, which was not allowed by the licensee as there was no agreement and for the purpose, it being a captive generator cum consumer and not an open access consumer. The said case does not suit the present case as there is a opens access agreement and moreover the energy generated is intended for third party sale and not for captive consumption. As such the said case has no application to the facts of this case.

36. It is appropriate to state that the Regulation No. 2 of 2005 which provided for open access and also agreement for that purpose have to be entered, stipulated the nodal agency to grant open access within a specific period and in the absence of the

same, it is to be treated as open access has been deemed to be allowed. The reason adduced in the pleadings that lot of system study and metering installation confirmation has to be done is absolutely uncalled for as the nodal agency has to comply with the requirement of allowing or not allowing open access within the time stipulated in the regulation. It is also to be noted that this Commission had occasion to rely on the policy of the government and give effect to the provisions thereof while dealing with levy of cross subsidy surcharge and wheeling charges. As such, it cannot be said that the policy cannot be given effect to by the Commission. It is also seen from the pleadings that the licensee itself gave effect to the provisions of the policy as contended by the petitioner in respect of certain aspects of payment of supervision charges, which is not rebutted by the licensee, as such it cannot allege that the policy cannot be given effect to.

37. Nowhere in the pleading it has been adverted to either agreeing or deny the fact that the licensee ought to have informed the petitioner that the plant is successfully synchronised yet it should generate energy. Absence of such caution on either side may result giving benefit of action in favour of the petitioner. The licensee having not exercised its due diligence cannot now turn round and allege that the petitioner I not entitled to banking of energy and that it suffered losses due to inadvertent unscheduled energy being fed into the grid causing grid disturbance.

38. It is also relevant to state here that in the absence of the regulation, why the licensee has either voluntarily kept quite when power was injected or did not take action through State Load Dispatch Centre to back down the generation from the petitioner project. No doubt as rightly pointed by the licensee the regulation made by this Commission is prospective n its application, but at the same time there is legitimate expectation that has been created in the form of policy of the government. The licensee voluntarily or conveniently abdicated its responsibility of enlightening generator about application of the policy. As such it cannot allege that the petitioner is not entitled to any relief.

39. The petitioner has sought to place reliance on the orders passed by the Commission in respect of extension of SCOD of certain projects. Extension of SCOD with reference to the PPA provisions and not refence extension of any facility as is involved in the present case. That too the said is with refence to the clauses in the

PPA which provide conditions where and when the PPA does get operated or there is impossibility of performance of the contract. Nothing of that sort is involved in this case and as such the reliance placed by the petitioner on the said cases to draw analogy for benefit of implementation of the policy is not correct and the said contention is refused. Adverting to ruling of the Hon'ble high Court it must be stated that the same is an interim order and does create any binding precedent for this Commission to follow. Likewise the orders of the other Commissions are only of persuasive value and do not constitute any binding precedents, moreover they are not applicable to the facts of this case.

40. The facts and situations leading to the request of the petitioner clearly emphasize that the petitioner is entitled to the relief as prayed for in the present petition in view of the discussion in the above paragraphs. Accordingly, the issue is answered in favour of the petitioner.

Issue (d):

41. The petitioner has contended and prayed that the energy injected into the grid be allowed to be banked and wheeled to its consumers, but the time for such wheeling may be extended up to a period of one year. In the alternative the licensee may be directed to pay the tariff for the said banked energy at the rate of Rs. 6.78 per unit. As the issue (a) and (b) have been answered in favour of the petitioner, there is no necessity for granting this relief. Even otherwise, the petitioner cannot be paid the amount as sought by it, if the energy was not allowed to be wheeled to its consumers, as this Commission had, in the regulation itself, clearly stated that the unclaimed banked energy has to be paid by the licensees at the pooled cost as determined by it. Therefore, this issue is closed subject to the observations made above.

42. Pursuant to the discussion on the issues framed above, one aspect that needs to be addressed is that the settlement of quantum of energy that is required to be considered as banked for the period 30.07.2016 to 18.11.2016. As this Commission is setting the time frame in respect of quantum of energy, it may be appropriate that the SLDC shall be involved in ascertaining the energy that has been delivered into the grid by the petitioner for the said period.

43. In the result, the original petition is allowed to the extent indicated below subject to the observations made in the course of discussion above.

a) The petitioner is entitled to banking of energy injected from 30.07.2016 to 18.11.2016 and the energy injected prior to the said period is treated as inadvertent energy which the licensees are not required to pay for it.

b) The petitioner is allowed to wheel the quantum of energy banked for the above said period within one year from the date of this order or 31.01.2020 whichever is earlier.

c) The SLDC shall provide the necessary data to enable the petitioner and the respondent to arrive at the figures in respect of energy banked.

d) The petitioner is not entitled to any charges or tariff for the energy that is allowed to be banked.

e) The parties are directed to bear their own costs in the circumstances of the case.

44. Office is directed to send a copy of this order to the SLDC for necessary action at their end.

The order is corrected and signed *on* this the 2nd day of January, 2019.

Sd/-
(ISMAIL ALI KHAN)
CHAIRMAN

//CERTIFIED COPY//