



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

**O. P. No. 70 of 2018**

**Dated 17.10.2022**

**Present**

Sri T. Sriranga Rao, Chairman  
Sri M. D. Manohar Raju, Member (Technical)  
Sri Bandaru Krishnaiah, Member (Finance)

Between:

M/s Sugna Metal Limited,  
# 1-8-673, IDA, Aazambad, Hyderabad 500 020.

... Petitioner

**AND**

1. Chairman and Managing Director,  
Sothorn Power Distribution Company of Telangana Limited,  
H.No.6-1-50, 5<sup>th</sup> Floor, Mint Compound,  
Hyderabad 500 063.
2. Senior Accounts Officer, Operation,  
TSSPDCL, Vikarabad,  
RR District 501 102.
3. Superintending Engineer, Operation,  
TSSPDCL, Vikarabad,  
RR District 501 102.
4. Chief General Manager (Revenue),

Sothern Power Distribution Company of Telangana Ltd.,  
H. No. 6-1-50, Ground Floor, Mint Compound,  
Corporate Office, Hyderabad 500 063.

... Respondents

The petition came up for hearing on 01.02.2021, 15.03.2021, 02.06.2021, 15.07.2021, 15.09.2021, 28.10.2021, 15.11.2021, 20.12.2021, 27.12.2021 and 17.01.2022. Sri. N. Vinesh Raj, Advocate for petitioner appeared on 01.02.2021, 15.03.2021, 02.06.2021, 15.09.2021, 28.10.2021, 15.11.2021, 20.12.2021, 27.12.2021 and there is no representation for petitioner on 15.07.2021 and Sri. Mohammad Bande Ali, Law Attaché for respondents have appeared 01.02.2021, 15.03.2021, 02.06.2021, 15.07.2021, 15.09.2021, 28.10.2021, 15.11.2021, 20.12.2021, 27.12.2021 and 17.01.2022. The proceedings of the matter has been conducted on 01.02.2021, 15.03.2021, 02.06.2021, 15.07.2021, 28.10.2021, 15.11.2021 through video conference and on 20.12.2021, 27.12.2021 and 17.01.2022 through physical mode, having been heard and having stood over for consideration to this day, the Commission passed the following:

#### **ORDER**

M/s Sugna Metal Limited (petitioner) has filed a petition under Section 142 of the Electricity Act, 2003 (Act, 2003) seeking directions to readjust the open access demand and to punish the licensee for not refunding the excess amount collected towards charges.

2. The averments of the petition are as below:
  - a. It is stated that the petitioner is a company registered under the Companies Act 1956 having a HT connection bearing H. T. No. VKB 1247 with contracted maximum demand (CMD) of 22999 kVA for supply of energy and demand from the respondents.
  - b. It is stated that the Act, 2003 is enacted to encourage open competition, open access, regularising and consolidating loss relating to generation, transmission, distribution, trading and use of electricity developing electricity industry, promoting competition, protecting interest of consumers, supply of electricity to all areas, rationalisation of electricity tariff, transparent policy regarding subsidies, promotion of efficiency and environmental policies etc.

- c. It is stated that the objective of the Act, 2003 is also to promote the generation, transmission, open access, trade and also to phase out cross subsidy gradually etc. It is stated that as per the objective and provisions of the Act, 2003 both Central and the State Government have framed the regulations accordingly. It is stated that even the Central and State Commission have been passing regulations, proceedings and orders in accordance with the Act, 2003.
- d. It is stated that in spite of the provisions of the Act, 2003, Central and State regulations and orders, the respondents have been violating the provisions time and again.
- e. It is stated that the open access to the consumers under the respondents more specifically HT Consumer over and above 1 MW have been permitted under the provisions of the Act, 2003, Central and State regulations and orders of the Central and State Commissions.
- f. It is stated that even this Commission has approved Regulations No. 2 of 2006 for interim balancing and settlement code for open access transactions. It is stated that as per the said regulation a schedule consumer is permitted to have power from the distribution licensee and also from open access. That the supply of power should be based on 15 minutes time blocks. The open access generator or consumer shall communicate to the SLDC / DISCOM availing open access one day in advance and accordingly inter se order of allocation of actual consumption among open access and distribution licensee shall be deemed to have been done with prior consent of all parties involved. The SLDC shall undertake accounting of energy for each time block on monthly basis and energy billing centre shall be responsible for the energy accounting and settlement in coordination with the DISCOMs. The settlement of the energy/ demand in respect of scheduled consumers shall be calculated at exit point for each time block.
- g. It is stated that the respondents have been issuing bills to the schedule consumers in violation of the said provisions which is detailed as below:
- h. It is stated that the petitioner has entered into open access agreement with GMR Energy Trading Limited dated 22.06.2017 for supply of energy and demand through IEX.

- i. It is stated that the petitioner has purchased energy and demand under open access facility during the period from April, 2015 to March, 2018. The respondents have adjusted the energy only of open access but had not adjusted the entitled demand as prescribed in Clause 8.2 of Regulation 2 of 2006 read with Clause 5, 6, 7 and 8 of proceeding No. APERC / Secy / 25 / 2013 dated 04.05.2013.
- j. It is stated that the above explained discrepancy is in violation of Clause 8.2 read with 8.4 of Regulation No.2 of 2006 dated 11.08.2006 and Clause 5, 6, 7 and 8 of proceeding No. APERC / Secy / 25 / 2013 dated 04.05.2013 in adjustment/ settlement of demand availed from the energy consumption from open access.
- k. It is stated that the respondents during the months from June, 2017, August, 2017 and September, 2017 claimed the penal demand charges first, then adjusted open access partial demand and claimed normal demand charges. Whereas as per Clause 8.4 of Regulation No. 2 of 2006 and Clause 5, 6, 7 and 8 of proceeding No. APERC / Secy / 25 / 2013 dated 04.05.2013 the respondents ought to have adjusted from RMD, the open access entitled demand then CMD and if any quantity remains to be charged at penal rates. In view of the above said discrepancy the respondents claimed the penal demand charges on double quantity in above said billing months. It is pertinent to note that if the entitled demand of open access is adjusted the penal demand charges will not attract.
- l. It is stated that the above explained discrepancy is in violation of Clause 8.4 of Regulation No.2 of 2006 dated 11.8.2006 and Clause 5, 6, 7 and 8 of proceeding No.APERC/Secy/25/2013 dated 04.05.2013.
- m. It is stated that the Clause 8.2 and 8.4 of Regulation No.2 of 2006 dated 11.08.2006 is extracted hereunder for ready reference of the Commission.

*"8.2 The Schedule demand at exit point shall be calculated by dividing the schedule capacity (kW) at the exit point by the power factor for the time block, for which purpose the power factor shall be equal to the recorded kWh divided by kVAh.*

8.4 *The Scheduled demand at Exit point or the actual demand made available to a consumer from each OA, Generator at that Exit point in a time block whichever is less, shall be deducted from the recorded demand (in the inter-se-order of such Generator as confirmed by the SLDC while finalizing the day ahead schedule, in case the consumer is availing of energy from more than one Generator. The balance demand for each time block shall be deemed to have been consumed from the DISCOM and shall be paid for as per the terms of the supply agreement with the DISCOM."*

- n. It is stated that the Clause 5, 6, 7 and 8 of proceeding No. APERC / Secy / 25 / 2013 dated 04.05.2013 is also reproduced hereunder for ready reference of the Commission.

***"Demand settlement for open access consumers:***

5. *It was brought to the notice of the Commission that the DISCOMs are not considering the Demand component availed through open access for billing purpose. The DISCOMs are charging for the entire recorded demand without deducting the demand component of open access power/energy from the recorded demand.*
6. *As per the Interim Balancing and Settlement (IB&SC) Code, the DISCOMs have to consider both energy and demand availed through open access while preparing bill.*
7. *The procedure to consider Open Access (OA) demand component for billing is explained below:  
For each time block total recorded energy and total recorded demand is available in the meter. Similarly, for each time block, power availed through open access for both energy and demand is also available from Energy Balancing Centre (EBC).  
Detailed method of arriving Maximum Demand (MD) consumed from DISCOM in a month is explained with the help of table shown below for nine time blocks:*

*To get demand consumed from DISCOM shown in column (8), deduct the OA Recorded Demand (shown in Column (7) from total Recorded Demand (RD) (shown in column (5), i.e., Demand consumed from DISCOM = (Total Recorded Demand - OA Recorded Demand)*

<b>Sl. No.</b>	<b>DISCOM Contracted Demand</b>	<b>OA Contracted Demand</b>	<b>Total Demand From all the source</b>	<b>Total Recorded Units in 15 minutes</b>	<b>Total Recorded Demand (RD)</b>	<b>OA Units in 15 minutes</b>	<b>OA Recorded Demand (kVA)</b>	<b>DISCOM Recorded Demand (kVA) (Col 5 – 7)</b>
	Col (1)	Col (2)	Col (3)	Col (4)	Col (5)	Col (6)	Col (7)	Col (8)
1	600	400	1000	200	800	98	392	408
2	600	400	1000	200	800	88	352	448
3	600	400	1000	197.5	790	98	392	398
4	600	400	1000	197.5	790	98	392	398
5	600	400	1000	202.5	810	78	312	498
6	600	400	1000	195	780	75	300	480
7	600	400	1000	194.5	778	69	276	502
8	600	400	1000	195	780	93	372	408
9	600	400	1000	205	820	84	336	484

*Of all the nine demands of column (8), the Maximum Demand is 502 kVA mentioned in row (7). The same logic can be extended for 2880 time blocks (15 minutes) in a month.*

8. *The APTRANSCO/DISCOMs (Energy Billing Centre) are directed to take into account the Demand component from open access while issuing the bills. To arrive at the Recorded Maximum Demand (RMD) of DISCOM, the Licensees shall follow the method shown in the above example."*

3. In view of the above said facts, the petitioner has sought the following relief in the petition.

- “a. To adjust entitled demand of open access as prescribed in Clause 8.2 r/w 8.4 of Regulation 2 of 2006 dated 11.08.2006 and Clause 5, 6, 7 and 8 of proceeding No. APERC / Secy / 25 / 2013 dated 04.05.2013 from recorded maximum demand and claim demand charges for balance quantity only during the period from April, 2015 to March, 2018.
    - b. To pay penalty as prescribed under Section 142 of Electricity Act, 2003.”
- 4. The respondent No.1 has filed its counter affidavit as below:
  - a. It is stated that the supply to the petitioner company RRS 1247 of M/s Suguna Metal Private Limited, Pargi was released on 25.11.2008 with a CMD of 4900 kVA at 33 kV in HT on payment of the required development charges and security deposit etc, after entering HT agreement and HT test report. The CMD was increased to 9999 kVA at 33 kV with effect from 15.10.2011. The CMD was further increased to 19999 kVA at 132 kV with effect from 11.05.2017. The CMD was further increased to 22999 kVA at 132 kV with effect from 28.11.2017. The CMD was further increased to 30999 kVA at 132 kV with effect from 23.05.2018.
  - c. It is stated that the respondents have not violated the provisions of the Act, 2003, regulations and orders of the Central and State Commissions.
  - d. It is stated that the allegations made by the petitioner that only the energy of open access is adjusted and demand is not considered as prescribed in Clause 8.2 of Regulation No.2 of 2006 read with Clause 5, 6, 7 and 8 of proceeding No.APERC/Secy/25/2013 dated 04.05.2013 is incorrect and false. The open access energy and demand are adjusted in the revised bills issued to the consumer as per Clause 8.2 of Regulation 2 of 2006 and proceeding No.APERC /Secy/25/2013 dated 04.05.2013. The day-wise abstracts of settlement of demand and energy are enclosed as material papers. The detailed working for one month i.e., for the month of Jan-2018 is given for clear understanding as to how the demand adjustment is done for the 2880 time blocks which is enclosed as material paper.
  - e. To illustrate the open access demand adjustment for the month of Jan-2018 is detailed below:

The total recorded maximum demand before adjustment of open access demand for 2880 blocks = 22920 kVA (which includes OA demand and demand consumed from DISCOM). This is the maximum total recorded demand attained out of 2880 (15 minutes) blocks. After deducting open access demand in each 15 minutes time block procured by the petitioner from the total demand for 2880 blocks, the net maximum demand consumed from DISCOM by petitioner arrived is 22880 kVA. After arriving the net maximum demand 22880 kVA consumed from DISCOM, the demand charges are levied based on maximum demand consumed by the petitioner from DISCOM in the C.C. bills.

Hence  $22920 \text{ kVA} - 22880 \text{ kVA} = 40 \text{ kVA}$  (open access demand to the credit of the petitioner) represents numerical difference between total RMD and net MD from DISCOM.

- f. It is stated that as per Open Access Regulation, 2005, Clause 19.4 energy and demand balancing issued by erstwhile APERC, the open access users shall make reasonable endeavour to ensure that their actual demand at an inter-connection does not exceed the contracted maximum demand or allocated sent-out capacity for that interconnection provided that for carrying out balancing and settlement of energy and demand at all entry and exit points relating to open access agreements, the licensee shall strictly adhere to the balancing and settlement code to be approved by the Commission from time to time.
- g. It is stated that on the request of the petitioner, NOC was issued to purchase power from open access duly obtaining an undertaking that its RMD will not cross the CMD. It is stated that the recorded maximum demand of the petitioner crossed the CMD.
- h. It is stated that as per Clause 4 of H.T. supply tariff order 2017-18, it is very clear that maximum demand exceeding the contracted demand has to be charged two times of normal charges. Clause 4 of H.T. Supply - Terms and Conditions reads thus:

***ADDITIONAL CHARGES FOR MAXIMUM DEMAND IN EXCESS OF THE CONTRACTED DEMAND:***

*In case, in any month the recorded maximum demand (RMD) of the consumer exceeds his contracted demand with the licensee, the consumer shall pay the following charges on excess demand recorded and on the entire energy consumed.*

<b>RMD over CMD</b>	<b>Demand Charges on Excess Demand</b>	<b>Energy Charges on full Energy</b>
<i>100 to 120%</i>	<i>2 times of normal charge</i>	<i>Normal</i>
<i>Above 120% and up to 200%</i>	<i>2 times of normal charge</i>	<i>1.15 times of normal charge</i>
<i>More than 200%</i>	<i>2 times of normal charge</i>	<i>1.20 times of normal charge</i>

Hence, the maximum demand exceeding the contracted demand is charged at twice the rate as per the Commission tariff order, 2017-18.

Viewed from any angle, there are no merits or bona fides in the present O.P. and therefore, the same is liable to be dismissed in limine.

- i. Hence, the claim of the petitioner that open access demand is not adjusted becomes untenable. It is therefore prayed the Commission to dismiss the petition.

5. The petitioner has also filed written submission and the same is extracted below:

- a. It is stated that the present application is filed aggrieved by the actions of the respondent in not giving credit of demand of open access and that charging of penal demand charges without considering open access demand.
- b. It is stated that the application filed by the petitioner may be read as part and parcel of the submission.
- c. It is stated that this Commission vide proceedings No. APERC / Secy / 25 / 2013 dated 04.05.2013 have noticed that the Discoms are not considering demand component availed through open access for billing purpose and that the Discoms are charging the entire recorded demand without deducting the demand component of open access power from the recorded demand. Hence clarified vide Clause 7 of the said

- proceedings stating that out of total recorded demand OA recorded demand has to be deducted to get the demand consumed from Discoms.
- d. It is stated that the respondents in violation of the said proceedings have been issuing bills without giving credit to the open access recorded demand.
  - e. It is stated that the respondents in their counter at para No. 5 illustrate at page 3 have shown the calculation contrary to the clarification given by this Commission even at perusal of the bills from April, 2015 to March, 2018 filed by the applicants from page no. 14 to page no. 49 of the material papers clearly establishes that the respondents have been billing without giving credit to the recorded demand availed by the applicants through open access.
  - f. It is stated that the fact the respondents have not given credit of demand in the bills is visible in the bills is in violations of the orders of this Commission.
6. The Commission has heard the counsel for the petitioner and the representative of the respondents along with its officer. The submissions made on the various dates of hearing are extracted below:

Record of proceedings dated 01.02.2021:

*“... .. The counsel for the petitioner stated that the respondents have to file the counter affidavit in the matter. The representative of the respondents sought time of four weeks for filing the counter affidavit. Since, the matter has come up for hearing for the first time, the request is acceded to and the matter is adjourned. The respondents shall file their counter affidavit on or before 22.02.2021 duly serving a copy of the same on the counsel for the petitioner and the counsel for the petitioner may file rejoinder, if any, within ten days thereof duly serving a copy of the same to the respondents.”*

Record of proceedings dated 15.03.2021:

*“... .. The counsel for the petitioner sought time to make submissions in the matter. The representative of the respondents has no objection. Accordingly, the matter is adjourned.”*

Record of proceedings dated 02.06.2021:

*“... .. The counsel for the petitioner sought further time to make submissions in the matter by stating that due to the pandemic situation he is not able to establish contact with the party and they are unable to come for discussion. The representative of the respondents has no objection. Accordingly, the matter is adjourned.”*

*Record of proceedings dated 15.07.2021:*

*“... .. The representative of the respondents stated that the petitioner has been seeking adjournments time and again without arguing the matter as it happened on three occasions. Due to non-prosecution, the matter is adjourned.’*

*Record of proceedings dated 15.09.2021:*

*“... .. The counsel for petitioner stated that the file has been misplaced in the office and as such short time may be given for arguing the matter. The representative of the respondents stated that the matter was adjourned earlier. Having considered the request of the counsel for petitioner, the matter is adjourned on the condition that the matter will be reserved for order in the absence of any submissions on the next date of hearing.”*

*Record of proceedings dated 28.10.2021:*

*“... .. The counsel for petitioner stated that he is ready to argue the matter. The representative of the respondents stated that this matter goes along with O.P.No.20 of 2016. As the matters of the petitioner in O.P.Nos.20 of 2016 and 27 of 2016 have been adjourned, this matter is also adjourned at the request of the parties.”*

*Record of proceedings dated 15.11.2021:*

*“... .. The counsel for petitioner stated that he is ready to argue the matter. The representative of the respondents stated that this matter goes along with O.P.No.20 of 2016. As the matters of the petitioner in O.P.Nos.20 of 2016 and 27 of 2016 have been adjourned, this matter is also adjourned.”*

*Record of proceedings dated 20.12.2021:*

*“... .. The counsel for petitioner stated that the matter is arising out of a different subject but of the same company as in O.P.No.20 of 2016. The Commission made it clear that the matter is being an old case, it is not inclined to grant any longer time and as such the matter is scheduled for hearing in one week. On the said date, the matter has to be argued in any case, as otherwise, the matter will be treated as heard and reserved for orders. The representative of the*

*licensee has stated that the petitioner has taken sufficient time. However, the counsel for petitioner persisted with the request for the adjournment, as such the matter is adjourned finally.”*

*Record of proceedings dated 27.12.2021:*

*“... .. The counsel for petitioner stated that the petitioner had filed the present petition in respect of refund of excess amount collected towards open access charges. The licensee is computing the demand charges contrary to the orders of the Commission and the explanation provided thereof. The counsel for petitioner sought to explain the drawl of energy from the DISCOM and drawl of energy from open access sources. The petitioner’s consumption is explained through the tables and bills filed by it with regard to recorded demand and contracted demand. He relied on the provisions of the regulation on open access, interim balancing and settlement code along with the provisions of the Act, 2003. It is his case that the open access drawl is within the contracted demand and as such, cannot be penalized stating that the consumer is exceeding the contracted demand.*

*While calculating the demand charges, the licensee has to segregate the demand availed from open access and the demand availed from the DISCOM and in case of exceeding the demand of the DISCOM then only, the petitioner is able to pay penal charges. On the contrary, the licensee is seeking to club the demand and treat the petitioner as a consumer exceeding the contracted demand and imposing penalty for excess RMD. The licensee is clubbing the open access draws by the consumer even before arriving at the RMD from the DISCOM, thereby the petitioner is mulcted with additional open access charges and penalty contrary to the orders of the Commission. He sought to demonstrate the erroneous calculations made by the DISCOM.*

*The representative of the licensee sought to defend the action stating that the regulation requires the open access draws should not exceed the CMD contracted with the licensee. In the case of the petitioner, upon considering the data relating to open access draws for each time block of 15-minutes, it appears that there are intermittent draws from open access and such drawl is in excess of the CMD with the DISCOM when considered for billing. As seen from the details filed before the Commission, it is stated that the consumer is charged to penalties only in case of the excess RMD, which has been drawn*

from the grid, which is not contrary to the orders of the Commission. It is also stated that for the period when there is no drawl from open access, benefit of CMD with DISCOM has been acceded to. However, in the absence of drawl of open access power also, the consumer has exceeded the CMD on certain days, thereby it has attracted penal charges over exceeding the CMD, as RMD is more than the contracted demand.

The representative of the respondent pointed out that the petitioner is not calculating the CMD and open access drawls in terms of the regulation and orders of the Commission. As such, the consumer is stating that it is being burdened with penalty and additional charges, which is not the case of the licensee. The representative of the consumer extensively relied on the details of charts filed by the DISCOM along with its response to the petition.

The Commission felt that there seems to be contradiction in understanding of both the parties in giving effect to the calculation. At this stage, the officer of the licensee, who is present in the hearing, sought to underline that the billing is done in accordance with the orders of the Commission, but the data is considered for whole month after ascertaining the block-wise consumption of both DISCOM drawl and open access drawl.

Considering that the counsel for petition is unable to figure out the case of the consumer, the Commission sought to know the CMD contracted and according to him, what was the actual drawl from the open access. The counsel for petitioner though stated certain figures, but sought time to understand and submit the same before the Commission on the next date of hearing, as it involved lot of technical jargon. In view of the submissions, the matter is adjourned. ... ..”

Record of proceedings dated 17.01.2022:

“... .. The counsel for petitioner stated that the issue is relating to calculation of maximum demand while billing for the power drawn from the DISCOM as well as under open access facility. The licensee is calculating the RMD for levying penalty for exceeding the CMD contrary to the proceedings issued by the Commission. The Commission had, in its proceedings, earlier provided that the excess RMD from the drawl of the DISCOM power shall be arrived at after deducting the total open access purchase from RMD availed by the consumer. In order to demonstrate the lapses on the part of the licensee, the counsel for

*petitioner waded through various figures and data regarding consumption of energy by the petitioner for different dates as also billing done by the licensee. The counsel for petitioner while recording his appreciation for explaining the methodology by the officers of the DISCOM sought to rely on the various parameters required to be considered for billing of the energy availed by the petitioner. He has explained in detail the various aspects of the calculations involved therein with the help of several bills and tables. It is his case that the open access draws have to be subtracted from the total RMD before arriving at the demand availed from the DISCOM and that thereby any excess demand would constitute the excess RMD, which will attract penalty.*

*The counsel for petitioner stated that the licensee is acting contrary to the directions of the Commission. Instead of deducting the open access draws from the total RMD, the DISCOM is deducting the CMD availed from the RMD, seeking to claim penal charges on the excess of energy availed over the CMD, as it is actually open access drawl, which is contrary to the directions of the Commission.*

*The representative of the respondents as also the officer of the licensee sought to controvert the submissions of the petitioner. It is their case that the excess RMD is arrived at after taking into consideration of the total time blocks available in a month and after deducting the open access draws from the RMD, the excess CMD is arrived at and for such excess CMD only, the bill is done and penalty is levied thereof. The officer of the licensee sought to present the detailed explanation with reference specific figures applicable to the RMD, CMD and open access draws with the help of several tables that are filed before the Commission. He also stated that the licensee is strictly adhering to the orders of the Commission in calculating the excess RMD and levy of penalty also.*

*The representative of the respondents has drawn reference to the contentions in the counter affidavit as also the proceedings referred to by the petitioner in support of its case to explain the modus of arriving at the excess RMD and thereby the penalty, if any. He stoutly refuted the contention of the petitioner that the licensee is not following the directions of the Commission.*

*The counsel for petitioner stated that the interpretation sought to be given by the licensee to the proceedings of the Commission is erroneous and the Commission may take a view on the same. At this stage, the Commission also*

*explained the intention of the proceedings that excess RMD is arrived at only after deducting the open access draws. However, it was made clear that the detailed examination will be done with reference to the contentions made by the parties. ... ..”*

7. The short point that arises for consideration is whether the respondents have adopted correct procedure in arriving at demand availed from DISCOM and consequently levy of penalty?

8. The basic facts in this case are that the petitioner is availing power supply from the 1<sup>st</sup> respondent and its officers mentioned at respondents No.2 to 4. It is availing CMD of 30999 kVA. It is also availing open access to draw power from third party generators. The petitioner is having grievance that the respondent/licensee is not giving effect to the provisions in Interim Balancing and Settlement Code, Regulation, 2006 as amended from time to time and proceedings dated 04.05.2013 on Open Access metering and demand settlement – FSA Billing on minimum energy.

9. The petitioner is alleging that the calculation effected by the DISCOM for the period 2015-2018 stating that it is not in accordance with the regulation and the proceedings referred above. It is his contention that the licensee should calculate the penalty only on the demand exceeded insofar as the licensee is concerned and not with regard to the entire demand. As extracted above, it is the case of the petitioner that the total power availed under open access at the exit point in a time block shall be deducted from the recorded demand and in the event of exceeding the demand of the licensee then such excess demand will attract penalty against the consumer. The petitioner laid emphasis on the example provided in the proceedings dated 04.05.2013 issued by the then Commission.

10. It is contention of the respondent that the CMD availed from the DISCOM is calculated only after deducting the open access draws. The licensee has strenuously contended that the regulation and the proceedings are strictly adhered to. To support its case, the detailed calculations have been filed before the Commission, specifically identifying the recorded demand, OA consumption and drawl from the DISCOM.

11. The licensee contended that the penalty is imposed only in the case of exceeding the demand of the DISCOM and it is no way concerned with excess draws from open access, however, the total demand should be within the contracted demand with the licensee. The petitioner has failed to show that the licensee is levying penalty for the demand availed under open access as the total demand is well within the contracted demand availed from the licensee.

12. As noticed above, the provision in the Regulation as well as proceedings issued by the Commission clearly demonstrate that whatever may be the demand availed under open access, however, the total demand should not exceed the contracted demand with the licensee and it includes the demand availed from the licensee. In this case, the petitioner has CMD of 30999 kVA and it has availed 19.99 MW as seen from the pleading of the parties. Adverting to the above quantities of power, the present petition about not giving effect to the Regulation No. 2 of 2006 and the proceedings dated 04.05.2013 for the period April 2015 to March 2018 is sought to be questioned and for appropriate penal action against the licensee under the provisions of Act 2003.

13. To assess the present aspect, it may be appropriate to state that an example is to be considered. If a consumer avails 1000 kVA CMD and also avails open access, the three scenarios arises as shown below:

CMD availed – 1000 kVA

Open access quantum – 300 kVA

RMD – 900 kVA

Then the demand availed from the DISCOM would be only 600 kVA. There is no penalty

In the other situation

CMD availed – 1000 kVA

Open access quantum – 300 kVA

RMD – 1100 kVA

Then the demand availed from the DISCOM would be only 800 kVA. Since the RMD is over and above the CMD, the consumer will attract penalty.

In the third situation

CMD availed – 1000 kVA

Open access quantum – 500 kVA

RMD – 1000 kVA

Then the demand availed from the DISCOM would be only 500 kVA. There is no case for penalty.

14. However, in the above example, as the quantum permitted for open access is only 300 kVA and the consumer has availed excess open access quantum of 200 kVA, obviously, the excess quantum is a drawl from the DISCOM and would attract penal charges as contended by DISCOM, even though the RMD has not exceeded beyond the CMD. Precisely, the parties have to settle this aspect in this matter.

15. While on the face of it the issue would look to be a billing issue, it also involves interpretation of the provisions of the Regulation as also the proceedings issued by the Commission. The proceedings are very emphatic on the mode of calculations for arriving at the demand availed from the DISCOM in the case of open access drawl and imposing of penalty, if any. The present case, the petitioner and the licensee are not on the same interpretation as is ordinarily understood in respect of calculation of DISCOM demand and open access demand as provided in the Regulation and the proceedings of the Commission.

16. Though this Commission had at first instance required the parties to satisfy themselves and understand the issue, the counsel for petitioner insisted on making submissions in the matter and thus the matter was heard thoroughly. The finding now that can be considered is the Regulation and the proceeding are clear as to method of calculating the excess demand availed from the licensee for levying penal charges. Collection of penal charges for excess open access drawl beyond the quantum permitted would not be there but when such drawl is less than the scheduled demand, it automatically explains the situation of drawl of excess demand from the licensee. In that event the petitioner is liable to pay the licensee for the excess demand availed from it. At the same time, contra is also to be kept it mind that the open access drawl is according to the quantum fixed and allowed but the total RMD is less than the contracted demand, in such a situation there is under drawl from the DISCOM. As such, keeping in mind the provision in the Regulation and the proceeding if the consumer avails power over and above the contracted demand but the open access demand had been quantified and availed to that extent only which has been permitted,

then the additional quantum of demand can be safely stated to be the deemed drawl from the licensee.

17. The Commission is constrained to observe that though calculations have been provided by the parties on either side, there is no concrete statement as to what is the excess amount of the demand either supplied by the licensee or drawn by the consumer with reference to open access quantum availed. But in any case the licensee has to calculate the demand availed from it by deducting the open access quantum availed by the consumer at the highest level in any time block and the same is to be considered for the rest of the time blocks in the month.

18. The Commission is of the opinion that the licensee is expected to give a true picture of the CMD availed, the open access quantum permitted for each time block depending on the supply made by the sources availed by the petitioner, the actual RMD recorded for the relevant period and the balance demand that is drawn from the DISCOM. If the RMD is in excess of the CMD, then the petitioner is liable to pay all the charges applicable where demand from open access is upto or at the level of MD permitted thereof.

19. The Commission is of the view that neither of the parties have given the true picture of the calculations in terms of the regulation and the proceedings. Therefore, the petition is disposed of by directing the parties to make out simple calculations, exchange the same and after receiving the objections on either side settle the matter under the aegis of CGRF. The matter is referred to CGRF which will finalise the above matter based on the calculations directed to be given and interpretation provided as above by the Commission. This exercise shall be completed within a period of 30 days. A report shall be filed by the concerned CGRF showing compliance of the order. It shall also give liberty to the consumer to file any further representation before the appellate authority.

20. Suffice it to state that the petition cannot be proceeded with under Section 142 of the Act, 2003, when the core issue that gives rise the present proceeding is itself not resolved. Therefore, the Commission does not wish to address the said prayer in terms of the observations and findings set hereinabove.

21. Office is directed to send copy of the pleadings in this matter to concerned CGRF for undertaking the exercise. With these observations, the petition is disposed of but in the circumstances without any costs.

**This order is corrected and signed on this the 17<sup>th</sup> day of October, 2022.**

Sd/-	Sd/-	Sd/-
(BANDARU KRISHNAIAH)	(M. D. MANOHAR RAJU)	(T. SRIRANGA RAO)
MEMBER	MEMBER	CHAIRMAN

**//CERTIFIED COPY//**

