



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

O.P.No.25 of 2022

Dated 25.07.2023

Present

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

Between:

M/s The Hyderabad Institute of Oncology Private Limited,
Regd. Office at # 8-2-293/82/L/276 A,
MLA Colony, Road No.2, Hyderabad 500 034.

... Petitioner

AND

1. Transmission Corporation of Telangana Limited,
Vidyut Soudha Building, Khairatabad Road,
Near Eenadu, Hyderabad 500 082.
2. Northern Power Distribution Company of Telangana Limited,
Corporate Office, H.No.2-5-31/2,
Vidyut Bhavan, Nakkalagutta, Hanamkonda,
Warangal 506 001.
3. Southern Power Distribution Company of Telangana Limited,
Corporate Office, H.No.6-1-50, Mint Compound,
Hyderabad 500 063.

... Respondents

The petition came up for hearing on 18.04.2022, 23.05.2022, 13.06.2022, 11.08.2022 and 01.09.2022. Sri K.S.S.V. Raghava Reddy, Advocate representing Sri D.Narendar Naik, counsel for petitioner is present on 18.04.2022, Sri Ambati Varun, Advocate representing Sri D.Narendar Naik, counsel for petitioner is present on 13.06.2022, Sri D.Narendar Naik, counsel for petitioner is present on 01.09.2022 and there is no representation for petitioner on 23.05.2022 and 11.08.2022. Sri Mohammad Bande Ali, Law Attaché for respondents is present on 18.04.2022, 23.05.2022, 13.06.2022, 11.08.2022 and 01.09.2022 and having stood over for consideration to this day, the Commission passed the following:

ORDER

M/s The Hyderabad Institute of Oncology Private Limited (petitioner) has filed a petition under Section 86(1)(f) of the Electricity Act, 2003 (Act, 2003) seeking payment of amount towards power supplied to the respondents from February, 2018 to November, 2021. The averments of the petition are extracted below:

- a. It is stated that the petition is filed for adjudication of dispute in relation to payment of arrears for electricity units generated and delivered by the petitioner from its 1 MW solar power plant to the respondent No.2, prior to the execution of long term open access agreement (LTOA) dated 26.11.2021 and for appropriate directions for related, incidental and consequential reliefs.
- b. It is stated that the petitioner has setup its power plant in the year 2018 for production of solar power energy with the intention of utilising the same as a captive power plant to cater to the power consumption requirements of the petitioner's hospital namely, 'Omega Hospitals' situated at Road No.12, MLA Colony, Banjara Hills, Hyderabad.
- c. It is stated that the power plant of the petitioner commenced operations in the month of January, 2018 and was commissioned and synchronised in accordance with the guidelines issued by the respondent Nos.1 and 2 on 24.01.2018.
- d. It is stated that subsequent to the commissioning of the petitioner's power plant, the petitioner has been regularly producing solar energy and supplying the produced energy to the respondents since the month of February, 2018 until November, 2021 and the entire energy at the petitioner's power plant has been supplied to the grid of the respondents.
- e. It is stated that despite establishing the power plant with an intention of utilising the same as a captive power plant to cater to the power requirements of its hospital, the respondents have delayed the execution of the open access agreement thereby preventing the petitioner to carry out captive consumption and executed the open access agreement very recently on 26.11. 2021. During the said period between February, 2018 and November, 2021, the petitioner has supplied the entire electricity produced at its power plant to the respondents

grid on a monthly basis without retaining/utilising any power for itself at its hospital.

- f. It is stated that the petitioner has cumulatively supplied 40,93,220 units of electricity which was originally intended to be utilised for captive consumption to the respondent's grid between February, 2018 to November, 2021 and such solar power generated and absorbed by the grid of the respondents has been regularly recorded by engineers of the respondents at the petitioner's power plant. The detailed division of the number of units supplied by the petitioner to the respondents on a monthly basis (but not accounted for want of open access) has been recorded.
- g. It is stated that the respondents have knowingly and wilfully fully utilised the electricity generated at the power plant of the petitioner from February 2018 to November 2021 and even though around 40,93,220 units of electricity were consumed by the respondents, the respondents have failed to make any payment against the units supplied by the petitioner since February 2018 nor have they made any adjustment between units generated at the power plant and consumed at the petitioner's hospital. Instead, the petitioner was compelled to pay tariff for all units consumed by their hospital since 2018 even though the power plant was commissioned for captive purposes.
- h. It is stated that despite commencing operations in the month of January, 2018, the petitioner has not received any adjustment or deduction of units from the monthly bills at Omega Hospitals matching the power generated and absorbed by the grid, while that was the natural expectation.
- i. It is stated that while the respondents have not made any payment or adjustment with respect to the electricity that has been produced and supplied by the petitioner against the electricity consumed at its hospital and have rather utilised their position of higher and unequal bargaining power to coerce and influence the petitioner herein to give an undertaking stating that the petitioner will not to make any claim for the inadvertent electricity produced by the petitioner.
- j. It is stated that while the undertaking given by the petitioner is with respect to claims relating to inadvertent power supplied by the petitioner that is power

supplied prior to the date of commissioning and synchronisation, the same cannot be interpreted to mean claims with respect to solar power supplied by the petitioner from the date of commissioning until the date of execution of open access agreement.

- k. It is stated that the undertaking is not valid in light of the fact that the respondents have resorted to illegal and unlawful means of coercing the petitioner to execute such an undertaking by utilising their superior position and by threatening not to execute the LTOA agreement dated 26.11.2021, unless the petitioner undertakes not to make any claims for the inadvertent power produced and supplied to the respondent by the petitioner.
- l. It is stated that the petitioner herein since the date of establishing its power plant has intended to utilise the power produced for its own usage at its hospital and the petitioner and respondents were always aware of the fact that the power plant was established as a captive power plant with the hospital of the petitioner being the end user of the electricity produced at the power plant.
- m. It is stated that the petitioner has specifically mentioned in its application for setting up its power plant that the same is being established for captive use and the respondent No.2 in its approval letter dated 25.01.2016 has also recorded that the petitioner herein is setting up its power plant for captive use.
- n. It is stated that even though approval for establishing the power plant for captive purposes was obtained in the year 2016 and the power plant was commissioned in the month of January, 2018, the respondents have extremely delayed the execution of the open access agreement until November, 2021 and during the said period between the commissioning of the power plant and execution of the agreement, the petitioner has not been able to utilise the power generated for self-consumption and has rather been supplying electricity generated at the power plant to the respondents on a monthly basis and the respondents have also acknowledged the electricity that has been supplied.
- o. It is stated that in addition to supplying electricity to the respondents, the petitioner has also been paying tariff charges as part of monthly bills generated at its hospital in a timely and diligent manner and has cumulatively paid electricity bills to the tune of more than 3.6 crore and the petitioner is as such

entitled to recover arrears for supplying solar energy generated at its power plant to the respondents and at the same time for paying tariff charges as part of monthly bills generated at its hospital despite establishing a captive power plant in 2018.

- p. It is stated that under clause 11(a) of the Telangana Solar Power Policy, 2015, the Government intended for a single window clearance system for all solar power projects including captive projects and intended to implement expeditious approvals through the single window clearance system. However, even though the Telangana Solar Power Policy explicitly warrants for speedy and expeditious approval of solar power projects such as the petitioner's power plant, the respondents have unreasonably delayed the execution of the open access agreement and caused irreparable financial harm upon the petitioner that has diligently paid electricity bills for the units consumed at its hospital and even produced and supplied solar energy to the grid of respondent No.2 without receiving any money for the same and neither has the electricity supplied been adjusted against the electricity consumed at the hospital of the petitioner.
- q. It is stated that it is thereby evident that Government of Telangana intended that the entire process for establishing and operating captive solar power plants shall be completed in a speedy manner and in the event of delay in the execution of open access agreement, the power producer shall be adequately compensated for the power already supplied during the pendency of the execution of the agreement. As a result, the petitioner herein is entitled to such relief as intended by the Telangana Government under the Solar Policy of 2015 and the petitioner cannot be made to suffer due to the inactions of the respondents in delaying the execution of the open access agreement by the respondents.
- r. It is further stated that the Telangana Solar Power Policy, 2015 exempts captive power projects from wheeling charges, transmission charges or cross subsidy charges and the petitioner herein is also not liable to bear any such expenditure as intended under the Telangana Solar Power Policy, 2015.
- s. It is thus stated that even though the petitioner established its captive power plant way back in 2018, it has not been able to utilise the electricity produced

in its power plant for consumption at its hospital as originally intended due to the unjustified delay in execution of the open access agreement by the respondents and neither has been compensated in any manner whatsoever for the power supplied to the respondents on a monthly basis.

t. It is stated that in such circumstances, the petitioner being left with no other option has approached the Commission to direct the respondents to pay arrears for 40,93,220 units of electricity supplied to the respondents at a tariff rate of Rs.9/- per unit which the petitioner was compelled to pay in the form of tariff charges raised on a monthly basis at its hospital, failing which the petitioner will be put to irreparable financial loss which cannot be compensated in any manner whatsoever.

2. Therefore, the petitioner has sought the following prayer in the petition for consideration.

a) Direct the respondent Nos.1 and 2 to make payment of Rs.3,68,38,980/- for 40,93,220 units supplied to the respondent Nos.1 and 2 from February, 2018 to November, 2018 at a price of Rs.9/- per unit or as may be determined by the Commission.

b) In the meantime, direct the respondents to adjust 40,93,220 units supplied to respondent Nos.1 and 2 on a monthly basis against the additional units of electricity to be consumed by the petitioner at its hospital.

3. The respondent No.1 has filed counter affidavit and the contents of it are extracted below:

a. It is stated that the averments and allegations of affidavit which are not specifically admitted or denied may be deemed to have denied by this respondent.

b. It is stated that the energy generated from the solar plant of the petitioner is injected into the network of the respondent No.2 in whose area the solar plant is located and thus utilized by only respondent No.2. The respondent No.1 is the nodal agency for only processing of Intra-State LTOA applications and thereby issuing the LTOA approvals and does not involve in the energy transactions of the open access users. Therefore, this respondent is no way connected to the relief sought by the petitioner.

c. It is stated that the petitioner had submitted a LTOA application for transmission of 1 MW under captive use on 24.04.2018.

i. *It is stated that as per the clause 13.1 of Regulation 2 of 2005 “All long-term and short-term open access users shall provide special energy meters capable of measuring active energy, reactive energy, average frequency and demand integration in each 15-minute time block, with a built-in calendar and clock and conforming to BIS/CBIP Technical Report/IEC standards at all entry and exit points”. Further as per clause 14.1 of this regulation “The licensees shall carry out load flow studies, system impact studies, etc. taking into account the existing capacity commitments and future projections of 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.”*

ii. *It is stated that hence, in order to confirm the above conditions, the LTOA application of the petitioner was forwarded to the licensees involved in the transaction that is respondent Nos.2&3 on 03.05.2018 for furnishing the technical feasibility and to confirm the availability of open access metering.*

iii. *It is further stated that, as per clause 10.6 of the Regulation 2 of 2005, LTOA sought can be allowed in case the system studies conducted in consultation with other agencies involved including other licensees, determine that LTOA sought can be allowed without further system-strengthening.*

Clause 10.6 of the Regulation 2 of 2005 reads thus:

“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.”

iv. *It is stated that the application of the petitioner for long term open access transaction is involving generator connected to the Distribution network of respondent No.2 and consumer connected to the distribution network of respondent No.3. Hence the feasibility report of respondent Nos.2&3 is essential for processing of open access application. In view of Clause 10.6 of the Regulation 2 of 2005, respondent No.1 being the nodal agency can process the LTOA application only after the receipt of technical feasibility from respondent Nos.2&3.*

d. It is stated that respondent No.2 has furnished the technical feasibility on 23.12.2020 and respondent No.3 has furnished the technical feasibility report on 18.08.2021 and the LTOA approval was issued to the petitioner on 28.09.2021.

- e. It is stated that, as per the approved LTOA agreement format, the open access user shall, as a payment security, deposit an amount equal to two months of all the applicable charges as specified under the agreement and also open a letter of credit (LoC) with the concerned DISCOM (exit point) for an amount equal to the cost of supply for electricity wheeled using the distribution system of the DISCOM equivalent to the number of days for which the agreement is entered into, subject to a maximum of ten days.
- f. It is stated that even after issuance of LTOA approval on 28.09.2021, the petitioner had submitted the security deposit towards wheeling charges and LoC to respondent No.3 on 03.11.2021 and the security deposit towards transmission and SLDC charges was submitted to respondent No.1 on 05.11.2021.
- g. It is stated that as the open access transaction of the petitioner involves the distribution network of both respondent Nos.2&3, a tripartite long term open access agreement was entered on 26.11.2021 between the petitioner, respondent No.1 and respondent No.3 as the exit point/consumer is connected to the distribution network of respondent No.3. Hence, it is submitted that there is no delay on part of respondent No.1 in concluding of open access agreement.
- h. It is stated that the respondent No.1 being the nodal agency for intra-state LTOA can process the LTOA application only in consultation with the other licensees involved and issue open access approval only after it is determined that the open access can be allowed. In the present case also the same procedure was followed and the respondent No.1 has issued the open access approval to the petitioner after the concerned DISCOMs i.e., the respondent Nos.2&3 had issued technical feasibility.
- i. It is stated that the licensee cannot adopt any policy issued by the State Government without the formulation of terms and conditions or regulations by the Appropriate Commission i.e., in State level it is the State 'ERC'. With regard to exemption of transmission charges for captive power plants under the Telangana Solar Power Policy-2015, it is to state that the following provision is made in the notes on transmission tariff in Appendix A (Schedule of approved

transmission tariff) in the TSERC approved transmission tariff order for the 4th control period,

“Exemption from payment of Transmission Charges and/or Transmission Losses in kind for the eligible Users of the Transmission Network shall be as per the Policy, if any, issued by the State Government, from time to time. The Licensee may take up the issue of making good of revenue loss due to such exemption with the State Government for proper relief.”

It is stated that the said provision is made in accordance with TSERC amendment Order dated 31.12.2016 in O.P.Nos.78&79 of 2015 for the Wheeling Tariff Order dated 27.03.2015 for 3rd Control Period wherein it is stated as follows.

“... .. 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. 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.”

It is stated that as per the above provision, respondent No.1 is levying transmission charges on the petitioner. Further, this respondent is periodically addressing the Government of Telangana for reimbursement of transmission charges collected from the intra-state solar generators so as to refund the same to the solar generators as per the provisions of Telangana State Solar Power Policy-2015. The amounts are yet to be received from the Government of Telangana. The transmission charges collected from the petitioner will be refunded after the receipt of the same from the Government of Telangana.

- j. It is stated that in the circumstances mentioned above, the action of the respondent No.1 is perfectly legal and valid and there is no prima facie case or balance of convenience in favour of the petitioner.
4. It is stated that hence, it is prayed the Commission to dismiss the petition.
5. The respondent Nos.2&3 have filed counter affidavit and the contents of the same are extracted below:
 - a. It is stated that M/s Hyderabad Institute of Oncology Private Limited has approached the office of the Respondent No.2 for setting up of 2.5 MW Captive Solar power plant at Beerol village, Thirumalayapalam Mandal, Khammam

District, Telangana. The respondent No.2 communicated the technical feasibility report vide letter dated: 25.01.2016 for setting up of 2.5 MW Solar Power plant by connectivity at 33 kV voltage level with interconnection point at 33/11 kV Beerol substation.

- b. It is stated that the petitioner was also informed through the same letter dated 25.01.2016 that *“The technical feasibility approval issued by TSNPDCL is subject to condition that the petitioner has to furnish Bank guarantee with validity period of two years and two months besides one month additional claim period from any nationalized bank for Rs.2,00,000/- per MW of proposed capacity within 45 days from the date of receipt of the letter or before processing of estimate, whichever is earlier, ensuing the commissioning of the said project within two years period”*. M/s Hyderabad Institute of Oncology Private Limited have completed 1 MW solar power plant against 2.5 MW and requested for reduction of captive solar power plant capacity from 2.5 MW to 1 MW vide letter dated 10.11.2017. The petitioner’s 1 MW captive solar power plant was synchronized on 24.01.2018.
- c. It is stated that at the time of synchronization of plant, feasibility study of the network was carried out by respondent No.2 for supply of power from the solar power plant of the petitioner to the nearest substation point. Since sufficient capacity existed in the transmission/distribution network for wheeling the power from the generating plant to the nearest substation point, technical feasibility was accorded to the plant of the petitioner. In pursuance thereof, the petitioner was able to synchronize its 1 MW, Solar Power Plant to the grid on 24.01.2018 at 33 kV side of 33/11 kV Beerolu substation.
- d. It is stated that as per clause 5 of Regulation 2 of 2005 (Terms and Conditions of Open Access to Intra-State Transmission and Distribution Networks), the nodal agency for processing the LTOA applications is State Transmission Utility (STU) and for processing STOA applications is State Load Dispatch Centre (SLDC). The relevant clause is reproduced below:

“5. *Nodal Agency:*

5.1 *For all long-term open access transactions, the Nodal Agency for receiving and processing applications shall be the State Transmission Utility (STU).”*

5.2 *For short-term open access transactions, the Nodal Agency for receiving and processing applications shall be the State Load Dispatch Centre (SLDC). The SLDC shall, however, allow short-term open access transactions only after consulting the concerned transmission and/or distribution licensee(s) whose network(s) would be used for such transactions”*

e. It is further stated that the petitioner applied for Intra-State STOA vide its application dated 24.04.2018 and the same was forwarded to 2nd and 3rd respondents by the Nodal Agency/CE (Comml & RAC)/TSTRANSCO vide letter dated 03.05.2018 to examine LTOA transaction for transmission of 1 MW power from the solar plant of the petitioner/M/s. Hyderabad Institute of Oncology Private Limited at Beerol village, Thirumalayapalam Mandal, Khammam District, Telangana of TSNPDCL to their captive user M/s Hyderabad Institute of Oncology Private Limited (M/s Omega Hospital, BJH-1416) located at Road No.14, Banjara hills, Hyderabad located within the jurisdiction of TSSPDCL for the period from 01.04.2018 to 31.03.2027 for a quantum of 1.0 MW (at entry point). The petitioner filed its LTOA application on 24.04.2018 i.e., three months after the date of synchronization of its solar power plant.

f. It is stated that clause (6) of the Regulation No.2 of 2005 which deals with the methodology/procedure for carrying feasibility analysis 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”

g. 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 LTOA facility which is time consuming process involving lot of manpower, was initiated by respondent Nos.2&3. For convenience the said process is narrated below:

“New Open Access Consumer willing to avail open access power under Inter/Intra State LTOA, feasibility has to be verified at various levels, viz., Verification of line/Feeder capacity, Verification of transmission and distribution Capacity, Verification of Sub Station feasibility, Verification of metering provisions as per CEA norms and TSERC 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.”

- h. It is stated that at present, the State has become rich in solar power generation. Huge number of solar power developers came forward and established their power plants and they have been injecting the Solar based power/energy into the grid which brought down the per unit cost of solar power. In view of huge supply of solar power the grid is overloaded. As such a committee is constituted with the officials of these respondents to carry out the study of feasibility system with reference to allowing open access to the new open access applicants in a colossal scenario under the fully loaded grid constraints and for taking necessary decision. The Committee approved a list of open access applicants including the petitioner who synchronized their generating plants and waiting for open access facility subject to the condition that the settlement of the injected energy into the grid shall be from the date of open access agreement only.
- i. It is stated that in view of the decision of the Committee, the respondent No.3 sought an undertaking from the petitioner on par with other solar developers who have synchronized their solar power plants and who were awaiting for open access facility. The petitioner furnished undertaking on Rs.100/- non-judicial stamp paper undertaking that it will not claim any charges for the inadvertent power up to the date of open access agreement. Therefore, the contention of the petitioner at paragraph 9 of the affidavit that the respondents coerced the petitioner utilizing their position and obtained undertaking is absolutely false and baseless. Accordingly, the petitioner has submitted an undertaking.
- j. It is stated that based on the technical feasibility study, the LTOA transaction was communicated as feasible and accordingly on 28.09.2021, nodal agency accorded approval for transmission of 1 MW power from M/s Hyderabad Institute of Oncology Private Limited, a Solar Power Plant located at Beerol village, Thirumalayapalam Mandal, Khammam District in TSNPDCL to M/s Hyderabad Institute of Oncology Private Limited (Omega Hospital), HTSC No.BJH-1416 at 33 kV level situated within the jurisdiction of TSSPDCL for captive purpose. On 26.11.2021 a tri partite LTOA agreement was entered by

Respondent Nos.1&3 with the petitioner/developer for the period from 27.11.2021 to 26.11.2023.

- k. It is stated that Interim Balancing and Settlement Code, Regulation, 2006 (hereafter referred as "Regulation 2006" adopted by TSERC vide Regulation No.1 of 2014 specifying Interim Balancing and Settlement Code, envisaging a day-ahead wheeling schedule of energy on the basis of 15-minute time blocks, and monthly settlement of deviations in scheduled energy injected/consumed by open access users who were allowed to avail open access facility subject to the availability of sufficient spare capacity in the transmission and distribution networks i.e., in respect of OA users having OA agreement with concerned DISCOM/TRANSCO.
- l. It is stated that as per Regulation 2006, banking facility was allowed only to the energy generated by wind and mini hydel projects. The unutilized banked energy has to be considered as inadvertent energy which shall not carry any charges to be paid by the DISCOM.
- m. It is stated that at the initial phase of generation of energy by means of solar, the State Commission vide Regulation No.1 of 2013 (First amendment to the Regulation 2006) included solar energy as one of the sources of renewable energy and extended the banking facility to solar generators as a promotional measure. The Commission vide Regulation No.2 of 2014 (Second amendment to the Regulation 2006) amended the banking year, terms and conditions for drawal of banked energy and purchase price for unutilized banked energy.
- n. It is stated that as per Regulation No.22 of 2006 and its subsequent amendments, interim balancing and settlement code for open access transactions shall apply to open access generators, scheduled consumers and open access users.
- o. It is further stated that Telangana State Government has issued Telangana Solar Policy 2015 and clause (e) of the policy relating 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.”

The aforementioned solar policy came into effect from 01.06.2015.

- p. It is stated that any policy formulated by the State Government has to be adopted by the DISCOM as per the terms and conditions or regulations formulated by the appropriate Commission that is in State level it is the State 'ERC'. No specific Orders/regulations are issued by the Commission relating to the banking facility. Hence, the TSPP-2015 policy cannot be adopted by respondents without any specific directions or orders from the Commission.
- q. It is stated that in line to the Government Orders and Section 108 of EA, 2003, the Commission has issued amendment order dated 31.12.2016 with respect to wheeling and cross subsidy surcharge, charges exemption to solar power developers and accordingly, all the developers who are eligible as per A.P. Solar Power Policy-2012 and Telangana Solar Power Policy 2015 to avail the benefit of incentives were exempted from wheeling charges and cross subsidy surcharge subject to the condition that the exempted charges amount is reimbursed by the Government of Telangana.
- r. It is stated that pursuant to the above amendment, even to give effect of the provisions and objectives of the solar policy, the same has to be directed by the Commission duly amending the existing Regulation in line with the Government policy directives and DISCOM shall act as per the framed regulations or directions issued by the Commission. The Commission has not issued any such directions for adoption of the policy directives issued by the Government.
- s. It is stated that later, the Commission issued Regulation No.1 of 2017 (Third Amendment to the Regulation 2006) issued by the Commission clearly lays down that the said regulation was intended to facilitate the accounting of energy for banking by a generating company (having captive consumption), who has no open access agreement with the licensees and having connection agreement only, by entering a separate agreement which was facilitated by amendment/addition to the said amendment regulation (i.e., Regulations No.2 of 2006, No.1 of 2013 and No.2 of 2014) Regulation No.1 of 2017.

- t. It is stated that further, the solar power generation is inherently infirm and varies from time to time according to seasonal and climatic variations. Because of such infirm and unscheduled power injection, the grid gets overloaded. To maintain grid discipline and to avoid damage to the transmission/distribution infrastructure, backing down of generators (from whom the DISCOMs are purchasing power having long term PPA's) has to be done. The DISCOMs are liable to pay fixed cost to the backed down generators without drawing power from such generators.
- u. It is stated that in case of shutting down of the generating stations like thermal plants due to injection of unscheduled power into the grid, such generating stations cannot be restored immediately as per the demand/requirement (variable & unpredictable). It is further stated that the DISCOMs shall have to purchase power at higher price from exchange to meet the deficit power which resulted due to demand variations and infirm solar generation.
- v. It is stated that the averments/allegations made by the petitioner that is not specifically dealt with may be deemed to have been denied by these respondents. The petitioner may be put to strict proof of the same.
6. Hence, it is prayed the Commission to dismiss the petition with costs.
7. The petitioner has filed rejoinder and the contents of the same are extracted below.
- a. It is stated that respondent Nos.2&3 has filed its counter to the present petition bearing O.P.No.25 of 2022 and has made pleadings which are contrary to record and hence all the averments made therein are categorically denied by the petitioner. The respondent Nos.2&3 may be put to strict proof of the same, except those which are specifically admitted hereinafter. Nothing shall be deemed to be admitted for non-traverse of pleadings.
- b. It is stated that it has been admitted by the respondents themselves that the petitioner herein has set up its captive power plant pursuant to the approval letter dated 25.01.2016 and the said plant was later successfully commissioned and synchronised in accordance with the technical guidelines on 24.01.2018.

- c. It is stated that the respondents have themselves agreed that since sufficient capacity existed after the conduction of a feasibility study by the respondents, the captive power plant was synchronised in accordance with the existing guidelines.
- d. It is stated that the permission for long term open access to utilise the power plant of the petitioner for captive purposes was granted by the respondents after a period of more than 3 years after the commissioning of the plant and while the process could be a bit tedious one, there is no valid explanation as to why there was a delay of more than 3 years in according the approval to the petitioner.
- e. It is stated that the respondents have themselves admitted that the petitioner had applied for long term open access on 24.04.2018 but the said agreement was entered into between the petitioner and respondents after a delay of more than three and a half years i.e., on 26.11.2021. The respondents were always aware since the year 2016 that is when an application was filed by the petitioner to seek approval for setting up the power plant that the power plant would be utilised for captive purposes, but still delayed the execution of the LTOA agreement and in the meantime received the energy being generated at the solar power plant of the petitioner without making any payments for the same.
- f. It is stated that the merely because the process of granting LTOA for captive utilisation of the solar power plant of the petitioner is a long one, the same cannot be used as an excuse to deliberately delay the grant of such approval and thereafter and further deny paying the petitioner for receiving and utilising the energy produced by the petitioner.
- g. It is stated that the respondents as after-thought have coerced the petitioner to give such an undertaking with the intention of wriggling out of their liability to pay the petitioner for the units of electricity that has already been consumed by the respondents. Even though the plant was commissioned in the month of January, 2018, the open access agreement was entered into much later in the year 2021 and the respondents have taken undue advantage of their superior position to delay the execution of the agreement and stall captive power consumption and have resorted to coercing the petitioner to give such an

undertaking with the sole intention of avoiding any liability with respect to the units of electricity already consumed by the respondents.

- h. It is stated that even if it is assumed without conceding that the State of Telangana was being overburdened with the supply of solar power, the respondents should have asked the petitioner to switch off their power plant, however, as a matter of fact, the respondents always had it within their control to switch off the plant of the petitioner, if necessary. Instead, the respondents have knowingly and wilfully utilised the electricity generated by the petitioner and have failed to pay the petitioner for the electricity consumed. In such circumstances, the unique contention being taken by the respondents for the first time that they have been overburdened with solar power cannot be accepted as they have never informed the petitioner previously regarding such a situation nor have they taken any active steps to manage the situation, but have rather continued to utilise the solar energy produced by the petitioner free of cost and have deliberately delayed the grant of open access approval to the petitioner.
- i. It is stated that the respondents have reiterated the provisions of relevant regulations concerning solar power generation within the State of Telangana and such provisions are not denied. However, it is stated that the present facts and circumstances are unique wherein after commissioning the said solar power plant of the petitioner no steps have been taken by the respondents to enter into an open access agreement while it was always in the knowledge of the respondents that the petitioner had setup the said plant with the sole intention of utilising the power generated for captive consumption at its hospital.
- j. It is submitted that the contention of the respondents that inadvertent power means power generated until the date of grant open access approval cannot be accepted because in such a case, the respondents may sanction LTOA at the fag end of solar policy period of 10 years and still say it is deemed inadvertent, leaving the producers such as the petitioner subjected to heavy losses. As per industry standards, the understanding of inadvertent power is that power that goes into the grid before the project is commissioned. This becomes more relevant in case of largescale solar projects which are above 50 to 100 MW - which cannot get commissioned in one go. In such cases it

typically takes over a period of several weeks for integrating with the grid segment by segment. In that process, some power gets injected in to grid prior to the date of issue of actual commissioning certificate that may happen after a month or two from the day of initial efforts.

- k. It is stated that such power which has been injected into the grid prior to commissioning is considered as inadvertent power and interpreting the same to mean anything else is denied as false and contrary to existing industry standards. Now any interpretation that till the date of LTOA agreement, the power generated by the petitioner is deemed inadvertent is totally wrong in our humble opinion and if we go by this misconception then the entire period of solar policy of ten years can be consumed and the respondents may resort to granting open access in the last minute and go onto say it is all deemed inadvertent power generated prior to issue of open access agreement. Such an interpretation projected by the respondent cannot be accepted and doing so would have serious consequences on the operation of solar power plants within the State.
- l. It is stated that the Telangana Solar Policy which has been issued by the Government of Telangana is binding on the respondents and as per the said policy it is explicitly stated that the energy injected into the grid from the date of synchronization to open access approval date shall be considered as deemed energy banked. However, the respondents are now taking a bald and baseless that the said solar policy is not binding on them as it has not been adopted by DISCOM.
- m. It is stated that it is a well settled principle of law that once a policy has been issued by the State Government it is binding on all departments of the State including the respondents herein and such averments put forth by the respondents stating that the same are not binding on them as they have not been adopted by DISCOM lacks any substance and ought not to be considered as a valid ground of defence. The respondents are trying to wriggle out of their liability by hook or crook and as a result are adopting such bald and baseless contentions which have no substance whatsoever.

- n. It is stated that the contents of the same are akin to the provisions of Regulation No.1 of 2017 (Third Amendment to the Regulation No.2 of 2006) issued by TSERC. However, it is pertinent to state herein that the petitioner had never entered into any connection agreement with the respondents until 26.11.2021 that is the date on which the LTOA agreement was executed by the respondents in favour of the petitioner. As a result, since the date of commissioning there was no agreement between the petitioner and the respondents, but the respondents have been enjoying the power supplied from the petitioner's plant without making any payment for the energy supplied.
- o. It is stated that as a result, the regulation relied upon by the respondents does not apply to the facts of the present case as there was no connection agreement between the petitioner and the respondents to begin with and as a matter of fact, if there was any requirement for entering into an agreement during such period, the respondents ought to have approached the petitioner to do the same but they have remained silent for more than 3 years and have willingly utilised the energy produced. Now, the respondents are coming with such new contentions for the first time with an intention of getting away without making payment to the petitioner for the electricity that has been consumed by the respondent.
- p. It is stated that the respondents are unlawfully differentiating between solar power generators and thermal power generators in violation of Article 14 of the Indian Constitution and without having any reasonable explanation to do the same. If the respondents were being supplied with excess power, it was always open for them to switch off the plant of the petitioner or instruct the petitioner to stop generation and supply of power, instead contrary to the same, the respondents have knowingly and wilfully enjoyed the power that was supplied by the petitioner and have conveniently stated that the grid is being supplied with excess power and as a result they are unable to make payment.
- q. It is stated that such contentions of the respondents cannot be accepted by any stretch of imagination as they have wrongly differentiated between power being produced by solar and thermal power generators and are relying upon bald and baseless contentions that the respondent's grid is being overburdened with

supply of excess power. Such averments put forth by the respondents are denied as false, bald and baseless.

- r. It is stated that the averments/allegations made by the respondents in their counter affidavit that are not specifically dealt with herein may be deemed to have been denied by the petitioner and the respondents are put to strict proof of the same.
- s. It is thus stated that the facts and circumstances warrant for the indulgence of the Commission to direct the respondents to pay arrears for 40,93,220 units of electricity supplied to the respondents at a tariff rate of Rs.9/- per unit which the petitioner was compelled to pay in the form of tariff charges raised on a monthly basis at its hospital, failing which the petitioner will be put to irreparable financial loss which cannot be compensated in any manner whatsoever.
8. It is stated that in view of the aforesaid, the Commission may be pleased to allow the petition bearing O.P.No.25/2022 with costs in favour of the petitioner.
9. The respondents No.2 and 3 have filed their reply to rejoinder. The contents of it are extracted below:
 - a. It is stated that M/s Hyderabad Institute of Oncology Private Limited approached this office for setting up of 2.5 MW captive solar power plant at Beerol Village, Thirumalayapalam Mandal, Khammam District, Telangana. TSNPDCL in its turn communicated the technical feasibility report vide letter dated: 25.01.2016 for setting up of 2.5 MW Solar power plant by connectivity at 33 kV voltage level with interconnection point at 33/11 kV Beerol substation. It is submitted that at the time of synchronization of plant, feasibility study of the network was carried out by TSNPDCL for supply of power from the Solar power plant of the petitioner to the nearest substation point, which doesn't mean that there exists feasibility for transmission of open access power from the generating point (located in TSNPDCL) to the consumer exit point M/s Hyderabad Institute of Oncology Private Limited (Located in the jurisdiction of TSSPDCL).
 - b. It is stated that it is true that the petitioner has applied for LTOA on 24.04.2018. It is stated that any open access application shall be processed duly verifying

the feasibility at various stages viz., line/feeder capacity, transmission and distribution capacity, substation feasibility, availability of metering provisions as per CEA norms and TSERC proceeding orders at the proposed consumer end to avail open access power, compatibility check of the installed ABT meters with the EBC software etc. 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. In the present case, the petitioner's solar plant is located in TSNPDCL and its captive consumer located in TSSPDCL which involves huge system studies and verification of design margins at two DISCOM levels.

- c. It is stated that the contention of the petitioner that the respondents have taken undue advantage of their superior position to delay the execution of the agreement and stalled captive consumption is false and baseless and hence untenable for the reason that the respondents have been distributing/supplying 24x7 quality power to all kind of services including agricultural services, Mission Bhagiratha Scheme, Lift Irrigation Scheme like Kaleeshwaram, Palamuru, Chevella – Pranahitha at large on “*No Loss No Profit Basis*”. The afore mentioned prestigious projects of the Government need uninterrupted power supply and the said project completely saturated the network of TSSPDCL.
- d. It is stated that in view of the facts mentioned supra the State has become rich in solar power generation. Number of solar power developers came forward and established their power plants and they have been injecting the solar based power/energy into the grid which brought down the per unit cost of solar power resulting in overloading of the grid. Due to injection of variable power from solar plants such as the plant of the petitioner, the schedules of the DISCOMs to supply 24x7 quality power to all the consumers is being deviated. As a result of which the DISCOM is being penalized by imposing deviation charges. Due to injection of power from solar generators such as the petitioner, long term generators are being backed down to maintain grid stability. This respondent company has been supplying 24x7 quality power to services of all category including agricultural services and aforementioned projects of Government without any interruption maintaining the grid stability at the cost of paying

deviation charges & fixed charges to the long term generators (coal based generators) who entered PPAs with the DISCOM which is causing additional burden and financial stress to this respondent company.

- e. It is stated that hence, a Committee is constituted with the officials of TSSPDCL, TSNPDCL and TSTRANSCO to carryout detailed feasibility system study for taking decision in respect of financial impact on this respondent company & maintenance of grid stability for the purpose of allowing open access. The Committee after carrying out detailed study approved the list of open access applicants including the petitioner's solar plant who have synchronized their generating plants and waiting for open access facility and directed to carry out the settlement of the energy injected into the grid from the date of open access agreement only. Accordingly, the petitioner furnished the undertaking to the effect that "*We will not claim any charges for the inadvertent power up to the date of open access agreement*".
- f. It is stated that after taking up the feasibility study and on receipt of undertaking from the developer vide letter dated: 05.02.2021 as per the Committee decision as stated above, the technical feasibility report of captive consumer was communicated to the Nodal agency/respondent No.1 by this respondent No.3 on 18.08.2021. Consequently, nodal agency/ respondent No.1 accorded approval for LTOA to the petitioner for transmission of 1 MW on 28.09.2021 for the period of two years. LTOA agreement was concluded accordingly on 26.11.2021. Hence, the contention of the petitioner that deliberately delayed the grant of LTOA approval becomes baseless and hence untenable.
- g. It is stated that this respondent company has been doing business of distribution of electricity on "No profit No loss basis". This respondent has allowed number of solar developers in Telangana to establish their solar plants only to support renewable energy and to provide non-discriminatory open access. This respondent has entered PPA's with long term conventional generators duly considering the future load growth. In fact due to the injection of this variable power from the petitioner's solar plant, this respondent is backing down the PPA's of conventional generators as stated at Para 6 at the cost of payment of fixed charges and deviation charges. Hence, the contention of the petitioner at Para 9 of the rejoinder that, this respondent has knowingly

and wilfully utilized the electricity generated by the petitioner becomes baseless and hence untenable. If really this respondent intended to do so, this respondent would not have bore the financial stress by paying fixed charges and deviation charges due to backing down of long term generators and this respondent would not have allowed the petitioner to enter LTOA agreement till date.

- h. It is stated that Telangana State Government has issued Telangana Solar Policy 2015 and clause (e) of the policy relating 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.”

The aforementioned solar policy came into effect from 01.06.2015.

- i. It is further stated that, as per Section 108 of Act 2003, the State Commission is required to be guided by the State Government in the matters of policy involving public interest. Consequently, TSSPDCL being a distribution licensee shall be directed by the Commission for implementation of any State Government Policy. Section 108 of the Act is extracted below:

“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.”

- j. It is stated that it thus becomes clear that as per Section 108 of the Act 2003, any policy formulated by the State Government has to be adopted by the DISCOM as per the terms and conditions or regulations formulated by the appropriate Commission i.e., in State level it is the State ‘ERC’. No specific orders/regulations are issued by the Commission relating to the banking facility. Hence, the TSPP-2015 policy cannot be adopted by TSSPDCL/respondents without any specific directions or orders from the Commission.

- k. It is stated that, the Commission has issued Regulation No.1 of 2017 that is Third Amendment to (Interim Balancing and Settlement Code for Open Access Transactions) Regulation No.2 of 2006 on 25.03.2017, wherein, the

Commission has amended the Appendix-3 of Principal Regulation and the relevant banking clauses of the said amendment are reproduced below:-

- “6. *For captive generator, the energy injected into the grid from date of synchronization shall be considered as deemed banked energy.*
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.*
8. *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 Clause 2 of Regulation No.1 of 2017 clearly postulates that the Third Amendment to (Interim Balancing and Settlement Code for Open Access Transactions) Regulation No.2 of 2006, (Regulation No.1 of 2017) shall apply to a generating company having captive consumption who has no open access agreement with the licensees but having connection agreement only which is extracted below:

2. *Extent of Application*
The amendment to the Interim Balancing & Settlement code set out in this regulation shall apply to a generating company (having captive consumption) who has no open access agreement with the licensee and having connection agreement only.

It is stated that since the petitioner neither have open access agreement nor have banking agreement as per Regulation No.1 of 2017, the petitioner is not entitled to make any claim for the energy injected prior to entering into open access agreement for the reason that Regulation No.1 of 2017 does not apply to the petitioner. Therefore, the contention of the petitioner that the respondents have been enjoying the power supplied from the petitioner's plant without making any payment for the energy supplied becomes baseless and hence untenable. In fact, this respondent has been facing lot of technical and financial stress due to injection of variable power by generators like the petitioner as detailed in Para 6 supra.

- I. It is stated that, the respondent Nos.2&3 have entered PPA's with long term conventional generators to cater the future load growth as these respondents have taken the task of supplying 24x7 quality power throughout Telangana State and has also allowed so many solar developers in Telangana to establish

their solar plants only to support renewable energy and to provide non-discriminatory open access. In such view of the matter the contention of the petitioner that it was always open for the respondents to switch off the plant of the petitioner holds no water.

- m. It is stated that the averments and allegations made in the petition that are not specifically dealt with herein may be deemed to have been denied by these respondents. The petitioner may be put to strict proof of the same.
10. It is therefore prayed the Commission to dismiss the petition with costs.
11. The Commission has heard the parties and the submissions on various dates are noticed below, which are extracted for ready reference.

Record of proceedings dated 18.04.2022:

“... .. The counsel for petitioner sought time for filing the rejoinder to the counter affidavit, however, the counter affidavit has not been received by him till date. A copy of the counter affidavit is made available by the respondents during the course of hearing. The counsel for petitioner sought two weeks time for filing rejoinder and hearing may be scheduled in the month of June, 2022. The Commission, while recording the receipt of counter affidavit, directs the petitioner to file the rejoinder within two weeks that is by 02.05.2022 duly serving a copy to the respondents. The hearing will be scheduled after two weeks thereafter. Accordingly, the matter is adjourned.”

Record of proceedings dated 23.05.2022:

“... .. There is no representation for petitioner. In view of the absence of the counsel for petitioner, an opportunity is given for his appearance and the matter is adjourned as the pleadings are complete.”

Record of proceedings dated 13.06.2022:

“... .. The advocate representing the counsel for petitioner sought adjournment, stating the pleadings are complete, but the counsel needs time to make submissions. He sought a time of two weeks for the purpose. The representative of the respondents has no objection for adjournment. Considering the request of the advocate for petitioner, the matter is adjourned.”

Record of proceedings dated 11.08.2022:

“... .. There is no representation on behalf of the petitioner. Office is directed to communicate the positing of the matter as there is no representation. The representative of the respondents has no objection for adjournment of the matter. The matter is adjourned.”

Record of proceedings dated 01.09.2022:

“... .. The counsel for petitioner stated that the petitioner has established a solar project for captive consumption. The project was synchronized to the grid and it was not permitted to use the energy for captive consumption by allowing open access. After connecting the project to the grid, the plant has been injecting energy into the grid whereas it had sought open access for captive

consumption. In the absence of not allowing captive consumption, the energy generated by the plant was injected into the grid and the licensee has to pay for the same. The licensee has utilized the energy generated by the petitioner and gained from it. The Commission has already heard similar matters in O.P.Nos.46, 47 and 61 of 2018. He is inclined to adopt the argument of the petitioners in those cases.

The representative of the respondents has endeavoured to submit that the petitioner itself gave consent that it would not claim for the energy injected into the grid prior to allowing to open access. However, it is submitted that the Commission has already seized the issue in similar matters, the same may be considered in this case also. Having heard the submissions of the parties, the matter is reserved for orders.”

12. The question that arises for consideration in the given facts and circumstances of the case is, whether the petitioner is entitled to any payment for the unutilized energy injected into the grid from its 1 MW captive solar plant from Feb'18 to Nov'21?

13. It is rightly pointed out by the petitioner that the issue pertains to the period prior to the execution of long-term open access agreement and is in relation to payment for units of electricity generated and delivered by the petitioner from its 1 MW solar power plant located in the jurisdiction of distribution licensee (Respondent No.2 or TSNPDCL) which is established for captive purpose for used by the captive consumer (prosumer) located in the jurisdiction of another distribution licensee (Respondent No.3 or TSSPDCL). However, the date of approval of LTOA is concerned to the petitioner's issue.

14. The relevant provisions in the Telangana Solar Power Policy-2015 at the cost of repetition are reproduced below:

“11. *Ease of Business – Enabling Provisions*

... ..

d) *Transmission and Distribution charges for wheeling of power*

The wheeling and transmission charges are exempted for captive use within the State. They will be charges as applicable for third party sale. The transmission and distribution losses however is fully applicable for both third party within the State as well as captive use within the State.

e) *Power scheduling and Energy Banking*

All SPPs shall be awarded must-run status that is injection from solar power projects shall be considered as deemed to be scheduled.

Banking of 100% of energy shall be permitted for all Captive and Open Access/Scheduled consumers during all 12 months of the year. Banking charges shall be adjusted in kind @ 2% of the energy delivered at the point of drawl.

The banking year shall be from April to March. Banked units cannot be

consumed/redeemed in the peak months (Feb to June) and in the peak hours (6 pm to 10 pm). The provisions on banking pertaining to drawal restrictions shall be reviewed based on the power supply position of the State.

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.

For Sale to DISCOMs, Energy injected into the grid from date of synchronization to Commercial Operation Date (COD) will be purchased by the DISCOMs at the first year tariff of the project, as per the provisions of the PPA with DISCOMs.”

15. Thus, the Telangana Solar Power Policy-2015, which came into effect from 01.06.2015, announced by the Government of Telangana provided several incentives and benefits to the solar projects set-up within the Telangana State. The policy envisaged concessions like tax exemption of the State Government, facilitation of infrastructure, exemption of wheeling and transmission charges for captive use within the State, banking of energy generated by the solar projects, etc.

16. The Hon'ble Supreme Court in the matter of M/s Energy Watchdog had observed as below:

“... .. Both the letter dated 31st July, 2013 and the revised tariff policy are statutory documents being issued under Section 3 of the Act and have the force of law. ...”

Thus, whatever is provided in the Government Policy of the Government of Telangana viz., “The Telangana Solar Power Policy-2015” would have to be given effect to as it is treated as law.

17. It is appropriate to state that the respondents being owned by the Government, they are bound to implement the decisions taken by the Government as it is in consonance with the provision of the Act, 2003. The respondents being the instrumentalities of the State are also bound to give effect to such policy as communicated to them by the Government.

18. Consequent upon the promulgation of the Telangana Solar Power Policy-2015, the Commission has given effect to the policy of the Government on 25.03.2017 through notification of Regulation No.1 of 2017 i.e., third amendment to the “*Interim*

Balancing and Settlement Code for Open Access Transactions, Regulation No.2 of 2006” to facilitate the accounting of energy for banking by a generating company, having captive consumption, who has no open access agreement with the licensees and having connection agreement only, a separate banking agreement has to enter by the distribution and retail supply licensee with such generating companies. The terms & conditions for banking facility, most relevant to the present case, which are specified in the above-mentioned third amendment regulation are reproduced below:

6. *For captive generator, the energy injected into the grid from date of synchronization shall be considered as deemed banked energy.*

....

8. *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.*

19. The undisputed facts of this case are –

- a) The petitioner attracted by the “*Telangana Solar Power Policy 2015*” has applied on 03.11.2015 to respondent No.2 for grant of connectivity for its proposed 2.5 MW captive solar power plant located within the jurisdiction of respondent No.2 (distribution licensee/TSNPDCL) located at Beerolu Village, Thirumalayapalam Mandal, Khammam District for its captive use at its hospital located within the jurisdiction of respondent No.3 (distribution licensee/ TSSPDCL) viz., Omega Hosipitals, Road No.12, MLA Colony, Banjara Hills, Hyderabad (HTSCNo.BJH-1416).
- b) The respondent No.2 has communicated the technical feasibility report to the petitioner vide letter dated 25.01.2016 for setting up of 2.5 MW solar power plant for captive use by connectivity at 33 kV voltage level with interconnection point at 33/11 kV Beerol substation.
- c) The petitioner has completed erection and installation of One (1) MW solar power plant against 2.5 MW and requested for reduction of solar captive power plant capacity from 2.5 MW to 1 MW vide letter dated 10.11.2017.
- d) Subsequently, the petitioner’s 1 MW captive solar power plant has been synchronized to the grid at 33 kV side of 33/11 kV Beerolu substation (in the presence of officials of respondent Nos.1&2 and the petitioner) and commissioned on 24.01.2018 as per the guidelines of respondent Nos.1&2. Since then, the plant has been injecting energy into the grid.
- e) Afterwards, the petitioner applied on 24.04.2018 to the nodal agency (respondent No.1 or TSTRANSCO or STU) for intrastate long-term open access (LTOA) in terms of Regulation No.2 of 2005.
- f) The LTOA application of the petitioner was forwarded by the nodal agency vide letter dated 03.05.2018 to respondent Nos.2 & 3 to examine the technical feasibility and to confirm the availability of open access metering.

- g) Upon receipt of technical feasibility reports from respondent No.2 & 3 on 23.12.2020 and 18.08.2021 respectively, the nodal agency accorded approval for LTOA to the petitioner on 28.09.2021.
- h) Consequently and upon providing the security deposit towards wheeling charges and Letter of Credit (LOC) to respondent No.3 on 03.11.2021 and the security deposit towards transmission and SLDC charges to respondent No.1 on 05.11.2021, a tripartite agreement was entered on 26.11.2021 for the period 27.11.2021 to 26.11.2023 among the petitioner and the respondent Nos.1 and 3 as the petitioner uses the transmission system of respondent No.1 and as the exit point/consumer is connected to the distribution network of respondent No.3.

20. In terms of clause 5 of Regulation No.2 of 2005 “*Terms and Conditions of Open Access*”, the Nodal Agency for receiving and processing applications for all long-term open access transactions is State Transmission Utility (STU) viz., TSTRANSCO or respondent No.1 Further, clauses 10.5, 10.6 and 10.7 of Regulation No.2 of 2005 stipulates the following with regard to 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, 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.*
- 10.7 *If, on the basis of the results of system studies, the Nodal Agency is of the opinion that the long-term open access sought cannot be allowed without further system-strengthening, the Nodal Agency shall notify the applicant of the same within 30 days of closure of a window.*

21. The clause 10.6 of Regulation No.2 of 2005 relating to grant of LTOA is clear and emphatic that the nodal agency shall within 30 days from the date of closure of window, intimate the applicant for open access that the same is being granted or otherwise for the reasons thereof. Admittedly, in this case the petitioner applied for long term open access on 24.04.2018, i.e., in the calendar month of April 2018 and the window closed on 30.04.2018. Respondent No.1 being the nodal agency, without any delay had undertaken correspondence with respondent Nos.2&3 on 03.05.2018 to ascertain the feasibility aspect. Whereas the Respondent No.2 furnished the technical feasibility on 23.12.2020 and respondent No.3 has furnished the technical

feasibility report on 18.08.2021, consequently the nodal agency accorded approval for LTOA to the petitioner on 28.09.2021. From the dates and events as recorded in the pleadings one stark issue that the Commission notices is that considerable delay had occurred in respect of the LTOA application made by the petitioner for its captive consumption.

22. The respondent No.1 contended that it is following the procedure for processing the LTOA application in consultation with the other licensees involved and issuing open access approval only after it is determined that the open access can be allowed. The contention of the respondent No.1 that its action is of no prima facie case or balance of convenience in favour of the petitioner is untenable. It is appropriate to state that the nodal agency and the concerned distribution licensees should act in a cohesive manner and ensure the compliance of the regulation duly adhering to the timelines specified in the regulation. Onus rests on the nodal agency to ensure compliance of the Act, 2003 and regulations thereof. The nodal agency has just sent the LTOA application of the petitioner to the respondent No.2&3 and was at laxity in getting the appropriate information within the timelines as specified in the regulation and has abdicated its responsibility to intimate/notify its decision either granting or refusing LTOA within the time period as specified in the regulation, in effect it did not comply with the regulation and thereby causing irreparable financial loss to the petitioner.

23. Whereas the respondent Nos.2&3 contention is that at the time of synchronisation of plant, feasibility study of the network was carried out by respondent No.2 for supply of power from the solar power plant of the petitioner to the nearest substation point and since sufficient capacity existed in the transmission/distribution network for wheeling the power from the generating plant to the nearest substation point, technical feasibility was accorded to the plant of the petitioner. But, the process of verification of feasibility for providing LTOA facility is time consuming process involving lot of manpower and narrated the methodology/procedure involved for carrying feasibility analysis in terms of clause 6 "*Criteria for allowing open access to transmission and/or distribution systems*" of Regulation No.2 of 2005. In this regard, the petitioner contended that the respondents were aware since the application was filed in the year 2016 that its power plant has intended to utilise the power produced

from it for its own usage at its hospital. Though the LTOA process is a bit tedious and long one the same cannot be used as an excuse to deliberately delay the grant of LTOA.

24. From the pleadings of both the parties, it is noticed that the technical feasibility report for allowing open access had been considered belatedly and they have not adhered to the timelines as provided in the open access regulation and it shows that the lapses are resting with the respondent Nos.2&3. They cannot now advert that they had to do lot of exercise/procedure for allowing such open access. The inactions on the part of respondent Nos.2&3 would lead to a conclusion that they were responsible for the delay in processing the LTOA application of the petitioner. Needless to say, that the ultimate delay was caused by respondent No.3 by giving its technical feasibility report on 18.08.2021.

25. As noted from the pleadings, the petitioner from the date of synchronisation has been generating power from a renewable source and such source cannot be disregarded. The contention which has been raised by the respondent Nos.2&3 that such energy injected into the grid has impacted their sales, revenues and would burden the end consumer subsequently in true-up exercise of the respondents is the result of acts done by the respondents themselves without examining the implications of allowing injection of energy from the petitioner's plant into the grid. They cannot now turn around and state that it is impacting their functioning. The respondents ought to have allowed open access in a timely manner according to the terms of regulation.

26. The contention of the respondent Nos.2&3 that the energy injected by the petitioner should be treated as inadvertent free power is invalid and it is against to the terms of Regulation No.2 of 2005. The provision under Section 70 of the Contract Act, 1872, postulates that a person doing or providing any goods or services not gratuitously is entitled to be compensated by the person, who is getting benefit out of it. Further, the Section 70 of the Contract Act envisages that one should perform to derive benefit of non-gratuitous act and the other party enjoys the same. In this case, the generator had generated power and the respondents utilized and also gained out of it. It is the respondent No.3, which has practically benefited in all respects since the captive consumption of the consumer has been served by respondent No.3, as such

the loss or compensation have to be borne by the respondent No.3 alone and none else.

27. Respondent Nos.2&3 have also contended that the Regulation No.1 of 2017 was intended to facilitate the accounting of energy for banking who has no open access agreement with the licensees and having connection agreement only. It is further contended that since the petitioner neither have open access agreement nor have banking agreement as per Regulation No.1 of 2017, the petitioner is not entitled to make any claim for the energy injected prior to entering into open access agreement for the reason that Regulation No.1 of 2017 does not apply to the petitioner. The Commission opines that any rules, regulations or guidelines where any action or restraint is provided for, have to be disseminated to the petitioner and the absence of the same, the petitioner cannot be faulted for non-compliance of the same.

28. The other contention of respondent Nos.2&3 for the delay in reporting technical feasibility to the petitioner's One (1) MW solar power plant is that the Telangana State has become rich in solar power generation, huge number of solar power developers came forward and established their power plants and in view of huge supply of solar power the grid is overloaded, as such a Committee is constituted with the officials of respondents to carryout the study of feasibility system with reference to allowing open access to the new open access applicants in a colossal scenario under the fully loaded grid constraints and for taking necessary decision and that Committee has approved a list of open access applicants including the petitioner who synchronized their generating plants and waiting for open access facility subject to condition that the settlement of the injected energy into the grid shall be from the date of open access agreement only. Accordingly, the respondent No.3 sought an undertaking vide letter dated 24.12.2020 from the petitioner on par with other solar developers. Upon furnishing an undertaking on Rs.100/- non-judicial stamp paper that it will not claim any charges for the inadvertent power up to the date of open access agreement, by the petitioner on 27.01.2021, and based on the technical feasibility study, the technical feasibility report as 'feasible' was sent to respondent No.1.

29. The petitioner contended that the respondents illegally and unlawfully coerced the petitioner to execute such an undertaking threatening not to execute LTOA unless it gives such an undertaking. The petitioner further emphasized that the undertaking

given is with respect to claims relating to inadvertent power supplied by the petitioner i.e., power supplied prior to the date of commissioning and synchronisation, the same cannot be interpreted to mean claims with respect to solar power supplied by from the date of commissioning till the date of execution of open access agreement.

30. From the document on record the Commission takes a note that the petitioner has given the undertaking to the effect that “*We will not claim any charges for the inadvertent power up to the date of Open access Agreement.*” On the other hand, even after giving undertaking dated 27.01.2021 by the petitioner on demand of the respondent No.3, the respondent No.3 took about seven months in releasing the technical feasibility report to the nodal agency. The Commission views that seeking an undertaking by the respondent No.3 from the petitioner before according LTOA approval was neither as per the provisions of the Telangana Solar Power Policy-2015 nor in terms of applicable regulation.

31. It is the case of the petitioner that in terms of the Telangana Solar Power Policy-2015 and also in terms of the Regulation No.1 of 2017, energy fed into the grid from the petitioner’s captive generating plant of One (1) MW installed capacity from the date of synchronisation should be treated as deemed banked energy. The Commission finds that the action of the respondents in not notifying the applicant/petitioner as regards providing of open access or otherwise for a period of more than 3 years is uncalled for and such act is neither appreciable nor to be supported. The nodal agency as well as the respondents 2&3 have to give effect to the provisions of Act, 2003 and the regulations made thereunder in so far as providing open access. Hence, as per the Government Policy and as per the terms of Regulation No.1 of 2017 the petitioner is entitled to the relief of banking. Accordingly the energy injected into the grid from date of synchronization can be considered for the purpose of banking and the loss sustained by the petitioner has to be made good by the respondent No.3 as it alone has benefited out of the energy so injected into the grid for the said period by the generator.

32. The cases viz., O.P.No.46, 47 and 61 of 2018 which were referred by the petitioner during arguments were related to 3rd party sales and whereas the present case is related to captive consumption, so in a strict sense the arguments submitted in those cases cannot be adopted.

33. It is relevant to state that the banked energy has to be consumed within the financial year only which has already lapsed. Therefore, as a specific instance and one time measure only, the energy injected into the grid by the petitioner (i.e., from its captive solar power plant of 1 MW installed capacity) for the period from date of synchronization to open access approval date is to be considered as deemed energy banked and the same should be treated as unutilized banked energy in term of Regulation No.1 of 2017 and further same shall be considered as deemed purchase by Respondent No.3 at the average pooled power purchase cost as determined by the Commission for the relevant year.

34. In view of the foregoing discussion, the petitioner is entitled to be compensated for the energy injected into the grid from the date of synchronization till the date of granting LTOA for captive consumption. Since, the petitioner had suffered sufficiently with regard to compensation for the units injected into the grid and there is a big-time lag due to various reasons, it may be appropriate to direct the respondent No.3 to pay for the same at the average pooled power purchase cost as determined by the Commission for the relevant year. However, the Respondent No.3 can set off the energy so paid for, against their renewable power purchase obligation.

35. This order shall be complied within eight weeks from the date of receipt of this order. Accordingly, the petition is disposed of, but in the circumstances, the parties shall bear their own costs.

This order is corrected and signed on this the 25th day of July, 2023.

Sd/-
(BANDARU KRISHNAIAH)
MEMBER

Sd/-
(M.D.MANO HAR RAJU)
MEMBER

Sd/-
(T.SRIRANGA RAO)
CHAIRMAN

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