



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

R. P. (SR) No. 101 of 2023

in

O. P. No. 47 of 2022

Dated 16.11.2023

Present

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

Between:

Southern Power Distribution Company of Telangana Limited,
Corporate Office, # 6-1-50, Mint Compound,
Hyderabad 500 063.

... Review Petitioner/Respondent No.1

AND

1. M/s J.K.Fenner (India) Limited,
Plot No.4 & 22, Phase IV, IDA, Patancheru,
Sangareddy District 502 319. ... Respondent No.1/Petitioner
2. Transmission Corporation of Telangana Limited,
Vidyut Soudha Building, Khairtabad Road,
Near Eenadu, Hyderabad 500 082 ... Respondent No.2/Respondent No.2

The review petition came up for hearing on 15.11.2023 in the presence of Sri. Mohammad Bande Ali, Law Attaché for review petitioner, having been heard and having stood over for consideration to this day, the Commission passed the following:

ORDER

M/s. Southern Power Distribution Company of Telangana Limited (TSSPDCL) (review petitioner/respondent No.1 in the original petition) has filed this review petition under Section 94 (1) (f) of the Electricity Act, 2003 (Act, 2003) read with clause 32 of Conduct of Business Regulation, 2015 seeking review of order dated 31.07.2023

passed in O. P. No. 47 of 2022 filed by M/s J.K.Fenner (India) Limited (respondent/ original petitioner). The contents of the review petition are extracted below:

a. It is stated that M/s. J. K. Fenner (India) Limited has filed petition vide O. P. No. 47 of 2022 before the Commission with a prayer as follows.

- i. To direct the respondents to grant open access approval to the petitioner solar power plant as per the application date 28.04.2018.*
- ii. To declare that the action of respondents in disallowing the petitioner for use the power generated from captive power plant by providing all facilities as required under the Act, 2003, Regulations etc., as illegal, contrary to the Telangana State Solar Policy, 2015 which came into effect from 01.06.2015 passed by the Commission.*
- iii. To direct the 1st respondent / petitioner herein to account for the units consumed by the petitioners Industry as per the meter reading for the service connection bearing No.SGR-034 by adjusting the units generated and fed into the grid from the petitioner's captive power plant.*
- iv. To pay for the additional units generated and pumped into the grid even after adjusting the consumption of above service connection that is SGR-034."*

b. It is stated that the Commission vide the order dated 31.07.2023 in O. P. No. 47 of 2022 has issued the following directions.

- "33. In view of the foregoing discussion, to meet the ends of justice there shall be a direction to the Nodal Agency as well as the distribution licensee that they should ensure that the petitioner is provided with LTOA immediately and take consequential steps in terms and conditions of Regulation No.1 of 2017 (third amendment to Regulation No.2 of 2006) and to make payments to the petitioner i.e., the petitioner is entitled to be compensated for the energy injected into the grid from the date of synchronization. Further, it may be appropriate to direct the respondent No.1 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.1 can set off the energy so paid for, against their renewable power purchase obligation for the relevant financial year.*
- 34. 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."*

c. It is stated that in the facts and circumstances of the case, the Commission should not have granted the above relief for the reason that the Regulation No.1 of 2017 is not applicable since the respondent No.1 neither had a banking agreement nor an open access agreement as per Regulation No.1 of 2017 for claiming for the energy injected prior to entering open access agreement. Therefore, order of the Commission dated 31.07.2023 is required to be reviewed on the following grounds:

- i. It is stated that the Commission ignored the fact that the Regulation No.1 of 2017 is not applicable since the respondent No. 1 neither had a banking agreement nor an open access agreement as per Regulation No. 1 of 2017 for claiming for the energy injected prior to entering open access agreement.
- ii. It is stated that the has ignored the fact that clause No.6 of Appendix-3 of Regulation No. 1 of 2017 was silent on the way in which the banked energy is to be settled. Whereas the Commission directed to treat such banked energy as unutilised energy for the purpose of settlement and directed to settle such energy at the rate of average pooled power purchase cost.
- iii. It is stated that the Commission ignored the fact that the developer submitted its open access application in full shape to the nodal agency on 24.05.2018 with a delay of 42 days from the date of synchronization (that is 13.04.2018) and the review petitioner herein was directed to compensate even for the units injected during the period of delay on the account of the respondent No. 1 in submission of the open access application to the nodal agency, respondent No. 2.
- iv. It is stated that the Commission ignored the fact that as per clause 10.6 of 'Terms and Conditions of Open Access Regulation, 2005' (Regulation No. 2 of 2005), (subsequently adopted by the Commission vide Regulation No. 1 of 2014) the nodal agency, respondent No.2 is provided with a timeline of 30 days from the closure of the window period to process any LTOA application. As per the said provision the application of the respondent No.1 was received in full shape on 24.05.2018 and the window closure for the said month was 31.05.2018. The respondent No. 2 as per Regulation No. 2 of 2005 is provided with a timeline of 30 days for processing the said open access application filed by the Respondent No. 1. Whereas the Commission in its order dated 31.07.2023 directed the review petitioner herein to compensate even for the units injected during this period.
- v. It is stated that the Commission should have exempted the petitioner from the liability for compensation of units injected into the grid by the respondent No.1 during the period from 13.04.2018 to 30.06.2018 as the

said period constitutes the delay on account of the act of respondent No. 1 in filing the application for open access and the open access processing time provided to the nodal agency for processing the open access application of the respondent No.1 as per the Regulation No.2 of 2005.

- vi. It is stated that the Commission should have appreciated the fact that there a huge delay from the side of the respondent No.1 in seeking the compensation towards the energy injected and the liability of the review petitioner shall be limited as per the relevant provisions of the Limitation Act, 1963.
- vii. It is stated that in the circumstances mentioned above, it becomes very much clear that there is mistake apparent on the case of record and hence the order dated 31.07.2023 has to be reviewed.

2. The review petitioner has sought the following reliefs in the review petition:

“To review the order of the Commission dated 31.07.2023 in O.P.No.47 of 2022 by modifying the period for settlement of the energy injected duly considering the limitation period and the period corresponding to the delay on account of the respondent No.1 in filing the LTOA application and the time period available to the nodal agency for processing the LTOA application filed by the petitioner.”

3. The Commission has heard the representative of the review petitioner to the review petition and considered the material available to it. The submissions on 15.11.2023 are noticed below, which are extracted for ready reference.

Record of proceedings dated 15.11.2023:

“... .. The representative of the review petitioner has stated that the Commission had passed orders contrary to the facts available on record. The original petitioner has no case as it has not entered into banking arrangement or open access agreement with the DISCOM. The Commission did not appreciate the applicability of Regulation No.1 of 2017. The Commission had not considered the timelines provided in the open access regulation and allowed compensation beyond the period for which the original petitioner is entitled to the same. Thereby, the order sought to be reviewed by this petition suffice from apparent on the face of the record. As such, the Commission may consider admitting the review petition and undertaking fresh hearing in the

matter, in the light of the facts narrated in the review petition. Having heard the submissions of the review petitioner, the matter is reserved for orders.”

4. The review petitioner sought to raise issues, which are primarily within the knowledge of the review petitioner as on the date of hearing original petition by the Commission on 01.09.2022. The contentions raised by the review petitioner do not constitute any material, which would be discovered after the disposal of the original proceedings. Inasmuch as, the various parameters considered by the Commission are based on the submissions of the parties and nothing exterior is considered by the Commission.

5. The Commission does not find any infirmity in the order passed by it nor it calls for interference by way of review. None of the ingredients of reviewing an order as set out in Order 47 of Civil Procedure Code, 1908 have been satisfied in this case. The review petitioner has not been able to show as to the following aspects for undertaking a review of the order.

- a. Where there is a typographical mistake that has crept in the order;
- b. When there is an arithmetical mistake that has crept in while effecting calculation or otherwise;
- c. When there is a mistake committed by Commission, which is apparent from the material facts available on record and / or in respect of application of law;
- d. When the Commission omitted to take into consideration certain material facts on record and 'law on the subject' and that if on taking into consideration those aspects, there is a possibility of Commission coming to a different conclusion contrary to the findings given;
- e. If the aggrieved party produced new material which he could not produce during the enquiry in spite of his best efforts and had that material or evidence been available, the Commission could have come to a different conclusion;

6. It is noteworthy to state that the principles of review are not satisfied in respect of the contentions raised by the review petitioner, None of the contentions would attract the ingredients of review so as to allow the Commission to revisit the order.

7. In view of the above, the Commission is not inclined to review the order dated 31.07.2023 in O. P. No. 47 of 2022 and accordingly the present review petition is dismissed as non-maintainable.

This order is corrected and signed on this 16th day of November, 2023.

Sd/-
(BANDARU KRISHNAIAH)
MEMBER

Sd/-
(M. D. MANOHAR RAJU)
MEMBER

Sd/-
(T. SRIRANGA RAO)
CHAIRMAN

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