



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

**O. P. No. 4 of 2021**

**Dated 15.04.2024**

**Present**

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

Between:

M/s Sundew Properties Limited,  
MindSpace, Cyberabad,  
Sy. No.64 (Part), APIIC Software Layout,  
Madhapur, Hyderabad 500 081.

... Petitioner

**AND**

- None-

... Respondent

The petition came up for hearing in SR stage [in O. P. (SR) No. 33 of 2016)] on 21.01.2021 and after numbering as O. P. No. 4 of 2021 on 28.01.2021, 18.03.2021, 09.06.2021, 15.07.2021, 25.08.2021, 23.09.2021, 28.10.2021, 20.12.2021, 27.12.2021, 17.01.2022, 18.04.2022, 23.05.2022, 11.08.2022, 14.11.2022, 09.01.2023, 04.04.2023, 10.04.2023 and 24.04.2023. Sri. Abhishek Manot, Advocate representing J. Sagar Associates counsel for the petitioner has appeared on 21.01.2021, 28.01.2021, 17.01.2022, Sri. Kunal Kual, Advocate representing J. Sagar Associates counsel for the petitioner has appeared on 09.06.2021, 15.07.2021, 25.08.2021, 28.10.2021, 23.05.2022, 24.04.2023, Sri. Samiskruth Rao, Advocate representing J. Sagar Associates counsel for the petitioner has appeared on 23.09.2021, 20.12.2021, 27.12.2021, 10.04.2023, Sri. T. G. Rajesh Kumar, Advocate representing the counsel for J. Sagar Associates counsel for the petitioner on 18.04.2022, 11.08.2022, 14.11.2022, 09.01.2023 and there is no representation for petitioner on 18.03.2021, 04.04.2023. The matter having been heard through video

conference on 21.01.2021, 28.01.2021, 18.03.2021, 09.06.2021, 15.07.2021, 25.08.2021, 23.09.2021, 28.10.2021 and physical hearing on 20.12.2021, 27.12.2021, 17.01.2022, 18.04.2022, 23.05.2022, 11.08.2022, 14.11.2022, 09.01.2023, 04.04.2023, 10.04.2023 and 24.04.2023 and having stood over for consideration to this day, the Commission passed the following:

### **ORDER**

M/s. Sundew Properties Limited (petitioner) has filed a petition approval of the tariff to be levied by it on its consumers as a deemed distribution licensee by approving the tariff determined for Southern power Distribution Company Limited (TSSPDCL) as the ceiling tariff. The averments in the petition are extracted below:

- a. The petitioner is a company incorporated under the provisions of the Companies Act, 1956 having its registered office at Sy.No.64(P), Mind Space, Cyberabad, Hitec City, Madhapur, Hyderabad, India. The petitioner is also developing Special Economic Zones (SEZs) in other States.
- b. The petitioner is established under Section 3 of the Special Economic Zones (SEZ) Act, 2005 (28 of 2005) and is setting up a sector specific SEZ for Information Technology and Information Technology enabled Services (IT&ITeS) at the above said address. The Government of India (GoI), on being satisfied that the requirements under sub-section (8) of Section 3 of the SEZ Act, 2005 and other related requirements have been fulfilled, granted Letter of Approval in the name of the petitioner vide Ministry of Commerce and Industry (MoC&I) Lr.No.F.2/25/2006-EPZ dated 30.06.2006 read with notification No.S.O.780(E) dated 18.05.2007 under sub-section (10) of Section 3 of the SEZ Act, 2005 for development, operation and maintenance of the IT&ITeS SEZ at the above said address.
- c. The petitioner stated that it has been notified as the developer of the SEZ by the MoC&I, Department of Commerce, GoI vide notification No.S.O.780(E) dated 18.05.2007 and S.O.1928(E) dated 06.08.2010 is developing the said IT&ITeS SEZ. The MoC&I, Department of Commerce, GOI vide its notification under clause (b) of sub-section (1) of Section 49 of the SEZ Act, 2005 dated 03.03.2010, specified that the developer of the SEZ is deemed to be a distribution licensee under the provisions of the Electricity Act, 2003 (Act, 2003).

The proviso inserted in clause (b) of Section 14 of the Act, 2003 was as under:

*“Provided that the Developer of a Special Economic Zone notified under sub-section (1) of Section 4 of the Special Economic Zones Act, 2005 shall be deemed to be a licensee for the purpose of this clause with effect from the date of notification of such Special Economic Zone.”*

In view of the above, the petitioner is a deemed distribution licensee in its SEZ area at the above said address.

- d. The petitioner stated that it filed a petition in O.P.No.10 of 2015 before the Commission on 10.03.2014 for taking on record the deemed distribution licensee status under Section 14 of the Act, 2003 in terms of the aforementioned notification dated 03.03.2010 issued by the MoC&I, Department of Commerce, GoI. The Commission after following the due regulatory process issued the order dated 15.02.2016 in O.P.No.10 of 2015 and took on record the petitioner’s status as a deemed distribution licensee with effect from 01.04.2016.
- e. The petitioner stated that having been recognized as a distribution licensee it is required to comply with the adopted regulations in Regulation No.1 of 2014 by the Commission that is Licensee’s duty for supply on request being Regulation No.4 of 2013 made by erstwhile Andhra Pradesh Electricity Regulatory Commission (erstwhile APERC) and undertake all the functions as envisaged in the Act, 2003 and in the various regulations framed by the Commission.
- f. The petitioner stated that it wishes to regularise the electricity distribution activities in its area of supply in line with the provisions of the Act, 2003 and rules and regulations made thereunder. Towards, this it needs to obtain the Commission’s approval for the tariff to be charged to consumers in its licence area. It is further clarified that petitioner is the second distribution licensee in the same area of supply and the first distribution licensee is the TSSPDCL.
- g. The petitioner stated that it has set up a sector specific SEZ meant exclusively for IT&ITeS, which is included under Industrial category by the Commission for tariff purposes. It does not have any other residential, agricultural, domestic, railways categories in SEZ area. Therefore, the petitioner, who is a distribution licensee can be said to be a niche class of licensee. In view of the same, it

desires to obtain the Commission's approval for allowing it to charge consumers in its licence area, the tariff that is applicable for the respective category of consumers in the TSSPDCL area of supply as modified from time to time, as the '*ceiling tariff*' in its area of supply and the same schedule of charges that is applicable in the TSSPDCL area of supply as modified from time to time.

- h. The petitioner stated that electricity distribution business is not the main activity, it is only one of the support services extended to its customers under its main activity. Presently, it is under various stages of development of manpower for its electricity distribution business. Five (5) numbers of buildings have been completely developed and occupied within the SEZ licence area. One (1) number of buildings is under development. Five (5) numbers of developed and occupied buildings are supplied separately (under HT-II: Other category) at 33 kV by TSSPDCL at present. The contracted maximum demand (CMD) of petitioner is 16650 kVA. The total units consumed by the consumers in SEZ Area for the month of June, 2016 is 4.3 MU with monthly amount paid to TSSPDCL at Rs.314.5 Lakhs.
- i. The petitioner stated that it is a sector specific SEZ meant exclusively for IT&ITeS has only two consumer categories in its area of supply that is LT Industrial and HT Industrial. The category-wise number of consumers and their power consumption for the past one year is as shown below:

Sr. No.	Consumer Category	No. of consumers	Sales (MU)	Amount paid to TSSPDCL (Rs. Lakh)
1	LT (Industrial + Commercial)	58	43.17	3145.19
2	HT (Industrial + Commercial)	-	-	
Total		58	43.17	

‘\*\*’ July-15 to June 2016

‘\*\*\*’ The commercial consumers are ATM's and food outlets.

As one more buildings in SEZ will be ready and occupied within the next 2-3 years, the consumer mix given above will undergo changes. The five operational buildings are multi-tenant buildings and the consumers are receiving supply at LT. It has been recovering electricity cost from the consumers within the SEZ area at the same rate that is being charged by TSSPDCL to SPL.

- j. The petitioner stated on approval of tariff as follows:

- i) *The second proviso to Section 62(1) of the Act, 2003 states as under:  
“Provided that in case of distribution of electricity in the same area by two or more distribution licensees, the Appropriate Commission may, for promoting competition among distribution licensees, fix only maximum ceiling of tariff for retail sale of electricity”*
- ii) *In this context, the minutes of the 18<sup>th</sup> meeting of the Forum of Regulators (FOR) states as under:  
“Agenda Item No.3: Issues regarding Determination of Tariff for SEZ in its Capacity as Deemed Distribution Licensee  
After considering the agenda note, the spirit of the proposal was appreciated by the FOR and there was a consensus that individual SERCs may consider taking action accordingly in case of SEZs. However, the proposed action of fixing only ceiling of tariff would not absolve the second licensees from fulfilling other obligations as required under the Electricity Act.” (emphasis added)*
- iii) *In this context, the minutes of the 22<sup>nd</sup> meeting of the Forum of Regulators (FOR) states as under:  
“... .. if SEZs are set up in area where the existing distribution licensees have not been able to build any network, their deemed distribution licensees status will help build the desired network. There was a special dispensation of tariff for such SEZ area. One of the options could be to allow the industrial tariff of the existing licensees as a ceiling tariff for such SEZ area. This was earlier discussed in the FOR...” (emphasis added)*
- iv) *The Maharashtra Electricity Regulatory Commission (MERC), in its order dated 12.06.2014 in Case No.15 of 2014 in the matter of Serene Properties Private Limited (sister concern of the petitioner) has ruled as under:  
“... .. The petitioner’s licence area of supply overlaps with the licence area of MSEDCL. The petitioner is the second licensee in its licence area with MSEDCL being the first licensee. The petitioner’s licence area, thus falls under the proviso to Section 62(1) of the EA 2003, which provides that in case of distribution of electricity in the same area by two or more distribution licensees, the Appropriate Commission may, for promoting competition among distribution licensees, fix only maximum ceiling of Tariff for retail sale of electricity.  
In view of above, in the interim, the Commission allows the petitioner to charge consumers in its licence area, the Tariff that is applicable for the respective category of consumers in the MSEDCL area of supply, as modified from time to time, as the ‘Ceiling Tariff’ in its area of supply, and approves the appropriate Tariff Schedule i.e. the Industrial Tariff for Industrial consumers and Commercial Tariff for the facilities established for Commercial Purpose within the licence area of the petitioner.” (emphasis added)*
- v) *The Gujarat Electricity Regulatory Commission (GERC), in its order*

dated 20.10.2012 in Case No.1240 of 2012 in the matter of Synefra Engineering and Construction Limited has ruled as under:

*“As the area of said SEZ has two licensees, viz. MGVCL and Synefra and in the light of provisions of Section 62 of the Electricity Act, 2003, the Commission decides to fix only the maximum ceiling of tariff for retail sale of electricity in order to promote competition among distribution licensees. Consequently, the Commission decides that the MGVCL tariff approved in the Commission’s Tariff Order 02.06.2012, will be the maximum ceiling for Synefra.” (emphasis added)*

vi) The GERC vide its order dated 08.05.2013 in Case No.1271 of 2012 in the matter of Aspen Infrastructures Limited (Formerly Synefra Engineering and Construction Limited) has ruled as under:

*“Accordingly, the Commission considers the request of Aspen and decides that the MGVCL’s tariff approved in the Commission’s Tariff order dated 16.04.2013 will be the maximum ceiling for retail supply in SEZ area of Aspen in accordance with the tariff schedule annexed to this order.” (emphasis added)*

vii) The GERC vide its order dated 29.09.2012 in Case No.1220 of 2012 in the matter of Jubilant Infrastructure Limited has ruled as under:

*“As the licensed area of JIL has two licensees, viz. DGVCL and JIL, in the light of provisions of Section 62 of the Electricity Act, 2003 and in order to promote competition among distribution licensees, the Commission decides to fix only maximum ceiling of tariff for retail sale of electricity. Consequently, the Commission decides that the DGVCL tariff approved in the Commission’s Tariff Order dated 02.06.2012 will be the maximum ceiling for JIL.” (Emphasis added)*

viii) The GERC vide its order dated 12.12.2011 in Case No.1117 of 2011 in the matter of the Torrent Energy Limited has ruled as under:

*“The license area of TEL has two licensees, viz. DGVCL and TEL in the light of provisions of Section 62 of the Electricity Act, 2003 and in order to promote competition among distribution licensees, the Commission decides to fix only maximum ceiling of tariff for retail sale of electricity. Consequently, the Commission decides that the DGVCL tariff approved in the Commission’s Tariff order dated 06.09.2011, will be the maximum ceiling for TEL. For this purpose, the approved tariff schedule is enclosed with this order.” (Emphasis added)*

k. The petitioner stated that its licence area overlaps with the licence area of TSSPDCL and thus, falls under the situation envisaged under the above proviso to Section 62(1) of the Act, 2003. Further, the consumers have opted to set up their units within the SEZ area under the presumption that the electricity tariff will be the same or lower than that applicable within TSSPDCL’s area of supply and the consumers would not be adversely affected in terms of electricity tariff on account of opting to set up their units within the SEZ.

- I. Therefore, the petitioner requests the Commission to allow it to charge consumers in the SEZ area the tariff that is applicable for the respective category of consumers in the TSSPDCL area of supply as modified by the Commission from time to time as the ceiling tariff. Accordingly, the Commission may be pleased to approve the LT and HT industrial and LT and HT commercial tariff as applicable in the TSSPDCL Tariff Schedule approved in the Commission's tariff order dated 23.06.2016 and revised by the Commission from time to time as the ceiling tariff applicable in SPL's area of supply.

**Tariff Schedule**

<b>Category</b>	<b>Fixed/Demand Charges (INR/month)</b>		<b>Energy Charge (INR/kWh/kVAh)</b>
	<b>Unit</b>	<b>Rate</b>	
<b>LT category</b>			
<b>LT-II: non-domestic/commercial</b>			
<b>LT-II(A): Up to 50 Units/Month</b>			
0-50	kW	50	6.00
<b>LT-II(B): Above 50 Units/Month</b>			
0-100	kW	60	7.50
101-300	kW	60	8.90
301-500	kW	60	9.40
Above 500	kW	60	10.00
<b>LT-III: Industry</b>			
Industry (general)	kW	60	6.70
<b>HT category</b>			
<b>HT-I(A): Industry General</b>			
11 kV	kVA	390	6.65
33 kV	kVA	390	6.15
132 kV and above	kVA	390	5.65
<b>HT-I(A): Optional category with load up to 150 kVA</b>			
11 kV	kVA	80	7.00
<b>HT-I(A): time of day tariffs (6 PM to 10 PM)</b>			
11 kV			7.65
33 kV			7.15
132 kV and above			6.65
<b>HT-I(A): time of day tariffs (6 AM to 10 AM)</b>			
11 kV			7.65
33 kV			7.15
132 kV and above			6.65
<b>HT-I(A): time of day tariffs (10 PM to 6 AM)</b>			
11 kV			5.65
33 kV			5.15
132 kV and above			4.65
<b>HT-II Others</b>			
11 kV	kVA	390	7.80

Category	Fixed/Demand Charges (INR/month)		Energy Charge (INR/kWh/kVAh)
	Unit	Rate	
33 kV	kVA	390	7.00
132 kV and above	kVA	390	6.80
<b>HT-II: time of day tariffs (6 PM to 10PM)</b>			
11 kV			8.80
33 kV			8.00
132 kV and above			7.80
<b>HT-II: time of day tariffs (6 AM to 10 AM)</b>			
11 kV			8.80
33 kV			8.00
132 kV and above			7.80
<b>HT-II: time of day tariffs (10 PM to 6 AM)</b>			
11 kV			6.80
33 kV			6.00
132 kV and above			5.80

**Terms and conditions**

- i. Fuel Surcharge Adjustment (FSA) is applicable in accordance with the provisions of the Electricity Act, 2003.
- ii. The tariffs are exclusive of the Electricity Duty payable as per the provisions of AP Electricity Duty Act as adopted by Government of Telangana.
- iii. Voltage surcharge  
The voltage surcharge for FY 2016-17 has been withdrawn.
- iv. Additional charges for exceeding contracted demand  
In case, in any month the recorded maximum demand (RMD) of the consumer exceeds his contracted demand with the licensee, the consumer shall pay the following charges on excess demand recorded and on the entire energy consumed.

RMD over CMD	Demand charges on excess demand	Energy charges on full energy
100 to 120%	2 times of normal charge	Normal
Above 120% and up to 200%	2 times of normal charge	1.15 times of normal charge
More than 200%	2 times of normal charge	1.20 times of normal charge

- v. Minimum charges

Category No.	Name of category	Rates for the year 2016-17
<b>LT Categories</b>		
LT-II(A) & II(B)	Non domestic	single phase INR. 65/month
	commercial	three phase INR. 200/month
<b>HT Categories</b>		
Billing demand	Billing demand shall be maximum demand recorded during the month or	

		80% of contracted demand whichever is higher except HT-VI (that is township and residential colonies, for this category the billing demand is actual demand recorded)
<b>Minimum energy charges</b>		
HT-I(A)	Industry – General	50 kVAh/kVA of billing demand per month
HT-II	Others	25 kVAh/kVA of billing demand per month

vi. **Customer charges**

<b>Consumer category</b>	<b>INR./month</b>
<b>LT-II: non-domestic/commercial (units/month)</b>	
0-50	INR. 45
51-100	INR. 55
101-300	INR. 65
301-500	INR. 65
Above 500 units	INR. 65
LT-III: Industry up to 20 HP	INR. 75
LT-III: Industry 21-50 HP	INR. 300
LT-III: Industry 51-100 HP	INR. 1125
HT Consumer at 11 kV	INR. 1,685
HT Consumers at 33 kV	INR. 1,685
HT Consumers at 132 kV and above	INR. 3,370

vi. **Delayed Payment Surcharge (DPS)**

**LT Category**

- a) In case of LT-II(A), if payment is made after due date, the consumers are liable to pay, DPS per month on the bill amount at the rates given in table below.

LT-II (A)	INR. 25 per month
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- b) In case of LT-II(B) & LT-III, the licensee shall levy DPS on the bill amount at the rate of 5 paisa/INR.100/day calculated from the due date mentioned on the bill, up to the date of payment or INR. 150 whichever is higher. In case of grant of instalments, the Licensees shall levy interest at the rate of 18% per annum on the outstanding amounts compounded annually and the two (DPS and Interest) shall not be levied at the same time.

**HT Category**

- (a) The licensees shall charge the DPS per month on the bill amount at the rate of 5 paisa/INR. 100/day or INR. 550 whichever is higher. In case of grant of installments, the Licensee shall levy interest at the rate of 18% per annum on the outstanding amounts, compounded annually and the two charges shall not be levied at the same time.

vi. **Reconnection charges**

<b>For all other Low Tension services</b>	
Overhead LT services	INR. 75
U.G. services	INR. 200
<b>High Tension service</b>	
11 kV	INR. 1,000
33 kV	INR. 2,000
132 kV and above	INR. 3,000

vii. **Testing charges**

<b>i) Installation</b>	<b>LT</b>	<b>HT</b>
The first test and inspection of a new installation or of an extension to an existing installation.	Nil	Nil
Charges payable by the consumer in advance for each subsequent test and/or inspection if found necessary owing to any fault in the installation or to non-compliance of the conditions of supply.	INR. 20	INR. 200
<b>ii) Meter</b>		
A.C. Single Phase Energy meter	INR. 100	
A.C. Three Phase Energy meter	INR. 300	
LT Tri Vector meter	INR. 2,000	
11 kV		INR. 3,000
33 kV		INR. 3,000
132 kV and above		INR. 3,000
Transformer oil		
Each sample of oil	INR. 150 per sample	

viii. **Supervision/inspection and checking charges**

For all other LT Categories	INR. 100
For all HT Categories	INR. 600

ix. **Low power factor charges**

For all consumer categories where kVAh billing is done, no low power factor surcharge shall be levied.

x. **Capacitor surcharge**

LT consumers having connected loads mentioned in table below shall pay capacitor surcharge (as per rules in vogue) at the rate of 25% of the billed amount, if capacitors are found defunct.

<b>Category</b>	<b>Connected load</b>
LT-II	<10 kW
LT-III	<20 HP

xi. **Fixed charges – Seasonal industries**

Not applicable for SPL's area of supply.

xii. **Temporary Supply for LT and HT consumers**

Temporary supply can be given on the request of a consumer initially for a period up to 6 months as per the tariff applicable under the temporary supply category. After the expiry of 12 months, the consumer is at liberty to seek further extension provided, the consumer pays twice the regular tariff or the consumer has the choice of availing of regular supply.

m. The petitioner stated that the Commission is empowered to approve the ceiling tariff as prayed for by the petitioner in accordance with Section 62(1)(d) of the Act, 2003 as reproduced above.

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

- “i) Allow Sundew Properties Limited to charge consumers in its licence area the same tariff that is applicable for the respective category of consumers in the TSSPDCL area of supply as modified from time to time as the ceiling tariff.
- ii) Approve the tariff schedule proposed by Sundew Properties Limited.
- iii) Condone any inadvertent omissions/errors/shortcomings and permit the petitioner to add/change/modify/alter this filing and make further submissions as may be required at a further date.”

3. The petitioner has filed additional affidavit and the contents of the same are extracted below:

a. The petitioner stated that on 21.01.2021, the present petition was listed for admission. During the hearing, the Commission requested the petitioner to explain the status of the civil appeal filed by it before the Hon'ble Supreme Court and its impact on the present proceedings. After hearing the submissions on behalf of the petitioner, this Commission directed the petitioner to file an affidavit detailing the relevant facts qua pending civil appeal before the Hon'ble Supreme Court and its nexus with the present petition, if any. In terms thereof, the petitioner is filing the present additional affidavit. In this regard, the relevant facts are as under:-

- (i) *On 30.12.2005, M/s K.Raheja IT Park (Hyderabad) Private Limited (KRIT) made a proposal to the MoC&I, for setting up a sector specific SEZ for IT/ITES, at Madhapur, Ranga Reddy District, Hyderabad in the erstwhile state of Andhra Pradesh.*
- (ii) *By its various communications dated 30.06.2006, 16.10.2006, 18.05.2007 and 06.08.2010, MoC&I granted approval to the petitioner, earlier known as KRIT to develop, operate and maintain its SEZ in terms of the provisions of the SEZ Act.*
- (iii) *On 03.03.2010, MoC&I in exercise of its powers conferred u/s 49(1)(b) of the SEZ Act, notified that a developer of a SEZ is deemed to be a distribution licensee under the provisions of the Act, 2003. By virtue of the said notification, MoC&I amended Section 14(b) of the Act, 2003 by adding a proviso therein, which recognises a developer of a SEZ as a*

*deemed distribution licensee.*

- (iv) *On 10.03.2014, the petitioner filed an application, being O.P.No.42 of 2014 before the erstwhile Andhra Commission, seeking identification as a deemed distribution licensee.*
- (v) *On 02.06.2014, the erstwhile State of Andhra Pradesh was bifurcated into States of Andhra Pradesh and Telangana, in terms of Andhra Pradesh Reorganization Act, 2014 (Central Act, 6 of 2014).*
- (vi) *On 03.11.2014, the Commission was constituted. Consequently, O.P.No.42 of 2014, that is the petition seeking identification as a deemed distribution licensee) was transferred from the Andhra Commission to the Commission and was re-numbered as O.P.No.10 of 2015.*
- (vii) *On 15.02.2016, this Commission passed an order dated 15.02.2016 recognizing and according deemed distribution licensee status to the petitioner with effect from 01.04.2016. While doing so, the Commission directed the petitioner to obtain from its promoters, a sum of Rs.26.90 Crores as equity share capital contribution for its power distribution business, by way of account payee cheques. The said compliance had to be completed by 31.03.2016. The relevant part of the order is reproduced hereinbelow for ease of reference:-*

*“26. We identify and accord the Deemed Licence status of the petitioner with the following conditions with effect from 01.04.2016:-*

*... ..*

*D. The net worth of the promoters makes the petitioner to satisfy the conditions laid down in Rule 3(2) of Capital Adequacy Rules. However, the petitioner is an independent entity registered under the Companies Act and it has another business activity viz., running of the SEZ. The power distribution business needs equity capital and a Licensee under the Act has various obligations and to meet the requirements of the Act we deem it appropriate to direct the petitioner to obtain 30% of the total investment of the power distribution business as equity share capital from the promoters on or before 31.03.2016. During the course of hearings, the petitioner submitted that the anticipated capital expenditure on the power distribution business is for a sum of Rs.89.53 Crores. Therefore, the promoters have to contribute 30% of the total anticipated investment of Rs.89.53 Crores which works out to Rs.26.9 Crores on or before 31.03.2016. The petitioner is hereby directed to obtain a sum of Rs.26.9 Crores as equity share capital contribution for the power distribution business by way of account payee cheques and not as book entries, from the promoters of the petitioner. In case, the anticipated capital expenditure increases from time to time the promoters have to contribute 30% of the additional expenditure as equity capital. Thus, we direct that the petitioner shall maintain the Debt: Equity ratio of 70:30 for the power distribution business always....”*

- (viii) *In order to operationalise its licence, on 16.03.2016, the petitioner filed an application in I.A.No.2 of 2016 in O.P.No.10 of 2015, seeking clarification and/or modification of the Commission's order dated 15.02.2016 that is the order recognizing/identifying the petitioner as a deemed distribution licensee.*
- (ix) *On 23.07.2016, the present petition was filed before this Commission.*
- (x) *On 04.08.2016, this Commission passed an order dismissing the petitioner's I.A.No.2 of 2016 in O.P.No.10 of 2015. While doing so, the Commission extended the time period for compliance of the conditions stipulated in its order dated 15.02.2016, upto 30.09.2016. The said extension was granted on the basis of erroneous recording of the submission made on behalf of the petitioner.*
- (xi) *On 26.08.2016, aggrieved by this Commission's erroneous recording of the concession made on behalf of the petitioner, the petitioner filed a review petition in R.P.(SR) No.40 of 2016.*
- (xii) *On 12.09.2016, the petitioner filed Appeal No.3 of 2017 before the Hon'ble Appellate Tribunal for Electricity (ATE) challenging the order dated 15.02.2016 passed by this Commission. Along with the said Appeal, an I.A. in I.A. No.3 of 2017) for stay was filed by the petitioner.*
- (xiii) *On 14.06.2017, the present petition was listed before the Commission. After hearing the submissions of all concerned, the Commission stated that:-*  
*"In the light of the facts that the petitioner is already before the appellate authority and the business has not yet commenced, the present petition is adjourned without any date."*
- (xiv) *On 20.06.2017, this Commission passed an order in Review Petition (SR) No.40 of 2016, adjourning it since the appeal filed by the petitioner was pending consideration before the Hon'ble ATE.*
- (xx) *On 20.02.2018, petitioner filed an I.A.No.253 of 2018 in Appeal No.3 of 2017 before the Hon'ble ATE, seeking the following reliefs, which are reproduced hereinbelow for ease of reference:-*  
*"15. In the light of the facts and circumstances as stated hereinabove, it is humbly prayed that this Hon'ble Tribunal may be pleased to:*
- (a) *Allow the instant application and direct the registry to list the captioned Appeal No.3 of 2017 for early hearing and disposal; and/or*
- (b) *Direct Ld. Telangana Commission to forthwith hear and dispose-off (i) O.P.(SR) No.33 of 2016- Retail Supply Tariff; (ii) O.P.(SR) No.41 of 2016 - filed on 26.08.2016 seeking segregation of electrical assets; (iii) O.P.(SR) No.42 of 2016- filed on 26.08.2016 seeking grant of Transmission Connectivity; and (iv) O.P.(SR) No.69 of 2016 filed 01.12.2016 seeking approval of Power Purchase Agreement and adoption of tariff determined through transparent bidding process under Section 63 of the Electricity Act, filed before it, pending adjudication of the present Appeal.*
- (c) *Pass such other or further orders as this Hon'ble Tribunal*

*may deem fit and proper in the facts and circumstances of the case to enable SPL to operationalize its distribution licence. ... ..”*

- (xxi) *On 13.03.2018, this Hon’ble ATE passed the interim order as under:-  
“... .. We have heard learned counsel for the appellant. As agreed by learned counsel for the parties, list this application along with the main appeal for hearing on 07.05.2018. All the contentions raised by the parties in this application are kept open. It is needless to clarify that there is no impediment for the State Commission to decide the matters pending for adjudication before it in accordance with law. ... ..”*
- (xxii) *On 27.09.2019, the Hon’ble Tribunal passed its Judgment in Appeal No.03 of 2017, upholding the Commission’s order dated 15.02.2016.*
- (xxiii) *In and around November 2019, Sundew filed civil appeal in C.A.No.8978 of 2019 before Hon’ble Supreme Court, challenging Hon’ble ATE’s judgment dated 27.09.2019 in Appeal No.03 of 2017. Presently, the pleadings are completed and the matter is likely to be listed on 01.02.2021.*

- c. The petitioner stated that, in view of the Hon’ble ATE’s order dated 13.03.2018, this Commission is required to hear and adjudicate the present matter. Even otherwise, the dispute in the Hon’ble Supreme Court is qua the legality and validity of the condition imposed by the Commission qua infusion of additional equity of Rs. 26.9 Crores by way of account payee cheques and not regarding the fixing of ceiling tariff. Therefore, the Commission can proceed with the adjudication of the present petition.
- d. The petitioner stated that in view of the above, the present affidavit along with the documents annexed to this petition be taken on record and the Commission be pleased to decide the matter expeditiously.
- e. The petitioner stated that the facts stated herein are true and correct to the best of my knowledge based on the records maintained by the petitioner in its ordinary course of business. The annexures filed with the present affidavit are true copies of their respective originals.
4. The petitioner has further filed their written submissions as below:
- a. The petitioner stated that on 23.07.2016, O.P.No.4 of 2021, the instant petition was acknowledged as SR No.33 of 2016 and was numbered only in 2021. It was filed by petitioner before the Commission. The said filing was a part of the steps taken by petitioner to operationalise its deemed distribution licence

granted to it vide the order dated 15.02.2016 in O.P.No.10 of 2015. The prayers sought therein are already extracted above.

- b. The petitioner stated that by way of the present petition it is seeking fixation of ceiling of tariff that is the tariff fixed by the Commission in respect of TSSPDCL for each category of consumer be considered as a ceiling for retail supply of electricity within the SEZ area, that is the area where petitioner is licensed to supply electricity. It is clarified that the reliefs are sought, as a pro-tem measure till the time various activities qua operationalization of deemed distribution licensee are carried out, that is entering into power purchase agreements, laying of distribution network, completion of tariff determination process, which is a time-consuming process.
- c. The petitioner stated that on 24.04.2023, the captioned matter was listed for final hearing before this Commission. After hearing the submissions on behalf of petitioner, the Commission was pleased to grant liberty to petitioner to file its written submissions within 2 weeks, that is on or before 08.05.2023. In terms thereof, the present written submissions is being filed.
- d. The petitioner stated the following brief facts:

<b>Date</b>	<b>Particulars</b>
10.06.2003	The Electricity Act came into force.
30.12.2005	M/s KRIT made a proposal to the MoC&I, for setting up a sector specific SEZ for IT/ITES, at Madhapur, Rangareddy District, Hyderabad in the erstwhile State of Andhra Pradesh.
30.06.2006	MoC&I granted approval to M/s KRIT proposal dated 27.02.2006, under Section 3(10) of the SEZ Act, for development, operation and maintenance of its SEZ for IT/ITES spread over an area of 12 Ha. at Madhapur, Ranga Reddy District, Hyderabad in the erstwhile State of Andhra Pradesh.
18.07.2006	M/s KRIT submitted a revised proposal to MoC&I for change in area of its IT/ITES, which was accepted by MoC&I on 05.09.2006 and notified the revised total area of 16.29 Ha on 16.10.2006. It is pertinent to note that the SEZ area in question in the present case falls in the larger area of the KRIT campus.
18.05.2007	MoC&I amended its earlier notification No.S.O.1770(E) dated 16.10.2006, by substituting the words "M/s K.Rajeha IT Park (Hyderabad) Private Limited" with the words "M/s Sundew Properties Private Limited".
03.03.2010	MoC&I in exercise of its powers conferred under Section

Date	Particulars
	49(1)(b) of the SEZ Act, notified that a developer of a SEZ is deemed to be a distribution licensee under the provisions of the Act, 2003. By virtue of the said notification, MoC&I amended Section 14(b) of the Act, 2003 by adding a proviso therein.
21.08.2013	The erstwhile Andhra Pradesh Electricity Regulatory Commission (AP Commission) notified the AP Distribution Licence Regulations No.10 of 2013.
10.03.2014	The petitioner filed an application being O.P.No.42 of 2014 before the erstwhile A.P. Commission, seeking identification as a deemed distribution licensee under Section 14 of the Act, 2003 read with clause 13 and Schedule 2 of the AP Distribution Licence Regulations.
02.06.2014	In terms of the Central Act, 6 of 2014, the erstwhile State of Andhra Pradesh was bifurcated into the States of Andhra Pradesh and Telangana.
03.11.2014	The Commission was constituted. Consequently, O.P.No.42 of 2014 that is the petitioner's application seeking recognition as a deemed distribution licensee was transferred from the APERC to the Commission and was re-numbered as O.P.No.10 of 2015.
10.12.2014	The Commission notified the TSERC (Adoption) Regulation, 2014 (Regulation No.1 of 2014), in terms of which all the regulations, decisions, directions or orders, all licenses and practice directions issued by the erstwhile Ld. APERC in existence on the date of constitution of the Commission would apply mutatis mutandis with respect to the State of Telangana.
15.02.2016	The Commission passed an order in O.P.No.10 of 2015, recognizing and according deemed distribution licensee status to petitioner with effect from 01.04.2016. However, while doing so, the Commission erroneously held that, it was necessary for the petitioner to meet the requirements of the Capital Adequacy Rules, in terms of clause 12 read with clause 49 of the AP Distribution Licence Regulations. Accordingly, the petitioner was inter alia directed to infuse a sum of Rs. 26.90 Crores as equity share capital contribution, from its promoters, for its power distribution business, by way of account payee cheques by 31.03.2016. It is clarified that such conditions are conditions subsequent and not conditions precedent.
23.07.2016	The petitioner filed the present petition, not numbered until 2021, under Section 62(1) of the Act, 2003 before the Commission seeking fixation of maximum ceiling of tariff for retail sale of electricity within the SEZ area now numbered as O.P.No.4 of 2021.
13.03.2018	The Commission's order dated 15.02.2016 was challenged by the petitioner vide A.No.3 of 2017 before Hon'ble ATE. The petitioner also filed I.A.No.253 of 2018 therein seeking the

Date	Particulars
	<p>following relief:</p> <p>“ ... ..</p> <p>15. In the light of the facts and circumstances as stated hereinabove, it is humbly prayed that this Hon'ble Tribunal may be pleased to:</p> <p>(a) Allow the instant application and direct the registry to list the captioned Appeal No.3 of 2017 for early hearing and disposal; and/or</p> <p>(b) Direct Ld. Telangana Commission to forthwith hear and dispose-off (i) O.P.(SR) No.33 of 2016-Retail Supply Tariff; (ii) O.P.(SR) No.41 of 2016 filed on 26.08.2016 seeking segregation of electrical assets; (iii) O.P.(SR) No.42 of 2016-filed on 26.08.2016 seeking grant of Transmission Connectivity; and (iv) O.P.(SR) No.69 of 2016 filed 01.12.2016 seeking approval of Power Purchase Agreement and adoption of tariff determined through transparent bidding process under Section 63 of the Electricity Act, filed before it, pending adjudication of the present Appeal. ...”</p>
13.03.2018	Hon'ble ATE heard A.No.3 of 2017 and noted that there is no impediment for the Commission to proceed with the present matter in accordance with law.
27.09.2020	Hon'ble ATE passed its Judgment in A.No.3 of 2017. The petitioner challenged said judgment before Hon'ble Supreme Court vide C.A.No.8978 of 2019.
22.02.2021	Hon'ble Supreme Court heard C.A.No.8978 of 2019 and directed that the Commission may proceed to deal with the applications filed by the petitioner in accordance with law. The said civil appeal is pending adjudication.

e. The petitioner stated that the statutory framework empowers this Commission to determine/fix the maximum ceiling tariff for retail sale of electricity in an area of supply having two or more distribution licensees. This is evident from:

(i) *Proviso to Section 62 (1) of the Act, 2003 which reads as:*

*“62. Determination of tariff – (1) The Appropriate Commission shall determine the tariff in accordance with the provisions of this Act for–*

(a) *supply of electricity by a generating company to a distribution licensee:*

*Provided that the Appropriate Commission may, in case of shortage of supply of electricity, fix the minimum and maximum ceiling of tariff for sale or purchase of electricity in pursuance of an agreement, entered into between a generating company and a licensee or between licensees,*

*for a period not exceeding one year to ensure reasonable prices of electricity.*

(b) *transmission of electricity.*

(c) *wheeling of electricity.*

(d) *retail sale of electricity:*

*Provided that in case of distribution of electricity in the same area by two or more distribution licensees, the Appropriate Commission may, for promoting competition among distribution licensees, fix only maximum ceiling of tariff for retail sale of electricity.*

... ..”

(ii) *A.P. Electricity Supply Code, 2004 (adopted by this Hon’ble Commission vide TSERC (Adoption) Regulation, 2014) which reads as:*

*“Recovery of Electricity Charges from consumers*

*3.1 The distribution licensee shall recover the electricity charges for the electricity supplied to the consumer as per the tariff determined by the Commission from time to time in accordance with the provisions of Electricity Act 2003:*

*Provided that where there are more than one Licensee in the same distribution area the Licensees may be allowed by the Commission to recover the charges at such tariffs as the licensee may consider appropriate subject to the maximum ceiling of tariff fixed by the Commission”*

f. The petitioner’s license area overlaps with the license area of TSSPDCL and the aforesaid provisions are attracted in the facts of the instant case. Further, the determination of ceiling tariff is only a pro-tem measure till the tariff is determined by the Commission.

g. It is stated that, the determination of ceiling tariff is not a unique situation and the same has been adopted by various Regulatory Commissions. In this context, the following orders/documents are noteworthy:

(i) Ld. MERC’s order dated 12.06.2014 in Case No.15 of 2014 [Paras 9.3 and 9.4].

(ii) Ld. GERC’s order dated 20.10.2012 in Case No.1240 of 2012 [Para 1.4].

(iii) Ld. GERC’s order dated 08.05.2013 in Case No.1271 of 2012 [Para 3.18].

(iv) Ld. GERC’s order dated 29.09.2012 in Case No.1220 of 2012 [Para 4.1].

(v) Ld. Tami Naadu Electricity Regulatory Commission (TNERC)’s order dated 21.08.2018 in L.P.No.1 of 2017 [Para 5.2].

h. Presently, a total of 42 consumers are situated in the area of supply of SEZ where all the consumers fall under LT/HT commercial and LT/HT industrial category of consumer. In this context, the comparison of tariff for each category

of consumer at the time of filing of the petition and as on date is provided in the table below:

SI. No.	No.of Consumers		Relevant Tariff Category		Tariff	
	As at 23.07.2016	As at 29.04.2023	As at 23.07.2016	As at 29.04.2023	As at 23.07.2016	As at 29.04.2023
1	29	42	HT-I(A) Cat	HT-I(A) Cat	Rs.6.15/Unit + Rs.390/kVA (Fixed Charges)	Rs.7.15/Unit + Rs.475/kVA (Fixed Charges)

- i. Determination of ceiling tariff would be in consumer interest since:
- (a) Consumers would have set up their units in the SEZ area under the presumption that tariff if supply is availed from the petitioner will be the same or lower than that in TSSPDCL's area of supply. Thus, they will not be prejudiced if TSSPDCL's tariff is considered as ceiling tariff for Sundew's license area.
- (b) A ceiling tariff will provide fillip to competition and thus inure to consumer benefit.
- j. In view of the above, this Commission may kindly grant relief as sought in the present petition.
5. The Commission has heard the counsel for petitioner and also considered the material available to it. The submissions on various dates are noticed below, which are extracted for ready reference.

Record of proceedings dated 21.01.2021 [O.P.(SR) No.33 of 2016]:

*"... .. The counsel for the petitioner stated that the petition is filed for determination of tariff for the power procured and to be charges to its consumers with the TSSPDCL tariff as ceiling tariff. The matter is pending since long time and the petitioner is unable to perform the licensee duties, therefore, this petition may be decided expeditiously.*

*The Commission sought to know whether it would proceed with the matter in the light of the fact that the petitioner had approached the Hon'ble ATE and subsequently the Hon'ble Supreme Court insofar as the order relating to grant of deemed distribution licence along with conditions. The counsel for petitioner stated that the appeal pending before the Hon'ble Supreme Court has no bearing on this petition as the limited issue in the appeal is with regard to infusing of additional capital into distribution business, which may be sustained or may not be sustained. If the condition is upheld then the petitioner is required to infuse additional capital as ordained by the Commission or otherwise, if it is struck down, then there will be no capital infusion. Thus, the case on hand has*

nothing to do with the above position. Accordingly, it is submitted the matter may be taken up for consideration by the Commission.

The counsel for the petitioner stated that there are two other petitions filed by the petitioner herein, which also require consideration and may be directed to be list for hearing. Upon being informed by the office, that the above said matters stand posted to 28.01.2021, the counsel for the petitioner requested for posting this matter on the said date.

The counsel for the petitioner, upon being asked by the Commission with regard to developments in the appeal, stated that while the appeal in the earlier matter was before the Hon'ble ATE, the petitioner had sought directions to the Commission to proceed with the other matters pending before it, which the Hon'ble ATE allowed the Commission to do so. The Commission required the counsel for the petitioner to place all records on the file of the Commission relating to the developments in the matter, to which he agreed.

The Commission while adjourning the matter and directing it to be posted on 28.01.2021, also directed the office to number the original petition."

Record of proceedings dated 28.01.2021:

"... .. The counsel for the petitioner stated that the matter is connected to O.P.No.16 of 2017 and therefore, this may also be adjourned to the same date. Accordingly the matter is adjourned."

Record of proceedings dated 18.03.2021:

"... .. There is no representation on behalf of the petitioner. As the connected matter is adjourned, this matter also stands adjourned."

Record of proceedings dated 09.06.2021:

"... .. The counsel for petitioner stated that this matter is connected to the earlier matter and has such may be posted on same date of hearing. Accordingly adjourned."

Record of proceedings dated 15.07.2021:

"... .. The counsel for petitioner stated that this matter is connected to O.P.No.16 of 2017 and it may be posted to the same date. Accordingly, the matter is adjourned."

Record of proceedings dated 25.08.2021:

"... .. The counsel for the petitioner stated that he needs further time to file rejoinder in the matter. The Commission sought to know the status of the appeal before the Hon'ble Supreme Court. The counsel for petitioner stated that the matter is scheduled to be listed for hearing on 09.09.2021, however, from 31.08.2021 the Hon'ble Supreme Court is scheduled to undertake physical hearing of the matter, as such a further mention will be made for early hearing of the matter expeditiously. In view of the request made by the counsel for petitioner, the matter is adjourned."

Record of proceedings dated 23.09.2021:

"... .. The advocate representing the counsel for the petitioner stated that further time may be granted for filing rejoinder in the other matter. This matter will go alongwith the other matter. Accordingly, the matter is adjourned."

Record of proceedings dated 28.10.2021:

“... .. The advocate representing the counsel for the petitioner stated that the matter is connected with O.P.No.16 of 2017 and accordingly, the same may be adjourned. Accordingly, the matter is adjourned.”

Record of proceedings dated 20.12.2021:

“... .. The advocate representing the counsel for the petitioner stated that the matter is connected with O.P.No.16 of 2017 and accordingly, the same may be adjourned. Accordingly, the matter is adjourned.”

Record of proceedings dated 27.12.2021:

“... .. The advocate representing the counsel for the petitioner stated that the matter is connected with O.P.No.16 of 2017 and accordingly, the same may be adjourned. Accordingly, the matter is adjourned.”

Record of proceedings dated 17.01.2022:

“... .. The advocate representing the counsel for the petitioner stated that the matter is connected with O.P.No.16 of 2017 and accordingly, the same may be adjourned. Accordingly, the matter is adjourned.”

Record of proceedings dated 18.04.2022:

“... .. The advocate representing the counsel for the petitioner stated that the matter is connected with O.P.No.16 of 2017 and accordingly, the same may be adjourned. Therefore, the matter is adjourned.”

Record of proceedings dated 23.05.2022:

“... .. The advocate representing the counsel for the petitioner stated that the matter is connected with O.P.No.16 of 2017 and accordingly, the same may be adjourned. Therefore, the matter is adjourned.”

Record of proceedings dated 11.08.2022:

“... .. The advocate representing the counsel for the petitioner stated that the matter is connected with O.P.No.16 of 2017 and accordingly, the same may be adjourned. Therefore, the matter is adjourned.”

Record of proceedings dated 14.11.2022:

“... .. The advocate representing the counsel for the petitioner stated that the matter is connected with O.P.No.16 of 2017 and accordingly, the same may be adjourned. Therefore, the matter is adjourned.”

Record of proceedings dated 09.01.2023:

“... .. The advocate representing the counsel for the petitioner stated that the matter is connected with O.P.No.16 of 2017 and accordingly, the same may be adjourned. Therefore, the matter is adjourned.”

Record of proceedings dated 04.04.2023:

“... .. There is no representation for petitioner. As the matter is connected to O.P.No.16 of 2017, the matter is adjourned.”

Record of proceedings dated 10.04.2023:

“... .. As the matter is connected to O.P.No.16 of 2017, the matter is adjourned on payment of cost of Rs.5,000/-. The details of the cost will be indicated by the office. This adjournment is a final chance.”

Record of proceedings dated 24.04.2023:

*“... . The counsel for the petitioner stated that the petition had been filed earlier for determination of tariff to be levied on the consumers situated in the SEZ area. The SEZ area comprises consumers of the categories of HT industry and commercial along with LT commercial consumers. The Commission is required to determine the ceiling tariff under Section 62 (1) (d) proviso of the Electricity Act, 2003, where two licensees are operating in the same area. Infact being a deemed distribution licensee, it is required to file proper petition for determination of tariff when it starts actual operations as a distribution licensee. For the present, the Commission may consider the tariff as determined by the Commission in respect of the existing distribution licensee at present to be the ceiling tariff in respect of the petitioner also. Based on which the petitioner will charge its consumers the tariff for the present.*

*The Commission sought to know that the petitioner had already approached the Hon'ble Supreme Court against the order of the Commission. The counsel for petitioner stated that the petitioner had sought deemed distribution licence from the Commission and the Commission had imposed certain conditions for operationalizing the same. Aggrieved by the said condition, the petitioner approached the Hon'ble ATE and later to the Hon'ble Supreme Court. According to the petitioner, the condition imposed by the Commission is a condition subsequent and not condition precedent. However, the said proceeding does not affect the present prayer as in any case, if it fails, the petitioner has to comply with the order of the Commission. Accordingly, he sought fixation of tariff to enable the petitioner to start operations of the distribution licensee as has been recognized under Section 49 of the SEZ Act, 2005 and rules thereof. Having heard the submissions of the counsel for petitioner, the matter is reserved for orders.”*

6. The present petition is for determination for retail supply tariff to be levied on the consumers, who are being served or likely to be served by the petitioner. It is stated that there are about 42 consumers, whose tariff will be under HT-I(A) category. From the record, it is noticed that at present the petitioner as well as sister concerns are being served by the existing licensee TSSPDCL from whom power supply had been availed as consumers.

7. The Commission notices that the petitioner though initially arranged for power procurement through bulk purchase by initiating competitive bidding for which a petitioner in O. P. No. 17 of 2017 along with I. A. No. 26 of 2017 has been filed. In both the petition along with interlocutory application, the petitioner has sought approval of the PPA and adoption of tariff derived through competitive bidding process for procurement of 50 MW round the clock power supply. However, the said proposal was withdrawn by the petitioner on 28.01.2021. The petitioner had withdrawn the petition and it was observed by the Commission as below:

“... ..

3. *During the course of hearing, the counsel for the petitioner stated that the relief sought in this petition does not survive as the PPA is with reference to the particular year only and no action is required now in this petition, as such he may be permitted to withdraw the same. Permission is accorded for withdrawal of the petition.*
4. *Accordingly, the petition is dismissed as withdrawn, but without costs. Consequently, the pending interlocutory application is closed.”*

In view of the above, the petitioner as at present does not have any bulk procurement arrangement for undertaking power supply on retail basis to the consumers, who are likely to be served by it.

8. The petitioner has, in fact, filed another petition seeking transfer of assets which are serving and falling within the distribution licensee area for operationalizing itself. The said petition in O.P.No.16 of 2017 is disposed of by the Commission by even date by observing as below:

“... ..

29. *The issue of the consumer interest would arrive only when the petitioner undertakes distribution and retail supply activities pursuant to its status as deemed licensee. The understanding the consumer interest is paramount only when the assets of the existing licensee are segregated into the assets falling under the SEZ area and non-SEZ area is erroneous. It is not necessary that the assets as existing today should be bifurcated and handed over to the petitioner in respect of those which are falling under the SEZ area and non SEZ area. The Act, 2003 does not place fetters on the existing licensee to serve any consumer in the area of the other licensee also where the area of operation of both licensees is similar and the same. As such, the petitioner itself has to establish its own network from the feeder to downstream lines. For this reason, the prayer of the petitioner cannot be acceded to.*
30. *Last but not the least, it has to be stated that the petitioner has not operationalized its distribution licence and is under litigation before the Hon'ble Supreme Court in respect of the condition imposed by the Commission. The proceedings in Civil Appeal No.8978 of 2019 are pending consideration before the Hon'ble Supreme Court. In view of the pendency of the proceedings before the Hon'ble Supreme Court, it is not appropriate for this Commission to bestow any benefit unless and until the issue raised by the petitioner itself is settled either way.*
31. *In these circumstances, the Commission is not inclined to grant any relief to the petitioner. Accordingly keeping in mind, the discussion as set out*

*in the foregoing paragraphs, the petition stands dismissed. The parties shall bear their own costs.”*

9. Since the petitioner is yet to establish its own distribution network as noticed above, no purpose will be served even if ceiling price is determined by the Commission as the petitioner is yet to operationalize its license activity. Further, as the petitioner itself had approached Hon'ble Supreme Court and filed a Civil Appeal (C.A.No.8978 of 2019) challenging the Hon'ble ATE Judgment dated 27.09.2019 in Appeal No.3 of 2017 which has upheld the Commission's Order dated 15.02.2026 in O.P.No.15 of 2016 wherein the Commission considered to direct the petitioner to infuse the requisite equity capital so as to meet the requirement of Capital Adequacy Rules, while recognizing the petitioner as deemed distribution licensee and the said C.A.No.8978 of 2019 being still pending before the Hon'ble Supreme Court, it is not appropriate for this Commission in undertaking the determination of ceiling tariff until the issue is settled finally and the petitioner operationalize its license activity.

10. The petitioner has extensively relied on the orders passed by various Commissions insofar as fixing ceiling tariff is concerned, where two licensees are functioning in the same area of operation. No doubt, the provisions of the Act, 2003 provide for determination of ceiling tariff in the case of two licensees functioning in the same area and the Commission is required to determine the same, but in the instant case, the petitioner is yet to operationalize its license activity as stated above. As such, determination of any ceiling tariff would be a futile exercise until the petitioner operationalizes its license activity by establishing the necessary framework for undertaking power supply to the end consumers within the SEZ area duly arranging power procurement and also complying the directions of the Commission subject to result of the appeal pending before the Hon'ble Supreme Court.

11. The decisions of the other Commissions as referred by the petitioner are neither binding nor applicable to the Commission. They can constitute at the most of persuasive value. As such, the same are not being considered in arriving at a decision in the matter, by the Commission.

12. In view of the above, the Commission finds no merit in undertaking the determination of ceiling tariff. Accordingly, the petition is dismissed. However, the Commission makes it clear that as and when the petitioner operationalizes its license

activity, no sooner than later it is required to take all the necessary steps that a distribution licensee shall initiate in terms of the Act, 2003 and regulations thereof. There shall be no order as to costs.

**This order is corrected and signed on this the 15<sup>th</sup> day of April, 2024.**

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