



TELANGANA STATE ELECTRICITY REGULATORY COMMISSION
5th Floor, Singareni Bhavan, Red Hills, Lakdi-ka-pul, Hyderabad 500004

O.P.No.19 of 2020

&

I.A.No.13 of 2020

Dated 07.10.2020

Present

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

Between:

M/s Ener Sol Infra Private Limited,
Plot No.270E/A, Road No.10, Jubilee Hills,
Hyderabad – 500 033.

... Petitioner

AND

1. Southern Power Distribution Company of Telangana Limited,
Corporate Office, # 6-1-50, Mint Compound,
Hyderabad – 500 063.
2. Transmission Corporation of Telangana Limited,
Vidyuth Soudha, Khairatabad,
Hyderabad – 500 082

... Respondents

This petition has come up hearing on 26.08.2020, 09.09.2020, 18.09.2020 and 25.09.2020. Sri P.Srinivasa Rao, Advocate for the petitioner appeared on virtual hearing on 26.08.2020, 09.09.2020, 18.09.2020 and 25.09.2020. Sri Mohammad Bande Ali, Law Attaché TSSPDCL for respondents appeared on virtual hearing on 26.08.2020. Sri Mohammad Bande Ali, Law Attaché, TSSPDCL along with Sri K.Sathish Kumar, DE, TSSPDCL for the respondents appeared on virtual hearing on 09.09.2020, Sri Mohammad Bande Ali, Law Attaché, TSSPDCL and Sri G.Karunakar, SE (Commercial), TSTRANSCO along with Sri K.Sathish Kumar, DE, TSSPDCL for the respondents appeared on virtual hearing on 18.09.2020 and 25.09.2020 and having been heard and having stood for consideration to this day, the Commission passed the following:

ORDER

M/s Ener Sol Infra Private Limited (petitioner) has filed a petition under section 86(1)(j), (e) and (k) of the Electricity Act, 2003 (Act, 2003) r/w the Commission's, Conduct of Business, Regulation No.2 of 2015, seeking directions to the distribution licensee for grant of approval of tripartite (open access) agreement for 2 MW solar power project for third party sale.

2. The petitioner stated that it is a company incorporated under the provisions of Companies Act, 2013 with the Registrar of Companies, Hyderabad and certificate with a corporate identity bearing number U40300TG2015PTC100410, dated 24.08.2015. It has been incorporated as per the objectives set out under the articles of association to set up a solar plant with a capacity of 2 MW. It has acquired the landed property to construct necessary plant for generation and operation, situated at Vinjamoor village, Chintapally mandal, Nalgonda district, Telangana. It is stated that it intends to develop the solar power as there is opportunity due to reforms introduced in the electricity sector and as the country recognized the need to generate energy through non-conventional sources. It decided to establish a power plant for production of energy and at the same time also to provide employment to some persons to run the power plant by carrying the business after the plant commences its operation.

3. The petitioner stated about the solar policy introduced by Union of India (Gol) as well by the State. The Gol has recognized the importance of solar energy as one of the future sources of energy and launched the National Solar Mission on 14.11.2009 under a brand name "**Solar India**" with an objective to maximize generation of power from solar energy. The erstwhile combined State of Andhra Pradesh has framed certain guidelines and a policy called as "*A.P. Solar Policy 2012*". It issued orders vide G.O.Ms.No.39 dated 26.09.2012. The objectives of this policy is to promote generation of power from solar, as the solar power is one of the important renewable energy sources. The objectives of the policy are to encourage, develop and promote solar power generation in the State with a view to meet the growing demand for power in an environmentally and economically sustainable manner, to attract investment in the State for the establishment of solar power plants, to promote investments for setting up manufacturing facilities in the State,

which can generate gainful local employment and also to encourage de-centralized, distribution, generation system in the State to reduce T&D losses. These are some of the objectives and the purpose sought to be achieved under the said policy.

4. The petitioner stated that the State was bifurcated and after formation of State of Telangana, it had issued **Solar Policy, 2015**. It has provisions which aim at creating an enabling environment for prospective solar power developers to harness substantial quantum of solar power in the best possible manner. These aims in turn is expected to meet the objective of the Government of Telangana (GoTS) to provide competitive, reliable power supply to its consumers and also to ensure a sustainable fuel mix in the long run. The policy further promotes solar parks, promote public as well as private investment in generation, to promote grid connected and off-grid solar applications and effective energy conservation measures. This policy will enrich the developers of solar power to be encouraged for immediate production of solar power particularly to reduce the gap between demand and supply position of power. It is relevant to note that the policy is further made applicable for the projects set up within the State and it provided a facility of grid connectivity based on both photo voltaic (PV) as well as solar thermal technologies projects set up for sale of power to TSDISCOMs and for sale of power to third parties within the State.

5. The petitioner stated that the GoTS also brought a new industrial policy popularly known as “**TSiPASS (single window)**” to encourage the establishment of companies, plants etc. After studying and due deliberations it has decided to set up a power plant and has identified suitable land required to set up plant and on acquisition application is made for all the requisite permissions which were issued by TSiPASS district level committee. It obtained “*consent for establishment*” (UID: MIC00800381551). The final certificate is issued, for sanction of technical approval about the feasibility by preparation of detailed project report has been placed before the concerned authority and sought for requisite sanction.

6. The petitioner stated that after careful examination of the project report, the distribution licensee has granted technical feasibility approval on 24.05.2016 vide CGM (Comml & RA)/SE(IPC)/F.Ener Sol/D.No.366/16. It has also got other permissions from the concerned departments, such as industries, roads and buildings, revenue and the local body, i.e., gram panchayat. It had also availed a

loan from the financial institution, that is State Bank of India, Commercial Branch, R.P.Road, Secunderabad to the tune of Rs.7.5 crore. The bank has released the loan amount and it has purchased the required equipment with the loan amount and undertook installation of required machinery. It has further entered into an agreement (PPA) dated 04.07.2016 with M/s.NATCO Pharma Limited [a third party consumer] for sale of power for a duration of 25 years. As per technical approval accorded for the generation of energy capacity, after completion of the project, it has applied to the distribution licensee for synchronization to the grid. The concerned inspector after conducting inspections, issued certificates about the technical feasibility as per the plant capacity. The said process was completed on 18.05.2018 vide Memo.No.CGM (IPC &RA)/SE(IPC)/F.Ener Sol/D.No.225/18 dated 18.05.2018 and the transmission of generated energy was intimated that is the '**Commercial Operation Date (COD)**' as 18.05.2018. Since then the energy generated from the plant has been safely injected into the grid nearby as provided by the distribution licensee. The energy is banked as on date and same was injected into grid. But so far, there are no payments to the petitioner and not released any amount for the same. The distribution licensee after conducting the necessary inspection had certified and the same was communicated to it by letter dated 18.05.2018.

7. The petitioner stated that in pursuance of the said certificate, it had entered into an agreement dated 04.07.2016 for third party sale with M/s Natco Fine Pharmaceuticals Limited, a '*power procurer*' having their industry situated at Kothur village and mandal, Rangareddy district bearing connection No.RJN 502 with a CMD of 3750 kVA. The distribution licensee has issued a certificate dated 18.05.2018 to it for synchronization of the plant to the grid. Thus, it was authorized to inject the power generated into the grid and the same can be utilized by the power procurer in terms of the PPA entered between it and power procurer. It made an application dated 18.07.2018 to the Nodal Agency for grant of a long term intra-state open access (LTOA) for the tri-partite agreement in order to sell the power generated from the plant to the third parties as envisaged in the solar power policy, 2015 of State Government. The Nodal Agency has not granted approval nor informed the reason for the same which is kept pending despite it having a legally valid concluded LTOA and application on 18.07.2018. The said LTOA is for a period from 23.01.2018 to 29.10.2043 with the distribution licensee.

8. The petitioner stated that it may be relevant at this stage to notice the provisions of the Act, 2003 and the relevant regulations.

Act, 2003

Section 2 (47) "Open access" means the non-discriminatory provision for the use of transmission line or distribution system or associate facilities with such line or system by any licensee or consumer or a person engaged in accordance with the regulations specified by the Appropriate Commission.

Section 38 (2) xxxxx

- (d) *to provide non-discriminatory open access to its transmission system for use by -*
 - (i) *any licensee or generating company on payment of the transmission charges; or*
 - (ii) *any consumer as and when such open access is provided by the State Commission under sub-section (2) of Section 42, on payment of the transmission charges and a surcharge thereon, as may be specified by the Central Commission.*

Section 39 (2) xxxxx

- (d) *to provide non-discriminatory open access to its transmission system for use by -*
 - (i) *any licensee or generating company on payment of the transmission charges; or*
 - (ii) *any consumer as and when such open access is provided by the State Commission under sub-section (2) of Section 42, on payment of the transmission charges and a surcharge thereon, as may be specified by the State Commission.*

Section 42 Duties of the Distribution Licensee and Open Access

(1) *xxxxx*

(2) *The State Commission shall introduce open access in such phases and subject to such conditions, (including the cross subsidies and other operational constraints) as may be specified within one year of the appointed date by it and in specifying the extent of open access in successive phases and in determining the charges for wheeling, it shall have due regard to all relevant factors including such cross subsidies, and other operational constraints:*

Provided xxxxxx

Section 181 xxxxx

(2) *xxxxx*

- (l) *payment of the transmission charges and a surcharge under sub-clause (ii) of clause (c) of section 40;*
- (p) *reduction [xxx] of surcharge and cross-subsidies under the third proviso to sub-section (2) of Section 42;*

Regulation No.2 of 2005, that is The APERC (Terms and conditions of Open Access) Regulation, 2005

Clause 2(f) "Open Access Agreement" means an agreement entered into between a licensee and the applicant to avail open access to the licensee's network for transmission and/or wheeling of electricity;

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

Clause 10 Procedure of application for long term open access

10.1 xxxxx

10.2 xxxxx

10.3 xxxxx

10.4 xxxxx

10.5. All applications received within a calendar month e.g. during 1st April to 30th April, shall be considered to have been filed simultaneously. This window of a calendar month shall keep rolling over i.e. after the expiry of a monthly window, another window of the duration of the next calendar month shall commence.

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

Clause 12 Open Access Agreement

12.1. Based on the intimation by the Nodal Agency to the open access applicant, the applicant shall execute an open access agreement with the concerned Licensee(s), which shall broadly set out the information as given in Annexure-2 to this Regulation. The Licensees shall draft a standard open access agreement format and get the same approved by the Commission within 30 days of coming into effect of this Regulation.

12.2 The open access agreement referred to in clause 12.1 shall be bipartite, tripartite or multi-partite involving the applicant, the concerned Distribution Licensee in whose area of supply the applicant's exit point is located and the concerned Transmission Licensee or Licensees. The Open Access Agreement shall clearly bring out the rights and obligations of all parties which are broadly set out in Annexure-3 with respect to exit points on transmission and distribution systems separately:

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

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

The (Interim Balancing & Settlement Code) Regulation, No.2 of 2006

Clause 2(h) "Open Access Agreement" means an agreement entered into between the Transmission and/or Distribution Licensees and the persons availing Open Access facility under clause 12 of the Open Access Regulation.

Clause 2(f) "Open Access Regulation" means the A.P.Electricity Regulatory Commission (Terms and Conditions of Open Access) Regulation, 2005 (Regulation No.2 of 2005). and

Clause 2(k) "Open Access Generation" means a generating Company using or intending to use the transmission system and/or the distribution system of the Licensees in the State for supply of electricity to a scheduled consumer or OA Consumer under the Open Access Regulation.

The banking regulation, as amended by Regulation No.1 of 2017

Appendix 3 as amended by Regulation No.1 of 2017

The terms and Conditions for Banking facility allowed to wind Solar and Mini-Hydel Power Generation:

1. *Banking Charges shall be adjusted in kind @2% of the energy delivered at the point of drawl.*
2. *xxxxx*
3. *xxxxx*
4. *xxxxx*
5. *xxxxx*
6. *xxxxx*
7. *For third Party sale, the energy injected into the grid form 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 utilized banked energy shall be considered as deemed purchase by Discom(s) at the average pooled power coast as determined by TSERC for the relevant year.*
9. *xxxxx*

The above regulation made it clear that, the position of the petitioner that though the power was banked as early as in 2018, till date the approval sought for was not yet considered by the respondent DISCOM, though the regulation mandates on the part of the DISCOM.

9. The petitioner stated about the Telangana State Solar policy, 2015. The relevant clauses which are extracted hereunder for better appreciation of the Commission.

3. Objectives:-

1. *Realise and harness the vast solar power potential of the State.*
2. *Contribute to long-term energy security of the State and promote a sustainable fuel mix in generation through higher contribution of solar energy.*

3. *To promote solar parks.*
4. *To promote public as well as private investment in solar power generation*
5. *To promote decentralized and distributed generation*
6. *To promote grid connected and off-grid solar applications and effective energy conservation measures.*
7. *To promote all technologies of harnessing solar energy.*

4. *xxxxxx*

5. *Applicability of the policy:- This solar policy shall be applicable for the following solar projects set up within the State-) Solar Power Projects (SPPs)*

a) *xxxxxx*

** Projects set up for sale of power to TSDISCOMS*

** Projects set up for sale of power to third parties within the State.*

The petitioner falls under the above category, which clearly indicates to sell the power generated to third parties.

10. The petitioner stated that despite repeated requests of the petitioner, the respondents are neither approving the LTOA nor giving effect to the provisions of the Act, 2003 and the regulations. It is put to severe hardship resulting in severe financial constraints and is under tremendous pressure from the lending agencies to start repayment or is under the threat of being declared non performing asset along with initiation of proceedings under The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act). The promoters are young entrepreneurs who have started ambitiously investing highly to start a career in solar project development. If the Nodal Agency delays the approval of LTOA then, the encouragement meted out by the Government and the enthusiasm with which they have started would be in jeopardy and also dampen others in investment. They would suffer irreparable loss of financial and social status as they have invested all the family savings made life into the project. As such the Nodal Agency in not allowing open access is nothing short of disobeying the policy of the State Government which is their bounden duty to implement.

11. The petitioner stated that in view of the said facts and circumstances, particularly there is no source of revenue being received by payment of bills for the energy banked into the grid of the licensee. As such, it is unable to make repayment of loan amount to the bank in addition to the obligation of payment of salaries, wages, allowances etc. to the employees and workers. The bank is not in a position to head its request since for the past sixteen months the same reason and the

intervening factors are stand still and remain un-attend, in other way it failed to secure the approval of tripartite agreement with the third party who is willing and ready to purchase the energy generated by it. Further, the bank has issued a letter to invoke the provisions of SARFAESI Act and the account shall be declared as NPA.

12. The petitioner stated that this action on the part of the respondents are highly unjust and untenable, inasmuch as the objectives of the solar policy, 2015 issued by the State of Telangana do provided for third party sales and the movement the application is placed for open access agreement it shall be considered as per process as policy specifically postulates so, which is in alternatively the distribution licensee is unable to purchase and pay the amount of tariff as determined by the Commission. On the other hand, the petitioner intended to do so, it had not provided the said facility. It had applied on 18.07.2018, the requisite amount under demand drafts are also duly received, but so far no action on it was taken. The State has prepared certain measures for improving the ease of doing business. The benefits for developers, entrepreneurs, etc., were provided including the exemption of wheeling and transmission charges and generating utilities of the State have to take necessary steps as and when it is required to do so. However, its request has been kept pending and remained unattended for no fault of it though it is entitled for the same under the Act, 2003, regulations of the Commission as well as the policy, 2015. The respondents denied this facility to it which is unjust and illegal being a State instrumentality. It is relevant to mention here that the State after the issue of the above policy, 2015 has provided a mechanism known as 'single window mechanism' for the solar power projects and as per the policy have to be implemented in its letter and spirit.

13. The petitioner stated that it has been repeatedly bringing to the notice of the respondents about approval of the open access agreement which has already been placed on record with them in tune with the existence of solar policy, 2015 issued by the State of Telangana and espousing its case for according the approval from the Commission as well. However, the respondents have unilaterally declined to grant approval for open access agreement and admittedly, as on date no amount is paid to it though the power generated by it has been duly sold it to their consumers and enriched it. Even this legitimate expectation for which indisputably it is entitled to the

benefit and the statutory scheme framed by the State which is in force and all other departments of the State are providing the benefits and incentives.

14. The petitioner stated that it is not in dispute that, the State in its domain and in a larger interest to develop the electricity sector provided certain incentives and facilities to the solar power developers such as petitioner and it is an admitted fact that the same is in force and operating the field. It has set up the generating plant by raising funds borrowing from the banks and financial institutions basing upon the policy of the State wherein incentives, opted facilities that are provided under the solar power policy, 2015. Further, the Commission had also framed necessary regulations for continuing the same. The benefit is under the same set of guidelines to achieve the objective of promotion of power generation through non-conventional source more particularly solar plants. However, the same have been ignored by the respondents and in dehorn to the policy, not providing the said facility and did not accord the approval for tripartite agreement for the third party sale of the power generated from the plant, or the distribution licensee as well can purchase the same and pay the tariff as determined and fixed by the Commission to it. The policy is issued for encouraging and development of solar power and not for curtailing the incentives. At any rate the present policy of 2015 of the State is also in furtherance of such objectives.

15. The petitioner stated that the Commission has also got ample power to promote co-generation and generation of electricity from renewable source under section 86(1)(e) of Act, 2003. Therefore, the generating plants using renewable sources of energy are required to be viewed as separate generating system for local area consumption as and when connected to the grid under the Act, 2003. The energy is consumed primarily in the respective local area leading to reduction in T&D losses. The distribution licensee have neither purchased the power generated nor even chosen to allow the petitioner to sell to third parties under a tripartite agreement for the reasons best known to them which is wholly unjust, irrational and contrary to the above policy in force, Act, 2003, regulations framed by the Commission as extracted above. It is incumbent on the part of the respondents to ensure compliance of the policy in total, once the scheme is framed under a policy and was entrusted to the agency for implementation. Therefore, the practice of declining the benefit of

third party sale which are in part and not allowing it is absolutely unjust, untenable and the same is hit by doctrine of promissory estoppel, more particularly the State has evolved a solar policy, 2015 and it is in force.

16. The petitioner stated that on account of the above position, it is unable to make repayment to the financial institutions, which granted loan and the requisite instalments are not even paid and have accumulated and huge amount of liability stands on its head. The bank had further threatened to invoke the SARFAESI Act, the operation of account is made non-performing asset. Shortly it is likely to go further step forward and bring the assets under public auction which event, it is not in a position to confront such an unbearable situation. Unless the Commission intervenes in the matter and grants necessary direction to the respondents to allow it to undertake third party sale and accord the open access agreement, by providing open access facility as per law, as it is not in a position to even survive and thereby the entire object is defeated.

17. The petitioner has raised the following grounds in the above circumstances.

- a. Because of the State Solar Policy, 2015 came into force with effect from 01.06.2015, the benefit and the facilities that are provided by the State shall not be denied to the petitioner by the respondents without any justification.
- b. The respondents should have seen that the policy decision issued by the State Government providing the option for sale of power generated to the third parties as well, in the event of the distribution licensee is not inclined to purchase the same from the petitioner.
- c. The petitioner waited long period after the COD and it commenced generation and has injected into the distribution licensee's grid, till date there is no payment of the amount, nor allowed the third party sale with the identified consumer within distribution licensee's area of supply only. The same ought to have been allowed by the respondents without any demur, or without reference to any objection.
- d. The respondents are not allowing the petitioner company to achieve the objective of any revenue generation even to meet the regular salaries, wages

and other allowances to be paid to the workers in the plant by payment of amount towards the energy banked as on date since the date of COD.

- e. The respondents ought to have at least chosen to examine the representations of the petitioner for third party sale by getting approval for the open access agreement. On account of their inaction the state of affairs to deal and operate the account with the bank insistence for repayment and in addition to the immediate action to declare the account as NPA. Hence, there is no other alternative to the petitioner except to approach the Commission for redressal of its grievances urged above and the entire action on the part of the respondents is against the principles of legitimate expectation.
- f. The respondents ought to have seen that once the policy by the State Government has been issued involving public interest, the same shall be implemented by the respondents and put in practice they being a State Government owned instrumentality by denying the benefit of third party sale which was provided by the State in larger interest of electricity sector to promote the solar power is wholly illegal, unjust and untenable.
- g. The distribution licensee ought to have seen that, as per the Act, 2003, it is obligation on the part of the licensee to supply electricity and it is mandatory duty to enforce to the extent laid down to the consumer and it will have to lay down its network in order to supply electricity to consumer seeking such supply. In that view of the matter, the action of the distribution licensee is wholly unjust and untenable and consequently the Commission may further direct to implement it in its letter and spirit.

18. The petitioner stated that the very fact that the respondents did not implement the solar policy of the State and acted contrary to the Act, 2003 and the regulations. Further no prejudice or harm would be caused to the respondents by implementing the solar policy, 2015 by allowing third party sales as provided under it, in letter and spirit as the respondents are owned and controlled by the State. Since the principal owner directed its subordinate or agent to do something, it is the bounden duty of the respondents to put it in practice. Per contra, grave injustice and prejudice would be caused to the petitioner as they would suffer on account of curtailing the benefit envisaged under the policy to sell the energy generated to the third party, as it will

lead to a severe financial crisis apart from hardship caused to the petitioner and the dependents on the industry. This action of disallowing the third party sales under the tripartite agreement to the consumer, is but high handed action of the respondents against the plant and it would have to close down its plant if the same is continued. Further, it would be very difficult to bear the burden of carrying the operation of production of energy without any recovery, despite the energy is injected into the distribution licensee's grid. All those dependents on the industry, including workers and their families and those indirectly dependent would be affected due to the non-recovery of revenue and disallowing the third party sale with consumer identified within the respondents jurisdiction.

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

"Therefore, it is most respectfully prayed that the Commission may be pleased to

a. *direct the respondents to enter into tripartite agreement with the petitioner as applied and placed on record as early as on 27.03.2020.*

b. *To declare that the action of respondents in disallowing the petitioner for third party sales by providing all facilities as required under the Electricity Act.2003, Regulations etc. as illegal, contrary to the Telangana State Solar Policy, 2015 which came into effect from 01.06.2015.*

or in the alternatively

c. *To direct the respondents to purchase the energy generated by the petitioner at the tariff determined by the Commission for the solar power plant in the State.*

d. *To pass any other order/s to meet the ends to justice and equity."*

20. The petitioner has filed an interlocutory application for entering into open access agreement by the distribution licensee and sought interim orders as below while reiterating the sequence events and the contentions in the original petition.

"It is therefore, under the said facts and circumstances it is therefore, prayed that this Hon'ble Commission may be pleased to grant an injunction against the respondents directing them to enter into the tripartite agreement dated 18.07.2018 for approval placed on before the respondent DISCOM as submitted by the petitioner along with the requisite amount, pending disposal of the above O.P. and any such order, are deemed fit and proper in the interest of justice and circumstances of the case."

21. The respondents have filed their counter affidavit in the matter and stated as extracted below.

A) Counter affidavit of TSSPDCL (Distribution Licensee or DISCOM)

- a. It is stated that M/s Ener Sol Infra Private Limited (petitioner), has approached this office for setting up of 2 MW solar power plant at Vinjamoor Village, Chintapally Mandal, Nalgonda District, Telangana vide letter dated 24.05.2016. TSSPDCL has communicated the technical feasibility report for setting up of 2 MW solar power plant to the petitioner for connectivity at 33 kV side of 33/11 kV Chintapally SS for supply of power from the petitioner's generating solar power plant to the nearest SS point and as there exists sufficient capacity in the transmission/distribution network for wheeling the power from the generating plant to the nearest Sub Station point, technical feasibility was accorded to the generating plant.
- b. Later, the petitioner has also submitted the following undertaking at the time of synchronization of its solar power plant:
- a. to d*
- e. TSSPDCL need not issue NOC for open access till the generator comply all the guidelines of TSSPDCL & TSERC.*
- f. We will abide by the rules and regulations of TSERC, TSSPDCL from time to time."*
- c. It is stated that, the petitioner has commissioned 2 MW solar power plant at the above said location for 3rd party sale and permission was accorded to the petitioner for synchronization of 2 MW solar power plant at 33 kV side of 33/11 kV Chintapally SS vide letter CGM(Comml&RAC)/SE (IPC) dated 18.05.2018. Accordingly, the petitioner has synchronized the plant to the grid on 19.05.2018 at 33 kV level to 33/11 kV Chintapally SS.
- d. It is stated that, the contention of the petitioner that in view of the permission for synchronization of the plant to the grid, the petitioner is authorized to inject the power generated into the grid and the same can be utilized by the "power procurer" in terms of the PPA entered into between the petitioner / power producer and power procurer which is incorrect. The petitioner has initially approached this office for permission for grid connectivity of their solar power plant to the TSTRANSCO/TSSPDCL network. At that point of time the feasibility study was carried out for injection of the said solar power to the nearest SS point only for the purpose of according approval for grid connectivity of the petitioner's power plant. Later, the petitioner approached seeking approval for availing open access facility for transmission of the said

solar power from their power plant to their consumer points which required independent study for technical feasibility. Mere approval for grid connectivity of their solar power plant does not amount to according of the feasibility for availing open access facility since the same requires a separate study as per the procedure and method laid down by the Commission to be followed by TSTRANSCO and TSSPDCL. It is further stated that processing criteria for open access application is to be initiated from the point of Nodal Agency only and upon receipt of open access application from the Nodal Agency, the feasibility study shall be carried out which cannot be initiated on the application being filed at the point of grid connectivity. Hence, the approval accorded to the solar power plant of petitioner for grid connectivity does not amount to approval for availing open access facility.

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

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

In view of the above provision, the Andhra Pradesh Electricity Regulatory Commission (APERC) has formulated Regulation 2 of 2005 to facilitate open access facility for the applicants willing to avail open access from the intra-state transmission or distribution network. The said regulation is adopted by the Commission vide Regulation 1 of 2014. Therefore the regulation is applicable to the State of Telangana.

- f. It is stated that the APERC has issued Regulation 2 of 2005, determining the terms and conditions for open access. Clause (5) of Regulation 2 of 2005 deals with Nodal Agency which is the processing entity. The same reads as follows:

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

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

- g. For convenience the procedural methodology or rules set forth for carrying feasibility analysis in clause (9) of the Regulation 2 of 2005 is extracted as 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".

- h. The petitioner has filed a long term open access application (LTOA) at the Nodal Agency on 06.08.2018 and the same was forwarded by the Nodal Agency to TSSPDCL vide letter dated 11.09.2018 for examining the technical feasibility for transmission of 2 MW power at the above said location to M/s NATCO Fine Pharmaceuticals Ltd., (HTSC.No.RJN-502) in TSSPDCL under third party for a period up to 08.07.2043.
- i. Accordingly, TSSPDCL has initiated its process of verification of technical feasibility to find out stability of system and reliability which was being carried out for the intra-state LTOA transaction as per the applicable rules and regulations formulated by the Commission for transmission of open access power from the generating point (located in Nalgonda district) to the consumer exit points M/s NATCO Fine Pharmaceuticals Ltd., (HTS.C.No.RJN-502) located in Rajendranagar Circle of TSSPDCL.
- j. As per the request of the petitioner, the process of verification of feasibility for providing LTOA facility was taken up by TSSPDCL as per the above regulations formulated by the Commission. For convenience the procedure adopted 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."*
- k. It is stated that Clause 14 of Regulation 2 of 2005 stipulates the procedure for determining the available capacity of transmission and distribution (T&D)

networks and it is to be carried out by TSSPDCL for arriving at the availability of sufficient spare capacity in the T&D networks so as to permit an open access transaction applied for.

- i. Clause 9.3 of the Regulation 2 of 2005 lays down the methodology to overcome the insufficient spare capacity for allowance of LTOA. The same is extracted below:

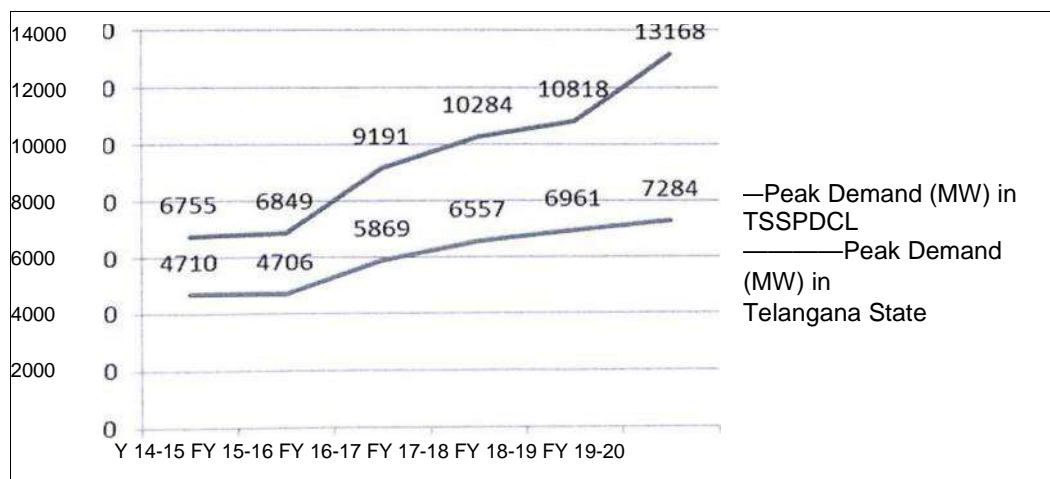
“9.3 Allotment of capacity in case of insufficient spare capacity congestion

9.3.1 For Long-Term applicants: In the event of insufficient spare capacity in distribution system/ congestion in the transmission system hindering accommodation of all long-term open access applications, the Nodal Agency shall inform the applicants of the same and shall advise the concerned Licensee(s) to carry out an assessment of works required to create additional capacity by strengthening of the system to accommodate such applicant(s). After completion of such works, the Nodal Agency shall allot the capacity to such applicant(s). As regards capital expenditure incurred by the licensee(s) for system-strengthening, the licensee(s) can require a capital contribution from the applicant(s) subject to the provisions of clause 17.1 (v) of this Regulation.”

- m. The aforesaid clause also stipulates that in case of insufficient spare capacity, the LTOA shall be provided by strengthening the system with the incurred capital expenditure to be borne by the applicant.
- n. The petitioner is intending to avail open access power through the intra-state LTOA transaction, whereas TSSPDCL has granted permission or reserved the capacity in the transmission/distribution network corridor from the generating plant to the nearest SS point only at the time of according technical feasibility, which does not imply that it is feasible to wheel the required quantum of open access power from the nearest SS point, through the connected transmission / distribution network and then through the nearest SS point of the consumer and then to the consumer service point. The injected energy at the generating point has to flow through the intra-state transmission and distribution network and then flow through the nearest substation point. Hence, it become clear that the intra-state transmission and distribution network has to be feasible to carry the said open access power from the source point to the nearest SS point and then to the consumer service point. Existence of feasibility from the generating plant to the nearest

substation point of the entry point is not only sufficient, but feasibility also has to exist for flow of open access power through interconnecting intra-state transmission and distribution network.

- o. It is stated that in the present scenario, the LTOA transaction of the petitioner company cannot be processed owing to the overloading conditions of the grid network i.e., maximum utilization of the distribution / transmission capacity.
- p. The reason for overloading distribution / transmission corridor is attributable to the instructions of the Government of Telangana to provide 24 Hrs power supply to all the services including agricultural services from January, 2018 (The MD during the month of January, 2018 has gone up to 6312 MW and the peak demand for the FY 2018-19 has gone up to 6961 MW in the month of October, 2018) onwards to abide by the policy of the State Government to provide 24 hours of reliable power supply to all the consumers including agricultural services, the TSDISCOMs had to make necessary arrangements for adequate power procurement from various sources and as a result of which the network became completely loaded.
- q. In addition to the above, it is also stated that the following graph details would show that the peak loading conditions of the grid network which has drastically increased every financial year starting from 2014 i.e., after the formation of Telangana and the grid network is being upgraded regularly in order to accommodate the growing demand year by year.



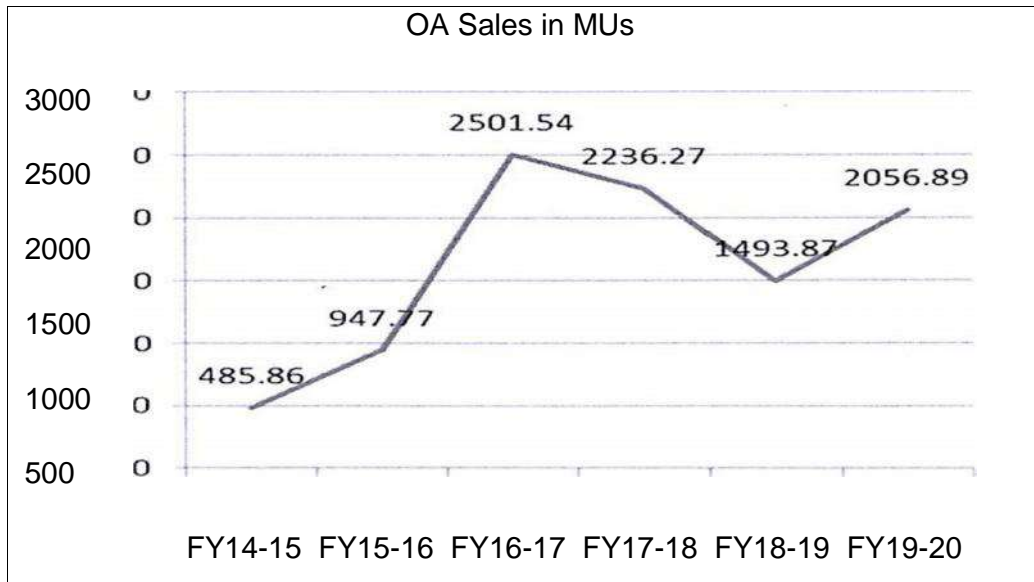
- r. It is stated that in the light of the above provision of the Act, 2003 and the regulations and rules set forth by the Commission, TSSPDCL is processing

many open access transactions every month with a view to provide non-discriminatory open access to the consumers through the same inter state and intra-state transmission or distribution network. For instance transactions detailed below are being accorded permissions for open access regularly through the network.

Open Access	For the month of August'20	
Details	No.	Qty (MW)
<u>Inter State</u>		
Short Term Open Access generators supplying power to Captive Consumers	2	44
Short Term Open Access generators supplying power to Exchanges	3	39.5
Short Term Open Access Consumers availing power from Captive Generators	2	7
Short Term Open Access Consumers availing power from Exchange	77	461.63
<u>Intra-state</u>		
Long Term Open Access generators supplying power to Captive Consumers	16	75.826
Long Term Open Access generators supplying power to third party consumers	26	126.044
Short Term Open Access Consumers availing power from Captive Generators	3	43.5
Short Term Open Access Consumers availing power from third party generators	1	1.5
Total	125	715.5

It became very much clear from the afore mentioned fact that the network (inter state and intra-state transmission network) is already loaded for the quantum of inter state short term open access transactions. All the above open access transactions are being accorded approval for wheeling or utilizing the transmission/distribution network every month regularly for every year and on an average the TSSPDCL is according approval for a quantum of 700-800 MW in open access only. Further, the peak demand recorded on the TSSPDCL grid network is 7284 MW on 06.03.2020 with the peak units being 152.38 Mus during the FY 2019-20 and recently on 08.08.2020, the grid network was loaded with the recorded maximum demand being 6845 MW which clearly substantiates the highly loaded condition of the grid network of TSSPDCL.

- s. It is also stated that with the growing demand of consumers of DISCOMs, the open access sales in TSSPDCL also increased yearly. The following table depicts the drastic increase of open access sale after the formation of Telangana, more particularly the sale has been drastically increased to 4 times during the FY 2019-20 when compared to OA sales in the FY 2014-15. The graph clearly shows the growth rate of OA sales in TSSPDCL.



- t. It is stated that as the number of open access transactions have been increased, capacity of power injection by various sources into the grid system has increased, which is leading to backing down of generators from whom the DISCOM is purchasing power to maintain grid discipline or otherwise the grid shall be disturbed causes damage to the transmission / distribution infrastructure. If the generators will back down at the request of the DISCOMS, the DISCOMS are liable to pay penalties in case of short term procurement.
- u. It is stated that in case of generating stations like thermal plants, if tripped cannot be restored immediately as per the demand requirement (variable & unpredictable) as the open access consumers (short term) are availing open access power which is not fixed and are varying from time to time which is disturbing the demand requirement of DISCOM due to which other consumers are at the risk of power interruptions due to unscheduled backing down of generating stations.
- v. But, in the present scenario the petitioner solar power generation is inherently infirm and varies from time to time according to seasonal and climatic variations and such infirm power is to be transmitted from the generating injection point to consumer service point is bound to further overload the network and resulting congestion of the network which is already highly loaded due to various open access transactions.

- w. After carrying out the huge system and network studies, to accommodate the open access transaction of the petitioner, this respondent has come to know that the network involved for supply of power from the entry point to the exit point is completely loaded due to saturation of the grid network with the 24 hrs agricultural supply, supply to other categories and also supply to the recent Mission Bhagiratha Scheme, Lift Irrigation Scheme like Kaleeshwaram, Palamuru, Chevella Pranahitha. The afore-mentioned projects of the Government have completely utilized the spare capacity of TSSPDCL interconnected grid network resulting in loading of the network to the maximum extent.
- x. It is stated that as the matter of allowing open access to the petitioner needs to be studied in a colossal scenario under this fully loaded grid constraints, a committee with the officials of TSSPDCL, TSNPDCL and TSTRANSCO is constituted to carry out the study of detailed feasibility system. Necessary action shall be initiated in regard to the request of petitioner after submission of the report by the committee.
- y. It is stated that the contention of the petitioner in respect of banking facility and terms and conditions laid down in Regulation 1 of 2017 for provision of banked energy is not being considered by the DISCOM is false and incorrect. In fact, the Nodal Agency is the concerned authority for settlement of such energy as per clause 7 of above said regulation (2 of 2006) which clause is extracted below:
"SLDC shall undertake the accounting of energy for each time block on monthly basis with the assistance of the Energy Billing Centre (EBC) of the State Transmission Utility (STU) in respect of the Open Access Generators, Scheduled Consumers and the OA Consumers who are connected to the transmission system, In respect of the Open Access Generators, Scheduled Consumers and the OA Consumers who are connected to the distribution system, it is the EBC that shall be responsible for energy accounting and settlement in co-ordination with the DISCOMs."
- z. Further, even the Nodal Agency shall carry out the settlement only after conclusion of open access agreement as directed as per clause 12.3 of Regulation 2 of 2005 which clearly states that the open access shall be provided after the applicant fulfills all the requisite formalities including the execution of open access agreement. The same is reiterated for kind perusal:

"Subject to the capacity being available, the Licensee(s) shall, after the applicant for long-term open access has completed all the pre-requisite formalities, including the execution of open access agreement, make arrangements to provide access to the applicant within the time period specified in the Andhra Pradesh Electricity Regulatory Commission (Licensees' Duty for Supply of Electricity on Request) Regulation, 2004 (No.3 of 2004):"

It is stated that DISCOM is required to follow the regulations framed by the State Commission.

- aa. In such view of the matter, the petitioner cannot claim the benefit of banking facility (purchase of energy by DISCOM) as stipulated under the Regulation 2 of 2005, 2 of 2006 and its subsequent amendments before entering open access agreement. Since, the applicant till such time is just treated as a consumer or generator of the distribution licensee, but not the open access applicant until it executes open access agreement.
- ab. It thus becomes clear that the said regulation is applicable to the open access applicants who shall be eligible to be called or addressed as open access users after entering into an open access agreement with the DISCOM. Hence the consumer/the applicant cannot claim itself to be an open access applicant unless it enters open access agreement. Consequently provisions contained in Regulation 2 of 2005 and 2 of 2006 and its subsequent amendments cannot be made applicable to the applicants who are not termed as open access users.
- ac. It is further stated that the Commission issued Regulation 1 of 2017 that is Third Amendment to (Interim Balancing and Settlement Code for Open Access Transactions) Regulation 2 of 2006 on 22.03.2017, in order to facilitate banking facility to the generating companies. Wherein the commission has formulated that
"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."
- ad. It is stated that the petitioner being a third party generator for availing the benefit of banking facility for the energy being injected into the grid from the date of synchronization till the date of open access approval need to be an eligible open access user which is under study by the committee. There

should be subsisting open access agreement for settlement in view of the said regulations which is applicable to eligible open access applicants only.

- ae. It is stated that DISCOM is not liable to pay for the energy injected from the date of synchronization to the date of open access agreement at any mutually agreed price without any rate being fixed by the Commission.
- af. Moreover, Regulation 1 of 2017 which is amendment of the Principal Regulation 2 of 2006, which is purely applicable to open access generators, scheduled consumers and OA consumers clearly states 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 regulations that is (Regulation 2 of 2006, 1 of 2013, 2 of 2014 and Regulation 1 of 2017). But, in the present scenario, the petitioner has neither a captive consumption within the premises nor is a declared eligible open access user without any subsisting open access agreement.
- ag. The guidelines or frameworks facilitated under the Regulation 2 of 2006 which is applicable to open access generators, scheduled consumers and OA consumers can be made applicable only if they use the transmission or distribution system of the licensee under the open access regulation as defined in the Regulation 2 of 2006 and the same regulation directed to provide open access facility only after conclusion of open access agreement. Whereas, the petitioner is not yet permitted or allowed to use transmission or distribution system of the licensee owing to the overloading situation of the grid network which is under the feasibility study by the committee.
- ah. Therefore, the contention of the petitioner for recovery of revenue by payment of bills for the energy banked into the grid is unlawful and cannot be processed in view of the applicable regulations in force.
- ai. It is stated that clause 11 (e) of the Telangana Solar Power Policy 2015, which came into effect from 01.06.2015, applicable to solar projects for sale of power to third parties postulates the concept of deemed banking energy to be

deemed purchase by DISCOM(s) at average pooled power purchase cost as determined by the Commission for the year if left unutilized.

- aj. It is stated that as per the powers vested under section 108 of the Act, 2003, the State Commission shall be guided by such directions in the matters of policy involving public interest as the State Government may give it in writing to the State Commission. The State Commission basing on such written directions regarding the policy of the Government, the State Commission after conducting public hearing and after obtaining the comments from the stakeholders directs the licensee to implement the policy of the Government.
- ak. 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 the 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 without any specific directions or orders from the Commission.
- al. In line to the Government orders and section 108 of the Act, 2003, the Commission has issued the 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.
- am. 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.
- an. Therefore, the contention of the petitioner that this respondent has ignored and in dehorse to the policy is injustice is not a true statement. This respondent being a distribution licensee is bound to act only upon the guiding

regulations, frameworks as postulated by this Commission and in the absence of adoption orders of the Commission in respect of the Government policy matters, this respondent is not authorized or not committed in toto to facilitate any incentives under the policy to the petitioner and is not even obligated to comply to the objectives of the policy matters.

- ao. It is stated that the contention of the petitioner that respondents have neither purchased the power generated nor even chosen to allow the petitioner to sell to the third party under a tri-partite agreement for the reasons best known to them is wholly irrational and contrary to the above policy in force, Act, 2003, regulations and hence untenable. As this respondent is bound to act only upon the prevailing guidelines and regulations which directed to allow open access facility only if there exist sufficient distribution corridor network in the grid for transacting the power through open access facility. Hence, this respondent cannot process the request of the petitioner to allow open access facility under the loaded grid conditions and at the stake of creating disturbance in the grid network causing hindrance for grid safety and stability. However, the Committee which is formulated to study the grid network stability basing on the results of the system study analysis of the grid will decide the LTOA transaction of the petitioner to be feasible or not.

B) Counter affidavit of TSTRANSCO (STU or Nodal Agency)

- a. The petitioner filed the above petition praying the Commission to direct the respondents to enter into tripartite agreement with the petitioner as applied and placed on record as early as on 27.03.2020; to declare that the action of respondents in dis-allowing the petitioner for third party sales by providing all facilities as required under Act 2003, regulations etc. as illegal, contrary to the Telangana State Solar Policy, 2015, which came into effect from 01.06.2015; or to direct the respondents to purchase the energy generated by the petitioner at the tariff determined by this Commission for the solar power plant in the State.
- b. It is stated that the petitioner has applied for LTOA on 06.08.2018 but not on 18.07.2018 as averred by the petitioner. The LTOA application dated

06.08.2018 of the petitioner was forwarded to the TSSPDCL on 11.09.2018 for furnishing the technical feasibility and the same is awaited from TSSPDCL.

- c. It is 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."

- d. It is stated that the application of the petitioner for LTOA transaction involving both generator and consumer, is connected to the distribution network of TSSPDCL. Hence the feasibility report of TSSPDCL is essential for processing of open access application. In view of Clause 10.6 of the Regulation 2 of 2005, the TSTRANSCO being the Nodal Agency can process the LTOA application only after the receipt of technical feasibility from TSSPDCL.
- e. It is stated that the transaction of the petitioner involves the distribution network of TSSPDCL only. Therefore this respondent is no way connected to the relief sought by the petitioner to enter into tripartite agreement. It is stated that the petitioner needs to enter bipartite agreement with the concerned distribution company. The TSTRANSCO will not be a party to the said agreement. However, the TSTRANSCO being a Nodal Agency for LTOA will process the open access application for approval if the concerned DISCOM, TSSPDCL issues technical feasibility. This respondent, therefore, states that the request of the petitioner for grant of approval of open access of its 2 MW solar plant under third party sale can be processed by this respondent only after the receipt of technical feasibility from TSSPDCL.

22. The Commission has heard the submissions of the counsel for the parties and perused the record in detail. The Commission has examined the petition and the interlocutory application. The Commission has taken-up this petition for consideration as urgency has been expressed by the petitioner with regard to its

financial status and the action likely to be initiated by the financial institution under SARFAESI Act, 2002. The submissions of the counsel for the petitioner and representatives of the respondents are summarized.

“The counsel for the petitioner stated that the petitioner established solar project and intended to undertake third party sale. Accordingly, based on the regulation in vogue it has entered into agreement for sale of energy generated from the project to third party and submitted the same to the Nodal Agency for according approval for long-term open access. Till date the respondents have not accorded approval for the LTOA. In fact, the synchronization of the plant had been allowed in May, 2018 itself, yet in the absence of approval for LTOA, the petitioner is unable to sale its energy to its third party consumer. The respondents are holding back the approval unjustly.

While so, the lenders are insisting the petitioner for the repayment of the loan drawn for establishment of the power project and went to the extent of issuing notice for initiating proceedings under SARFAESI Act, 2002. If the proceedings are initiated, the petitioner would be facing irreparable loss and injury including the means of livelihood.

The counsel for the petitioner highlighted the provisions in the regulation, as also the decisions rendered by the Hon’ble High Court in the matter of allowing open access under section 42 of the Act, 2003.

The counsel for the petitioner stated that though the application for long term open access was made in July, 2018, the nodal agency did not accord consent even after lapse of two years and four months assuming that the window for the open access application stood closed in August, 2018 itself.

The counsel for the petitioner highlighted the plight of the petitioner stating that in the absence of allowing the third party sale, the power generated has been injected into the grid, therefore, the counsel sought interim directions as prayed for, in the circumstances that banker has initiated proceedings under SARFAESI Act, 2002, In the event of the said Act being invoked, the petitioner will be put to irreparable loss and will be left with no other way except to close the plant.

The counsel for the petitioner sought to rely on section 94 (2) of the Act, 2003. The counsel also emphasized the provisions of the conduct of business regulations, 1999. This argument is made in support of the request for passing interim order in the matter as has been expressed earlier and sought for by the petitioner. The Commission has authority to pass suitable orders to meet the ends of justice and to protect the interests of the parties.

The counsel for the petitioner while explaining the orders passed by the Hon’ble High Court in W.A.No.80 of 2019 between the respondent and another company stated about promissory estoppel. It is also his case that the respondents cannot act differently against different consumers and generators. The petitioner had right and authority to invoke the penal provisions under section 142 of the Act, 2003, but did not choose to do so. The counsel reiterated the fact that the technical feasibility was accorded by the distribution licensee in May, 2016 and the power plant was synchronized with the grid after conducting due inspection of the plant and the necessary grid conditions with the intention of allowing third party sale only. Thereafter, the power generated is injected into Licensee’s network without any demur while not deciding on allowing the open access to the petitioner. Now stating

that they are undertaking system studies and after receipt of the report only they will consider the open access application, is illegal and harsh. It is also violative of the regulations. The respondents have not informed the petitioner about the status of application for a period of two years and now are stating that they are undertaking study, unjustly.

The representative of the respondents stated that the petitioner cannot rely upon on the letter on the DISCOM as it has not allowed open access nor consented to allow the same, except allowing the plant to connect to the nearest substation. That in itself does not constitute allowing open access as the nodal agency is yet to decide on the application of the petitioner and the DISCOM has not yet conveyed its feasibility to the nodal agency. The judgment relied upon by the petitioner is not relevant to the petitioner's case as in that case the respondents were agitating that in view of the system constraints, they were not able to provide open access facility to the consumer. It is not the case with the petitioner. Synchronization of the plant does not amount to or constitute allowing of third party sale. Pumping of the energy generated by the petitioner without seeking banking of the same, would be illegal injection and nothing stopped the petitioner from stopping generation of power. Even otherwise, in the absence of agreement for banking, the respondents could not have taken the same as having been allowed and now alleged that the respondents have drawn the power and unjustly enriched itself.

The representative of the respondents stated that the respondents have constituted a committee for examining the feasibility of allowing open access and that open access would be allowed only upon receipt of such report. The energy pumped into the grid cannot be treated as banked energy in the absence of the agreement and no determination of tariff for such energy is made, which is to be procured by the respondents. There is no balance of convenience in favour of the petitioner and the petitioner is free to undertake such course as may be desirable in respect of energy generated from the plant. Such action cannot be against the respondents as it has not desired to procure the energy so generated. No relief may be granted to the petitioner at this stage. Payment of loans or any other aspect of financial issues is not the concern of the respondents.

The counsel for the petitioner prayed for interim order to direct the respondents to enter into agreement or in the alternative to pay for the energy already injected into distribution licensee's network. If neither is possible, the Commission may direct the respondents to procure the said energy also at the tariff determined by the Commission itself."

23. The Commission notices from the pleadings and the material on record, that the petitioner, being attracted by the Solar Policy, 2015 of the State of Telangana, after having the granting the technical feasibility by the distribution Licensee on 24.05.2016 had established a solar generating plant of capacity, 2 MW [out of 4 MW initially sanctioned] at Chintapally (V&M), Nalgonda district in Telangana State, intending to sell the generated power to third party consumer in accordance with the provisions of regulations duly availing loan of Rs.7.5 crore from the financial institute i.e., State Bank of India. It has also entered into a bilateral agreement dated

04.07.2016, for sale of power with the third party consumer viz., M/s NATCO Pharma Limited, having their industry situated at Kothur V&M, Rangareddy district bearing connection No.RJN-502 with a CMD of 3,750 kVA for a duration of 25 years The plant was commissioned as per Licensee guidelines and synchronized to the grid i.e., network of the distribution licensee, at 33 kV side of 33/11 kV SS Chintapally, in the presence of the officials of respondents on 19.05.2018 and since then the energy is being injected to grid. The petitioner, made an application dated 18.07.2018 to the Nodal Agency viz., TSTRANSCO (STU) for grant of long term intra-state open access (LTOA) in terms of provisions of 'Terms and Conditions of Open Access' Regulation No.2 of 2005.

24. It is alleged that the Respondents, instead of completing the processing of the application for allowing LTOA within the timelines set out in the said Regulations, dodging the issue, thus not allowing the petitioner to undertake third party sale of energy generated from its plant, this resulted in the petitioner being deprived of revenue from the third party sale. Hence the petitioner has filed this petition along with interlocutory application, seeking the stated relief.

25. As extracted in the pleadings, regarding open access, it makes emphatically clear that the Respondents are bound to allow the open access in accordance with the provisions of the Act, 2003 and the Regulations, and the provisions of the said regulation as stated by the petitioner clearly set out the time lines for allowing the open access to any generator/consumer. The Commission notices that no communication whatsoever was made over to the petitioner, in terms of clause 10.6 or 10.7 of the Regulation No.2 of 2005. Whereas, the respondents now turned round after a period of two years to state that they are yet to decide as to whether the petitioner must be allowed to open access or not since system studies are not yet completed, without providing any material evidence, in case to case basis, in particular against the application of the petitioner, that the Respondents carried out the exercise, any load flow studies to simulate the impact of power flows associated with such open access transaction on the distribution network, system impact studies, etc., in conformity with technical standards according to Grid code and/or Distribution code and/or Indian Electricity Rules, as case may be and thus determined whether capacity is available to permit such open access transaction or

there is a need to carry out system-strengthening works to ensure availability of sufficient capacity.

26. 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 two years unless and until the petitioner approaches this Commission and now states that they are yet to complete the process after lapse of two years is uncalled for, as it smacks of exercising dominant position by not allowing the open access, such act is neither appreciable nor to be supported. The respondents have acted contrary to the provisions of the Act and regulations.

27. The Commission notices from the pleadings in the petition that the petitioner is under threat from financial institutions under SARFAESI Act, 2002. The counsel for the petitioner brought to our notice, the judgment passed by the Hon'ble High Court in Writ Appeal No.80 of 2019 filed by the respondent No.2. It has been held by the Hon'ble High Court while confirming the order of the single judge of the Hon'ble High Court in W.P.No.25144 of 2017 as below.

"13. It is seen that on the earlier occasion, the respondents have themselves agreed to give the open access on 24 hours basis, but at that particular point of time, the petitioners requirement only 12 hours per day. Therefore, it did not avail the same. But, subsequently, when the petitioner started an Induction Furnace which runs for 24 hours per day, the counsel has again re-applied for the open access. The respondents, instead of granting the open access, have taken legally untenable grounds for denying the open access viz., that installation of the said equipment and energy meters cannot be said to have been installed only for the purpose of availing open access facilities; that the charges for installation of the meters were not paid; that the petitioner being a consumer fed through Mixed/Express Feeder cannot be allowed open access due to operational constrains like maintaining the balance between supply and demand, short term or long term access; that the petitioner is a short term consumer, and during emergencies, it is not possible to control the short term open access consumer existing on mixed/express feeder; that the dedicated feeder is not taken etc. As rightly held by the learned Single Judge, when the respondents are allowing the open access to other factories and companies, the said facility cannot be denied to the petitioner on legally untenable grounds, and it cannot be discriminated."

28. Though the judgement referred to by the petitioner directly does not fit into the facts and circumstances of the case, yet cue can be deciphered that the licensees, have to give effect to the provisions of the Act, 2003 and the regulations made thereunder in so far as providing open access. The distribution licensee cannot now at this stage resile from the implementation of the above said provisions. The

reasons assigned by the respondents for such resale is contrary to the established law.

29. The counsel for the petitioner would endeavor to submit that the petitioner had the option of undertaking recourse to punishing the respondents for violating the provisions of the Act, 2003 and regulations thereof under section 142 of the Act, 2003. However, the counsel pleaded that since the petitioner as a consequence may suffer and jeopardize its existence at the hands of respondents, if the petitioner were to invoke section 142 of the Act, 2003. In order to obviate any confrontation and to ensure that it should get the compliance of the Act, 2003 and regulations, the petitioner resorted to adjudicatory proceedings instead of initiating penal action against the respondents. Having not done so and keeping quiet for two years while the energy was merrily injected into the licensee's network/grid, now turning round after the petitioner approaches this Commission, is nothing short of showing disrespect or violating the Act, 2003 and regulations thereof. The action of the respondents is highly deprecated.

30. Reference has been drawn to lift irrigation schemes and provision of 24 hours supply to agriculture at the instance of the Government for not providing open access to the petitioner by the TSSPDCL. It is surprising that for the sake of 2 MW solar power plant which has CUF of only 19% approximately, the TSSPDCL found the system to be constrained due to above actions and over loaded so that it cannot deliver the energy generated by the project to the consumer of the generator. From the submission of the DISCOM it can only be stated that the DISCOM or the Nodal Agency are unfairly denying open access.

31. One other contention raised by the DISCOM appears to be self made interpretation of Regulation No.1 of 2017. The said amendment regulation provides for the case of captive generator or a consumer who has no open access agreement but the provisions make it clear that in case of third party sale the energy fed in to grid from the date of synchronization till open access approval is to be treated as deemed banked energy. In the instant case the DISCOM did not state that it has refused to provide open access through the Nodal Agency. Assuming that open access is allowed, the energy injected into grid i.e., the distribution licensee's network would stand to be a deemed banked energy. In that view of the matter and

inasmuch as the Respondents having not allowed open access for a period of 2 years cannot now refuse to do so and thereby it is liable to pay the charges for the energy drawn by it from the petitioner project.

32. It is also contented by the DISCOM that the policy issued by the Government has not been adopted by the Commission. The DISCOM cannot advert to such a contention merely because the policy was not specifically adopted in any proceedings of the Commission. In fact, Regulation No.1 of 2017 partially covers some of the aspects of the policy. Thus, it cannot state that the Commission has not adopted the policy.

33. The DISCOM sought to aver that the power generated cannot be loaded to the grid which is already constrained and therefore a committee has been setup to assess the system requirement that is to be strengthened. While drawing the power in to grid the DISCOM cannot state that open access cannot be allowed and system studies are being done. Both the situations run contrary to each other. Thus the contention of the DISCOM cannot be sustained.

34. A factual matrix needs to be highlighted here, according to the petitioner it has made application for open access on 18.07.2018 whereas the respondents have stated that the applicant had made the application on 06.08.2018. The date mentioned by the respondents may be correct. However, by complying the regulation on open access the Nodal Agency took a period of 1 month to forward the application to the DISCOM for ascertaining the feasibility of providing open access to the petitioner. The Nodal Agency should have intimated in terms of provisions of the regulation to the applicant/petitioner about feasibility or otherwise of open access facility at the most by 30.09.2018 i.e., within 30 days from the closure of monthly window, in respect of the petitioner, it is on 31.08.2018. The Nodal Agency has abdicated its responsibility by sending the application to the distribution licensee and not communicating the status of the application to the applicant/petitioner within the stipulated time. Moreover, it is stated that it is awaiting the feasibility report from the distribution licensee. As no communication is made by the Nodal Agency within the stipulated time, the Nodal Agency has caused untold agony to the petitioner which is neither called for nor is appropriate. The petitioner is entitled to avail LTOA due to lapses of the respondents.

35. Inasmuch as the respondents having got unjustly acted, it is duty of this Commission to set right the gross injustice done to the petitioner. The petitioner is required to be rightly paid for the energy injected to the grid from the date of synchronization.

36. Keeping the above discussion and factual matrix, 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 long-term intra-state open access (LTOA) immediately and take consequential steps in terms and conditions of 'Interim Balancing and Settlement Code' Regulation No.2 of 2006 and to make payments to the Petitioner.

37. The petition is allowed as above (para 36). In view of disposal of the original petition, the interlocutory application stands closed. No costs.

This order is corrected and signed on this the 7th day of October, 2020.

Sd/-
(BANDARU KRISHNAIAH)
MEMBER

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

Sd/-
(T.SRIRANGA RAO)
CHAIRMAN