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

O. P. No. 82 of 2015
&
I. A. Nos. 31 of 2015

Dated: 17.01.2017

Present
Sri. Ismail Ali Khan, Chairman
Sri. H. Srinivasulu, Member

Between:

M/s. Pragati Group,
28/2, 2nd Floor, Cunningham Road,
Bangalore – 600 052. … Petitioner.

And

1. Chairman & Managing Director,
   Southern Power Distribution Company of TS Ltd.,
   Mint Compound, Khairathabad, Hyderabad-500004.

2. Transmission Corporation of Telangana State
   (TRANSCO), Vidyut Soudha,
   Hyderabad – 500 082. … Respondents No.1 & 2.

3. State Load Dispatch Center of Telangana State
   (TSSLDC), Vidyut Soudha,
   Hyderabad – 500 082. … Respondent No.3.
   (Proposed to be Impleaded by the Petitioner vide I. A. No. 31 of 2015)

The petition came up for hearing on 27.04.2015, 30.06.2015, 17.07.2015, 04.08.2015, 08.09.2015, 04.11.2015, 23.11.2015, 23.12.2015, 13.06.2016, 22.06.2016 and 09.08.2016. Sri. Hari Kumar, Electrical Engineer alongwith Sri. N. K. K. Venkat, Consultant represented the petitioner on 27.04.2015. Sri. N. K. K. Venkat, Consultant appeared for the petitioner on 30.06.2015, 08.09.2015, 04.11.2015, 23.11.2015, 22.06.2016 and 09.08.2016. Sri. K. Naveen Kumar, General Manager of the petitioner appeared on 04.08.2015. There was no representation on behalf of the petitioner on 17.07.2015, 23.12.2015 and 13.06.2016. Sri. Y. Rama Rao, Standing

Counsel for the respondents along with Sri. J. Ashwini Kumar, Advocate appeared on 27.04.2015, 04.08.2015, 08.09.2015, 04.11.2015. Sri. J. Ashwini Kumar, Advocate representing Sri. Y. Rama Rao, Standing Counsel for the respondents appeared on 30.06.2015, 17.07.2015. Sri. P. Venkatesh, Advocate representing Sri. Y. Rama Rao, Standing Counsel for the respondents appeared on 23.11.2015 and 23.12.2015. Sri. Y. Rama Rao, Standing Counsel for the respondents along with Smt. Priya Iyengar, Advocate appeared on 13.06.2016 and 09.08.2016. Smt. Priya Iyengar, Advocate representing Sri. Y. Rama Rao, Standing counsel for the respondents appeared on 22.06.2016. The petition having stood for consideration to this day, the Commission passed the following:

ORDER

M/s. Pragati Group (petitioner) has filed a petition under sec 86 (1) (f) of the Electricity Act, 2003 (Act, 2003) seeking to question the action of levying wheeling and transmission charges by the licensees along with the issue of not allowing the banking of power supplied pursuant to the synchronization of project and open access transactions as inadvertent energy including allowing the same beyond 31.01.2015.

2. The petitioner stated that it is a generating company and has setup a 9 MW solar plant at Boinpally Village, Midjil Mandal in Mehaboobnagar District. It has entered into a Long Term Open Access Agreement (LTOA) with the Respondent No.1-Telangana State Southern Power Distribution Company Limited (TSSPDCL) on 12.08.2014 for availing of open access facility for the use of distribution network of the respondent No. 2, Transmission Corporation of Telangana State (TSTRANSCO) for wheeling of the energy generated from its plant located at Mehaboobnagar District to the choice of its consumers located in the service area of TSSPDCL.

3. The petitioner stated that in accordance with the applicable provisions of the Andhra Pradesh Electricity Regulatory Commission Terms and Conditions of Open Access to Intra State Transmission & Distribution Networks Regulation (Regulation No.2 of 2005) (O A regulation), the petitioner has made an application before the nodal agency as designated under the said Regulation on 02.05.2014 with one of the exit points at Visakhapatnam in APEPDCL (HT SC No. VSP 418). However, due to uncertainty in operationalization of inter-state open access for solar generators, it filed

a revised application with increased drawl point capacities / allocations to rest of power – off takers / scheduled consumers on 23.05.2014 for grant of open access for a contracted capacity of 9 MW at entry point of solar generator to below mentioned consumers and the same has been accepted in the manner provided under the said Regulation.

a. M/s Enn Enn Corporation Ltd. HDN 936
b. M/s Enn Enn Corporation Ltd. HDN 954
c. M/s HSBC Software Development India (P) Ltd. RRN 1289

4. The petitioner stated that as per the terms of the LTOA, the effective date shall be the date up on which the parties execute the agreement and shall be in force from the effective date up to 30.06.2021. However, there were inherent process delays on the part of respondents in executing the agreement. Whereas the subject solar plant first phase of 4.83 MW got synchronized on 28.03.2014 and second stage of 4.17 MW on 04.06.2014. The same has also been certified by the officials of the TSSPDCL and TSTRANSCO vide their joint meter readings being taken every month on 18th day. It is stated that *v*ide the letter dated 16.08.2014, the CGM (Comml & RA), TSSPDCL has informed the petitioner that the LTOA has come into force with effect from 13.08.2014 and requested to send the transmission schedule at the entry point as per the open access regulation and the amendments made thereto, till the expiry of the LTOA.

5. The petitioner stated that 86 (1) (e) provides for promoting cogeneration and generation of electricity from renewable sources of energy by providing suitable measures for connectivity with the grid and sale of electricity to any person, and also specify, for purchase of electricity from such sources, a percentage of the total consumption of electricity in the area of a distribution licensee. Likewise clause (f) provides for adjudicating upon the disputes between the licensees and generating companies and to refer any dispute for arbitration.

6. The petitioner stated that there are three critical issues on which it has been greatly subjected to the distress by the TSTRANSCO and TSSPDCL and so is constrained to file this petition under section 86 (1) (f) of the Act, 2003. The three issues are narrated as under.

I. Non-Complying of the Tariff Order of the Commission:

a) In the Tariff Order dated 09.05.2014, issued by the erstwhile Andhra Pradesh State Electricity Regulation Commission (APERC), for wheeling charges for 3rd control period between FY 2014-19, vide page 87 under caption “note on wheeling charges” at point iii, it is specified that “In line with government Policy there shall be no wheeling charges for Non-Conventional Energy generators using Wind Solar and Mini-Hydel sources”.
b) Much displeasure to the petitioner, the TSSPDCL is not implementing the provisions of the distribution tariff order for the third control period issued by the then APERC on 09.05.2014, in true spirit, in so far as the concessions offered to solar power developers by means of waiver of wheeling charges. It is constrained to pay the corresponding wheeling charges per month amounting to a sum of Rs. 3,16,710/- which poses a lot of burden and stress on the financial position of the petitioners.
c) TSSPDCL as a distribution and retail supply licensee of the Commission is obliged as per law and conduct to implement all directions, regulations and orders issued by the Commission under the relevant provisions of the Act, 2003.
d) Further it is stated that Commission in it’s order dated 07.02.2015, vide I. A. No. 1 of 2015 between M/s. Arhyama Solar Power Private Limited and TSTRANSCO, TSSPDCL and others, passed an interim order “directing that the licensees shall give the benefit of exemption of transmission and wheeling charges in favour of the petitioner pending disposal of the main petition”.
e) Further it is also stated that Hon’ble High Court of Judicature at Hyderabad in its order dated 23.12.2014 vide W. P. M. P. No. 48927 of 2014, between M/s. Shri Lakshmi Ganapathy Industries Private Limited and TSTRANSCO, TSSPDCL and others, had passed an interim order “directing that the respondents and its subordinates are restrained from levying and collecting wheeling and transmission charges from the consumers of petitioners on third party sales”.

II. Treatment of Inadvertent Energy:

a. Even though application for open access in complete respect has been filed by 23.05.2014, the TSTRANSCO and TSSPDCL have finalized the

modalities of the agreement and concluded the same by 13.08.2014. Three months have elapsed since the application has been filed and it has lost the valuable generation of electricity. It has come to know that as per the rules the generation has been accounted as inadvertent energy and absorbed at free of cost by the TSSPDCL. The breakup of such energy supplied to the grid before the commencement of the LTOA is shown below.

i) Approx. generation from 23.05.14 – 23.06.14 = 12,00,000 units.

ii) Approx. generation from 23.06.14 – 04.08.14 = 18,00,000 units.

iii) Approx. generation from 04.08.14 – 12.08.14 = 3,00,000 units

b. As shown above, generation of about 33 lakh units has been considered for free cost by the TSSPDCL, which is very unfair and arbitrary.

c. It is stated that the provisions of the O A Regulation clearly set out the time frames within which, the LTOA shall be allowed.

d. Clause 10.6 of the above regulation reads as “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 of the same.

e. It is very clear that the open access has been sought to get the power wheeled to the target consumers who are having enough existing contracted capacities with the DISCOMs and the power is to be wheeled is within those contracted demand. No system strengthening has happened to allow open access to the consumers as per the open access application.

f. Clause 12.3 of the Open Access Regulation reads as “subject to the capacity being available, the licensee shall, after the applicant for long term open access has completed all the pre – requisite formalities, including the execution of LTOA, make arrangements to provide access to the applicant within the time period specified in the APERC (Licensee’s duty for supply of electricity on request) Regulation, 2004. (Regulation 3 of 2004).

g. All the target consumers are supplied at 33 KV by the TSSPDCL and there was no requirement whatsoever with regard to system strengthening and erection of a new substation for allowing open access.

h. No Objection Certificate (NOC) for availing of open access from the appropriate authorities has been received on 04.08.2014 and the LTOA has

been entered into on 13.08.2014. Had the open access been granted in time to it, these units would have been covered in billing / settlement process. Injustice has been done to it for none of its mistakes. The delay in grating the open access approval, internal delays in the official procedures of the licensees, cannot be thrown on to the open access applicants, and the callous nature of the licensees cannot be entertained.

i. Though the petitioner had put all best efforts in expediting the approval process, there still were internal delays by TSSPDCL and TSTRANSCO. The delay on the part of the licensees results in inappropriate advantage to them by means of inadvertent energy. The irony of the situation is that, such delays results in improved operational performance of the DISCOMs, since such inadvertent energy which was not accounted for actually helps in loss calculations of the DISCOMs by showing lesser level of losses than the actual losses, there by showing a fictitious improvement in operational performance of licensees.

j. It is stated that the provisions of G. O. Ms. No. 44, dated 16.11.2012, clearly stipulates time frame of 15 days for granting intra-state open access approval [at Clause (c)]. state government also clearly set out the time frames within which, the long term open access shall be allowed. Federal Policy ignorance of the TSTRANSCO and TSSPDCL are clear denial towards promotion of solar power in the state and hence is subject to appropriate remedies.

k. The petitioner stated that it has lost approximately 33 lakh units that were injected into the grid and not being accounted for. These injected units fallaciously reflect in the improved performance of TSSPDCL just by delaying the process of open access of the investor. This is detrimental and pulls back the investors in renewable sector and incorrectly shows improved performance of TSSPDCL and further encourages TSSPDCL to delay the approval process not adhering to the timelines published by Commission.

l. In view of the above, it is stated that to treat the inadvertent energy injected into the grid as banked energy; otherwise, it is subjected to tremendous financial pressures. These kinds of acts of the licensees are discouraging the entrepreneurs to invest in renewable sector in the state and avail open

access facility. This is detrimental to the whole concept of open access envisaged in the Act, 2003.

III. Request to carry forward the unutilized banked units:

a. As per the provisions of the Interim Balancing & Settlement Code (IBSC) Regulation (Regulation No. 2 to 2006), settlement of the imbalances that occur due to open access transactions have to be carried out. Treatment of banked energy, in respect of the renewable energy generators involved in intra state open access transactions is to be carried out.
b. There was undue delay on the part of the licensees in conducting the settlement committee meetings. It affected the petitioner in bad way as it was unable to utilize the banked energy in a prudent manner. The chronological events of the settlement committee meetings conducted are shown in a table in the petition.
c. It came to its knowledge that delays in organizing the settlement committee meetings were due to the delay in constituting the settlement committee by TSTRANSCO. This is not the fault of it. Administrative delays on the part of the licensees cannot be blamed on it. For no mistake of it settlements were unduly delayed giving it less / no time to utilize the banked energy. As per the Regulation No. 2 of 2006 and Amendments made to it, the unutilized banked energy existing as on 31st January will be treated as procured by the TSSPDCL at a rate of 50% of the pooled cost of power purchase, which is very unviable. This leads to forcibly leaving its banked energy to TSSPDCL at highly unremunerative price. This fact will again encourage the licensees to delay the process to fallaciously reflect in the improved performance. This puts the generators in a very disadvantage position.
d. Immediately, after knowing the quantum of its banked energy in Dec – 14 billing cycle, it applied for short term open access (STOA) on 09.12.2014 to dispense the banked energy so accrued to petitioner account to a short term consumers of its choice and the application was declined by CE / SLDC / TSTRANSCO on 27.12.2014 for unknown reasons to us.
e. But in a similar situation, APSLDC under the same regulations of erstwhile APERC has allowed the request of M/s Hetero in same circumstances. While it has put all his best efforts to expedite the process by submitting,

letter on 24.12.2014, were put in vain. It has written letters again to TSSPDCL on 29.12.2014 and reminder letter on 03.01.2015 for knowing the reasons for declining its application so that it can re-apply. However, its letters were unacknowledged by TSSPDCL as on date and there was no response, it is not able to re-apply for STOA.

f. Further, as part of petitioner efforts to schedule banked energy, it has applied for addition of exit points on 12.12.2014 and 19.12.2014 and its applications were rejected on the grounds that exit points once added should be for the whole period of the agreement and that the period mentioned by us were, for the new exit points, was less than the existing period of agreement. However, it has not been able to concur this fact from the existing regulatory provisions.

g. Delays and ignorance in the process by department officials in granting approvals in spite of all requisite provisions causing losses to investors in renewable sector and incorrectly projecting improved performance of TSSPDCL.

h. In view of the above and difficulties explained in availing the banked units, it request for issue of necessary instructions to the TSSPDCL to consider carry forwarding of the banked energy so available as on 31.01.2015, to the next financial year that is 2015 – 16.

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

a. “For the aforementioned reasons and grounds, the petitioner most respectfully prays this Commission for the following.

b. Direct the respondents to comply with the third control period distribution MYT tariff order and extend concessions on wheeling charges for the petitioner.

c. Direct the TSSPDCL refund all the payments made towards wheeling charges to the petitioner along with payment made towards security deposit of wheeling charges.

d. Quash the act of treatment of energy injected into the grid by the petitioner, after synchronization of the plant and commencement of OA transactions, as inadvertent energy by the TSSPDCL and consider these units as banked energy enabling the petitioner to schedule the banked energy.

e. Allow the petitioner to avail the banked energy available as on 31.01.2015, to be carry forward to the next financial year, in view of the delays on the part of the respondents to conduct the settlement committee meetings and other reasons as mentioned in this petition."

8. The 1st Respondent has filed his counter-affidavit as follows:

a. The erstwhile state of A. P. in the year 2012 had issued G. O. Ms. No.39 Energy (RES.A1) Department dated: 26.08.2012 notifying the solar power policy in exercise of its powers conferred under section 108 of the Act, 2003. Subsequently, the erstwhile state of A.P. issued another G. O. Ms. No. 44 Energy (RES.A1) Department dated16.11.2012 whereby G. O. Ms. No. 39 is amended.

b. As per the said amendment, the solar power plants which wheel and transmit power to grid are exempted from payment of wheeling and transmission charges. The above incentive is applicable for a period of seven years from the date of implementation.

c. It is stated that the then four APDISCOMs have filed the ARR & Tariff proposals for distribution business for 3rd MYT control period (i.e., FY 2014-15 to FY 2018-19) and retail supply business for FY 2014-15 on 04.12.2013 before the Commission. In pursuance to the above filings made by the then APDISCOMs, the APERC has directed that the "existing tariffs shall continue from 01.04.2014 until further orders in view of the model code of conduct".

d. It is stated that APERC issued tariff order on 09.05.2014 in respect of wheeling tariff of distribution companies. The said tariff order provides that in terms of the government policy, solar power projects are exempted from the payment of wheeling charges. The APERC has issued the orders in the matter of determination of wheeling charges for 3rd MYT control period (FY 2014-15 to 2018-19) and directed to publish a public notice in two English and two Telugu daily newspapers on 10.05.2014.

e. As per Regulation No.8, dated 28.08.2000 of APERC, clause (10) & (11) in tariff is as follows:

"The licensee shall publish the tariff or tariffs approved by the Commission in the newspapers having circulation in the area of supply as the commission may

direct from time to time. The publication shall, besides such other things as the commission may require, include a general description of the tariff amendment and its effect on the classes of the consumers".

"The tariff so published under clause (10) above shall become the notified tariffs applicable in the area of supply and shall take effect only after such number of days as the commission may direct which shall not be less than seven days from the date of first publication of the tariffs".

In order to implement the wheeling tariff order, TSSPDCL has requested the Special Chief Secretary, Energy Department vide letters 09.05.2014 and 31.05.2014 to issue the necessary instructions for publishing the wheeling tariff in the newspapers. But, no instruction had been received.

f. Subsequently, the A. P. Reorganisation Act, 2014 (Act, 6 of 2014) came into effect from 02.06.2014 and the new states of A. P. and Telangana came into existence from that date. As per the schedule XII of Act, 6 of 2014, Anantapur and Kurnool Districts which previously fell within the jurisdiction of APCPDCL have been reassigned to APSPDCL. The Government of Andhra Pradesh vide G. O. Ms. No.24, dated 29.05.2014 has issued necessary guidelines for reassignment of distribution business of above two districts to APSPDCL.

g. Similarly, as per section 3 of the amended Act, 6 of 2014, certain areas in the territory of Khammam District in the erstwhile state of Andhra have been retained in the new state of Andhra Pradesh. This necessitates a corresponding reassignment of distribution business from APNPDCL to APEPDCL. Thus, as per Act, 6 of 2014, the jurisdiction of the DISCOMs has been altered. Correspondingly, the sales quantity, power purchase quantity, power purchase cost and Aggregate Revenue Requirement included in the filings of each DISCOM will undergo corresponding changes, along with the volume of power supplied to subsidizing and subsidized consumers. All these changes will feed into the cost of service for each DISCOM, which will impact the level of subsidy to be provided to each DISCOM.

h. Further, the respective shares of power allocated between the four DISCOMs originally fixed in G. O. Ms. No. 58, dated 07.06.2005 under the 3rd Transfer scheme has been amended in G. O. Ms. No. 20 dated 08.05.2014.

i. A common merit order dispatch month wise for all DISCOMs i.e., for entire state has been previously considered by the Commission in its earlier examination of the filings. This merit order dispatch is no longer relevant in the light of the creation of the two new sates of Andhra Pradesh and Telangana and the new states have to redraw the merit order dispatch for the respective two states separately.

j. In the light of the above events, the Commission has returned the filings of Retail Supply Business to TSSPDCL (former APCPDCL) for updating the data and proposals originally submitted as they are no longer relevant after the formation of the states of Andhra Pradesh and Telangana on 02.06.2014.

k. Some of the factors considered for filing the wheeling tariff order are as following:

1. Investments.
2. Return on capital employed (ROCE).
3. Depreciation.
4. Operation and maintenance (O&M) Expenses.
5. Taxes on income.
6. Special appropriation for safety measures.
7. Revenue requirement for distribution business, etc.

The wheeling tariff order issued by APERC considering all the above factors consists of the figures before bifurcation of the state that is figures of APCPDCL (including Anantapur and Kurnool) Districts.

l. Further the Commission in the letter dated 02.01.2015 has informed as following:

> "That TSSPDCL and TSNPDCL are required to file the ARR for distribution business and FPT of wheeling charges a-fresh for the remaining part of the control period. Having regard to the fact that the combined state of Andhra Pradesh has been bifurcated and two new states with different composition of districts and the area of operations of the licensees have undergone a change. The data and figures towards tariff arrived at in the earlier orders have no relevance at this point of time. Further the cost of wheeling charges / distribution cost and will aid in deciding the retail supply tariff also".

Based on the above factors, TSSPDCL has not implemented the tariff order dated 09.05.2014.

m. The Commission has issued the tariff order dated 27.03.2015 for wheeling tariff for the distribution business for 3rd Control period (2014-15 to 2018-19) effective from 01.04.2015. Further it is stated that the DISCOMs are supposed to follow the terms and conditions of tariff order dated 09.05.2014 as long as it is in force. As per the directions of Commission, the tariff order dated 09.05.2014 is applicable for the period from 17.05.2014 to 31.03.2015. The wheeling charges collected from NCE generators (Solar, wind and mini-hydel) for the period from 17.05.2014 to 31.03.2015 are refunded by adjusting in the subsequent bills.

n. Further, in the wheeling tariff order dated 27.03.2015, with regard to objections received from NCE generators for exemption of wheeling charge as envisaged in wheeling tariff order dated 09.05.2014 on NCE projects, the Commission viewed that there is no policy issued in this regard by the GoTS applicable for FY 2015-16 to FY 2018-19. Hence, as there is no direction on exemption of wheeling charges for the NCE generators (solar, wind and mini hydel) plant for the FY-2015-16 to 2018-19, wheeling charges are being imposed from 01.04.2015 to consumers availing from NCE generators also.

o. Hence, as can be seen the petition is filed by the petitioner for implementation of the tariff order issued by APERC and the same has been implemented by TSSPDCL to the extent applicable data and from 01.04.2015 onwards distribution tariff order issued by Commission is being implemented.

II. Treatment of Inadvertent Energy:

1. The petitioner has filed the open access application to the nodal agency (Executive Director, Plg, RAC & Reforms / APTRANSCO) on 02.05.2014 and later submitted a revised application changing the open access applicants on 23.05.2014. The revised application was received from the nodal agency on 31.05.2014.

2. The petitioner has filed the OA application with 3 Nos consumers proposed under open access. The proposed consumers by the petitioner were not having the

interface metering arrangement in order to avail of open access. The same metering arrangements were provided on the following dates.

Sl.No.	Name of consumer	Date of installation of metering
1	M/s Enn Enn Corp Ltd (HDN-936)	28.06.2014
2	M/s Enn Enn Corp Ltd (HDN-954)	01.07.2014
3	HSBC Software Development India Private Limited (RRN-1289)	10.07.2014

3. The feasibility report was submitted to the nodal agency on 19.07.2014 and the open access approval was issued on 04.08.2014. Based on the above approval, a long term open access agreement was concluded on 12.08.2014. It can be observed that most of the delay in issuing the open access approval has occurred due to non-availability of interface meters to the consumers opted by the petitioner. Any consumer willing to avail of open access shall have the interface metering as per the CEA metering regulations. Further there are no such Regulation / Orders to consider the energy pumped before entering the O A Agreement as banked energy.

III. Request to carry forward the unutilized banked units:

The settlement of intra state open access transactions are done as per Regulation 2 of 2005. 1 of 2013 and 2 of 2014 issued by then APERC and adopted by the Commission vide Regulation 1 of 2014 from time to time. It is prayed that the Commission may be pleased to dismiss the prayer of petitioner and pass such other orders which deems fit in the circumstances of case.

9. The respondent No. 2 has filed its counter-affidavit as follows. The 2nd respondent deny the allegations made in the petition and submit that the petitioner sought the reliefs as are extracted at paragraph 7 of this order.

10. The respondent No. 2 stated that the issues regarding wheeling charges and refund of already collected wheeling charges pertain to the respondent No. 1 that is TSSPDCL. Regarding the treatment of energy injected into grid after synchronization and before open access approval, it is stated that there is no provision in any regulation of the Commission to treat this power as banked energy. In the Central Electricity Regulatory Commission (CERC) regulations also, the Commission has specified charges for infirm power (the power injected before COD) for only generators of coal,

gas, imported coal and RLNG depending on the cost of fuel vide clause - 5 (5) of "Deviation Settlement Mechanism and related matters) Regulations, 2014", but not specified any charges for infirm power generated from solar generators. Regarding the petitioner's prayer to carry forward the banked energy available as on 31.01.2015 to next financial year on the grounds that the energy settlement meetings were delayed, it is submitted that for allocation of banked energy, one need not wait for the completion of energy settlement meeting. Other generators have allocated the banked energy to their consumers in advance, without waiting for completion of the settlement meetings. The same procedure could have been followed by the petitioner to drawback the banked energy without waiting for the settlements. But the petitioner has not followed the same, which means the petitioner is not clear in how to utilize the banked energy in planned manner. In fact, the petitioner has addressed CGM / Finance / TSPDCL, a letter dated 08.01.2015 informing the allocation of the banked energy of 4,48,000 units to its consumers for the billing period commenced from 18.01.2015, but suddenly withdrawn from the same vide letter dated 09.01.2015. Further, there is no provision in any regulations to carry forward this banked energy into next year. Instead, there is a provision in regulation 2 of 2006 and its amendments that for this banked energy, the concerned DISCOM has to pay half of the pooled cost for the energy available in banking as on 31.01.2015. Hence, it is stated that the requests of the petitioner are not legal and valid, hence the Commission is prayed to declare that the petition is not maintainable.

11. The respondent has offered its remarks paragraph wise. In reply to the averments made at paragraphs 1 to 7 of the petition, it is stated that the averments made at paragraphs 1 to 5 of the affidavit relate to the petitioner's solar power plant and the long term open access application with respondent No. 2 and about the revised application made by the petitioner due to bifurcation of the state and synchronization of the solar plant with the grid in phases up to 04.06.2014 and about the open access agreement. Paragraphs 6 to 7 refers to section 86 of the Act, 2003 and the same is a matter of record.

12. The respondent stated in reply to the averments made at para 8 (a) to 8 (e) of the petition that these are related to levy of wheeling charges for which justification will be given by the respondent No. 1 that is TSSPDCL.

13. The respondent stated in reply to the averments made at para 9 (a) to 9 (e) of the petition that the petitioner has filed an application to nodal agency that is undivided APTRANSCO for approval of long term Intra-state open access on 02.05.2014 before bifurcation of the State. Since, one of the exit points falls in APEPDCL area, which will become inter-state from 02.06.2014 due to state bifurcation, a revised application was filed by the petitioner to nodal agency undivided APTRANSCO on 23.05.2014. In fact, the solar plant's first unit of 4.17 MW was synchronized on 28.03.2014 and second unit was synchronized on 04.06.2014. So it is clear that the 9 MW solar plant was synchronized in full shape only on 04.06.2014 and the petitioner has filed open access application to nodal agency before synchronization of the total plant. Hence, the petitioner's application was considered only after synchronization of the 9.0 MW power plant that is 04.06.2014. As per the clause 10.6 of the TSERC / APERC Regulation 2 of 2005, "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". Here the application date is 04.06.2014 and the date of closure of window as per regulation is month ending that is 30.06.2014. So for this transaction the due date for issue of open access approval is 31.07.2014. The feasibility from the DISCOM was received on 22.07.2014. After that a note file was circulated and the long term open access approval was issued on 04.08.2014 that is a delay of 4 days that too in a scenario of bifurcation of state. It is pertinent to note here that for issue of long term open access, the time period allowed by the regulation is 30 days from the closure of the application window of a month. This time is not sufficient as the issue of long term open access approval involves getting feasibility from TRANSCO field engineers and DISCM field engineers which is taking much time. For new consumers fixing of ABT meters and its associated CTs and PTs itself is taking much time. In inter-state open access the time allowed by CERC to PGCIL for issue of long term open access is 4 months when system strengthening is not required and 6 months when system strengthening is required. For this also the applicant has to enclose the NOCs from both entry and exit point STUs along with the application. So for intra-state long term approvals either the time for issuance of open access approval has to be increased or the applicant must submit the application along with the feasibility of both entry and exit point DISCOMs.

14. The respondent stated in reply to the averments made at para 9 (f) to 9 (g) of the petition that clause 12.3 of Regulation 2 of 2005 is as follows.

> "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, (No. 3 of 2004);"

The clause 3 (2) (a) Regulation 3 of 2004 is as follows:

> "The Distribution Licensee shall give supply of electricity to the premises pursuant to the application under sub-clause (1) above where no extension of distribution main or commissioning of new sub-station is required for effecting such supply within one month after the receipt of the application along with the fees, charges and security amount payable;"

From the above, it is clear that the open access should be commenced within 30 days after open access agreement is entered by the applicant. In this case, the open access agreement was entered on 12.08.l2014 and open access was commenced on the next day of open access agreement that is 13.08.2014.

15. The respondent stated in reply to the averments made at para 9 (h) of the petition that the petitioner itself has stated at para 3 of the petition that there were inherent process delays on the part of respondents in executing the agreement. So, it is clear that there were no intentional delays by any wing but only inherent delay (that to a delay of 4 days). For this delay also there were many reasons like state bifurcation. On 02.06.2014, Telangana state was formed and TSTRANSCO was formed. On 04.06.2014, this generator was synchronized in complete share. The open access application was submitted earlier to Un-divided APTRANSCO. All the files pertaining to Telangana had to be taken over from A P counter parts, the wings had to be formed in TSTRANSCO for different works etc. In this transition stage, a delay of 4 days is not a matter to be considered.

16. The respondent stated in reply to the averments made at para 9 (i) of the petition that the comments of the petitioner that "such delays result in improved operational performance of the DISCOMs, since such inadvertent energy which was

not accounted for actually helps in loss calculations of the DISCOMs by showing lesser level of losses than the actual losses, thereby showing a fictitious improvement in the operational performance of respondents" are unwarranted and uncalled for and not in good taste. As per the transmission tariff order the total installed capacity of TS DISCOMs is about 11365 MW for the year 2014-15 (53.89% of 21089 MW). Out of this by delaying the open access for a 9 MW (average power will be 2 MW) for some days how much losses can the DISCOMs reduce and how much increase in operational performance can the DISCOMs show is beyond imagination.

17. The respondent stated in reply to the averments made at para 9 (j) of the petition that the clause-c of G. O. Ms. No. 44 dated 16.11.2012 which stipulates time frame of 15 days for granting intra-state open access can be implemented only when there is feasibility and proper metering at both entry and exit points. After ensuring this only the nodal agency can process the application. In this case the feasibility from the DISCOM was received on 22.07.2014 and the open access approval was issued on 04.08.2014 well within the 15 days' time.

18. The respondent stated in reply to the averments made at para 9 (k) & 9 (l) of the petition that for every generator the energy injected into the grid after synchronization and before PPA or open access agreement will become inadvertent power and there is no regulation to treat this as banked energy. Further, CERC also in its' regulation of "Deviation Settlement Mechanism and related matters) Regulations, 2014" clause 5 (5) specified charges for infirm power (the power injected before COD) for only generators of coal, gas, imported coal and RLNG depending on the cost of fuel as follows:

Domestic coal / Lignite / Hydro – 1.78 / kWh sent out

APM gas as fuel - 2.82 / kWh sent out up to 31.3.2014 and thereafter, 5.64 / kWh sent out

Imported Coal - 3.03 / kWh sent out

RLNG - 8.24 / kWh sent out

CERC has not specified any charges for infirm power generated from solar generators. Since the generator has not incurred any fuel cost for this generation the request of the company to treat the inadvertent power as banked energy need not be considered.

19. The respondent stated in reply to the averments made at para 10 (a) and 10 (b) of the petition that as per the APERC Regulation No.2 of 2006 (Interim Balancing and Settlement Code), the SLDC is carrying out the energy accounting of all intra state open access users. The following basic inputs are required to carry out the energy and demand settlement calculations of any OA Users.

- Open Access approval and the agreement.
- Common Billing Cycle information of Open Access Consumers to the communicated by DISCOMs.
- Entry and Exit points Main, Check and Standby meters joint meter readings along with MRI data from the field.
- Monthly Line losses data from field, in case of multiple generators are connected to a same line and whose entry point meters are at substation end.
- Interruptions information like PT, CT and meter failures occurred during the billing cycle and computed energy details required for data substitution during the settlement calculations.

The above all information is mandatory to carry out the energy accounting of OA users. On receipt of the above information, the settlement calculations are taken up for open access users through the software based on the each billing cycle, since the billing cycles are not common. This settlement process generally completes within 10-15 days for all existing OA users (20 OA generators Vs 36 consumers) subject to receipt of all inputs data as mentioned above, if there is any delay in receipt of the inputs it will result in delay of settlement calculations and subsequently causes delay in conducting settlement meetings.

Vide para 10 (b) the petitioner stated that “there was un-due delay on the part of the respondents in conducting the settlement committee meetings. That affected the petitioner in bad way as petitioner was unable to utilize the banked energy in a prudent manner”. In his regard he Chronological instances took place in the field during he each billing cycle are explained in detail in the counter affidavit.

In view of the various instances took place as narrated in the counter affidavit, it is stated that the energy accounting of the petitioner and their consumers got delayed, otherwise there is no delay on part of the SLDC in conducting the settlement meetings.

Further it is also stated that either the OA generator or the consumers have never represented in any of the settlement meetings with regard to delay of conducting the settlement meetings by SLDC.

20. The respondent stated in reply to the averments made at para 10 (c) that the petitioner's claim on the TSTRANSCO with regard to delays in organizing the settlement committee meetings were due to the delays in constituting the settlement committee by TSTRANSCO is completely inappropriate. After the bifurcation of combined state with effect from 02.06.2014, a common note file was circulated to both the boards on 04.07.2014 for the constitution of separate settlement committee's to A P and T S. But as per the instructions of A P Board the note file was restricted up to A P state only, duly approving the note file on 14.08.2014. In view of this TSSLDC has immediately circulated a separate note file on 05.09.2014 for constitution of settlement committee for review and certification energy accounts of intra state open access users and got approved on 11.09.2014. The settlement committee constitution was intimated to all individual OA generators vide letter dated 19.09.2014. Accordingly, the settlement meetings are being continued till date.

Further, the petitioner has stated that, less / no time is given for utilization of banked energy is not correct. In this regard it is stated that, M/s. Pragathi Group has addressed a letter dated 08.01.2015 to CGM / Finance / TSSPDCL duly allocating the banked energy of 4,48,000 units to their consumers that is 1,79,200 units to M/s. Enn Enn Corporation Limited (HT SC No. HDN936), 1,00,800 units to M/s. Enn Enn Corporation Limited (HT SC No. HDN954) and 1,68,000 units to M/s. HSBC Software Development India Private Limited (HT SC No. HDN1289) for the billing period commenced from 18.01.2015, but suddenly dropped the same vide letter dated 09.01.2015 and the reasons for cancellation of banked energy allocations were not known.

Apart from the petitioner, there are other solar generators who are availing intra-state open access and they have withdrawn banked energy duly giving advanced allocation to their consumers irrespective open access settlements meeting conducted, the following are the certain OA generators.

1. M/s. Lakshmi Ganapathy Industries Private Limited.
2. M/s. Peritus Corporation Private Limited.
3. M/s. Pennar Industries Limited.

4. M/s. Suryanarayana Swamy Solar Power Private Limited
5. M/s. Arhyama Solar Power Private Limited.

All these generators have allocated the banked energy to their consumers in advance, without waiting for completion of the settlement meetings, the relevant allocation letters are herewith enclosed for ready reference. The same procedure would have been followed by M/s. Pragathi Group to withdraw the banked energy without waiting for the settlements. But the generator has not followed the same, which means the M/s. Pragathi Group is not clear in how to utilize the banked energy in planned manner and further blaming TSTRANSCO for conducting settlement meeting with delay due to administrative problems is not appropriate.

21. The respondent stated in reply to the averments made at para 10 (d) and 10 (e) that the petitioner has applied for intra state open access to supply banked energy to Dr. Reddy's Laboratories Limited (NLG-225) for the period from 15.12.2014 to 31.12.2014.

Regulation 2 of 2014 clause 2 (e) of Appendix-3 is as follows:

"Generators have to communicate time block-wise banked energy withdrawal schedule and allocations to respective open access / scheduled consumers at least 10 days before the commencement of billing cycle."

As per the above condition it is clear that the generator can schedule he banked energy to their existing OA / scheduled consumers only, whereas the petitioner has proposed to allocate the banked energy to a new consumer which is not allowable as per the regulation. Hence, the STOA application was rejected. Referring to para 10€, it is submitted that TSTRANSCO cannot comment on how APSLDC has granted STOA in a similar situation to M/s. Hetero.

22. The respondent stated in reply to the averments made at para 10 (f) that the petitioner has applied for addition of one new exit on 12.12.2014. While the same was under processing stage, again the petitioner has submitted revised application on 19.12.2014 to add revised exit points to the existing approval with very short durations of open access as follows.

S. No.	Exit point consumer	Duration of application submitted date that is 19.12.2014 and open access requested date	From date	To date	Duration
1	M/s. Reddy's Laboratories Ltd. HTSC No. RRN-743	Negative 4 days	15.12.2014	15.12.2015	One year
2	M/s. Mylan Laboratories Ltd, HTSC. No. MDK-512	One day	20.12.2014	31.01.2015	42 days
3	M/s. GVK Properties & Manage, HTSC. No. HDN-1262	One day	20.12.2014	31.01.2014	42 days

From the above, it is clear that the duration of new exit points open access are 42 days and one year. But existing LTOA agreement period is from 13.08.2014 to 30.05.2021. As per the clause 16.1 of the A P / TSERC Regulation 2 of 2005,

> "the Long-Term users shall have the flexibility to change entry and / or exit points twice a year subject to the results of system impact studies to be carried out by the concerned Licensees at the behest of such users. All expenses incurred by the Licensees to carry out such studies shall be reimbursed in full by such users".

That means there is a provision to change the exit point or entry point in the regulation but there is no provision of adding an exit point in the regulation. In spite of that TSTRANSCO considered the request of the developer to add more exit points but there is no provision in the regulation to change the period of open access for certain consumers of the same approval and same open access agreement. In view of above, TSTRANSCO has rejected revised application dated 19.12.2014. Further, the company submitted the revised application on 09.01.2015 and the application was processed for the full tenure of the open access as per the original approval and issued the open access approval on 06.02.2015.

23. The respondent stated in reply to the averments made at para 10 (g) to 10 (i) that there are no intentional delays by any wing in the matter of the petitioner. The only problem is the developer has applied for open access at the time of state bifurcation that too with consumers of both areas viz. A P and Telangana. Later he has deleted the consumer of A P area but not added suitable consumer from Telangana area to

fully utilize his energy. So, much of the energy was accumulated in the banking and at the fag end of the banking year in a desperate condition the developer wanted to utilize his banked energy by some means. But the licensees cannot do anything against the regulations and operational problems cannot be attributed to utilities. The same procedure is being followed in respect of other solar generators and no one has raised any dispute on the same. Hence it is stated that the problem is not with the utilities but the developer.

24. The respondent stated that its action is perfectly legal and valid and there is no prima facie case or balance of convenience in favour of the petitioner. Hence, it is prayed that the Commission may be pleased to dismiss the petition and pass such other order or orders as this Commission may deem fit and proper in the circumstances of the case.

25. The respondent No.3 has filed his counter-affidavit to the petition. The respondent No.3 has denied the allegations made therein except those that are specifically admitted hereunder. It is stated that the issues regarding wheeling charges and refund of already collected wheeling charges pertain to the 1st respondent that is TSSPDCL. The issues regarding the treatment of energy injected into the grid by the petitioner after synchronization of the plant and commencement of OA transactions as banked energy enabling the petitioner to schedule the banked energy pertains to the 2nd respondent that is the nodal agency of TSTRANSCO. The issues regarding delays on the part of the respondents to conduct the settlement committee meetings and other reasons as mentioned in this petition pertains to this answering respondent.

26. The respondent stated in reply to the petitioner's averment at para 2 (h) that "*How could one plan for the banked energy allocations without concluding energy settlement meetings and knowing the quantum of Banked energy",* it is stated that from the settlement abstracts it can be observed that there is sufficient time for the generator between the settlement periods to communicate banking energy allotment to its consumers. Further, the generator can also give a letter to allocate the banked energy arising out of the current month settlement to its consumers ten days before the commencement of next billing cycle without waiting for completion of the settlement meetings. It is also observed from settlement abstracts that all the consumer drawls from the generator are very less compared to the allocation of

generated energy to each consumer. Hence, more energy was banked due to under drawls by the Open Access consumers. If required the generator can also arrive at approximate banking energy based on the JMR and consumer HT bill every month on or before 24th and plan accordingly. The petitioner is aware that every month there will be generation units left which will go into banked account as the total drawls of the consumers put together will be less than the actual generation every month. The petitioner is also aware that banking energy allocation will be of no use as the generation is higher than the actual consumption.

27. The respondent stated in reply to the averment at para 2 (h) that "*Immediately, after knowing the quantum of petitioner banked energy in December-14 billing cycle, we applied for short term Open Access (STOA) on 9.12.2014 to dispense the banked energy so accrued to petitioner account to a short term consumers of petitioner choice, and petitioner application was declined by CE / SLDC / TSTRANSCO on 27.12.2014 for unknown reasons to us. Petitioner has written multiple letters to Respondent-I to know the reasons for declining our application with no response as on date from Respondent-1. While approval was granted by AP SLDC under the same regulations of erstwhile APERC has allowed the request of M/s. Hetero in same circumstances."* It is stated that the December, 2014 billing cycle is from 18.11.2014 to 17.12.2014. The settlement was completed on 20.01.2015. Further the petitioner has admitted that *after knowing the quantum of banked energy in December-14 billing cycle, they applied for short term Open Access (STOA) on 09.12.2014 to dispense the banked energy so accrued.* It is not clear as to how the petitioner could arrive at the quantum of banking energy for the month of December-2014 billing cycle without completing the settlement. Apparently the petitioner had planned to sell its banked energy to M/s. Dr. Reddy's Laboratories (NLG 225) in STOA and applied for approval, but the same was rejected by TSSLDC on 27.12.2014 as there was no regulation which permits the OA generator to sell the banked units to outside consumers other than the scheduled OA consumer with whom he had entered into OA agreement. The petitioner had mentioned that *APERC has allowed the request of M/s. Hetero in same circumstances* which is totally false and the situation was different. M/s. Hetero was permitted to carry forward to the next financial year its accumulated banking energy from January, 2014 to March, 2014 which is the intervening period of old and new regulations. As per the old regulation banked energy allocation period is from July to December. The

accumulated banked energy used to lapse by 31st December. In the new amendment the generator was given half of the pooled cost by DISOCMs for the banked energy units unutilized / unallocated and accumulated up to 31st January of following year. In this regard it is stated that the banking energy has to be settled at one point or the other for OA generators as per regulations and yearly energy account has to be closed whether it is December or January and it cannot be carried on and on. The petitioner had submitted a letter dated 08.01.2015 to the CGM / Finance / TSSPDCL for adjustment of banked energy to its 3 Nos Scheduled OA consumers for the billing period from 18.01.2015 to 31.01.2015 and subsequently withdrawn the letter on 09.01.2015. This clearly indicates that the petitioner did not want to allocate the banking energy to its consumers as it will be of no use as the drawls are very less compared to the generation.

28. The respondent stated that the action of respondents is perfectly legal, valid and in conformation of the provisions under Electricity Act and also in compliance with the rules and regulations framed therein. There is no *prima facie* or *ex facie* or any iota of balance of convenience in favour of the petitioner. Hence the above O.P. is liable to be dismissed *inlimine.* It is therefore prayed that the Commission may be pleased to dismiss the O.P. No. 82 of 2015 and pass such other order or orders as this Commission may deem fit and proper in the circumstances of the case.

29. The petitioner has filed its rejoinder to the counter-affidavits filed by the respondents No. 1 to 3. The 1st respondent in its counter dated 29.06.2015 at point I (8) stated non-publication of wheeling tariff released by erstwhile APERC as a main reason for non-implementing the wheeling charges exemption on solar developers. However, the same reason was rejected by the Hon'ble High Court in W. P. No. 39035 of 2014 that mere non-publication of tariff order in newspapers will not enable respondent No. 1 to violate government policy and restrained the respondent No. 1 levying wheeling charges. It is also stated that respondent No. 1 has been providing supervision charges exemption to solar developers, whose estimates were sanctioned after 01.06.2016 based on solar policy 2015, which was neither released as a Government Order (G.O.) nor was approved by this Commission. This is clear evidence of misuse of power entrusted on respondent No.1.

30. The petitioner stated that the Supreme Court of India in Civil Appeal Nos. 7798 of 2002, & others – between The Commissioner of Commercial Tax, Ranchi Vs Swarn Rekha Cokes and Coals Pvt. Ltd & others – held that the benefits of provided in the earlier policy would continue to apply to new states created by ACT notwithstanding the fact that the erstwhile state of Bihar had been divided into two states by creation of new state of Jharkhand based on provisions made at sections 84 and 85. It is stated that provisions at sections 100 & 101 of AP Re-organization Act, 2014 are verbatim of provisions at sections 84 & 85 of Bihar Re-organization Act, 2000 based on which Supreme Court Judgment rendered.

31. The petitioner stated that the financial implications on respondent No.1 are trivial as CERC in its recent notification dated 23.03.2016 made clause 2 (2) that a RE generator either selling power to third party or captive mode is not eligible to avail REC benefits, if it takes benefits in the form of concessional wheeling / transmission charges. It understands that many of the solar developers had already submitted undertaking to state nodal agency (respondent 3) that they will not take wheeling charges waiver benefit. Hence, it shall be an option to developers under solar policy 2012 to choose from REC's or wheeling charges waiver. Hence, it stated that the benefits envisaged in solar policy, 2012 should be made available to solar developers falling in the preview of said solar policy.

32. The petitioner has stated in its reply about treatment of energy injected in to grid after synchronization and before open access agreement. The respondent 2 has referred CERC regulation in their counter dated 17.07.2015 that it has no effect on the case in context as stated by the petitioner in its earlier rejoinder at point I (a). Brief scenario for the case, based on submissions made by Respondents

1) Respondent-II considers the LTOA from date of synchronization.

2) Respondent-I will allow the petitioner to synchronize the plant only after obtaining an undertaking that the energy supplied till date of agreement is free of cost.

33. The petitioner stated that in such a case, the absence of treatment of such pumped energy, petitioner is left in helpless state. The whole, process of granting the approval is at the mercy of respondents. In addition the approval granting is a lengthy process involving more than 100+ department officials. The Then CMD /

APTRANSCO had issued an order to address this anomaly in his order dated 31.12.2013. Same data is sought from the field officials multiple times, while much of the data is already available with respondents.

34. The petitioner stated that in similar case, MERC had passed an order effecting to utilize such energy, which is pumped into grid after sync of the plant before entering to wheeling agreement.

35. The petitioner stated that in so far as the unutilized banked units due to delays in conducting settlement meetings, the petitioner stated that the respondent 2 and respondent 3 listed out reasons for delays in conducting settlement meetings, none of the reasons were attributed to lack of action from petitioners. All the delays were caused by field officers of respondents' in spite of best efforts of the petitioner. Petitioner understands that delays in settlement causes not just deferred cash flows, but also loss of revenue due to lapse of banking year.

36. The petitioner strongly disagreed to the point raised by respondent 2 to schedule banked energy before settlement as the question of schedule does not arise before settlements are concluded. Accordingly it reiterated the prayer in the petition.

37. The petitioner originally filed a rejoinder on the following lines.

a) The response to point (1) at page 2 of respondent No.2 Regarding treatment of energy injected into grid after synchronization and before open access approval, respondent No.2 referred to original regulation of Central Electricity Regulatory Commission (Grant of Connectivity, Long-term Access and Medium-term Open Access and related matters) Regulations, 2009 and its amendments thereof.

b) The statement of reasons of Second Amendment Regulations, 2012 vide Notification No.-L-1 / (3) / 2009-CERC, dated 21.03.2012.

i) Does not deal with non-conventional energy sources (S.O.R. page No.3 Clause ii)

ii) Deals only with inter-state open access.

iii) Only deals with technical testing period till COD of the generating plant. However, in petitioner's case COD is date of synchronization. As a matter of fact, across India and across Globe it is a standard practice to declare synchronization date as COD date for solar power plants as

there exists no mechanism to test the full load of solar energy, given the erratic nature of generation of the solar power plants. It also to submit that respondent No.1 has also been granting the COD of third party sale solar power plants as the date of synchronization.

iv) Referred regulations, in any case, do not deal with treatment of energy after of COD of the plant.

Hence, stated that reference to said CERC notifications has no jurisdiction on the case, in context.

c) The petitioner wonders how could one plan for the banked energy allocations without concluding energy settlement meetings. During the meetings with other generators, as pointed out by respondent No. 2, it did realize that they had no option because the settlement meetings were unduly delayed and banking year is about to get over. It is stated that the question of planning for banked energy does not arise without requisite open access permissions and the energy settlement for the previous month is concluded. Hence, the contention of respondent No. 2 is totally wrong and needs to be dismissed.

d) In response to point 5 of respondent No.2, it is stated that consideration of application only after synchronization of plant and absence of treatment of energy till grant of open access had put petitioner in helpless sate. Also, the time frame of 30 days after receiving feasibility reports gives enough liberty for DISCOMs to cause indefinite delay. In this context, erstwhile government had made, to fill this gap, provisions in G. O. Ms. No. 44, dated 16.11.2012, it is clearly stipulated time frame of 15 days for granting intra-state open access approval [at Clause(c)]. Again, this policy also fails to address the issue of failing to comply with this order and treatment of energy, in case the approval is not granted within in the envisaged time frame. It is stated that this issue was addressed in Andhra Pradesh Solar Policy, 2015, allowing the generators to bank the energy injected into the grid till open access agreement vide clause 4(c).

e) In response to point 6 of respondent No. 2, It is stated that the regulation of referred (Reg. 3 of 2004) are pertaining to new supply requests from the consumers and not pertaining to the open access supplies, where there is no such extension of distribution or transmission system is involved. In case, of absence of any such time lines, even if we have to assume these time lines are for open access supplies, a total of 30 days needed for the DISCOMs to provide feasibility and a total of 30 days needed

for TRANSCO to provide open access approval summing upto a total of 60 days to grant the open access approval from the date of application. In our case, it is a total of 100+ days to start the supply to our off-takers from the date of synchronization commercial operation date. It is stated that original application was submitted on 24.05.2015 and respondent No. 1 provided the feasibility on 22.07.2015, a total of 58 days. And respondent No. 2 took a total of 81 days from 23.05.2015 to 04.08.2015, though delay was shown as only a delay of 4 days due to window system and consideration of our application form the date of synchronization.

f) As a matter of record, petitioner would furnished the lengthy process followed by the respondents to issue the Open Access approvals. In addition, most of the information requested by respondents from the field, after many internal circulations, is readily available with respondents. This anomaly was noted by then Chairman and Managing Director of TRANSCO and consequently an order was released on 31.12.2013. However, this order was never implemented by respondents for unknown reasons.

g) In fact, till date the petitioner fails to understand the concept of supplying free power to Respondent No. 1 till the grant of open access approval and the power to issue said approval lies with the respondent No. 1 only. This brings about inherent contradiction in the interest of the parties involved. In such case, Commission may pass an appropriate order, effecting to the contradiction in the interests of the parties involved.

h) In response to point 7 of respondent No. 2, it is stated that though the petitioner and respondents admit that these delays are due to inherent process issues, only petitioner is put to loss.

i) In response to point 8 of respondent No. 2, it is stated that though the case in context might seem to be a minor figure to the respondent No. 2, it is a huge financial burden to the petitioner, it is stated that similar multiple cases, cumulatively could be a much significant figure.

j) In response to point 9 of respondent No. 2, it is stated that it appears that the whole concept of nodal agency is not taken in positive spirit by respondent No. 2. To the developer, it appeared that the nodal agency has to co-ordinate with stake holders to ensure timely issuance of the approval. In this context, there is not even a single reference to the tune frame in any of the letters called for obtaining reports from the

stakeholders by respondents. In this case, nodal agency appeared to considering itself to be an isolated entity, not involving the other stakeholders.

k) In response to point 10 of respondent No. 2, it is stated that the respondent No. 2's observation that the petitioner is not incurred any fuel cost is completely ignorant of the fact that the petitioner had incurred huge capital investment, maintenance expenses and the asset has definite life span and hence there is cost involved in generation of energy from solar power plants. Also, it is stated that CERC was only dealing with inter-state open access in the referred regulation by respondent No. 2 and there were not even a single inter-state open access transaction in India through solar generator due to erratic nature of generation and consequent huge UI charges. Hence, it is stated that the CERC has not dealt with solar generators in the said regulation.

l) In response to point 11 of respondent No. 2, all the information provided by respondent No. 2 are onus respondent Nos. 1 and 2 and petitioner has no role, what so ever, in providing the said information. However, petitioner has been continuously following up with respective field officers to ensure the said information is furnished to respective internal offices as it will have financial impact on the petitioner. There was a common billing cycle provided by TSSPDCL that is 18th of every month vide their letter to TSTRANSCO.

m) The petitioner stated that at page 6, S.N.1 & 2 it is mentioned that respondent No. 2 came to know about other 1 MW solar generator M/s. Suryanandan Texturizers Private Limited only while conducting the settlement meetings. This is completely a false submission, as the respondent No. 2 is well aware of other 1 MW solar generator much before granting of open access. In addition, respondent No. 2 took an undertaking from petitioner to address issues pertaining to common line maintenance and other related co-ordination works with electricity department. Line loss calculation instruction was sent to the field offers of respondent No. 1 much before commencement of open access agreement vide their feasibility letter, which is filed before respondent No. 2 also. Delays in complying with the orders passed by respondent No.1 by the field officers is no fault of petitioner. Majority of the reasons cited by respondent No. 2 in conducting the settlement meetings were lack of availability of required documents, which are to be provided by the officers of respondent Nos. 1 and 2 to conduct the settlements. Hence, it is stated that the delays were not on account of petitioner but the loss was only to petitioner.

n) In response to point 12 of respondent No. 2, it is stated that immediately, after knowing the quantum of petitioner banked energy in Dec-14 billing cycle, it applied for short term open access (STOA) on 09.12.2014 to dispense the banked energy so accrued to petitioner account to short term consumers of petitioner choice and petitioner application was declined by CE / SLDC / TSTRANSCO on 27.12.2014 for unknown reasons to us. It has written multiple letters to respondent No. 1 to know the reasons for declining our application with no response as on date from respondent No. 1. While approval was granted by APSLDC under the same regulations of erstwhile APERC, it has allowed the request of M/s. Hetero in same circumstances.

n) In addition as pointed out by respondent No. 2, petitioner wonders how could one plan for the banked energy allocations without concluding energy settlement meetings and knowing the quantum of banked energy. During its meetings with other generators, as pointed cut by respondent No. 2, we did realize that they had no option because the settlement meetings were unduly delayed and banking year is about to get over. Hence, petitioner in a similar case had no option to schedule the banked energy in the month of January, 2014 but had to withdraw the schedule after knowing that the energy banked from 18.01.2014 to 31.12.2014 cannot be used and is purchased by respondent No. 1 at half the pooled cost with no opportunity given to petitioner.

o) In response to point 13 of respondent No. 2, it is stated that approval granted to the M/s. Hetero by APSLDC based on the same regulations. It requests the Commission to clarify and confirm the interpretation of the regulation with reference to scheduling the banked energy to other open access consumers.

p) In response to point 14 of respondent No. 2, it is stated that as to respondent No. 2's interpretation of the word "Change of exit points" was not anticipated by petitioner. While, the open access agreement was entered by petitioner and he is committed to pay the network usage charges till the tenure of agreement, complying provisions in Regulation No. 2 of 2005, the argument that change of open access period for certain consumers is not allowed is not just and fair as long as open access user is paying the network charges. In addition short term open access was rejected by respondent No. 2 (Point 13) to schedule banked energy, petitioner is not allowed to add new open access consumer to allocate her banked energy. In such case, petitioner is left with no opportunity to schedule banked energy.

q) In response to point 15 of respondent No. 2, it is stated that either delays were intentional or non-intentional by respondents, the loss was attributed to the petitioner and gain was to respondents. Also, the word “desperate” at this context by respondent No. 2 is absolutely unwarranted and uncalled for.

38. The petitioner stated in response to the respondent No. 1 averments as below.

a. Noncomplying to tariff order of Commission.

In the tariff order dated 09.05.2014, issued by the erstwhile APERC, in respect of wheeling charges for 3rd control period between FY 2014-19, vide page 87 under caption “Note on Wheeling Charges” at point iii, it is specified that *“In line with Government policy there shall be no wheeling charges for Non-Convetional Energy generators using Wind Solar and Mini-Hydel sources”,* after obtaining public opinion. The Commission, in none of its orders had passed any such regulation in contrary to the provisions extended to solar developers on wheeling charges. Hence, it is stated that the respondent No. 1 is obliged to extend to solar developers, the waiver of wheeling charges for solar developers as per government policy, unless a contrary provision is made by the Commission.

b. Treatment of inadvertent energy.

i. It is stated that the petitioner and its off-takers had applied for approval to change metering as per open access metering requirements on 07.05.2015, much before revised application date that is on 23.05.2015 and made available all necessary equipment on 08.05.2015. Purchase orders and all payments for the required equipment were concluded before 08.05.2015. However, respondent No. 2 has given approval only after a month, which caused a delay in installing the meters and more delay is added by (16 DAYS FOR hdn-936, 23 days for HDN-954, 33 days for RRN-1289) filed officers in installing equipment due to their availability. In this context, erstwhile Commission orders on 18.09.2014 are that the distribution licensee has to give approval within a week after such application by open access user.

ii. The argument that there are no such regulation / orders to consider energy pumped before entering the OA agreement as banked energy and respondent No. 1 did not allow the petitioner to synchronize the plant until it obtained undertaking from petitioner to give energy pumped as free of cost (inadvertent)

to it, while respondent No. 2 does consider open access application only from synchronization date. The petitioner is pushed to wall in the whole process and there was no level playing field provided for the petitioner.

iii. There are no provisions either in CERC or in the Commission's regulations regarding treatment of energy injected post synchronization / COD, till the date of open access agreement. In such a case, the petitioner is put in a situation of loss for no fault of it but solely due to the lack of provisions of treatment of such energy in any regulations. The Commission is mandated to promote cogeneration and generation of electricity from renewable sources of energy in terms of 86 (l) (e) of the Act, 2003.

iv. The principal regulation No. 2 of 2006 at clause 15 also provides that in case of any difficulty in giving effect to any of the provisions of the regulation, Commission may be general or special order issue appropriate directions to open access generators, schedule consumers, OA consumers, transmission licensee(s), distribution licensee(s) etc. to take suitable action not being inconsistent with the provisions of the Act, 2003 which appear to the Commission to be necessary or expendient for the purpose of removing difficulty.

v. Hence, it prayed that the Commission invocation of clause 15 and to pass appropriate orders for a just and equitable disposal allowing the petitioner herein to bank the energy from

i) Date of synchronization till date of open access agreement.

ii) Unutilized banked energy in the banking year ending January, 2015.

iii) Use the banked energy in the immediate next available opportunity with in reasonable timeframe, without changing other terms and conditions of regulation No. 2 of 2006.

39. The petitioner stated about the similar case dealt by other Commissions:

a. The Maharashtra Electricity Regulatory Commission (MERC) in Case No.44 of 2014, between M/s. Green Energy Association and MSEDCL & MEDA. at paragraph 3 and 4, facts of delay by distribution utilities has been mentioned and at paragraph 23, directed the distribution utilities to provide credit notes for the generation from date of synchronization till open access agreement period due to delay caused by distribution utilities.

b. The APERC in O. P. No. 59 of 2014, between M/s. Hetero Wind Power Private Limited and APTRANSCO, at paragraph 5, clause (15) of regulation No. 2 of 2006 invoked for just and equitable disposal for the purpose of removing difficulty and allowed the petitioner to utilize the banked energy in the immediate available opportunity.

40. The petitioner stated that the contention of respondents on the question of legal validity the petition has to be dismissed as Indian Constitution makes provisions for ex post facto orders, this case is even evident on the fact that it is lack of provisions rather than amendment to existing provisions. Further it is stated that the Supreme Court of India has provided overriding effect, through several of its judgments, few of directive principles of state policy (which are not legally enforceable) over fundamental rights (which are legally enforceable) to provide just, fair and equitable opportunity. Hence, the directives given by the Commission, through regulations, and government, through government orders, has to be taken in positive spirit by respondents rather than the nature of their legal status.

41. We have heard the consultant for the petitioner and the counsel for the respondent. We have perused the record.

42. Subsequently the petitioner has sent a letter stating that it has sought the energy details from the SLDC as directed by the Commission at the time of hearing. The Commission has awaited for the same for about a month, but nothing came through from the petitioner. However, on 05.10.2016 a letter is placed before us from the petitioner which is on the following lines.

"We, M/s. Pragathi Group, have filed petition under section 86 (1) (f) of the Electricity Act, 2003 in the matter of adjudication of disputes between M/s. Pragathi Group in respect of their 9 MW Solar Based Generating Plant located at Boinpally (V) in Mehaboobnagar (Dist) and TS TRANSCO, TS SPDCL.

In this context, we would like to *withdraw our prayers regarding banking of energy* injected from date of synchronization till open access.

However, *we maintain our prayers regarding wheeling charges waiver* extended to solar developers as per solar policy 2012."

43. By the interlocutory application in I. A. No. 31 of 2015, the petitioner sought to implead the TSSLDC as a party respondent. The respondents have no objection and the same is allowed.

44. Since the petitioner has withdrawn its prayer with regard to banking issues, we deem it appropriate to dismiss the case as withdrawn in so far as prayers (d) and (e) as mentioned supra at paragraph 7 of this order. In the light of this development, the Commission proceeds to examine the remaining prayers. Before the bifurcation of the state the then government of Andhra Pradesh has issued G. O. Ms. No 39 dated 26.09.2016 providing for concessions and incentives who establish a solar power plant in the erstwhile state of Andhra Pradesh. One of the aspects covered by the said G. O. is related to transmission and wheeling charges. It is stated therein as follows.

> "*Wheeling and Transmission Charges*
>
> There will be no wheeling and transmission charges for wheeling of power generated from the Solar Power Projects, to the desired location/s for captive use/third party sale within the state through 33 KV system subject to industries maintaining their demand within its contracted demand. However, wheeling and transmission charges for wheeling of power generated from the Solar Power Projects for sale outside the state will be as per APERC regulations"

After the bifurcation of the state in the year 2015 the Government of Telangana state by letter dated 10.06.2016 communicated a policy document to the TSDISCOMs wherein the condition imposed states as follows.

> "*Transmission and Distribution charges for wheeling of power*
>
> The wheeling and transmission charges are exempted for captive use within the state. They will be charged as applicable for third party sale. The transmission and distribution losses however is fully applicable for both third party within the state as well as captive use within the state."

45. From the material facts it can be safely deciphered that the petitioner has completed synchronization of the plant on 04.06.2014 and open access has been allowed from 13.08.2014. At the relevant time, the tariff order of the erstwhile APERC in respect of transmission and wheeling charges passed separately on 09.05.2014 was in force. Even the policy issued by the erstwhile Government of Andhra Pradesh was also in place and subsisting. Keeping in view the subsisting policy only the tariff

order dated 09.05.2014 on wheeling charges has given effect to the policy as has been mentioned by the petitioner.

46. We are constrained to disagree with the respondents that the earlier policy cannot be given effect or the wheeling tariff order has not been notified hence the prayer cannot be acceded to. Albeit as an interim measure the Hon'ble High Court has taken the following view and this Commission is bound by such view it being a party to the case referred by the petitioner as by itself or the licensee have got the order modified by the Hon'ble High Court in the said matter. At this stage it may be worth recording the observations of the Hon'ble High Court in W. P. M. P. No. 48927 of 2014 in W. P. No. 39035 of 2014.

> "Mr. S. V. Ramana, learned Counsel representing Mr. O. Manohar Reddy, learned Standing Counsel for TSSPDCL, seeks time for filing counter-affidavit.
>
> The learned Counsel has, however, admitted that under G. O. Ms. No. 39, Energy (RES-A1) Department, dated 26.09.2012, as amended by G. O. Ms. No. 44, Energy (RES-A1) Department, dated 16.11.2012, solar power is exempted from the wheeling and transmission charges. He has also admitted that as per the tariff order, dated 09.05.2014, passed by the Andhra Pradesh Electricity Regulatory Commission, the solar power is exempted from wheeling charges and transmission charges. He has further stated that respondent No.3 has not published the said tariff order in newspapers.
>
> In my *prima facie* opinion, mere non-publication of the tariff order in the newspapers will not enable respondent No. 3 to violate the Government policy and the tariff order passed by the Andhra Pradesh Electricity Regulatory Commission. Therefore, respondent No.3 and its subordinates are restrained from levying and collecting the wheeling and transmission charges from the consumers of the petitioners on third party sales, pending further orders."

If the contentions of the petitioner are accepted, then the respondents are bound to give benefit of the policy of the government and the order of the erstwhile APERC.

47. This contention is contested by the respondents on the pretext that the Commission has not issued any tariff order in so far as wheeling charges for the third control period is concerned at the relevant time as Commission was not in place. That the respondents have not notified the tariff order on wheeling charges dated

09.05.2014 issued by the erstwhile APERC. That the tariff order on wheeling charges was issued by the Commission on 27.03.2015 and that the Government of Telangana State issued a solar policy only on 10.06.2015. Hence the same are not applicable to the petitioner, it being a project prior to the order of the Commission and policy of the Government of Telangana State.

48. The attitude of the respondent seems ostensibly to brow beat the system which was in their hands and not to hand down the benefits to the generators like the petitioner. Inasmuch as the petitioner has synchronized the project and also obtained open access though belatedly, it has to get the benefit of exemption of wheeling charges as has been determined by the erstwhile APERC. This is more so in the teeth of the observations of the Hon'ble High Court as extracted above though not finally confirmed and that this Commission had itself while passing fresh order on determination of wheeling tariff for the control period 2014 – 2019 had observed as follows.

> "In conclusion, the Commission directs the TSSPDCL and TSNPDCL to levy wheeling tariff for each year of the Control Period from FY2015-16 to 2018-19 as indicated in Annexure E. **Regarding wheeling charges for FY 2014-15, the same shall not be levied now directly from the consumers, but the same will be adjusted during the true-up for 3rd control period.** The Terms and Conditions with applicability are indicated in Annexure – F. These tariffs are effective from 01st April 2015." (emphasis supplied)

In the light of the above the petitioner is entitled to exemption of wheeling charges for the period 13.08.2014 to 31.03.2015.

49. We are of the view that what ought to have been done by the licensee itself to settle the issue has been placed before us. Though the action of the licensee is that of misunderstanding or overreaching the orders of the Commission, we restrained ourselves from taking any action at this point of time in order to mitigate the suffering of the petitioner and like generators.

50. While we were about to pass orders in this case, we noticed that on regulatory side the issue raised by the petitioner as far as directions of the government under section 108 of the Act, 2003 were under consideration before us. The central point for consideration was exemption of wheeling charges for the projects established based

on the solar policy, 2012 issued by the then government of Andhra Pradesh and the solar policy issued by the government of Telangana State.

51. By acceding to the directions of the government of Telangana State under section 108 of the Act, 2003, we had passed the following order. The order is dated 31.12.2016 in O. P. No. 78 and 79 of 2015.

"After paragraph 49, the following paragraphs shall be added, namely:

"Provided that the wheeling charges shall not be applicable to the Solar Power Projects as per the policy directive of the Govt. of Telangana as given below:

Sl.No.	***A.P. Solar Power Policy, 2012***	***Telangana Solar Power Policy, 2015***
1	***Wheeling Charges***	
	There will be no wheeling and transmission charges for wheeling of power generated from the Solar Power Projects, to the desired location/s for captive use/third party sale within the state through 33 KV system subject to industries maintaining their demand within its contracted demand. However, wheeling and transmission charges for wheeling of power generated from the Solar Power Projects for sale outside the state will be as per APERC regulations.	*The wheeling and transmission charges are exempted for captive use within the state. They will be charged as applicable for third party sale. The transmission and distribution losses however is fully applicable for both third party within the state as well as captive use within the state.*

Provided further that the Govt. of Telangana shall reimburse the Discoms, the sum of money due to the exemption of the wheeling charges to the Solar Power Projects as stated in first proviso to the para 49. In the event of non-reimbursement by the Govt. of Telangana of the wheeling charges so exempted, the Discoms shall continue to levy the wheeling charges as applicable before this amendment plus the sum accrued as arrears from such consumers who are exempted under this amended order".

5. Further, the Annexure - F of the order dated 27.03.2015 reads as under:

Existing Paragraph -

"Applicability

Applicable for the use of distribution system for wheeling of electricity of a licensee by other licensees, generating companies, captive power plants, and

consumers who are permitted open access as per terms and conditions of Open Access Regulation (2 of 2005) and any other person(s)"

- Which is amended as under:

"Applicability

Applicable for the use of distribution system for wheeling of electricity of a licensee by other licensees, generating companies, captive power plants, and consumers who are permitted open access as per terms and conditions of Open Access Regulation (2 of 2005) and any other person(s).

Provided that the wheeling charges shall not be applicable to the Solar Power Projects as per the policy directive of the Govt. of Telangana as given in the paragraph 4 of this order."

52. Thus, by all means and in the light of the above order passed by us, the petitioner is entitled to the relief as prayed by it in the petition insofar as wheeling charges are concerned.

53 The petition is allowed to the extent indicated above and dismissed as not pressed in respect of prayer on banking of energy. The petition is allowed in part, leaving parties to bear their own costs.

This order is corrected and signed on this the 17th day of January, 2017.

Sd/-	Sd/-
(H. SRINIVASULU)	**(ISMAIL ALI KHAN)**
MEMBER	**CHAIRMAN**

//*CERTIFIED COPY*//

TELANGANA STATE ELECTRICITY REGULATORY COMMISSION HYDERABAD

From:
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Sri. Y Rama Rao, Advocate
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Near Appollo Hospital, Jubilee Hills
Hyderabad. – 500033

Lr. No. S. 22 / Secy / 2017 - 3 Dated. 18.01.2017.

Sir,

Sub:- Orders issued by the Commission in O. P. No. 82 of 2015 & I.A. No. 31 of 2015 – Reg.

***

Copy of the Order passed by Telangana State Electricity Regulatory Commission on 17.01.2017 in O. P. No. 82 of 2015 & I.A. No. 31 of 2015 is forwarded herewith.

Yours sincerely,

COMMISSION SECRETARY

Encl : as above

Copy to:

Deputy Director (Law)
Deputy Director (IT)
JD / IT – with a request to place the order in the Commission's website.
P.S. to Chairman
SCO. to Member / F