



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

O. P. (SR) No. 107 of 2023

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I. A. (SR) No. 108 of 2023

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I. A. (SR) No. 109 of 2023

Dated 16.12.2023

Present

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

Between:

M/s. Kakatiya Cement Sugar & Industries Limited,
Regd. Office at # 1-10-140/1, "GURUKRUPA",
Ashok Nagar, Hyderabad 500 020.

... Petitioner

AND

1. Northern Power Distribution Company of Telangana Limited,
Corporate Office, H.No.2-5-31/2, Vidyut Bhavan,
Nakkalagutta, Hanamkonda, Warangal 506 001.

2. Transmission Corporation of Telangana Limited,
Vidyuth Soudha, Somajiguda,
Hyderabad 500 082.

... Respondents

The petition came up for hearing on 14.12.2023 in the presence of Sri. Vikram Pooserla, Advocate along with Ms. Achala Siri, counsel for petitioner, having been heard and having stood over for consideration to this day, the Commission passed the following:

ORDER

M/s. Kakatiya Cement Sugar & Industries Limited (petitioner) has filed a petition under Section 86 (1) (f) the Electricity Act, 2003 (Act, 2003) questioning the recovery of grid support charges and other reliefs.

2. The petitioner has sought the following prayers in the original petition.
 - a. To declare that the claim of grid support charges for the period from FY 2002-03 till FY 2008-09 along with interest calculated with effect from FY 2002-03 allegedly payable by the petitioner, demanded vide Lr.No.CGM/IPC&RAC/GM/DE(IPC/AO(IPC)/AAO/F.Grid Support/D.No.544/20, dated 07.01.2021 issued by the respondent No.1 is time-barred, illegal and void.
 - b. To consequently, direct that the petitioner is not liable to pay grid support charges for from FY 2002-03 till FY 2008-09 along with interest, by setting aside the notice bearing Lr.No.CGM/IPC&RAC/GM/DE(IPC/AO(IPC)/AAO/F.Grid Support/D.No.544/20, dated 07.01.2021 issued by the respondent No.1.
 - c. To consequently declare that the respondent No.1 is not entitled to recover the grid support charges for the period from FY 2002-03 till FY 2008-09 along with interest from the power purchase bills due and payable by respondent No.2 to the petitioner by setting aside the letter bearing Lr.No.CGM/IPC&RAC/GM/DE(IPC)/AO(IPC)/AAO/F.Grid Support/D.No.612/20, dated 11.02.2021 issued by the respondent No.1.”

3. The petitioner has also filed an Interlocutory Application under Section 94(2) of the Act, 2003 r/w TSERC Regulation No.2 of 2015.The petitioner has sought the following prayer in the application.

“Pending adjudication and disposal of the main O.P. filed by the petitioner, the Commission may be pleased to direct the respondent No.1 not to take any coercive steps against the petitioner in pursuance to the notice bearing Lr. No. CGM/IPC RAC/GM/DE(IC/AO(IPC)/AAO/F.Grid Support/D.No.612/20, dated 11.02.2021 including recovery of the grid support charges for the period from FY 2002-03 to FY 2008-09 along with interest from the power purchase bills due and payable by respondent No.2 to the petitioner.”

4. The petitioner has filed another Interlocutory Application under Section 94(2) of the Act, 2003 r/w TSERC Regulation No.2 of 2015 and sought the following prayer in the application.

“Pending adjudication and disposal of the main O.P. filed by the petitioner, the Commission may be pleased to direct the respondents not to insist upon payment of the grid support charges for the period from FY 2002-03 to FY 2008-09 along with interest, which is demanded vide notice bearing Lr.No.CGM/IPC&RAC/GM/DE(IPC/AO(IPC)/AAO/F.Grid Support/D.No.544/20 dated 07.01.2021 issued by the respondent No.1 and consequently not to reflect the demanded amount as arrears in relation to the petitioner.”

5. The petitioner has filed brief submission on maintainability of the petition, which is extracted below.
- a. It is stated that the present petition is maintainable in law and this Commission has the power to adjudicate upon the petition under Section 86(1)(f) of the Act, 2003.
 - b. It is stated that the reliefs sought by the petitioner in the present matter pertain to time-barred claims of the respondents for Grid Support Charges for the period from FY 2002-03 till FY 2008-09. In this regard, the following submissions are made:
 - i. As per Article 2.5 of the amended Power Purchase Agreement executed between the petitioner and respondent No.2, petitioner is liable to pay Grid Support Charges as may be determined by the TSERC.
 - ii. The petitioner availed grid support of the respondent No.2 during the period from FY 2002-03 till FY 2008-09, for which Grid Support Charges are liable to be paid as per the PPA terms. Admittedly, this is not disputed by the petitioner. However, it is pertinent to note that no demand or claim was ever raised by the respondents during the afore-said period, despite the Commission fixing the tariff. It is only in the year 2021 that the claim was raised for the first time along with interest.
 - ii. Demand having been made after more than 11 years, the claim is clearly barred by limitation.
 - c. It is stated that from the above, it is evident that the petitioner's grievance, thus, lies in the fact that the claim for Grid Support Charges, though may be valid under law and contract, are time-barred in light of the respondents' own delay in claiming the amounts against the petitioner when the same were due during the relevant period of time. It is pertinent to note that the challenge in the present matter does not pertain to the power of this Commission to determine the Grid Support Charges, which is upheld by the Hon'ble Apex Court in Civil Appeals No.8969 of 2003 and batch. Thus, the observations of the Commission on the maintainability of the present petitions would be incorrect.
 - d. It is stated that under Section 86(1) of the Act, 2003 this Commission has the power to adjudicate upon the disputes between a licensee and generator. Since the respondents, being licensee companies are purporting to recover time-barred debts/dues as against the petitioner, a generator company, in an arbitrary manner, the Commission has the power to adjudicate upon the dispute between the parties and grant the reliefs as sought for.
 - e. It is stated that thus, the instant petition and applications filed therein are maintainable in law and this Commission has the power to adjudicate upon the

same.

f. Therefore, it is prayed that the Commission may be pleased to number the petition and applications filed therein at the earliest and post the matter for hearing considering the urgency cited in the applications.

6. The Commission has heard the counsel for petitioner and also considered the material available on record. The submissions on 14.12.2023 is noticed below, which are extracted for ready reference.

Record of proceedings dated 14.12.2023:

“... .. The advocate submitted that the matter is filed with regard to claims made by the respondents towards grid support charge. It is not known why the matter is put on maintainability. Even otherwise, the petitioner is neither questioning the authority of the Commission nor the authority of the respondents to claim the same. The limited issue that is raised in the petition is with regard to claims made beyond the limitation period for the amounts purportedly due by the petitioner. Further alleging that the amounts are due, the power purchase agreement is not being entered into by the respondents.

The petitioner has also filed interlocutory applications more particularly seeking directions that the respondents should proceed to enter into PPA dehorse the dues allegedly claimed by the respondents. In both the I.As. the petitioner is seeking that there should be stay of collection and the same should not be insisted pending disposal of the original petition.

The Commission having heard the submissions of the advocate for the petitioner, has reserved the matter on the maintainability as well as passing of necessary interim orders.”

7. At the time of hearing, the counsel for petitioner through the senior advocate has contended that the petitioner is not questioning the authority of the Commission as also the authority of the distribution licensee in collecting the amount. This aspect has already been settled by the Hon'ble Supreme Court, as such it has no case insofar as the authority of the Commission or the levy by the licensee. The short point on which the petition is filed is with regard to the limitation aspect that is applicable towards claims made by the distribution licensee. The claims made by the licensee are time-barred.

8. The Commission is of the view that the petitioner has rescinded the aspects of the authority of the Commission as also the authority of the distribution licensee. That leaves the Commission with sole issue of limitation towards claims and demand raised by the licensee. This aspect is required to be adjudicated. Unless, the petition is

admitted and notice is ordered to the distribution licensee, the matter cannot be decided.

9. Therefore, the Commission is inclined to admit the petition and accordingly directs the office to number the same along with interlocutory applications filed by the petitioner. Post the original petition along with interlocutory applications to 18.12.2023 at 3.00 P.M. and to cause notice to be issued to the parties.

This Order is corrected and signed on this the 16th day of December, 2023.

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

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