TELANGANA STATE ELECTRICITY REGULATORY COMMISSION

5th Floor, Singareni Bhavan, Red Hills, Lakdi-ka-pul, Hyderabad 500 004

O. P. No. 12 of 2023

Dated 06.05.2024

Present

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

Between:

M/s Sai Adithya Green Energy Private Limited,
Regd. Off # 1-8-19/3, Vidyutnagar,
New Dilsuknagar, Hyderabad, Telangana 500 060. ... Petitioner.

AND

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

2. Chief General Manager (IPC & RAC),
   TSSPDCL, Corporate Office,
   # 6-1-50, 2nd Floor, Corporate office,
   Mint Compound, Hyderabad, Telangana 500 063. ... Respondents.

The petition came up for hearing on 05.06.2023, 10.07.2023, 31.07.2023 and 21.08.2023. Sri. Deepak Chowdary, Advocate Sri. Challa Gunaranjan, counsel for petitioner has appeared on 05.06.2023 and 31.07.2023, Sri. Challa Gunaranjan, counsel for petitioner along with Sri. Deepak Chowdary, Advocate appeared on 10.07.2023 and Sri. Challa Gunaranjan, counsel for petitioner appeared on 21.08.2023. Sri. Mohammad Bande Ali, Law Attaché representative for the respondent has appeared on 05.06.2023, 10.07.2023, 31.07.2023 and 21.08.2023 and having stood over for consideration to this day, the Commission passed the following:

ORDER

M/s Sai Adithya Green Energy Private Limited (petitioner) has filed a petition

filed under Sections 86(1)(e) and (f) of the Electricity Act, 2003 (Act, 2003) read with Regulation Nos.2 of 2006, 1 of 2017 and 2 of 2015, seeking the claim of the units fed into grid by the petitioner's 1.0 MW solar power plant for the period from 01.10.2020 to 31.03.2022 as deemed purchase and pay the average pooled power purchase cost as determined by the Commission for the relevant years of 2020-21 and 2021-22. The averments in the petition are extracted below:

a. It is stated that the petitioner herein is a company incorporated under provisions of Companies Act, 1956 engaged in the business of generation and sale of solar power. The petitioner established its solar power plant with a capacity of 1.0 MW at Tangadpalli village, Choutuppal mandal, Yadadri district. The petitioner is a third-party generator and the energy generated by the petitioner is being supplied to its scheduled consumer that is M/s Rane Brake Lining Limited under the power purchase agreement (PPA) dated 29.08.2014 (for SDP-306). The Southern Power Distribution Company of Telangana Limited being the respondent No.1 is the distribution licensee operating within the area of the petitioner's project and its consumer. The respondent No.2 is the officer of the respondent No.1.

b. It is stated that Section 42(2) of the Act, 2003, mandates the introduction of open access in phased manner subject to conditions to be specified by the Commissions. The erstwhile Andhra Pradesh Electricity Regulatory Commission (APERC) for the State of Andhra Pradesh in exercise of powers conferred under Section 42(2) read with 181(1) of the Act, 2003 had issued regulations on terms and conditions for allowing open access for supply of electricity to consumers through intrastate transmission and distribution networks, namely, APERC (Terms & Conditions of Open Access) Regulation, 2005 being Regulation No.2 of 2005. The said regulation contained the guidelines for the licensees and open access users in the State of Andhra Pradesh in the matter of availing open access by the users including generating companies and licensees.

c. It is stated that the erstwhile APERC also issued the APERC (Interim Balancing and Settlement Code) Regulation, 2006 being Regulation No.2 of 2006 on 11.06.2006, providing guidelines to the licensees and intrastate open access users in the State of Andhra Pradesh in the matters of scheduling of open access transactions, meter readings, energy accounting and settlements at

entry points and exit points, banking conditions for mini hydel and wind power projects etc. Consequently, the Government of Andhra Pradesh (GoAP) issued the Solar Power Policy, 2012, vide G.O.Ms.No.39, dated 26.09.2012 and amendment to it vide G.O.Ms.No.44, dated 16.11.2012 to promote generation of solar power in the state. The objective of the solar policy is to encourage, develop and promote solar power generation in the State with a view to meet the growing demand for power in an environmentally and economically sustainable manner.

d. It is stated that above Regulation No.2 of 2006, was first amended vide Regulation No.1 of 2013, notified on 02.05.2013 and secondly vide Regulation No.2 of 2014 notified on 01.04.2014, had included solar as renewable sources of energy and allowed the facility of banking to be in line with the solar power policy issued by the GoAP.

e. It is stated that, pursuant to A.P. State Reorganisation Act, 2014 and the formation of the State of Telangana with effect from 02.06.2014. The Government of Telangana (GoTS) issued a new policy being Telangana Solar Power Policy, 2015 (solar policy 2015) with the object of developing solar park(s) with the necessary utility, infrastructure facilities to encourage developers to set up solar power projects in the state.

f. It is stated that under the solar policy 2015, in terms of clause 11(e), the energy injected into the grid by the solar power projects intended for captive or 3rd party sale from the date of synchronization till granting open access approval, will be considered as deemed banked energy. For the ready reference of the Commission clause 7 and clause 11(e) are extracted as here under:

> *"Clause 11(e) Power scheduling and Energy Banking:*
> *For captive/third party sale, energy injected into the grid from date of synchronization to open access approval date will be considered as deemed energy banked.*
> *The unutilized banked energy shall be considered as deemed purchase by DISCOM(s) at average pooled power purchase cost as determined by the TSERC for the year.*
> *For Sale to DISCOMs, Energy injected into the grid from the date of synchronization to Commercial Operation Date (COD) will be purchased by the DISCOMs at the first-year tariff of the project, as per the provisions of the PPA with DISCOMS".*

g. It is stated that the Commission has once again amended Regulation 2 of 2006, by way of 3rd amendment and issued Telangana State Electricity Regulatory

Commission (Interim Balancing and Settlement Code for Open Access Transactions) Third Amendment Regulation, 2017 being Regulation No.1 of 2017, whereby appendix - III of the principal regulation was substituted and the relevant clauses - 7 and 8 of appendix - III read as follows:

> *"APPENDIX-3 – Terms & Conditions for Banking Facility allowed for Wind, Solar and Min-Hydel Power Generation:*
> *For third party sale, the energy injected into the grid from the date of synchronization till the date prior to captive consumption or open access approval date will be considered as deemed banked energy.*
> *The unutilized banked energy shall be considered as deemed purchase by DISCOM(s) at the average pooled power purchase cost as determined by TSERC for the relevant year."*

h. It is stated that the petitioner considering the incentives provided under the solar policy, 2015 had offered to setup a 1.0 MW solar power project at Tangadpalli village, Choutuppal mandal, Yadadri district. In respect of the same, the petitioner was accorded permission vide letter dated 02.09.2015 for setting up of the solar power plant for sale of power to 3rd parties.

i. It is stated that the petitioner had completed installation of 1.0 MW and permission was accorded by Chief General Manager (Comml & RA) vide memo dated 19.06.2014 for synchronization of the plant and accordingly was connected to grid on 11.09.2015.

j. It is stated that while the permission and setup of the solar power plant was ongoing, the petitioner had entered into a PPA, with M/s Rane Brake Lining Limited (scheduled consumer) on dated 27.08.2014. In pursuance to the above, the petitioner had also entered into an long term open access (LTOA) agreement on 03.12.2015 with the respondent No.1 for supply of power to its scheduled consumer for the period between 04.12.2015 to 15.09.2020 and has continued to generate and supply power to its scheduled consumer under the LTOA dated 03.12.2015.

k. It is stated that as the petitioner's LTOA period was coming to end, the petitioner made a fresh application dated 10.06.2020 for renewal of LTOA. Immediately an inspection was conducted by officials of the respondent No.1 and the petitioner was orally informed that, on inspection the power injected to the grid was causing harmonics beyond the permissible limits and which shall affect the grid stability and the petitioner was asked to rectify the same.

l. It is stated that the petitioner vide representation dated 07.12.2020, had

informed the respondent No.2 that the harmonics were being caused by the invertor filters and they are in the process of installing the external filters which shall suppress the harmonics as per the prescribed guidelines under IEEE STD 319-2014 and further orally requested the respondents to grant 3 months' time to rectify the harmonics. The respondent No.2 vide letter dated 18.12.2020, had informed the petitioner that

> *"In view of the above, as the said harmonics distortions are major and not in compliance to the technical standards of TSTRANSCO or TSSPDCL specifications and such distorted power injection has a serious implication on grid's security, it is requested to take necessary action with an immediate effect to mitigate the harmonics distortions which are out of limits and ensure that the generated power injected into the grid from the generating plant shall be free from anomalous harmonics by installation of requisite harmonic suppressors. Upon suppression of harmonics, it is requested to communicate the same along with test reports to this office immediately for taking further necessary action for processing LTOA application. Matter is most urgent as it involves Grid Security and safety for reliable operation."*

m. It is stated that thereafter the respondent No.2 vide letter dated 24.12.2020, had informed the petitioner that,

> *"After careful consideration of your request dated 07.12.2020. The management had decided to grant 3 months' time for installation of harmonic suppressors and the renewal of the LTOA will be processed only after submitting the power quality test report to this office upon suppression of harmonics as per CEA (Technical Standard for Grid Connectivity) (Amendment) Regulation, 2013 and as per clause 8.1(b) of the LTOA agreement dated 03.12.2015."*

Further the petitioner was also informed that in default of the above, the petitioner's plant would be deenergized from the grid as per clause 8.1(b) of LTOA agreement and clause 15 of Central Electricity Authority (Technical Standard for Connectivity of the Distributed Generation Resources) Amendment Regulation, 2019 (CEA regulation).

n. It is stated that, originally it was M/s Fimer India Private Limited (Fimer) that had installed the Invertors, the petitioner had once again approached the same and requested them to identify and rectify the issue. The petitioner was then informed by Fimer, that due to the advent of COVID-19 availability of labour was a major concern and they have requested further time. The petitioner had once again orally requested the respondents for additional time to rectify the harmonics. That being said the respondent No.2 vide letter dated 01.04.2021, had informed the petitioner that, it is granted further period of three months from

the date of issuance of the notice and that the petitioner's LTOA will be processed only after the receipt of the same. It is respectfully submitted that, Fimer has started conducting the testing of the equipment that was causing the harmonics and informed the petitioner that the Invertors were causing the harmonics and informed the petitioner to replace it with new invertors. The petitioner had immediately placed the purchase order vide letter dated 17.12.2021.

o. It is stated that, due to the spread of Covid-19 and the continuous restriction/lockdowns imposed by the Government of India (GoI) and the GoTS, the petitioner was facing several issues in identifying the cause and to rectify the issue of harmonics and with great efforts was able to remove the faulty equipment causing the harmonics and replace the same with new equipment, the said process was duly completed by 24.03.2022. The petitioner immediately vide representation dated 25.03.2022, along with the necessary data indicating the power quality test to the respondent No.2 and requested the same to renew the LTOA application dated 10.06.2020. Considering the representation and analysing the power quality reports furnished by the petitioner, the respondent No.2 vide letter dated 27.06.2022, have granted approval for renewal of LTOA for the period from 25.03.2022 to 24.03.2024, and further directed the petitioner to complete the process of entering into LTOA by completing the necessary formalities. The petitioner had entered into a LTOA agreement dated 01.10.2022 for the period between 25.03.2022 to 24.03.2024.

p. It is stated that, the petitioner taking reference to the permission accorded for LTOA and the LTOA agreement, vide representation dated 04.01.2023, informed the respondents that although the petitioner was in the process of rectifying the harmonics and entering into LTOA, the petitioner solar plant was never disconnected from the grid and that all through during the period from expiry of the initial LTOA and the renewal of LTOA, the petitioner was continuously injecting power to the grid and the JMR readings were also taken for the period from 16.09.2020 to 24.03.2022 and furnished to the respondent No.1. The petitioner had injected a total of 23,49,140 units during this period. Therefore, the petitioner had requested the respondents to compensate the petitioner for the units generated and supplied to the grid at the average pooled purchase cost as determined by the Commission from time to time in pursuance

to the solar policy, 2015, Regulation No.1 of 2017.

q. It is stated that the petitioner sought for LTOA for supply of power to its scheduled consumer and is eligible for same. Despite the petitioner was facing the issue of harmonics, the petitioner plant was never disconnected or deenergized from the grid. In respect of the same, the petitioner had performed a non-gratuitous act and hoping to receive compensation for the energy injected into to the grid, had requested the respondents to compensate the same as envisaged under Regulation No.1 of 2017, by treating the energy as deemed purchase and further requested to pay the pooled purchase cost as determined by the Commission for the relevant period. The statement of calculation of number of units fed into the grid and unutilized energy during the above period and the tariff payable thereon, for raising the present claim is filed as annexure. The petitioner had by letter dated 04.01.2023 requested the respondents to pay for the unutilized deemed energy during the above period, as there is no response, the petitioner is constrained to file this present petition.

r. It is stated that, the respondents have continued to allow the petitioner to generate the power and such powers was utilized by the respondent No.1 and they had in turn sold it in retail to its consumers and benefited out of it. Therefore, either they should have granted renewal with effect from 25.09.2020 or alternatively should have treated the energy from 25.09.2020 to 24.03.2022 as deemed banked in terms of Regulation No.2 of 2006 or compensated the petitioner for the energy as it is a non-gratuitous act, failing which the petitioner is at a huge loss and severe financial burden.

s. It is stated that the petitioner had availed a loan from Power Finance Corporation Limited for an amount of Rs.5.64 crores and due to non payment of the monthly instalment dues, the petitioner was declared as a non performing asset.

t. It is stated that the petitioner is entitled to claim for all those units which are delivered to grid and utilized by the respondent No.1, at the rate as to be determined by the Commission. The petitioner has continuously generated energy and fed it into the grid since the expiry of the LTOA to the renewal of its LTOA. As per the prevailing regulations in terms of APPENDIX-III to Regulation No.2 of 2006 as amended by Regulation No.2 of 2014, the energy fed into the grid is treated to be in bank and that the unutilized energy during the year shall

be deemed to have been purchased by the respondent No.1 at a tariff of 50% of pooled cost. Subsequently as this APPENDIX-3 has been substituted by Regulation No.1 of 2017 on 22.03.2017, in terms of said substituted provisions, the unutilized deemed banked energy is deemed to be purchased by the respondent No.1 and shall pay tariff of average pooled power purchase cost.

2. Therefore, the petitioner has sought the following reliefs in the petition.

"a) To declare that the energy generated and fed into grid of the 1st respondent from the petitioner's 1.0 MW solar power project during the period from the date of from expiry of the initial LTOA and the renewal of LTOA that is 16.09.2020 to 24.03.2022 as deemed to be banked and purchased or alternatively the same should be treated as a non-gratuitous act and the units fed during the above period should be compensated.

b) To direct the respondent No.1 to pay for the said energy of 23,49,140 units at the tariff as may be decided by this Hon'ble Commission along with interest at the rate of 12% per annum."

3. The respondents have filed the counter affidavit as extracted below:

a. It is stated that the petitioner established its 1.0 MW solar power plant at Tangadpalli village, Chotuppal mandal, Yadadri district, Telangana and synchronized the same on 11.09.2015. The petitioner entered an intrastate LTOA agreement with respondent on 03.12.2015 for the period from 04.12.2015 to 15.09.2020 and exported its power to its consumer M/s Rane Brake Lining Limited, HTSCNo.SDP-306 at 33 kV level through PPA dated 29.08.2014 under the aforesaid intrastate LTOA agreement.

b. It is stated that the petitioner approached the respondents for setting up of 1.0 MW Solar power plant at Tangadpalli village, Chotuppal mandal, Yadadri district, Telangana for which permission was accorded by the respondent on 19.06.2014 and the plant was synchronized to the grid on 11.09.2015.

c. It is stated that the petitioner entered LTOA on 03.12.2015 to supply its power to its scheduled consumer M/s Rane Brake Lining Limited, HTSCNo.SDP-306 for the period from 04.12.2015 to 15.09.2020.

d. It is stated that as per clause 5 of Regulation No.2 of 2005, the nodal agency for processing the LTOA applications is State Transmission Utility (STU) and for processing STOA applications is State Load Dispatch Centre (SLDC). The relevant clause is reproduced below:

"5. Nodal Agency:

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

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

It is stated that, as the existing LTOA period was to expire on 15.09.2020. Therefore, the petitioner made a fresh application dated:10.06.2020 to the nodal agency as per aforesaid clause for renewal of LTOA.

e. It is stated that, as part of processing any open access application, all the inverter-based power plants shall have to carry out the annual power quality test duly complying respondent No.1/TSTRANSCO standards as per clause B1 (4) under Part II of CEA technical standards for grid connectivity, 2013 (first amendment of CEA regulation 2007) and submit the same to the respondent. The relevant clause is herewith reproduced below:

"B1(4) Measurement of harmonic content, DC injection and flicker shall be done at least once in a year in presence of the parties concerned and the indicative date for the same shall be mentioned in the connection agreement;

Provided that in addition to annual measurement, if distribution licensee or transmission licensee or the generating company, as the case may be, desires to measure harmonic content or DC-injection or flicker, it shall inform the other party in writing and the measurement shall be carried out within 5 working days."

f. It is stated that the petitioner's power quality test report for renewal of LTOA conducted by NABL accredited agency were submitted by SE/OP/YDD vide letter dated 25.08.2020 wherein, some of the power quality parameters were found beyond the permissible limits for which, the SE/OP/YDD was instructed vide letter dated 18.12.2020 to see that the petitioner's plant harmonics are rectified in order to maintain grid stability as contended in para 14 of the affidavit.

g. It is stated that the following are the relevant clauses mentioned in the CEA and TSERC Regulations with regard to maintaining technical standards in respect of power quality parameters.

a. As per Clause 8.1(b) of the LTOA agreement, the developer has to abide to the set forth technical requirements as per mutually agreed terms and conditions.

Clause 8.1(b)

"In the event of failure of the Open Access User to comply with any prescribed technical requirements, which adversely affects

the power quality or security of the grid, performance or management of grid assets, TSTRANSCO and/or TSSPDCL shall be entitled to issue appropriate advice to de-energise the connection granted to the Open Access User forthwith, in accordance with the Clause 20 of the Regulation and the procedures outlined in the AP Grid Code or Distribution Code or the TSDISCOM's General Terms and Conditions of Supply."

b. Further, the sub clauses I and IV of clause 12 of TSERC (State Electricity Grid Code) Regulation, 2018 (grid code) with regard to harmonic standards which is herewith reproduced below:

12. Safety Standard:

i) The applicable safety requirements for construction, operation and maintenance of electrical plants and electric lines shall be as per the Indian Electricity Rules 1956 or the standards notified by the Authority under clause (c) of Section 73 of the Act:

Harmonic Distortion:

iv) All persons connected to the Grid or intending to connect to the State Grid shall ensure that, the total Harmonic distortion for voltage at the connection point shall not exceed 5% with no individual harmonic higher than 3% and the total harmonic distortion for current drawn from the Transmission System at the connection point shall not exceed 8%.

The same regulation also states that, if failure to comply regard to provisions of State Electricity Grid Code by user, may lead to disconnection of the plant. The relevant clause is herewith reproduced below:

60.7 Consistent failure to comply with the provisions of the Grid Code or with the rule and procedures developed under such provisions, by User or Transmission Licensee, may lead to disconnection of the Plant and/or Apparatus of such User or Transmission Licensee.

c. As per clause 15(1&2) of CEA (technical standards for connectivity of the distributed generation resources) Amendment Regulations, 2019 which is reproduced below.

15. Compliance of regulations: -

(1) It shall be the responsibility of concerned licensee to ensure that before connectivity to the grid, all the provisions with regard to the connectivity stipulated in these regulations are complied with by the applicant.

(2) The user may be disconnected from the grid by the licensee for non-compliance of any provision of these regulations, under report by the licensee to the appropriate Electricity Regulatory Commission."

h. It is stated that the petitioner at paragraph 15 of its petition admitted to have submitted representation dated 07.12.2020 seeking time to rectify the harmonics to avoid de-energization of its 1 MW solar plant for which, this

respondent vide letter dated 24.12.2020 granted 3 months' time for installation of harmonic suppressors and to submit the latest PQT reports. It was informed to the petitioner that, in case of default, the petitioner's plant would be de-energized from the grid as per clause 8.1(b) of LTOA agreement.

i. It is stated that the petitioner instead of submitting the latest PQT report in compliance to the CEA technical standards went on requesting this respondent continuously vide letters dated 04.01.2021, 19.06.2021, 24.09.2021 and 29.12.2021 to extend further time to submit the latest PQT reports. The respondent in response to the aforementioned letters had been extending time for submission of latest PQT reports vide notices dated 01.04.2021, 17.06.2021, 09.07.2021, 05.10.2021 and 10.01.2022 to rectify the harmonics and to submit the latest PQT reports in compliance to the CEA technical standards in order to process their renewal LTOA and also making it clear that in case the petitioner fails to submit the latest PQT reports, the plant of the petitioner shall be de-energized.

j. It is stated that the petitioner in the long run submitted the satisfactory PQT reports vide letter dated:25.03.2022 that is after lapse of more than one and half year from the date of his LTOA application. The nodal agency accorded LTOA approval to the petitioner from the date of issuance of satisfactory PQT reports that is from 25.03.2022 to 24.03.2024 since the renewal LTOA agreement for the applied period by the petitioner that is from 16.09.2020 to 15.09.2022 cannot be granted/accorded retrospectively, which period did not contain the required satisfactory PQT test report.

k. It is stated that the contention of the petitioner that their plant was never disconnected from the grid all through during the period from expiry of the initial LTOA and the renewal of LTOA is denied which is far away from the facts. It is stated that the plant of the petitioner was not deenergized/disconnected at the request of petitioner while seeking extension of time vide representations dated 04.01.2021, 19.06.2021, 24.09.2021 and 29.12.2021 for rectifying the harmonics and avoiding deenergization of the plant.

l. It is stated that once a project is interconnected to the grid, joint meter readings (JMR) have to be taken in order to account for the energy input to the grid as the power cannot be stored at one place and should be transmitted, irrespective of the fact whether any agreement is executed or not. The petitioner under the

guise of such JMR cannot claim compensation of the units injected into the grid at average pooled purchase cost as per Regulation No.1 of 2017 for want of LTOA agreement during such period.

m. It is stated that the petitioner was never disconnected or deenergized from the grid despite the petitioner was facing the issue of harmonics is untenable and baseless as the petitioner itself sought for time extensions vide representations dated 04.01.2021, 19.06.2021, 24.09.2021 and 29.12.2021 to carry out the PQT test against the de-energization notices issued by this respondent vide notices dated 01.04.2021, 09.07.2021, 05.10.2021 and 10.01.2022. Further, the contention of the petitioner that it had performed non-gracious act by injecting the power hoping to receive compensation is not maintainable as the time extensions for rectification of harmonics is only based on the requests made by the petitioner against the de-energization notices issued by this respondent.

n. It is stated that the electrical energy injected into the grid cannot be stored and it would be consumed instantly and there would be no option for the respondents either to accept or reject the said energy at the cost of paying deviation charges and fixed charges to the long term generators that is coal based generators, who entered PPAs with the DISCOM and it is not a case of utilizing the energy voluntarily by this respondent, but it amounts to thrusting it up on, without having the option of refusing it.

o. It is stated that this respondent has issued several notices to the petitioner calling upon it to submit satisfactory PQT reports and also cautioned that failure to do so, this respondent would be constrained to deenergize its plant for non compliance of power quality parameters as enumerated in CEA technical standards for grid connectivity 2013 (First amendment of CEA regulation 2007) and grid code. The petitioner went on seeking extension of time for submission of PQT report. Therefore, the petitioner cannot claim charges towards the unwanted injection of energy during the extended period for submission of satisfactory PQT report. The petitioner is trying to take advantage of the orders of extension of time to submit the PQT report made for the benefit of the petitioner.

p. It is further stated that as per TSERC Regulation 2 of 2014 (2nd amendment to Regulation 2 of 2006) banking facility can be availed by the solar power

developers subject to certain terms and conditions for drawl of banked energy. As per the said condition the developers are required to communicate the block wise drawl from banked energy and the same shall be wheeled to their consumer accordingly. For that matter solar power developer should have open access agreement with the DISCOM. In the present case, the existing LTOA agreement of the petitioner was expired on 15.09.2020 and from 16.09.2020 to 24.03.2022, there was no agreement between the petitioner and the respondent No.1. However, the plant of the petitioner was not deenergized during such period only based on the requests made by the petitioner against de-energization notices.

q. It is stated that the averments made by the petitioners that are not specifically dealt with herein are denied by this respondent. The petitioner may be put to strict proof of the same. It is prayed the Commission to dismiss the petition with costs.

4. The respondents have filed a memo stating as below:

a. It is stated that as per the record of proceeding dated 21.08.2023, the copy of order dated 26.11.2015 in O.P.No.32 of 2014 passed by the Karnataka Electricity Regulatory Commission (KERC) is filed for taking on record.

b. It is stated that the respondents rely upon the order in O.P.No.32 of 2014 passed by the KERC on 26.11.2015 in Lalpur Wind energy Private Limited Vs Karnataka Power Transmission Corporation Limited and others wherein, similar question fell for consideration. The KERC extracted the commentary under Section 70 of the contract Act by the learned authors, Pollack & Mulla, 14th Edition, Volume II and the same reads as follows:

"… … A claim on the basis of something done against the express provisions of statute cannot be claimed under this Section ..."

"… … Where the Defendant informed the Plaintiff that he did not want the work done, the work was not done lawfully. …"

"… … The voluntary acceptance of the benefit of the work done or under delivery is the foundation of the claim under Section 70. The person on whom the benefit is conferred, enjoys the benefit voluntarily. It means that the benefit must not have been thrust upon him without his having the option of refusing it. Nobody has a right to forcing the benefit upon another. …"

c. It is stated that the KERC having extracted the said commentary of Section 70 observed as follows in paragraph 9(e) at page No.21 (6th line from downwards)

and the same reads as follows:

> *"Further, it can be noted that the electrical energy injected into the Grid cannot be stored and it would be consumed instantly and there would be no option for the Respondents, either to accept or reject the said energy. Therefore, it is not a case of enjoying the benefit voluntarily by the Utilities, but it amounts to thrusting it upon them, without having the option of refusing it"*

d. It is stated that it thus become very much clear from the aforementioned decision of KERC and also from the decisions cited by the learned counsel for petitioners that the petitioners cannot take aid of Section 70 of the Contract Act to claim compensation in respect of the energy thrusted upon by them to the grid of the respondents without their consent and knowledge.

e. It is stated that the aforementioned order of the KERC in O. P. No.32 of 2014 was challenged before the Hon'ble Appellant Tribunal for Electricity (ATE). The Hon'ble ATE by order dated 08.02.2019 in Appeal No.37 of 2016, upheld the order of the KERC in O.P.No.32 of 2014.

f. It is further stated that the petitioner relied on order dated 24.01.2013 in Appeal No.170 of 2012 filed by BESCOM against the order dated 29.03.2012 passed by the KERC directing the BESCOM to pay for energy injected into the grid consumed by BESCOM at the rate of Rs.3.40 per unit.

g. It is stated that the said appeal relied up on by the petitioner is irrelevant to the present case as that matter is related to the delay in execution of wheeling and banking agreement upon expiry of the PPA but not the failure of the technical parameters. Whereas the present matter is related to the failure of the petitioner in adhering to the power quality parameters as per CEA regulations and the time extension granted for fulfilling the said power quality parameters was only based on the requests of the petitioner.

5. The Commission has heard the counsel for petitioner and the representative of the respondents. It also considered the material available to it on record. The submissions on various dates are noticed below, which are extracted for ready reference:

> *<u>Record of proceedings dated 05.06.2023</u>:*
> *"… … The advocate representing the counsel for petitioner stated that the matter is coming for the first time and the counter affidavit has to be filed, but it had already been filed. He needs time for filing rejoinder in the matter by four weeks time. The representative of the respondents while stating that the counter affidavit had already been filed, has no objection for adjournment of the*

matter. Accordingly, the matter is adjourned."

Record of proceedings dated 10.07.2023:

"… … The counsel for petitioner sought time for filing rejoinder in the matter. The representative of the respondents has no objection. The Commission has directed the counsel for petitioner to file rejoinder on or before 24.07.2023 by serving a copy of the joinder to the respondents. Accordingly, the matter is adjourned."

Record of proceedings dated 31.07.2023:

"… … The advocate representing the counsel for petitioner stated that the counsel for review petitioner is engaged in the Hon'ble High Court for the State of Andhra Pradesh at Amaravathi, hence he is unable to attend the hearing before the Commission. He sought adjournment of the matter to any other date. The representative of the respondents has no objection. Accordingly, the matter is adjourned."

Record of proceedings dated 21.08.2023:

"… … The counsel for petitioner stated the details of the case and explained various dates for consideration for payment of the amount towards the energy delivered between the date of synchronization and the date of granting long term open access.

The counsel for petitioner stated that the licensee and the nodal agency have raised issues with regard to the compliance of CEA regulation. Earlier, the petitioner sought grant of the LTOA, then the issue of compliance of regulations was not imposed on it. Eventhough, the earlier it had been granted LTOA, post the present application the respondents seeking to deny the LTOA sought compliance of the regulations. However, this issue did not find place on the earlier occasion. In order to comply with the requirements, the petitioner had made efforts and took time for complying the same. The issue with regard to grant of LTOA cannot be tagged to the aspect of non-compliance of certain technical parameters.

The counsel for petitioner stated and referred to a judgment of the Hon'ble ATE in the matter of M/s Bangalore Electric Supply Company Limited Vs. M/s Reliance Infrastructure Limited. Though the said judgment is not directly setting out the principle, yet the issue of grant of LTOA has been considered in the matter. The respondents have, in their counter affidavit, stated about the contention of the petitioner that harmonics were required to be complied with. The respondents did not deenergize the plant eventhough the petitioner did not comply with the technical requirements despite granting time. The petitioner, in fact, sought time for compliance of the regulations, however, continued to generate power and inject into the grid. As such, the petitioner is seeking reimbursement of the charges towards power injected into the grid for the period from 01.10.2020 to 31.03.2022 by treating it as deemed purchase.

The representative of the respondents stated that the petitioner sought renewal of LTOA from 16.09.2020 for further period. The LTOA was granted to the petitioner from 01.10.2022 for a period of two years. However, before granting renewal of the LTOA for the period from 16.09.2020 to 15.09.2022, the petitioner was required to comply certain technical requirements including PQT test.

The representative of the respondents stated that the petitioner was given several extensions to comply with the same. The petitioner did not come forth to comply with the regulation including the technical requirements. Reference

made to the judgment of the Hon'ble ATE is neither appropriate nor relevant to the present case as it was involving the generator and the licensee, who had agreement between them.

The representative of the respondents stated that the licensee was generous not to deenergize the power plant. The licensee suffered unnecessary charges and losses that had been occasioned due to continuation of injection of power despite absence of any agreement between the petitioner and the licensee. The generation injected into the grid cannot be termed as a sale to the DISCOM by which it would have enriched itself. Such energy could at best be treated as inadvertent power and therefore, it cannot attract any payment in any form. The Commission may be pleased to refuse the relief as the petitioner has not complied with the regulations and technical parameters in a timely manner. The respondents cannot be mulcted with unnecessary charges in the form pooled cost to be paid to the petitioner as the amount of the energy delivered is not treated as banked energy.

The counsel for petitioner relied on a judgment passed by the Commission in M/s Ener Sol Infra Private Limited vide O. P. No.19 of 2020, wherein the Commission had considered the issue of payment of charges for the energy injected into grid prior to grant of LTOA after synchronization. Moreover, the petitioner and like developers have established solar power plants in the State of Telangana owing to the policy notified by the government, which was accepted by the Commission subsequently in Regulation No.1 of 2017. That technical specifications required to be corrected was suffering from non-availability of suitable products in the market and the same got delayed. The petitioner did not stop the production of energy for the reason that it was in fond hope of availing LTOA as sought by it.

The counsel for petitioner stated that having drawn the power and supplying it to its consumer, the licensee cannot now refuse to compensate the petitioner on the ground that the same was inadvertent power not within the knowledge of the respondents. Therefore, keeping in view of the policy and subsequent regulation as notified by the Commission, the petition may be considered for grant of the relief as prayed for.

Having heard the submissions of the parties, the matter is reserved for orders."

6. The core issue in this petition is with regard to payment of energy charges for the power injected into the grid between expiry of the earlier permission towards LTOA and grant of fresh LTOA after a lapse of two years. Facts apart, the petitioner had earlier synchronised the power plant in the year 2014 and availed open access in the year 2015. Such open access period started on 04.12.2015 and ended on 15.09.2020. Later, further open access was granted from 25.03.2022 which would expire on 24.03.2024.

7. Primarily, the petitioner has been generating power from the 1 MW solar power plant and availed LTOA. When it sought renewal of the permission for LTOA, technical issues relating to harmonics and non-availability of PQT for considering the request

arose. The undenied fact is that the petitioner had sought extension of time to obtain and provide the PQT as also to change the inverters which were causing higher incidence of harmonics and affecting the grid. The petitioner had time and again sought extension from the respondents and the respondents were considerate enough to extend the time but with strict notice that after the expiry of the extended time the solar plant would be disconnected from the grid in the absence of availability of necessary reports from the generator.

8. As stated above, the period of open access initially ended on 15.09.2020 and fresh open access permission was enabled in favour of the petitioner from 25.03.2022 till 24.03.2024 by acceptance letter dated 27.06.2022. The period between 15.09.2020 and 25.03.2022 culminated in the petitioner generating power and injecting into the grid without reference to either sale to the respondents or its own consumers. The respondents knowingly or unknowingly though threatened the petitioner that they would deenergise the power plant, never took the extreme step and instead allowed the power into the grid.

9. Now, the petitioner is claiming that permission may be accorded by treating such injection energy as deemed to be banked and purchased by the respondents it being a non-gratuitous act and also in the alternative to pay for the said energy at the tariff as decided by the Commission including interest at the rate of 12%. It is appropriate to state that if the energy is banked or deemed to be banked, then in terms of the subsisting regulation the petitioner would be entitled to average pooled cost as decided by the Commission for the relevant financial year. The subsisting regulations do not visualise a situation where there is intermittent gap between open access permission at first instance and renewal of the open access subsequently. The regulations will only provide for a situation where the generator is synchronised to the grid initially and open access is allowed with a time lag. Such power is liable to be paid at average pooled cost.

10. It is not out of place to state here that the petitioner did avail LTOA at first instance and got renewal of the same subsequently with a huge time gap of approximately one and a half year. This time lag between the expiry of earlier LTOA and renewal of the subsequent LTOA resulted in the power plant being kept running without deenergisation as also injection of energy into the grid. This situation is not

akin to initial synchronisation of the power plant to the grid and grant of open access after examination by the nodal agency by taking necessary inputs from the licensees. In initial phase, there might by time lags for grant of open access and would result in generation of power and injection of such power into the grid, which has been duly recognised by the Commission duly providing for payment mechanism.

11. The situation in this case had arisen due to lapses on the part of the both the parties. The respondents did not inform the petitioner about technical aspect of harmonics at first instance or requirement of PQT at the earliest point of time. The petitioner also did not hasten the action required by it to rectify the technical defects relating to harmonics and also providing the PQT in terms of the regulation of the CEA. Having regard to the actions or inactions on the part of the parties to the petition, the claims and counter claims made herein are required to be considered as one of an instance and not the routine exercise.

12. It is appropriate to state that the respondents have benefited from the energy injected into the grid by selling the same to their consumers unless it is shown to the contra. The petitioner had also kept live the generating station without complying with the Act, 2003, rules and regulations for continuation of open access. The parties by their actions have brought a situation thereby neither would compromise on the power injected into the grid nor settlement can be arrived at due to lapses on either side.

13. The Commission notices that the respondents raised issues when the petitioner sought renewal of the LTOA with regard to technical aspects more particularly the injection of harmonics and the requirement of PQT, which were hither to known to them even prior to the petitioner seeking renewal of LTOA. Assuming that the respondents have done inspection of the plant every year, these aspects should have come to light at the earliest point of time in the year 2016 itself. The Commission would be constrained to infer that in order to delay the grant of LTOA to the petitioner, the respondents unwittingly raised the issues only when the petitioner sought the extension of LTOA. This is nothing short of exercising the dominant power merely because the respondent No.1 is the only distribution supply in the area of supply where the generator is located.

14. Section 42 of the Act, 2003 read with Section 60 require providing of open

access and denigration of abuse of dominant position of the licensees or generators. The PQT report required by the respondent No.1 is applicable from the year 2013 when the CEA notified the CEA (Technical Standard for Grid Connectivity) (Amendment) Regulation, 2013 as also the LTOA at clause 8.1(b) of the LTOA agreement. The same are extracted below:

CEA (Technical Standard for Grid Connectivity) (Amendment) Regulation, 2013

"Bl. Requirements with respect to Harmonics, Direct Current (DC) Injection and Flicker

(1) Harmonic current injections from a generating station shall not exceed the limits specified in Institute of Electrical and Electronics Engineers (IEEE) Standard 519.

(2) The Generating station shall not inject DC current greater than 0.5 % of the full rated output at the interconnection point.

(3) The generating station shall not introduce flicker beyond the limits specified in IEC 61000.

Provided that the standards for flicker will come into effect from 1st April 2014.

(4) Measurement of harmonic content, DC injection and flicker shall be done at least once in a year in presence of the parties concerned and the indicative date for the same shall be mentioned in the connection agreement;

Provided that in addition to annual measurement, if distribution licensee or transmission licensee or the generating company, as the case may be, desires to measure harmonic content or DC-injection or flicker, it shall inform the other party in writing and the measurement shall be carried out within 5 working days;"

Clause 8.1(b) of LTOA Agreement:

"In the event of failure of the Open Access User to comply with any prescribed technical requirements, which adversely affects the power quality or security of the grid, performance or management of grid assets, TSTRANSCO and/or TSSPDCL shall be entitled to issue appropriate advice to de-energise the connection granted to the Open Access User forthwith, in accordance with the Clause 20 of the Regulation and the procedures outlined in the AP Grid Code or Distribution Code or the TSDISCOM's General Terms and Conditions of Supply."

Further, the above said CEA Regulation was amended in the year 2019 and it provided as below:

"3. Power Quality Standards:

i. The limits of injection of current harmonics at Point of Common Coupling (PCC) by the user, method of harmonic measurement and other matters, shall be in accordance with the IEEE 519-2014 standards, as amended from time to time.

ii. Prosumer shall not inject direct current greater than 0.5% of rated output at interconnection point.

iii. The applicant seeking connectivity at 11 kV or above shall install Power Quality meters and share data as and when required by the licensee.

Users connected at 11 kV or above shall comply with this provision within 12 months of notification of these regulations.

iv. *In addition to harmonics, the limits and measurement of other power quality parameters like voltage sag, swell, flicker, disruptions, etc. shall be as per relevant BIS standards or as per IEC/IEEE standards if BIS standards are not available."*

15. From the above provisions, it is clear that when the petitioner approached the nodal agency for extension of LTOA as is required, three months prior to the actual end date of LTOA, it was the responsibility of the nodal agency to inform the petitioner that the petitioner is required to obtain the necessary reports in terms of the subsisting regulations as soon as the application has been received. It appears from the record that when the actual extension was proposed to be considered then the required testing was sought for and technical difficulties relating to harmonics came to light upon which the petitioner has sought extension of time for setting right the required equipment for extension of LTOA. It appears to be strange that when the regulations as also LTOA subsisting at that time require yearly inspection and test reports for continuing the LTOA, nothing is said as to whether such exercise was undergone from the year 2016 to 2019. Absence of clear material on either side would leave the Commission constrained to decide the issue as the same are the basis for taking a final decision in the matter.

16. In this context, the Commission would lean towards giving benefit to the petitioner for the reason that noncompliance of the regulations is partly vested with it and partly vested with the respondent. The petitioner though ought to have ensured proper connectivity and compliance of Act 2003, rules and regulations, equally respondent is also responsible in a similar manner in the matter.

17. Having realised that there seems to be some difficulty regarding operation of the plant due to non-submission of PQT although the petitioner showed diligence to rectify the anomaly, however it took some time due to the period culminating in the pandemic situation in the 2nd and 3rd phases. Thus, there might be delay in complying with the requirements of the Act 2003, rules and regulations. In the meantime, it so happened that the petitioner's generation unit continued to generate power and injected the same into the grid even though it had no open access agreement, no consumer is identified as third party procurer for sale of energy so generated or the sale is itself to the DISCOM, the respondent herein. On the other hand, the

respondents also did not show negligence as to technical requirements and reports as required by them, however they allowed energy to be injected into the grid and surreptitiously utilised the same for their own benefit.

18. Inasmuch as the petitioner's unit is a small capacity of 1 MW the total energy injected into the grid would constitute a small fraction of the total energy purchased and supplied to its consumers by the respondent. As the energy injected into the grid can neither be stored nor brought back it is appropriate that the petitioner be compensated appropriately.

19. That brings the Commission to the orders referred by the counsel of the petitioner. Reference has been made to Appeal No.170 of 2012 dated 24.01.2013 of the Hon'ble ATE, wherein the Hon'ble ATE had held in the summary of the filings as extracted below:

> *"(a) RInfra is entitled for compensation for the energy injected from its Wind Energy Generator from 30.9.2009 to 10.1.2010 i.e. between the date of expiry of the period of the PPA and the date of execution of the Wheel and Banking Agreement by the Appellant at the rate determined by the State Commission which is the rate of energy fixed by the State Commission for supply of energy by Wind Energy Generators to the Appellant.*
>
> *(b) The findings of the Tribunal in the judgment dated 16.5.2011 in Appeal No.123 of 2010 in Page 40 of 41 Appeal No.170 of 2012 the matter of Indo Rama Synthetics (I) Ltd Vs Maharashtra Electricity Regulatory Commission & Others would not apply to the present case in view of the facts and circumstances of the case. We have distinguished the present case from the Indo Rama case."*

Though, the facts do not completely substitute in the said judgement, the finding set out therein would squarely apply to the situation that the petitioner is entitled for compensation having injected the energy due to action or inaction on the part of the respondent.

20. Reference had been made to the order passed by this Commission in O. P. No.19 of 2020 dated 07.10.2020. In the said case, the petitioner sought for open access but the same was denied and ultimately the petitioner had to approach the Commission for suitable relief. The Commission having considered the submissions in the matter had held in paragraphs 25 and 26 as extracted below:

> *"25. As extracted in the pleadings, regarding open access, it makes emphatically clear that the Respondents are bound to allow the open access in accordance with the provisions of the Act, 2003 and the*

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

26. *The Commission finds that the action of the respondents in not notifying the applicant/petitioner as regards providing of open access or otherwise for a period of two years unless and until the petitioner approaches this Commission and now states that they are yet to complete the process after lapse of two years is uncalled for, as it smacks of exercising dominant position by not allowing the open access, such act is neither appreciable nor to be supported. The respondents have acted contrary to the provisions of the Act and regulations."*

It was further held at paragraph 34 as extracted below:

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

Even this order though does not specifically fit into the petitioners facts, the findings set out therein by the Commission has to be considered in terms of the

present facts and circumstances of the case.

21. The respondent on the other hand placed reliance on the judgement rendered by the Hon'ble ATE in Appeal No.37 of 2016 dated 08.02.2019, the issue that fell for consideration in the appeal is as extracted below:

> *"Issue No.1:- Whether the State Commission has passed the impugned order in an arbitrary and discriminatory manner in contravention of the provisions of the Electricity Act, 2003 as well as Karnataka Electricity Regulatory Commission Regulations, 2004?*
>
> *Issue No.2:- Whether the State Commission has rightly held that the respondent licensees are liable to pay only average pool power purchase cost for the energy injected into the grid and that too for part of the total delay period in execution of Wheeling and Banking Agreement?"*

The findings thereof have been stated at paragraph 8.3 of the order of the Hon'ble ATE which are reproduced below:

> *"We have carefully considered the submissions of both the parties and also took note of other cases for which learned counsel for the Appellant has questioned the matching parity and alleged Judgment of A. No.37 of 2016 discrimination. The reliance placed by the learned counsel for the Appellant on decisions in Fortune Five Hydel Projects v. KPTCL & Ors. and Green Infra Wind Power Generation v. SLDC & Ors. is uncalled for as the application for wheeling and banking of energy in these cases was made prior to the commissioning of the respective projects and admittedly, there was a delay in executing the WBA, which is not the case herein. Additionally, learned counsel for the Respondents pointed out that the reliance of the Appellant on other judgments of this Tribunal is totally irrelevant as the same were passed in different facts and circumstances having no matching similarity with the case in hand. After critical analysis of the facts in cited cases and the case in hand, it is relevant to note that there is no force in the arguments of the learned counsel for the Appellant regarding discrimination whatsoever. Consequentially, we opine that the State Commission has carefully analyzed the records and material placed before it and has passed the impugned order in a judicious manner without being prejudice to any developer and without any discrimination to the Appellant. Thus, any interference from this Tribunal on this ground is not required.*

Inasmuch as the Hon'ble ATE was considering the significance of contractual arrangements for injecting energy and where there is refusal to inject energy. However, the said judgement could not aid the respondent as it is noticed that due to omissions and commissions of either parties the case of the renewable energy is sacrificed.

22. Reliance is placed on Regulation No.2 of 2006 as amended by Regulation No.1 of 2017 being 3rd amendment to the interim balancing and settlement code. No doubt this regulation would seek to aid the petitioner if and only if the compensation of energy

is claimed in respect of energy injected into the grid from the date of synchronization to the date of open access being allowed. In the given set of facts neither of the situations would arise as the petitioner had already availed open access initially and was only seeking renewal of the same. It is not an initial synchronization and allowing it open access for the first time. Therefore, the said regulation is of no consequence to the petitioner. However, the provisions of would aid the principle of compensating for the energy injected without reference to any contractual arrangement. Clauses 7 and 8 of the amendment regulation are extracted below for ready reference:

> *"7. For the third party sale, the energy injected into the grid from the date of synchronization till the date prior to captive consumption to an open access approval date will be considered as deemed banked energy.*
>
> *8. The unutilised banked energy shall be considered as deemed purchase by DISCOMS at the average pooled power purchase cost as determined by the TSERC for the relevant year."*

23. Last not the least the parties have addressed the arguments in respect of Section 70 of the Indian Contract Act 1872. Section 70 of the Contract Act would endeavour to state that no action is taken or no work done intending it not to be gratuitous would amount to inviting payment for the same. In this case, the petitioner is seeking renewal of the LTOA delayed the submissions of requirements for extension of LTOA. On the other hand, the respondent while insisting compliance of Act, 2003, rules and regulations though threatened the petitioner that it is seeking to deenergise the solar power plant from the grid, never took extreme step. Thereby it has allowed injection of energy even in the absence of any contractual arrangement presuming that the energy so injected is gratuitous. The record now discloses that the parties have not expressly stated as to the energy injected into the grid as to whether it is gratuitous or non-gratuitous. By implication in favour of and giving benefit of understanding it is to be inferred that the petitioner has injected the energy into the grid non-gratuitously and respondent latched up such energy as if it is a gratuitous act. This act of the respondent is neither appropriate nor appreciable in the context of the fact that such energy has been disposed of and monetary gain has been made by the respondent. It is also a settled law that any non-gratuitous act on part of one party and in favour of other party would invite suitable compensation for such non-gratuitous act. The petitioner is therefore entitled to be compensated for the amount of energy injected into the grid for the period 16.09.2020 to 24.03.2022.

24. Having considered the rival contentions, making a deep analysis of the provisions of the regulations as well as law, the Commission is of the view that the petition should succeed and accordingly allowed. Owing to the findings arrived at by the Commission the petitioner is entitled to compensation for the energy injected into the grid at the rate of average pooled power purchase cost as decided by the Commission for the relevant financial years. The petitioner has claimed specific quantum of energy mentioned in the prayer to be compensated. That being so, the respondent without any demur would accept the same and pay compensation to that extent only with in a period of 4 weeks from the date of receipt of this order.

25. The petition is allowed in terms of observations made supra, but without any costs.

This order is corrected and signed on this the 6th day of May, 2024.

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

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