TELANGANA STATE ELECTRICITY REGULATORY COMMISSION

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

O. P. No. 6 of 2023
and
I. A. No. 1 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 Orient Cement Company Limited,
5-9-22/57/D, 2nd, 3rd and 4th Floor,
G.P. Birla Center, Adarsh Nagar, Adarsh Nagar,
Hyderabad 500 063. ... Petitioner.

AND

1. Transmission Corporation of Telangana Limited,
   State Load Despatch Centre, Vidyuth Soudha,
   Hyderabad – 500 082.

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

3. Superintending Engineer,
   OMC Circle, TSTRANSCO, Adilabad
   (Mancherial HQ), Telangana. ... Respondents.

The petition came up for hearing on 04.04.2023, 24.04.2023, 05.06.2023 and 10.07.2023. Sri. P. V. Nishanth, Advocate representing Sri Challa Gunaranjan counsel for the petitioner has appeared on 04.04.2023 and 24.04.2023, Sri Deepak Chowdary, Advocate representing Sri. Challa Gunaranjan, counsel for the petitioner appeared on 05.06.2023 and Sri. Challa Gunaranjan, counsel for the petitioner along with Sri. Deepak Chowdary, Advocate appeared on 10.07.2023. Sri. Mohammad Bande

Ali, Law Attaché for the respondents has appeared on 04.04.2023, 24.04.2023, 05.06.2023 and 10.07.2023. The matter having been heard and having stood over for consideration to this day, the Commission passed the following:

ORDER

M/s Orient Cement Company Limited (petitioner) has filed a petition under Sections 9, 61 and 86(1)(f) of the Electricity Act, 2003 (Act, 2003) questioning the levy of line and bay maintenance charges and consequential relief. The averments in the petition are extracted below:

a. It is stated that the petitioner is a company incorporated under the Companies Act, 1956. The petitioner is engaged in the manufacturing of cement and is having its factory situated at Devapur Village, Kasipet Mandal, Adilabad District. The petitioner is presently having service connection vide S.C.No.ADB–018, HT-I category with contracted maximum demand (CMD) of 6.0 MVA.

b. It is stated that the petitioner is a power intensive unit and requires continuous power supply for continuous running of the cement unit. Therefore, an agreement was entered between Andhra Pradesh State Electricity Board (APSEB) and the petitioner on 29.05.1979 for laying of 132 kV dedicated feeder from Bellampally Substation to petitioner's cement plant at Devapur in Luxettipet taluk, Adilabad district in terms of voluntary loan contribution (VLC) scheme as per which the petitioner had to lend loan for Rs.20 Lakhs to the APSEB for laying the said electric line and the same was later repaid by the APSEB along with interest. Thereafter, petitioner entered into HT agreement dated 10.12.1979 with APSEB for supply of electricity with CMD of 12,500 KVA for atleast 5 years on payment of tariff in accordance with tariff orders passed by the erstwhile APSEB, later APERC and presently TSERC from time to time. The correspondence exchanged between the petitioner and then APSEB in this regard is filed as annexure which may be read as part of the present petition.

c. It is stated that the dedicated line from Bellampalli SS to the petitioner's plant at Devapur is therefore, is owned by the then APSEB and presently respondent No.1 that is the Transmission Corporation of Telangana Limited (TSTRANSCO) as the entire expenditure was incurred at the instance of then APSEB. Further the said line is always maintained by them. As petitioner sought for enhancing its existing CMD, it entered into HT agreement dated 22.04.2005 with

respondent No.2 that is Northern Power Distribution Company of Telangana Limited (TSNPDCL) for supply of power with CMD of 28.5 MVA. Later another HT agreement was entered into on 07.03.2008 as the existing CMD was further enhanced to 32 MVA.

d. It is stated that the petitioner had requested for deration of CMD from 32 MVA to 15 MVA in view of its captive plant being ready for synchronization. The Chief General Manager, Operation, Comml, IPC vide Memo No.CGM/Op. Comml& IPC/NPDCL/Warangal/F.OCC/D.No.51/11 dated 27.04.2011 accorded approval for deration of CMD. Accordingly, petitioner entered into revised HT Agreement dated 07.07.2011 for availing power supply at 15 MVA. As the petitioner's power requirements was increasing from time to time, it had decided to establish a captive power plant of 2x25 MW within the same premises to be operated in portable with the grid. The petitioner has incurred Rs.206.77 crores for establishing the same and on completion of the plant, it had applied for synchronization with respondent No.1's grid at 132 kV substation (SS), Bellampally. By letter dated 26.03.2010 issued by Chief Engineer (CE), IPC, Andhra Pradesh Power Coordination Committee (APPCC), the petitioner was requested to furnish undertaking in the format provided for the purpose of granting synchronization. Accordingly, the petitioner submitted an undertaking dated 07.04.2010 and pertinently the said undertaking nowhere mentions anything about bay and line maintenance charges. The correspondence exchanged between the petitioner and then APSEB in this regard is filed as annexures which may be read as part of the present petition.

e. It is stated that petitioner's 2x25 MW coal based captive power plant was synchronized to respondent No.1's grid for meeting the requirements of its consumption in cement plant and a certificate dated 22.08.2012 to this extent was issued. The surplus power is sold to India Energy Exchange (IEX) for which purpose petitioner entered into agreement with Power Trading Corporation Limited (PTC). It is stated that petitioner has been availing open accesses for selling surplus power to IEX from time to time by obtaining necessary standing clearance/no objection certificate (NOC) from State Load Dispatch Center (SLDC) as required under Central Electricity Regulatory Commission (CERC) Open Access (OA) Regulations, 2008 and on payment of necessary OA charges and transmission charges.

f. It is stated that surprisingly by referring to Lr. No.CE (Tr)/SE (Tr)/DE-SS/ADE 3/F.PPD/D. No.598, dated 23.07.2018 and Lr. No.CE (Tr)/SE (Tr)/DE-SS/ADE 3/F.PPD 1988/17/D. No.47/2019, dated 19.01.2019, the respondent No.3 that is the Superintending Engineer, OMC Circle, TSTRANSCO for very first time has informed vide Lr. No.SE/OMC/ADB/AE(T2)/F.No./D.No.1141/18, dated 06.02.2019, that the maintenance expenses for the interconnection facilities provided by respondent No.1 network has to be borne by the power developer and therefore bay and line maintenance expenses of 132 kV line from Bellampally SS to the petitioner's plant worked out for Rs.45,23,449/- for the period from August 2012 to March 2018 were requested to be paid. The petitioner immediately replied to respondent No.3 vide letter dated 02.04.2019, submitted on 04.04.2019, informing that the 132 kV line from Bellampally substation to petitioner's plant at Devapur is the capital asset of respondent No.1 as it has incurred the cost of laying, therefore, the obligation to maintain the same vests on it. Further the references dated 23.07.2018 and 19.01.2019 mentioned in the demand letter dated 06.02.2019 divest related to the petitioner in as much as they refer to the NCE projects having PPA's with the DISCOMs for sale of power, who in terms of said contracts were required to pay the bay and line maintenance charges and that in the case on hand neither petitioner is NCE developer nor has any PPA with DISCOMs. It was also informed that the demand or levy of bay and line maintenance charges neither emanates from retail tariff order or transmission tariff order or under any contractual obligation, therefore, is totally without jurisdiction. All the maintenance charges are already factored in transmission tariff order, therefore, there cannot be any independent and separate bay and line maintenance charges for captive generators as that of the petitioner. Besides the petitioner also raised objection that the claim is barred by limitation and is hit by Section 56(2) of the Act, 2003.

g. It is stated that in spite of the same respondent No.3 issued reminder letter dated 09.07.2021 without even referring to the petitioner's reply dated 02.04.2019 received on 04.04.2019 raising the same demand and also stated that demand would also be raised for the financial years 2018-19, 2019-20 and 2020-21. The petitioner vide letter dated 24.07.2021 reiterated that it is not liable to pay the bay and line maintenance charges as demanded by the respondents.

h. It is stated that, that being so, respondent No.3 issued further demand vide Lr.No.SE/OMC/ADB/ADE(T)/F.No.D.No.367/21, dated 29.07.2021, claiming bay and line maintenance for the subsequent period that is for FY 2018-19 to 2020-21 of Rs.28,37,794/- in addition to earlier demand of Rs.45,23,449/-, thus claiming in total Rs.73,61,293/- to be tentative and subject to revision. Even this demand letter does not consider the objections raised by petitioner vide letter dated 02.04.2019, or even refer to it. The petitioner immediately replied by letter dated 04.10.2021 submitted on 07.10.2021 and reiterated the contentions raised earlier. However, the respondent No.3 without dealing with either of the petitioner's objections submitted on 07.10.2021, merely requested to arrange the bay and line maintenance charges and also informed that the demand for FY 2021-22 will be intimated in due course of time.

i. It is stated that respondent No.3 issued Lr.No.SE/OMC/ADB/ADE (T)/F.No./ D.No.392/22, dated 30.06.2022 demanding bay and line maintenance charges for the period 22.08.2012 to 31.03.2021 amounting to Rs.73,61,293/-. The petitioner once again submitted representation dated 10.08.2022 to the respondent No.3 reiterating its earlier stand.

j. It is stated that in spite of petitioner's representations, the respondent No.3 issued impugned notice vide Lr.No.SE/OMC/ADE(T)/F.No./D.No.894/22, dated 01.11.2022 levying Rs.84,81,468/- (Eight Four Lakhs Eighty-One Thousand Four Hundred and Sixty-Eight) towards bay and line maintenance charges for the period 22.08.2012 to 31.03.2022. It is stated that in spite of repeated representations, respondent No.3 is issuing demand notices without considering the objections raised by the petitioner that it is not liable to pay bay and line maintenance charges and the levy does not fall under any statutory provision authorizing the respondents such levy and is bad in law.

k. It is stated that the demand notices issued by respondent No.3 speak about the levy and collection of bay and line maintenance charges from the CPP/NCE projects who have PPAs with DISCOMs. Though petitioner has the CPP there was never any PPA exists between the petitioner and the respondents. Hence, the levy of bay and line maintenance charges does not have any basis, statutory force, binding agreement or contract, therefore, illegal and the same may be declared as null and void. It is stated that the petitioner is having HT-II industrial category service connection, presently having CMD of 6.0 MVA

(derated w.e.f., 09.06.2021), since the lines are vested with respondent No.1 and the cost of the maintenance and charges for usage of the same are factored in tariff and petitioner has been paying the power bills as per the tariff determined by the Commission, separate bay and line maintenance charges cannot be levied. It is stated that respondents collected necessary transmission charges while granting open access permission for export of power from the CPP of the petitioner. Assuming bay and line maintenance charges are leviable, they can be levied only if the same are authorized by this Commission cited in the retail tariff order or transmission tariff order admittedly neither of the said order allow any such charges.

l. It is stated that without prejudice to the above submissions, petitioner also states that even it is assumed that petitioner has to pay bay and line maintenance charges, the same cannot be claimed beyond 2 years proceeding to such demand. Section 56(2) of the Act, 2003 speaks that no sum due from any consumer, under this Section shall be recoverable after the period of two years from the date when such sum became first due, unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied and the licensee shall not cut off the supply of the electricity. The respondents for the first time issued the demand notice only on 06.02.2019, under the aforesaid provision, the demand cannot be raised preceding 06.02.2017. It is stated that petitioner is filing the present petition raising the following among other grounds

   i. The impugned levy of bay and line maintenance charges imposed on the petitioner on the premise that the capital asset that is 132 kV dedicated line from Bellampally SS to the petitioner's cement manufacturing unit requires to be maintained by respondent No.1 at the cost and expenses of the petitioner is completely without jurisdiction, lacks authorization of the Commission to collect such charges either from the retail tariff order or transmission tariff order, besides emanating from any contractual obligation.

   ii. The respondents ought to have seen that the capital asset that is 132 kV line has been laid at the cost of APSEB, of course, in terms of VLC as per which the petitioner initially incurred the cost, has advanced the loan and later on the same was reimbursed along with interest at the rate of 6%, therefore as the asset is owned by respondent No.1, all costs are already factored in the operation and line maintenance account while determining the transmission charges in terms of transmission order, therefore the said charges once again cannot be claimed, that too without authority of law.

iii. The impugned demand apparently is with reference to Lr.No.CE(Tr)/SE(Tr)/DE-SS/ADE3/F.PPD/D.No.598, dated 23.07.2018 and Lr.No.CE(Tr)/SE(Tr)/DE-SS/ADE3/F.PPD 1988/17/D.No.47/2019, dated 19.01.2019 as referred to in the 1st demand Lr.No.SE/OMC/ADB/ AE(T2)/F.No./D.No.1141/18, dated 06.02.2019, which, neither has any application to the petitioner nor the same would be binding on the petitioner, in as much as, the said letter relates to only those NCE projects or power developers, who had entered into PPAs with DISCOMs, which provided for such developers to incur the bay and line maintenance charges as per the said contracts. The petitioner neither is a not NCE developer nor it has any PPA with DISCOMs which provided for the developer to reimburse the cost of maintenance expenses, therefore, the impugned levy is arbitrary and illegal.

iv. That petitioner is already subjected to payment of demand and energy charges as per the retail tariff order in respect of the power consumed from the respondent No.2 as a HT consumer, transmission charges and open access charges in respect of the power sold to IEX through open accesses, in terms of the prevailing CERC OA Regulations, 2008, the respondents are precluded from imposing or claiming bay and line maintenance charges which completely lack statutory or contractual basis.

v. Without admitting that the impugned charges are leviable the claim was raised for the first time vide Lr.No.SE/OMC/ADB/AE(T2)/ F.No./D.No.1141/18, dated 06.02.2019 with effect from August, 2012, which is totally barred by limitation, delay and laches, besides contrary to Section 56(2) of the Act, 2003.

vi. That the impugned levy has no basis for computation of determination of charges, the quantum arrived, in the impugned demand letter no recital and the details of undertaking if any has not been spelt out, therefore for lack of material and basis, the demand is totally un-sustainable.

m. It is stated that in spite of several representations made by the petitioner that the impugned levy is bad in law, without any basis and is liable to be withdrawn, the respondent No.3 is time and again issuing notices and demanding bay and line maintenance charges. Therefore, petitioner is constrained to approach this Commission by way of present petition.

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

"*a. To declare that the levy of bay and line maintenance charges by respondents in respect of maintenance of 132 kV dedicated line from Bellampally SS to the petitioner's Cement manufacturing unit at Devapur in pursuance to demand letters vide Lr. No. SE / OMC / ADB / AE (T2) / F. No. / D. No.1141 / 18, dated 06.02.2019, Lr. No. SE / OMC / ADB / ADE (T) / F. No./ D. No. 229 / 21, dated 09.07.2021, Lr. No. SE / OMC / ADB / ADE (T) / F. No. D. No. 367 / 21, dated*

29.07.2021, Lr. No. SE / OMC / ADB / ADE (T) / F. No. / D. No. 894/22 dated 01.11.2022 issued by respondent No.3 is without any statutory force, binding agreement/contract, contrary to the provisions of the Act, 2003 and rules and regulations made there under.

b. Consequently, set aside the Lr. No. SE / OMC / ADB / AE (T2) / F. No. / D. No. 1141 / 18, dated 06.02.2019, Lr. No. SE / OMC / ADB / ADE (T) / F. No. /D. No. 229 / 21, dated 09.07.2021, Lr. No. SE / OMC / ADB / ADE (T) / F. No. / D. No. 367 / 21, dated 29.07.2021 and Lr. No. SE / OMC / ADB / DE (T) / F. No. / D. No. 894/22, dated 01.11.2022 issued by respondent No. 3."

3. The petitioner has also filed an Interlocutory Application as extracted below:

a. It is stated that petitioner filed the original petition praying this Commission to declare that the levy of bay and line maintenance charges by respondents in respect of maintenance of 132 kV dedicated line from Bellampally SS to the petitioner's cement manufacturing unit at Devapur in pursuance to demand letters vide Lr.No.SE/OMC/ADB/AE(T2)/F.No./D.No.1141/18 dated 6.2.2019, Lr.No.SE/OMC/ADB/ADE(T)/F.No./D.No.229/21 dated 9.7.2021, Lr.No.SE/ OMC/ADB/ADE(T)/F.No.D.No.367/21 dated 29.7.2021, Lr.No.SE/OMC/ADB/ ADE(T)/F.No./D.No.894/22 dated 01.11.2022 issued by the respondent No.3 is without any statutory force, binding agreement/contract contrary to the provisions of the Act, 2003 and rules and regulations made there under.

b. It is stated that petitioner is challenging the impugned levy raising the following among other:

i. The impugned levy of bay and line maintenance charges imposed on the petitioner on the premise that the capital asset that is 132 kV dedicated line from Bellampally SS to the petitioner's cement manufacturing unit requires to be maintained by respondent No.1 at the cost and expenses of the petitioner is completely without jurisdiction, lacks authorization of this Commission to collect such charges either from the retail tariff order or transmission tariff order, besides emanating from any contractual obligation.

ii. The respondents ought to have seen that the capital asset that is 132 kV line has been laid at the cost of APSEB, of course, in terms of VLC as per which the petitioner initially incurred the cost, has advanced the loan and later on the same was reimbursed along with interest at the rate of 6%, therefore as the asset is owned by respondent No.1, all costs are already factored in the operation and line maintenance account while determining the transmission charges in terms of transmission order,

therefore the said charges once again cannot be claimed, that too without authority of law.

iii. *The impugned demand apparently is with reference to Lr.No.CE(Tr)/SE(Tr)/DE-SS/ADE3/F. PPD/D. No.598, dated 23.07.2018 and Lr.No.CE(Tr)/SE(Tr)/DE-SS/ADE3/F.PPD1988/17/D.No.47/2019, dated 19.01.2019 as referred to in the 1st demand Lr.No.SE/OMC/ADB/ AE(T2)/F.No./D.No.1141/18, dated 06.02.2019, which, neither has any application to the petitioner nor the same would be binding on the petitioner in as much as the said letter related to only those NCE projects or power developers who had entered into PPAs with DISCOM, which provided for such developers to incur the bay and line maintenance charges as per the said contracts. The petitioner neither is not a NCE developer nor it has any PPA with DISCOMs which provided for the developer to reimburse the cost of maintenance expenses, therefore, the impugned levy is arbitrary and illegal.*

iv. *The petitioner is already subjected to payment of demand and energy charges as per the retail tariff order in respect of the power consumed from the respondent No.2 as a HT consumer, transmission charges and open accesses charges in respect of the power sold to IEX through open accesses in terms of the prevailing CERC OA Regulation, 2008, the respondents are precluded from imposing or claiming bay and line maintenance charges which completely lack statutory or contractual baking.*

v. *Without admitting that the impugned charges are leviable the claim was raised for the first time in Lr. No.SE/OMC/ADB/AE(T2)/F. No./D. NO. 1141/18 dated 6.2.2019 with effect from August, 2012, barred by limitation, delay and laches, besides contrary to S. 56 (2) of the Act, 2003.*

vi. *The impugned levy has no basis for computation of determination of charges, the quantum arrived, in the impugned demand letter no recital and the details of undertaking if any has not been spelt out, therefore for lack of material and basis, the demand is totally unsustainable.*

c. It is stated that in spite of several representations made by the petitioner that the impugned levy is bad in law, without any basis and is liable to be withdrawn, the respondent No.3 is time and again issuing notices and demanding bay and line maintenance charges from the petitioner. Therefore, petitioner is constrained to approach the Commission by filing the original petition under Section 86(1)(f) of the Act, 2003. The contents of the original petition may be read as part and parcel of the present petition. It is stated that recently when earth wire was found missing between 12-31 towers and 45-47 towers due to which snap had happened on 'R' Phase which is topmost conductor and petitioner had faced lots of tripping and breakdowns in the line during rainy seasons. Absence of this earth wire may cause failure of major equipment's either at Bellampally SS or petitioner's 132 kV substation including fire hazard

at any location. It is further stated that the line is around 20 kilo meters long and passing through forest area and many villages in Kasipet mandal, it will be hazardous to the forest, fields and villagers which are in close vicinity of this line. The issue was brought to the notice of the CE (KNR Zone) TSTRANSCO with a copy to the respondent No.3 vide letter dated 14.12.2022 and requested to look into the matter and take suitable action for re-arrangement of the conductor and earth. Respondent authorities are orally stating that they will not take any action unless and until the impugned demand is paid by the petitioner or any order is passed by the Commission staying the impugned demand. It is stated that as explained in the original petition and preceding paras, petitioner is regularly paying all legally levied bills and charges including open access charges, CC charges and the action of the respondents in not performing their duties and insisting for the payment of impugned demand is arbitrary, illegal besides claiming the same without any authority and statutory force, contrary to the provisions of the Act, 2003 and rules and regulations made there under. There is prima facie case and balance of convenience is in its favour, if this Commission does not grant interim order in its favour, the petitioner will be put to irreparable loss and severe hardship.

4. Therefore, the petitioner/application has sought the following relief.

> *"To stay the collection of bay and line maintenance charges in pursuance of Lr.No.SE/OMC/ADB/ADE(T)/F.No./D.No.894/22, dated 01.11.2022 issued by respondent No.3."*

5. The respondent No.1 has filed the counter affidavit as extracted below:

a. It is stated that as per clause 10 of the HT agreement dated 07.07.2011, the board/respondents have the unilateral right to vary from time-to-time tariffs, scale of general and miscellaneous charges and terms and conditions of supply under the agreement by special or general proceedings. For convenience clause 10 of the HT agreement dated 07.07.2011 is extracted below:

> *"BOARDS RIGHT TO VARY TERMS OF AGREEMENT:*
> *We agree that the Board shall have the unilateral right to vary from time-to-time tariffs, scale of general and miscellaneous charges and terms and conditions of supply under this agreement by special or general proceedings."*

b. It is stated that the petitioner, who was originally a consumer has utilized the bay and line which was laid by respondent No.1 for exporting its power, turned

as developer in due course of time. Since the petitioner became a developer, the respondent No.1 is not required to maintain the bay and line and therefore the petitioner is liable to pay bay and line maintenance charges. So long as the petitioner was consumer, the respondent No.1 did not ask the petitioner to pay such charges of maintenance. The petitioner having become developer has been transmitting power to consumers availing the line laid down by the respondent No.1 and hence the petitioner is bound to share the bay and line maintenance charges incurred by the respondent No.1. Of course, the subject 132 kV line is the capital asset of respondent No.1, but the petitioner has been availing the same, the petitioner is liable to pay maintenance charges.

c. It is stated that in general practice, the consumer shall bear the cost of bay and transmission line laid from the existing EHT SS to consumer end, whereas in the present case respondent No.1 alone laid the line which is now being utilized by the petitioner for export of its power. In view of the above, the respondent No.3 vide letter dated 06.02.2019 has raised the demand and issued notices demanding the bay and line maintenance charges from August 2012 to March 2018 as the petitioner has been utilizing the line which was originally laid for exporting of power to the petitioner as a consumer. The respondent No.1 has to deploy operators round the clock for maintenance, for monitoring and operations of bays in EHT SS to avoid any fault and for immediate restoration of service in case of any faults and other problems.

d. It is stated that the contention of the petitioner that the claim of 3rd respondent is barred under Section 56(2) of the Act, 2003 is false and baseless since such limitation is required to be observed in cases of demand pertaining to the consumers only, but not to the developers/generator. In the present case the demand notice for bay and line maintenance charges was raised after the petitioner became the generator and got connected with the grid of the respondent No.1 to avail open access from 22.08.2012 onwards.

e. It is stated that the respondent No.3 vide letter dated 29.07.2021 while quoting the letter of the petitioner dated 24.07.2021 has clearly stated that the bay and line maintenance charges are levied on the petitioner as the petitioner has been utilizing the subject line and bay for injection of power generated by it to the grid. Further, the demand notices from 2018-19 to 2020-21 was also

communicated in the same letter that is letter dated 29.07.2021 of respondent No.3 with detailed calculation for each financial year for line and bay separately.

f. It is stated that the claim made by respondent No.3 is as per Section 10(1) of the Act, 2003. Section 10(1) of the Act, 2003 reads as follows:

> *"Subject to the provisions of this Act, the duties of a generating company shall be to establish, operate and maintain generating stations, tie-lines, substations and dedicated transmission lines connected therewith in accordance with the provisions of this Act or the rules or regulations made there under."*

Therefore, in view of the aforesaid provision the petitioner having become a generator, connected to the grid of respondent No.1 and has been availing open access from 22.08.2012 onwards is liable to pay the bay and line maintenance charges.

g. It is stated that further as per the latest demand notice issued by respondent No.3 vide letter dated 01.11.2022, the petitioner is liable to pay an amount of Rs.84,81,468/- for the period from 22.08.2012 to 31.03.2022 towards maintenance expenses of bay and line emanating from 132 kV Bellampally substation. Despite issuing of several letters from the office of respondent No.3 demanding payment of bay and line maintenance charges, the petitioner failed to pay the said charges.

h. It is stated that with a view to avoid the circumstances similar to this petition, a proposal for execution of a connection agreement was made, wherein it is proposed that the developer shall enter into a connection agreement with the concerned utility and the same has been approved by the Commission.

i. It is stated that the contention of the petitioner that the claim of respondent No.3 is barred under Section 56(2) of the Act, 2003 is false and baseless since such limitation is required to be observed in cases of demand pertaining to the consumers only, but not to the developers/generator. In the present case the demand notice for bay and line maintenance charges was raised after the petitioner became the generator and got connected with the grid of the respondent No.1 to avail open access from 22.08.2012 onwards.

j. It is stated that further, it is true that the bay and line maintenance charges are to be claimed regularly for each financial year, but it was not claimed earlier that is prior to the year 2018, due to inadvertence. The liability can be fastened as and when the mistake is noticed. There is no limitation or prohibition not to

make such demand after certain time. However, this does not absolve the liability of the petitioner to pay line and bay maintenance expenses from the date of commissioning and subsequent years there of and the liability does not cease to exist automatically. The respondent No.3 vide letter dated 29.07.2021 has issued the demand notice from 2018-19 to 2020-21 with detailed calculation for each financial year with separate tabulations for both the line and bay.

k. It is stated that correspondence is made with petitioner apart from issuing several letters from the respondent No.3 for payment of bay and line maintenance charges, but the petitioner did not pay the same till date.

l. It is stated that the bay and line maintenance charges are levied as per the existing norms and agreements with PGCIL and NTPC.

m. Hence, it is prayed that the Commission may be pleased to dismiss the petition with costs.

6. The petitioner has filed rejoinder as extracted below:

a. It is stated that it has no application herein, as it does relate to line and bay maintenance (L&B) only relating to tariff and miscellaneous charges as determined by the Commission. No separate L&B charges are ever determined by the Commission and all bays and lines which are belonging to the respondent No.1 are covered by transmission tariff order.

b. It is stated that the petitioner is a consumer and still has an HT service agreement for 6.0 MVA and it pays energy and demand charges, depending on the consumption as per the tariff determined by the Commission. Further when once power is exported from the same lines, the petitioner pays open access charges and transmission charges. The transmission charges shall include and taken with its fold the usage of the transmission lines, bay and other network belonging to respondent No.1, therefore, the respondent No.1 shall realize the cost of maintaining the said network system for maintaining the lines. These charges are determined by this Commission under transmission tariff order, therefore, imposing these charges over and above the same are clearly without jurisdiction and unauthorized.

c. It is stated that the reference made to the general practice and trying to justify the demands of B and L charges is misconceived and in particularly in the

absence of any statutory imposition or contractual obligation. The respondent No.1 is obligated to maintain EHT SS and its network as a licensee and it is permitted to collect charges for usage of said network strictly in accordance with respective tariff order of the Commission.

d. It is stated that the petitioner uses the network of the respondent No.1 both as a consumer and developer, therefore, the respondent No.1 is precluded from raising the impugned demands from August, 2012 onwards, which is clearly also barred by limitation or suffers from delay and latches, merely because the petitioner uses the network of respondent No.1 for supply of power through open access, the same shall not entitle the respondents to claim the impugned charges which are extraneous and unauthorized. For availing open access, the petitioner is required to pay charges as Regulation No.2 of 2005.

e. It is stated that Section 10(1) of the Act, 2003, specifies that respondent No.1 is entitled to collect the impugned charges. In fact the Section empowers the generator to lay its own lines. Placing reliance on said proviso is completely misconceived.

f. It is stated that the petitioner had answered to the said demand and no reply was even given by the respondents.

g. It is stated that in fact, the respondents rightly did not intend to impose the impugned demand charges as they were well aware that those charges can be collected from the petitioner for availing open access, as the petitioner had been paying the open access charges for such service. The respondent No.1's contention that the same was due to inadvertence and mistake is completely misplaced. In fact the letter dated 23.07.2018 addressed by the Chief Engineer, TSTRANSCO to all CE's specifically states as under:

> *"All the Chief Engineers/Zone shall conduct the meetings with the Superintending Engineers & Divisional Engineers and formulate the 'Rate Contract' pattern for collection charges from the 'Power Developers' as per the PPAs, evolve uniform pattern from head quarters. After one month, the rates will be reviewed by the 'Technical Committee' and will be finalized duly conducting one more meeting."*

The above clearly goes to show that the exercise undertaken in relation to collection of B and L charges was with reference to respective PPAs, which agreements provided for payment of B and L charges and not to open access users. Therefore, the basis of claiming these charges is completely without application of mind and contrary to above letter.

h. It is, therefore, prayed that the Commission may be pleased to allow the original petition as prayed for.

7. The respondents have filed their written submissions as stated below:

a. It is stated that the case of the petitioner is that dedicated line from Bellampalli SS to the petitioner's plant at Devapur is owned by the then APSEB and presently respondent No.1 as the entire expenditure was incurred at the instance of then APSEB; the said line is always maintained by them; that petitioner's 2x25 MW coal based captive power plant was synchronized to respondent No.1's grid for meeting the requirements of its consumption in cement plant and a certificate dated 22.08.2012 to this extent was issued; the surplus power is sold to IEX for which purpose company entered into agreement with PTC Limited, that petitioner has been availing open accesses for selling surplus power to IEX from time to time by obtaining necessary standing clearance/NOC from SLDC as required under CERC OA Regulations, 2008 and on payment of necessary transmission charges; that the 132 kV line from Bellampally substation to petitioner's plant at Devapur is the capital asset of respondent No.1 as it has incurred the cost of laying, therefore, the obligation to maintain the same vests on it; the references dated 23.07.2018 and 19.01.2019 mentioned in the demand letter dated 06.02.2019 divest related to the petitioner in as much as they refer to the NCE projects having PPA's with the DISCOMs for sale of power, who in terms of said contracts were required to pay the bay and line maintenance charges and that in the case on hand neither petitioner is NCE developer nor has any PPA with DISCOMs; that the demand or levy of bay and line maintenance charges neither emanates from retail tariff order or transmission tariff order or under any contractual/obligation; that the demand is without jurisdiction; that the lines are vested with respondent No.1 and the cost of the maintenance and charges for the usage of the same are factored in tariff and the petitioner has been paying the power bills as per the tariff determined by Commission, separate bay and line maintenance charges cannot be levied and that the petitioner is not liable to pay bay and line maintenance charges since the levy of surcharges does not fall under any statutory provision authorizing the respondents to levy surcharges.

b. It is stated that also the case of the petitioner that even it is assumed that the petitioner has to pay bay and line maintenance charges, the same cannot be claimed beyond two years preceding to such demand as provided under Section 56(2) of the Act 2003.

c. It is stated that the case of the respondents is that as per Section 10 of the Act, the duties of a generator shall be to establish, operate and maintain generating stations, tie-lines, sub stations and dedicated transmission lines connected therewith in accordance with the provisions of the Act, 2003 or the rules or regulations made there under. Since the petitioner/generator did not lay the lines and has been using the bay and line owned by the respondent No.1, it has to pay bay and line maintenance charges.

d. It is stated that also the case of respondents that the petitioner utilized the bay and line laid by respondent No.1 as a consumer. The respondent No.1 did not levy such charges so long as it continued as consumer. Later, the petitioner became a developer and therefore respondent No.1 is not required to maintain the bay and line and hence the petitioner is liable to pay bay and line maintenance charges.

e. It is stated that also the case of the respondents that respondent No.1 has to deploy operators round the clock for maintenance, for monitoring the operations of bays in EHT SS to avoid any fault and for immediate restoration of service in case of any fault and other problems.

f. It is stated that Section 56(2) of the Act, 2003 applies to consumers only but not to the developers/generators and hence the petitioner cannot take aid of the said provision.

g. It is stated that the respondent No.1 with a view to avoid the circumstances similar to this petition, made a proposal that the developer shall enter into a connection agreement with the concerned utility and the same has been approved by the Commission vide letter in D.No.573/2022 dated 25.10.2022. Pursuant thereto, the respondent No.1 issued T.O.O (CE/Comml&RAC) Ms.No.1555, dated 20.01.2023. Clause (v) of the said TOO provides those in-house captive users who intend to supply surplus power to grid for sale or banking, bay and line maintenance charges shall be levied for that financial year.

h. It is stated that clause 2.12(d)(i) of the connection agreement provide that the line and associated equipment, till the interconnection point/isolating device at the connection point shall be maintained by the user and in case of request by the generator to respondent Nos.1 or 2 to maintain the line, the generator shall pay the cost of maintenance.

i. It is stated that clause 2.12(d)(ii) of the connection agreement provide that the generator shall pay respondent Nos.1 and 2 the charges of operation and maintenance of the bays at the respondent Nos.1 or 2 substation.

j. It is stated that in the circumstances mentioned above and in view of the fact that the petitioner having become a generator and having been supplying surplus power to the grid for sale or banking, the respondent Nos. 1 and 2 are entitled to levy bay and line maintenance charges and the petitioner has to pay the same.

k. It is stated that the learned counsel for the petitioner placed reliance on a judgment of the Hon'ble Appellate Tribunal for Electricity (ATE), New Delhi dated 29.10.2015 in Appeal Nos. 285, 286 and 287 of 2014 and also an order of APERC in O.P.No.11 of 2016 dated 19.11.2016.

l. It is stated that in judgment of the Hon'ble ATE, dated 29.10.2015 in Appeal Nos.285, 286 and 287 of 2014, while proceeding to decide whether doctrine of delay and latches is applicable to the facts and circumstances of the matters, in para 12 and 13 observed/found that the appellant companies evidently executed PPAs with the respondents APDISCOMs which provide that maintenance expenses of the interconnection facilities from time to time have to be borne by the generator, namely the appellants and that the appellants are bound to pay maintenance charges incurred on the maintenance of their respective dedicated transmission lines laid by the transmission/distribution licensee for evacuation of power from the respective generation station to the substation of the licensee. Paragraphs 12 and 13 of the said judgment are extracted below:

> *"12. Having cited various rulings/case laws propounded by Hon'ble Supreme Court and High Court, we now proceed to decide whether Doctrine of delay and laches is applicable to the facts and circumstances of the matters of the appellants pending before us. It is evident from the facts of the matters before us that the appellants had executed the PPAs with respondents for supply of electricity. The dates of the PPAs are as under:*

M/s EID Parry (India) Limited	14.08.2001
M/s Ganpati Sugar Industries Limited	15.05.2002
M/s Jeypore Sugar Co. Limited	13.01.2000

13. Each of the PPAs with respect to the respective appellant provides that maintenance expenses of the inter-connection facilities from time to time have to be borne by a generating company, namely the appellants. The maintenance work on the generating units has to be done in coordination with the APTRANSCO (said transmission licensee/respondent). In this way, the appellants are bound to pay maintenance charges incurred on the maintenance of their respective dedicated transmission lines laid by the transmission/distribution licensee for evacuation of power from the respective generation station to the sub-station of the licensee. Regarding the fact that the maintenance charges are to be paid by the generating company to the licensee for maintenance of the dedicated transmission line of the generating company, there is no dispute between the generating companies/appellants and the licensee/respondents."

m. It is stated that the Hon'ble ATE having observed so mainly dealt with the issue of delay in claiming the maintenance charges incurred on the maintenance of their respective dedicated transmission lines laid by the transmission/distribution licensee for evacuation of power from the respective generation station to the substation of the licensee.

n. It is stated that while dealing with the said issue the Hon'ble ATE came to the conclusion that the provisions of Limitation Act 1963 are not applicable to the proceedings before the State Electricity Regulatory Commission and Central Electricity Regulatory Commission. Relevant paragraph 11.4 of the judgment is extracted below:

"11.4) Thus in view of the recent judgment dated April 4, 2014 of the Hon'ble Supreme Court and the Full Bench judgment dated 13.03.2015 of this Appellate Tribunal, we uphold that the provisions of the Limitation Act 1963 are not applicable to the proceedings before the State Electricity Regulatory Commissions and Central Electricity Regulatory Commission."

o. It is stated that having held so the Hon'ble ATE proceeded to examine the cases on hand by applying the doctrine of delay and latches by referring judgments of the Hon'ble Supreme Court and Delhi High Court and came to the conclusion in paragraph 23 that the doctrine of delay and latches is fully applicable to the cases of the appellants therein.

p. It is stated that then the Hon'ble ATE proceeded to appreciate the impugned order passed by the learned State Commission and came to the conclusion in paragraph 25 of the judgment that the learned State Commission in spite of

recording finding that the respondents ought to have served a notice before affecting the deductions from power bills of the appellants unilaterally and for the lapses or mistakes or inadvertence of the employees of the respondents, the organization like the respondents could not be made to suffer losses. Paragraph 25 of the judgment is extracted below for convenience:

"25. A close and careful perusal of the Impugned Order makes it evident that the State Commission was of the opinion while passing the Impugned Order, that the respondents/distribution licensees since are required to carry out periodical maintenance, therefore, it is difficult for them to individually account for in all such cases. The respondents before the State Commission clearly admitted that due to inadvertence of the licensees the said line maintenance charges were not claimed year after year and on consideration of the same the State Commission expressed the view that however, the lapses and laches on the part of the respondents do not absolve the appellant petitioners form liability to pay the maintenance charges from the COD/dates of commissioning of the respective power project of the appellants. The Impugned Order, as stated above, has been passed by the State Commission in spite of recording finding that the respondents ought to have served a notice before affecting the deductions from power bills of the appellants unilaterally and for the lapses or mistakes or inadvertence of the employees of the respondents, the organization like the respondents could not be made to suffer losses."

q. It is stated that thereafter the Hon'ble ATE having examined the demand notices by referring Section 56 of the Act, 2003 came to the conclusion in paragraph 31 of the judgment that the learned State Commission had rightly held that the claim of the respondents was not barred by Law of Limitation, but the same is barred by the principle of delayed latches. Relevant portion of Paragraph 31 of the judgment is extracted below:

"31. The learned State Commission in the Impugned Order had rightly held that the claims of the maintenance charges made by the respondents (distribution/transmission licensee) were not barred by law of limitation and we agree to the extent only that the Limitation Act 1963 is not applicable to the proceedings before the State Electricity Regulatory Commissions and Central Electricity Regulatory Commission. After going through the legal authorities mentioned above in this judgment, we find that the said maintenance charges/expenses claimed by the respondents (distribution/transmission licensee) are absolutely barred by the principle of delay and laches and the said principle is clearly applicable to the facts of the matters before us."

"Thus all the findings recorded in the Impugned Orders directing the transmission/distribution licensee (respondents herein) to collect line maintenance and bay expenses from the appellant/petitioners are liable to be set aside being based on quite illegal and improper appreciation of the evidence and other material available on record and we cannot allow

such illegal findings to prevail in such kind of matters where the said demand or claim is absolutely barred by Doctrine of Delay and Laches."

r. It is stated that basing on the above findings the Hon'ble ATE finally held at paragraph 32 that the State Commission was not justified in holding that the respondents (distribution/transmission licensee) are entitled to demand line maintenance charges/expenses from the appellants from the date of commercial operation till the date of notice and hence allowed the appeals by setting aside the impugned orders.

s. It is stated that it thus become very much clear from the perusal of the cited judgement of Hon'ble ATE that the impugned order of the learned State Commission holding that the appellants are liable to pay the maintenance charges for the dedicated transmission line of the appellants which is being maintained by the respondents, was set aside/quashed by applying the principle of delay and latches but not on merits. As a matter of fact, the Hon'ble ATE in paragraph 13 of its judgment categorically held that, the appellants are bound to pay maintenance charges incurred on the maintenance of their respective dedicated transmission lines laid by the transmission/distribution licensee for evacuation of power from the respective generation station to the SS of the licensee. In such view of the matter the learned counsel of the petitioner cannot take aid of the said judgment to substantiate the case of the petitioner.

t. It is stated that the cited judgement of Hon'ble ATE cannot also be considered in the present case without knowing the fact of its being challenged before the Hon'ble Supreme Court for the reason that the principle of delay and latches cannot be applied to the cases dealt by the Hon'ble ATE. The learned State Commission was very much right and correct in passing the impugned order.

u. It is stated that the other order of APERC in O.P.No.11 of 2016 relied on by learned counsel for petitioner also cannot be considered, since the same was passed on technical ground of transfer of title/ownership of assets in question. It is also not known whether the said order was not carried in appeal.

v. It is stated that in the circumstances mentioned above, as per Section 10 of the Act, 2003, the petitioner having become a generator is duty bound to establish, operate and maintain generating stations, tie-lines, sub-stations and dedicated transmission lines connected therewith in accordance with the provisions of the

Act or the rules or regulations made thereunder. The petitioner cannot escape from its liability on the ground that the lines are vested with respondent No.1 and the cost of the maintenance and charges for the usage of the same are factored in tariff and the petitioner has been paying the power bills as per the tariff determined by the Commission, separate bay and line maintenance charges cannot be levied and that the petitioner is not liable to pay bay and line maintenance charges since the levy of surcharges does not fall under any statutory provision authorizing the respondents to levy surcharges.

w. It is stated that in view of Section 10 of the Act, 2003 the contention of the petitioner that the cost of the maintenance and charges for the usage of the same are factored in tariff will be of no help to the petitioner. The power bill that is being paid by the petitioner is nothing to do with the demand made by the respondents. Hence it is prayed the Commission to dismiss the petition with cost.

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

Record of proceedings dated 04.04.2023:
"… … The advocate representing the counsel for petitioner sought time for filing rejoinder in the matter. The representative of the respondents has no objection. Accordingly, the matter is adjourned."
Record of proceedings dated 24.04.2023:
"… … The advocate representing the counsel for petitioner stated that the rejoinder will be filed today as it has already been sent for the signature of the authorized representative. The matter may be taken up after one week. The representative of the respondents has no objection. Accordingly, the matter is adjourned."
Record of proceedings dated 05.06.2023:
"… … The advocate representing the counsel for petitioner stated that the rejoinder has been filed today with a copy made available to the representative of the respondents. The representative of the respondents confirmed the same. However, the advocate sought for further time to argue the matter. Accordingly, the matter is adjourned."
Record of proceedings dated 10.07.2023:
"… … The counsel for petitioner stated that the petition is filed questioning the levy of line and bay maintenance charges sought to be recovered from the petitioner by issuing demand notices to the petitioner for the period 2012 to 2019. The petitioner stated that it is a cement manufacturing unit and it was established in the year 1979 with a contracted maximum demand of 12500 kVA. The power facility was availed through a line connected to the then board's

substation for which the then board collected voluntary loan contribution for erecting the line.

The counsel for petitioner stated that it has been enhancing the power requirement from the board and later from the respondents time and again and reached 32 MVA in the year 2008. The proposals were also submitted for further enhancement of the load, however, did not avail the same. In the meantime, the petitioner had established a captive generation plant of 2x25 MW in the year 2012 and got synchronized to the grid for operating it in parallel with the grid.

The counsel for petitioner stated that the petitioner having established the captive power plant sought to reduce the demand being availed from the then existing capacity to 15 MVA, which was acceded to by the respondents. The petitioner had availed open access and had been paying transmission and open action charges as determined by the Commission from the year 2012 to till date. The petitioner has no power purchase agreement with the licensee. The power generated by the petitioner is either consumed by itself or any surplus power is sold in the power exchange.

The counsel for petitioner stated that the licensee strangely and all of a sudden raised a demand requiring the petitioner to pay line and bay maintenance charges for the period 2012 to 2019 initially and subsequently for further period upto 2022. The petitioner had been making representations time and again pointing out that it is not liable for payment of line and bay maintenance charges as it does not arise in any rule or regulation. The total amount as of now due as claimed by the licensee is around Rs.84.0 lakhs. There are no parameters for assessing the amount and the licensee has relied on certain clauses provided in the nonconventional energy power purchase agreement.

The counsel for petitioner stated that where a generator is producing energy from renewable sources and in those cases, the power purchase agreement entered by the respondents would provide for payment of charges towards line and bay maintenance. Such is not the case of the petitioner, as it is only a consumer of energy supplied by the licensee and had established only CPP for its own utilization. In case of excess generation being available from the generation of the CPP, such excess generation from CPP would be injected into the grid for being sold to third parties through power exchange.

The counsel for petitioner stated that the consumer has obtained NOC for captive consumption and had been paying the open access charges and transmission tariff as determined by the Commission. It had at first instance itself given undertaking that it would abide by the tariff and charges as has been determined by the Commission. In fact, the transmission tariff as determined by the Commission would take into account all the assets in operation in respect of transmission or distribution as the case may be. Therefore, there is no case for the respondents to mulct the petitioner with any other charges other than the tariff as determined by the Commission. Also, it is relevant to state that once the line has been established it becomes the property of the transmission or distribution licensee as the case may be. Therefore, for maintaining the said asset it is not required to collect any charges other than the tariff as determined by the Commission.

The counsel for petitioner stated that the licensee is claiming amounts for the period 2012 to 2022 through its several demand notice, which is not permissible under the Electricity Act, 2003 or even under the general law. It is beyond the

limitation prescribed for claiming the amount. The respondent did not reply to the representations made by the petitioner in detail including the legal issues with regard to non-applicability of the line and bay maintenance charges, as the same does not arise under any rule or regulation as notified by the Commission, as also in general financial principles for a such long period. The Hon'ble ATE in an almost identical situation had held that the line and bay maintenance charges are not liable to be paid that too against belated claim beyond the time period as stipulated by the Act, 2003. The APERC also considered similar issue and passed orders in favour of the consumer before it, the said reference is only invited for persuasive value only.

In any case, the petitioner is not liable to pay the charges as claimed by the respondent/licensee as the whole claim is based on sum internal discussion and correspondence between various officers of the licensee. Inasmuch as, there is no specific agreement between the parties, which would have given rise to the liability on the part of the petitioner. As such, the Commission may set aside the claim made against the petitioner.

The representative of the respondents stated that the claim is made subsequent to the petitioner becoming a developer of power project of 2x25 MW and till that date the petitioner is treated as ordinary consumer only. It is a fact that the representations have not been replied by the licensee. It has to be stated that the petitioner has to comply with the provisions of the Act, 2003, rules and regulations as provided in Section 10(1) of the Act, 2003. Therefore, the petitioner is bound to pay the amount as demand by the respondent/licensee. The contentions with regard to the applicability of the judgment of the Hon'ble ATE and reference made to the order passed by the APERC, primarily, cannot be accepted, however, the same will be answered in detail in the written submissions. The petitioner being a generator is bound to comply with the demand placed by the respondent/licensee. The petitioner has not made out any case for interference by the Commission.

The counsel for petitioner stated that the licensee is now bringing forth the concept of developer only to sustain its demand and also invoking Section 10 of the Act, 2003. At any rate, no claims can be made by the respondents based on their internal discussion and proposition which is not based on any rule or regulation including not limited to any bilateral agreement on the subject. Having heard the argument of both the parties, the matter is reserved for orders."

9. The Commission notices the issue of claim towards line and bay maintenance charges arose with the claim made by respondent No.3 in the year 2019. By letter dated 06.02.2019, the claim has been raised against the petitioner by stating as follows:

"With reference to the above, the maintenance expenses for the inter connection facilities provided by TSTRANSCO network is to be done by the power developer from time to time accordingly. Bay & Line maintenance expenses for M/s. Orient Cement Company Ltd., Devapur emanating from 132 kV SS Bellampally worked out for an amount of Rs.45,23,449/- (Rupees Forty Five Lakhs Twenty Three Thousand Four Hundred Forty Nine only) from the year Aug-2012 to Mar-2019.

Hence, it is requested to kindly arrange to pay an amount of Rs.45,23,449/- (Rupees Forty Five Lakhs Twenty Three Thousand Four Hundred Forty Nine only) at the earliest."

The petitioner replied to the claim by its letter dated 02.04.2019 by denying the same.

10. It is noticed that the basis for said claim is the letter addressed by respondent No.1 to the operational, Chief Engineer about the decision taken to collect bay and line maintenance charges vide letter dated 23.07.2018 which is extracted below:

"Vide memo cited, the Minutes of meeting pertaining to the meeting conducted by the Director/Transmission on "Collection of the Bay and Line maintenance charges" held on 06.06.2018 at 6th floor Main meeting hall, Vidyut Soudha with all the Superintending Engineers/OMC/Circles were communicated, for taking necessary action at various levels.

In this regard, it is requested to furnish the point wise action taken report as per the cited memo. Further, it is informed that, following is the point (8) of Minutes in annexure-I of memo 1st cited.

(8) Proposals from the Zonal Chief Engineers for collecting amounts from the private NCE developers in respect of the various services availed by them, by department in connection with O&M activities at Inter-connecting sub-station:

All the Chief Engineers/Zone shall conduct the meetings with the Superintending Engineers & Divisional Engineers and formulate the "Rate Contract" pattern for collection charges from the "Power Developers" as per the PPAs, to evolve uniform pattern from head quarters. After one month, the rates will be revised by the "Technical Committee" and will be finalized duly conducting one more meeting.

It is requested to arrange the compliance report of the 1st cited memo along with Rate contract formulated as discussed and finalized at the zonal levels by 30.07.2018 for the next review meeting and to submit to Technical Committee."

(emphasis added in the letter itself)

11. A further claim is made by respondent No.3 in the year 2021 vide letter dated 09.07.2021, which is extracted below:

"With reference to the 1st cited above, a demand notice was issued for an amount of Rs.45,23,449/- (Rupees Forty Five Lakhs Twenty Three Thousand Four Hundred Forty Nine only) from the year Aug-2017 to Mar-2018 towards Bay & Line maintenance expenses for M/s Orient Cement company Ltd., Devapur emanating from 132 kV SS Bellampally. But, payment not received till now.

Vide reference 2nd above, the Chief Engineer/Transmission/ TSTRANSCO/Vidyut Soudha/Hyderabad requested to expedite to collect the Bay & Line maintenance charges towards vendor renewal of M/s. Orient Cement company Ltd., Devapur.

Further, the balance financial years 2018-19, 2019-20 & 2020-21 bay and maintenance charges to be paid details will be communicated shortly for arranging payment.

Hence, it is once again requested to arrange to pay an amount of Rs.45,23,449/- (Rupees Forty Five Lakhs Twenty Three Thousand Four Hundred Forty Nine only) at the earliest."

Though reference has been made to representation of the petitioner in the year 2019 nothing is stated about it by the respondent No.3. The above said claim was replied by the petitioner in its letter dated 24.07.2021.

12. The respondent No.3 issued a further letter on 29.07.2021 setting out the claims made by them towards bay and line maintenance charges for the period 22.08.2012 to 31.03.2021. The said letter is issued to petitioner along with details of calculations for the said period in annexure to the said letter. The petitioner made a detailed representation to the respondent No.3 on 04.10.2021.

13. The respondent No.3 by letter dated 30.06.2022 made further claim towards bay and line maintenance charges and stated as below:

"With reference to the 5th cited above, a demand notice was issued for collection of Bay & Line maintenance charges for the period from 22.08.2012 to 31.03.2021 for an amount of Rs.73,61,293/- (Rupees Seventy three lakhs sixty one thousand two hundred ninety three only).

Vide reference to the 7th cited above, the Chief Engineer/Transmission/ TSTRANSCO/Vidyut Soudha/Hyderabad requested to expedite to collect the O&M charges from M/s. Orient Cements Limited, Devapur towards the Bay and line maintenance charges till date as the same connected line and bay are utilized by the firm for injection of power generated by them to the grid and also has requested for furnishing the lates status on collection of charges.

Hence, it is once again requested to arrange to pay an amount of Rs.73,61,293/- (Rupees Seventy three lakhs sixty one thousand two hundred ninety three only) for the period from Aug-2012 to March-2021 at the earliest.

Further, it is to inform that, the above worked out amount is tentative, further if any difference is observed in future in the demand notice, the same will be informed for arranging payment and further informed that the amount for the year 2021-22 will be arrived and intimated later."

It is noticed that while the references quoted in the letter mentioned about representations made by the petitioner, but nothing is stated in reply to those representations. The petitioner replied to the demand notice by letter dated 10.08.2022.

14. A further letter dated 01.11.2022 is issued demanding payment of bay and line maintenance charges for the period August 2012 to March 2022. The letter also shows details of the amount due and the calculations arrived at thereof vide its enclosure.

15. While the claim purportedly is made in the year 2019 for the first time and subsequently for the period August 2012 subsequently by separate letters in the year 2021 and 2022 till date that is 31.03.2022, the submissions of the respondent do not justify or mention as to under which rule, regulation or order and of which authority, the claims are made. Reference has been made in the letter 2018 extracted above as to the proceedings issued by respondent No.1 with regard to collection of bay and line maintenance charges, however it is seen from extract enclosed to the notice dated 06.02.2019 that in discharge of its duties, the respondent No.1 internally required its officers to provide proposals relating to private NCE developers in respect of various services availed by them in connection with operation and maintenance activities at the interconnection SS.

16. From the noting of the internal working of the respondent No.1 as mentioned in the letter dated 23.07.2018, it is clear that the respondent No.1 intended to collect the bay and line maintenance charges from the private NCE developers, whose projects are connected to the system and also availing several services by the developers from the respondent No.1. It is also noticed from the record that the petitioner is neither a NCE developer nor it is intending to sell the power generated from its captive power plant which it has established in the year 2012 to the DISCOMs in the State of Telangana. To signify this aspect, it is appropriate to notice the synchronization report filed by the petitioner which is extracted below:

> *"This is to certify that 2x25 MW coal based power plant of M/s Orient Cement is synchronized to APTRANSCO Grid at 132 kV level at 132 kV Bellampally sub-station in Adilabad district on 22.08.2012 at 18:45 hrs duly following departmental procedure and permissions in vogue."*

Thus, primarily the petitioner is not liable for any charges towards bay and line maintenance charges in view of the specific observation in the letter of respondent No.1 towards initiating proposals as stated above.

17. It is noticed from the record filed by the petitioner that the APPCC in its letter dated 26.03.2010 had permitted synchronization of the petitioners 2x25 MW coal based captive power plant and required an undertaking to be given wherein it has been provided as below:

> *"1. We hereby undertake that, in acceptance of the above, we will pay the Grid Support charges, transmission and SLDC charges to APTRANSCO and wheeling charges to APDISCOMs, as fixed by APERC and as billed by the APNPDCL, as well as electricity duties and other charges as may*

be fixed by APERC from time to time, with prejudice to our right to seek redressal before the Andhra Pradesh Electricity Commission, whenever any grievance is felt.

2. *Whereas it is to declare that the company has not entered into any long term power purchase agreement (PPA) APDISCOMS."*

From the above, it is clear that respondent No.1 or any committee acting on its behalf had never intended payment of any charges which are not decided by the Commission. Coupled with the letters referred to towards claims made by respondent No.3, it is clear that the bay and line maintenance charges have never been decided by the Commission nor can the same be claimed by the respondents.

18. The parties have adverted to the aspect of payment of open access charges and transmission charges levied and collected by the respondent No.1. Primarily, transmission charges are liable to be paid for utilizing the transmission system at EHT level which is under the control of respondent No.1. The charges are levied for the utilization of the system as determined by the Commission from time to time. In this case, the petitioner is drawing power at EHT level for contracted demand of 6 MW. However, it is also operating a 2x25 MW coal based captive power plant and is exporting excess energy that is available after its consumption to the interstate consumers through PTC. Thus, the petitioner is liable to pay for transmission charges. As the petitioner is not selling the energy within the State to the DISCOMs and trading the same to intrastate or interstate consumers it has to avail open access of the intrastate transmission system and thus is liable for open access charges.

19. The petitioner though a captive generator is conceding that it is availing open access and thus it is liable for transmission and open access charges. Insofar as the system is concerned the dedicated line through which the petitioner is importing or exporting power is the asset of the respondent No.1, as such it has to be maintained by respondent No.1. As the petitioner is availing services on the transmission line owned by respondent No.1, it is paying the transmission and open access charges, and therefore the question of bay and line maintenance charges would not arise. Since the line is owned by respondent No.1, the onus to maintain it and safeguard it completely rests with respondent No.1 only. Any charges incurred cannot be passed on to any consumer or developer where such asset is owned by respondent No.1. Thus, the petitioner is absolutely right in saying that it is not liable to pay bay and line

maintenance charges since it is already incurring expenditure towards transmission and open access charges.

20 In this regard, it is appropriate to state that the petitioner had availed power supply from the then APSEB and the said board had erected the required dedicated line at EHT level by availing loan from the petitioner and repaying it. Thus, the board ended up owning the asset which is now in the custody of respondent No.1. In those circumstances, the petitioner has not established the line and as such it is not required to maintain it. Therefore, it is not liable for line and bay maintenance charges.

21. At this juncture, it is also relevant to mention that the petitioner is bound by General Terms and Conditions of Supply (GTCS) as amended from time to time. One of the conditions in GTCS is clause 5.3.2 which speaks of service line charges.

> *"5.3.2 Service Line Charges*
>
> *5.3.2.1 The Service line charges payable by the consumers for release of new Connection/additional load under both LT and HT categories shall be levied at the rates notified by the company in accordance with regulations/orders issued by the Commission from time to time These charges shall be paid by the consumer in advance failing which the work for extension or supply shall not be taken up. These charges are not refundable.*
>
> *Provided that where any applicant withdraws his requisition before the Company takes up the work for erection of the service line, the Company may refund the amount paid by the consumer after deducting 10% of the cost of the sanctioned scheme towards establishment and general charges. No interest shall be payable on the amount so refunded.*
>
> *5.3.2.2 Notwithstanding the fact that a portion or full cost of the service line has been paid for by the consumer, the service line shall be the property of the Company, which shall maintain it at its own cost. The Company shall also have the right to use the service line for supply of energy to any other person(s)."*

Thus, no charges are liable to be paid by the petitioner, even assuming that the petitioner has paid for the line and bay while availing supply.

22. It is trite to state here that the provisions of Act, 2003 provide for recovery of charges and expenditure in Sections 45 and 46. The same are reproduced below:

> *"45. Power to recover charges –*
>
> *(1) Subject to the provisions of this Section, the prices to be charged by a distribution licensee for the supply of electricity by him in pursuance of Section 43 shall be in accordance with such tariffs fixed from time to time and conditions of his licence.*
>
> *(2) The charges for electricity supplied by a distribution licensee shall be -*

(a) *fixed in accordance with the methods and the principles as may be specified by the concerned State Commission;*

(b) *published in such manner so as to give adequate publicity for such charges and prices.*

(3) *The charges for electricity supplied by a distribution licensee may include -*

(a) *a fixed charge in addition to the charge for the actual electricity supplied;*

(b) *a rent or other charges in respect of any electric meter or electrical plant provided by the distribution licensee.*

(4) *Subject to the provisions of Section 62, in fixing charges under this Section a distribution licensee shall not show undue preference to any person or class of persons or discrimination against any person or class of persons.*

(5) *The charges fixed by the distribution licensee shall be in accordance with the provisions of this Act and the regulations made in this behalf by the concerned State Commission.*

46. *Power to recover expenditure: -*

The State Commission may, by regulations, authorise a distribution licensee to charge from a person requiring a supply of electricity in pursuance of Section 43 any expenses reasonably incurred in providing any electric line or electrical plant used for the purpose of giving that supply."

Further, Section 39 has provided as below:

"39. State Transmission Utility and functions: -

… …

(2) *The functions of the State Transmission Utility shall be -*

… …

(d) *to provide non-discriminatory open access to its transmission system for use by-*

(i) *any licensee or generating company on payment of the transmission charges; or*

(ii) *any consumer as and when such open access is provided by the State Commission under sub-Section (2) of Section 42, on payment of the transmission charges and a surcharge thereon, as may be specified by the State Commission."*

It is seen from the above provisions, that the Act, 2003 does not envisage the charges towards bay and line maintenance. Claiming the same would be contrary to the provisions of the Act, 2003. Thus, the respondents are not entitled to recover the amounts.

23. This brings the Commission to the applicability of Section 56. For appreciating the issue, Section 56 is reproduced below:

"56. Disconnection of supply in default of payment –

(1) *Where any person neglects to pay any charge for electricity or any sum other than a charge for electricity due from him to a*

licensee or the generating company in respect of supply, transmission or distribution or wheeling of electricity to him, the licensee or the generating company may, after giving not less than fifteen clear days notice in writing, to such person and without prejudice to his rights to recover such charge or other sum by suit, cut off the supply of electricity and for that purpose cut or disconnect any electric supply line or other works being the property of such licensee or the generating company through which electricity may have been supplied, transmitted, distributed or wheeled and may discontinue the supply until such charge or other sum, together with any expenses incurred by him in cutting off and reconnecting the supply, are paid, but no longer:

Provided that the supply of electricity shall not be cut off if such person deposits, under protest, -

(a) an amount equal to the sum claimed from him, or

(b) the electricity charges due from him for each month calculated on the basis of average charge for electricity paid by him during the preceding six months,

whichever is less, pending disposal of any dispute between him and the licensee.

(2) Notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, under this Section shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied and the licensee shall not cut off the supply of the electricity."

The provision is specific and emphatic in explaining as to which of the sum 'of amounts fall under the provision. It is noticed that the provision employs the words *Where any person neglects to pay any charge for electricity or any sum other than a charge for electricity due from him to a licensee or the generating company in respect of supply, transmission or distribution or wheeling of electricity to him,*' thus, even the amount under issue in the instant petition would also fall under this Section.

24. The contention of the respondents is erroneous for the reason that it is not merely applicable to a consumer only and is also applicable for other sums due from any of the stakeholders to any other stakeholder, be it consumer, transmission or distribution licensee or generator as the case may be. In the instant case, claim has been made from the year 2012 by notice issued in 2019. Applying the principle set out in the above provision in case if there is any liability on the part of the petitioner it would arise only from two years prior to the date of issue of notice and not the earlier period. The interpretation that the provision cannot be applied to any other purpose is misconceived. Therefore, the claim of the petitioner that it is not liable for the amounts

claimed by the respondents prior to 2017 is acceptable subject to the other conclusions rendered in this order.

25. The other argument that has been set forth by the parties that Section 56 is not applicable to the generator cannot be countenanced for the reason that the petitioner in this case has dual role of being a consumer as well as generator. It is a generator for the reason that it owns a captive power plant and thereby is liable to follow the provisions relating to generator under the Act, 2003, rules and regulations. In this context, it is appropriate to notice the judgment of the Hon'ble Supreme Court in the matter of Assistant Engineer (D1), Ajmer Vidyut Vitran Nigam Limited and Another. vs. Rahamatullah Khan alias Rahamjulla in Civil Appeal No.1672 of 2020 as reported in 2020 (4) SCC 650. The relevant para of the above judgment is extracted below:

> *"Section 56(2) however, does not preclude the licensee company from raising a supplementary demand after the expiry of the limitation period of two years. It only restricts the right of the licensee to disconnect electricity supply due to non-payment of dues after the period of limitation of two years has expired, nor does it restrict other modes of recovery which may be initiated by the licensee company for recovery of a supplementary demand."*

The interpretation set out by the Hon'ble Supreme Court would clearly demonstrate that the petitioner is not liable for the amounts if the same have not been demanded prior to two years and shown in the bill. It only restricts the disconnection of the supply but would allow the licensee to recover the amount through other means. Since the respondents have not initiated any other steps but claimed the amounts beyond two years prior to the initial notice, they are not entitled to claim the same. Further, the Hon'ble Supreme Court in the matter of M/s Prem Cottex Vs. Uttar Haryana Bijli Vitran Nigam Limited and others in Civil Appeal No.7235 of 2009 reported in 2021 SCC Online SC 870 has observed as extracted below:

> *"14. But a careful reading of Section 56(2) would show that the bar contained therein is not merely with respect to disconnection of supply but also with respect to recovery. If sub-section (2) of Section 56 is dissected into two parts it will read as follows:*
>
> *(i) No sum due from any consumer under this Section shall be recoverable after the period of two years from the date when such sum became first due; and*
>
> *(ii) the licensee shall not cut off the supply of electricity.*
>
> *15. Therefore, the bar actually operates on two distinct rights of the licensee, namely, (i) the right to recover; and (ii) the right to disconnect. The bar with reference to the enforcement of the right to disconnect, is actually an exception to the law of limitation. Under the law of limitation, what is extinguished is the remedy and not the right. To be precise, what is*

extinguished by the law of limitation, is the remedy through a court of law and not a remedy available, if any, de hors through a court of law. However, Section 56(2) bars not merely the normal remedy of recovery but also bars the remedy of disconnection. This is why we think that the second part of Section 56(2) is an exception to the law of limitation."

Therefore, the contention of the respondents cannot be sustained.

26. Reference has been made by the parties to the order passed by the present APERC on 19.11.2016 in O.P.No.11 of 2016 on its file and order passed by the Hon'ble ATE in Appeal No.285 of 2014 and batch decided on 29.10.2015 filed by EID Parry India Limited Vs. APERC on the instant subject. In the matter of the decision of the present APERC, it is of only persuasive value and it does not constitute a binding precedent so as to be followed by the Commission. Insofar as the judgment of the Hon'ble ATE, the Hon'ble ATE itself recorded its finding on Section 56 at paragraphs 26 to 28. The same are extorted below:

"26) Before coming to our own individual conclusion, we deem it proper to cite the provisions of Section 56 of the Electricity Act, 2003 which we reproduce as under:

"56. Disconnection of supply in default of payment –

(1) Where any person neglects to pay any charge for electricity or any sum other than a charge for electricity due from him to a licensee or the generating company in respect of supply, transmission or distribution or wheeling of electricity to him, the licensee or the generating company may, after giving not less than fifteen clear days' notice in writing, to such person and without prejudice to his rights to recover such charge or other sum by suit, cut off the supply of electricity and for that purpose cut or disconnect any electric supply line or other works being the property of such licensee or the generating company through which electricity may have been supplied, transmitted, distributed or wheeled and may discontinue the supply until such charge or other sum, together with any expenses incurred by him in cutting off and reconnecting the supply, are paid, but no longer:

Provided that the supply of electricity shall not be cut off if such person deposits, under protest, -

(a) An amount equal to the sum claimed from him, or

(b) The electricity charges due from him for each month calculated on the basis of average charge for electricity paid by him during the preceding six months,

Whichever is less, pending disposal of any dispute between him and the licensee."

(2) Notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer,

under this Section shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied and the licensee shall not cut off the supply of the electricity."

27) Section 56 of the Electricity Act, 2003 clearly provides that Where any person neglects to pay any charge for electricity or any sum other than a charge for electricity due from him to a licensee or the generating company in respect of supply, transmission or distribution or wheeling of electricity to him, the licensee or the generating company may, after giving not less than fifteen clear days' notice in writing, to such person and without prejudice to his rights to recover such charge or other sum by suit, cut off the supply of electricity. The wordings of the Section 56 clearly specifies that if any person neglects to pay the charges of electricity or any sum other than a charge, the licensee may after giving 15 days clear notice in writing without prejudice to his rights to recover such charge or other sum by a suit cut off the supply of electricity. The amount due has to be demanded in writing and disconnection can be affective only after giving not less than 15 days clear notice in writing. Sub-section 2 of Section 56 of the Electricity Act, 2003 clearly provides that notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, under this Section shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied and the licensee shall not cut off the supply of the electricity. Thus, sub-section 2 of Section 56 provides that no due from any consumer under this Section shall be recoverable after a period of two years when such sum became first due unless the same is shown continuously as recoverable as arrear of charges for the supplied electricity. Further a perusal of the Section 56 of the Act will show that limits have been put on the amount that can be claimed from any person who is in default of payment of any charge for electricity or any sum other than the charge for electricity due from him to a licensee or a generating company, which was not there in the earlier statutes.

28) Thus under Section 56 of the Electricity Act, 2003 two options were given either the respondents namely, transmission/distribution licensee either could have filed a suit for recovery of the charges for maintenance of dedicated transmission lines of the appellant or the respondents could have disconnected the supply in default of payment of such charges of the appellant petitioners. But none of the two options had been resorted to by the licensee."

27. Apart from the above, the Hon'ble ATE also observed at paragraphs 12 to 15, which are extracted below:

"12. Having cited various rulings/case laws propounded by Hon'ble Supreme Court and High Court, we now proceed to decide whether Doctrine of delay and laches is applicable to the facts and circumstances of the

matters of the appellants pending before us. It is evident from the facts of the matters before us that the appellants had executed the PPAs with respondents for supply of electricity. The dates of the PPAs are as under:

M/s EID Parry (India) Limited	14/08/2001
M/s Ganpati Sugar Industries Ltd.	15/05/2002
M/s Jeypore Sugar Co. Ltd.	13/01/2000

13. *Each of the PPAs with respect to the respective appellant provides that maintenance expenses of the inter-connection facilities from time to time have to be borne by a generating company, namely the appellants. The maintenance work on the generating units has to be done in coordination with the APTRANSCO (said transmission licensee/respondent). In this way, the appellants are bound to pay maintenance charges incurred on the maintenance of their respective dedicated transmission lines laid by the transmission/distribution licensee for evacuation of power from the respective generation station to the sub-station of the licensee. Regarding the fact that the maintenance charges are to be paid by the generating company to the licensee for maintenance of the dedicated transmission line of the generating company, there is no dispute between the generating companies/appellants and the licensee/ respondents.*

14. *The facts established from the record are that the respondents (transmission/distribution licensee) after a lapse of more than 8 years or 10 years had issued demand letters demanding each appellant to pay the maintenance expenses/charges from the Commercial Operation Date of the respective generation station of the appellants to the date of demand notice without any prior of 2014 SH information about the maintenance work having been carried out. The appellants had never been informed about any line stoppage and line clearance for such line maintenance. Further it is established from record that the demand notice for line maintenance charges, for a period of in some cases for more than 8 years and in some cases for more than 10 years at one go, without furnishing the details of the works allegedly done and even without furnishing work-wise expenses on the said dedicated transmission lines of the appellants and the expenses incurred on such maintenance on dedicated lines, had been issued by the transmission/ distribution licensee only on the basis of a clause in the respective PPAs of the appellants to the effect that line maintenance expenses from time to time have to be borne by the generating company/appellant and that each of the appellants was bound to pay maintenance charges, incurred by the licensee, for the maintenance of dedicated transmission lines of the appellants.*

15. *The correspondence between the appellants/generating companies and the respondent licensee clearly indicates that the appellants gave response to the said demand notices issued by the licensee and objected to the imposition/collection of maintenance charges of dedicated transmission lines requesting the respondents to provide details of the works of maintenance made on the said dedicated lines, showing actual amount spent by the respondents and the basis for calculation of the said expenses. It is further established from record that the respondents/licensee, namely transmission/distribution licensee*

even without considering the objections of the appellants and without furnishing the required details, as required by the appellants, unilaterally deducted the amount of maintenance charges from the export bill/power bill of the appellants and subsequently informed the appellants of the said deductions of the maintenance charges."

From the narrative extracted above, it is clear that the petitioners/appellants before the Hon'ble ATE were generators undertaking power supply to the respondents therein and had power purchase agreements with the respective DISCOMs. Therefore, any liability, which is provided for by the Act, 2003, rules and regulations, would invariably be attracted. The petitioner herein would not fit into the facts, which are borne on record in respect of the appellants therein, it being neither a generator undertaking sale to the DISCOMs nor to third parties within the State. Thus, reference made to the above judgment of the Hon'ble ATE would not aid to the parties either way.

28. The respondent No.1 has made an attempt to refer to connection agreement as approved and notified by the Commission 25.10.2022 and consequential office order issued by it. It is strange that the respondent No.1 would endeavour to rely on the proceeding of the Commission, which came subsequently and much later to the issue that has arisen in the instant petition. No doubt, post the communication of the Commission with the petition fits into any of the conditions mentioned in the proceedings of the Commission, it would automatically apply on and from that date. However, the same cannot be applied retrospectively in the case of the petitioner herein.

29. That brings the Commission to the question of applicability of Section 10 of the Act, 2003. The said provision is extracted below:

"10. Duties of Generating Companies:

(1) Subject to the provisions of this Act, the duties of a generating company shall be to establish, operate and maintain generating stations, tie-lines, sub-stations and dedicated transmission lines connected therewith in accordance with the provisions of this Act or the rules or regulations made thereunder.

(2) A generating company may supply electricity to any licensee in accordance with this Act and the rules and regulations made thereunder and may, subject to the regulations made under sub-section (2) of Section 42, supply electricity to any consumer.

(3) Every generating company shall –

(a) submit technical details regarding its generating stations to the Appropriate Commission and the Authority;

(b) *co-ordinate with the Central Transmission Utility or the State Transmission Utility, as the case may be, for transmission of the electricity generated by it."*

The provision explains the duties and responsibilities of a generator. It also makes it clear that what is maintained by the generating company and what is left to the transmission or distribution licensee. Though mention is made about dedicated line in the provision, yet a factual matrix would not ennure to the benefit of the respondents for the reason that the petitioner had availed power supply during the subsistence of APSEB, who developed the line and the plant to undertake power supply to the petitioner herein. Thus, the petitioner is not required to maintain the line and plant. Accordingly, the contention of the respondents cannot be sustained.

30. One aspect that requires consideration is with regard to delay in claiming the amounts as also not having any approval upto the year 2022 from the Commission. The respondents were unable to show as to any provision in the Act, 2003 apart from Section 10, rules and regulations which would entail payment of the amount to the respondents. Absence of authority prior to 2022 cannot be the basis for claiming the amounts. As pointed out by the Hon'ble Supreme Court in the decision extracted above, the respondents may not lose the right to claim the amount, but it is not as if they have no remedy at all to recover the amounts due to them. However, even such recovery would be subject to general law of limitation, though, as held by the Hon'ble Supreme Court limitation per-se would not apply to the proceedings before the Commission.

31. It has been contended by the respondents that the petitioner is bound by the power supply agreement and clauses thereof. The issue that has arisen is not with reference to the power supply agreement under supply is being availed but in respect of the petitioner's status as a generator. Therefore, saying that the petitioner is bound by the tariff and charges as determined by the Commission in respect power supply is neither relevant nor appropriate.

32. It is unconscionable on part of the respondents to bring in various provisions and orders only to defend their action when the same were not attracted even earlier. Appropriately said that the petitioner in this particular case is not liable for any amount in view of the specific facts staring at the respondents, being the line and bay held by them only.

33. Considering the elaborate analysis of the factual matrix, the Commission is of the view that the petitioner should succeed in this petition. Accordingly, the petition is allowed and the petitioner is not liable to pay any amounts as claimed by the respondents. At the same time, it is made clear any provision made or any instruction given pursuant to and in accordance with the provisions of the Act, 2003 should be given effect to on the subject matter without fail. The petition is allowed to the extend indicated above, but in the circumstances, without any costs.

34. Since the main petition itself is being disposed of, nothing survives in the Interlocutory Application and the same stands closed.

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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