TELANGANA STATE ELECTRICITY REGULATORY COMMISSION

5th Floor, Singareni Bhavan, Red Hills, Lakdi-ka-pul, Hyderabad 500004

O.P.(SR) No.5 of 2019

Dated 02.06.2021

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

Between:

Southern Power Distribution Company of Telangana Limited,
6-1-50, Mint Compound, Hyderabad - 500063
through the Chairman and Managing Director

Chief General Manager (IPC and RAC)
Southern Power Distribution Company of Telangana Limited,
6-1-50, Mint Compound, Hyderabad - 500063 … Petitioners

AND

-Nil- … Respondent

The Petition came up for hearing on 15.02.2021. Sri Mohammad Bande Ali, Law Attaché of the petitioners has appeared through video conference. The matter having been heard and having stood over for consideration to this day, the Commission passed the following:

ORDER

Southern Power Distribution Company of Telangana Limited (TSSPDCL) along with its officer being the Chief General Manager (IPC and RAC) (petitioners) have filed a petition u/s 181 of the Electricity Act, 2003 (Act, 2003), seeking amendment to the model banking agreement for in-house captive generators by deleting the clause 5.14 from the banking agreement and approving the amendment. The contentions of the petitioners are as under:

a) The Commission has issued Regulation No.1 of 2017 viz., 3rd amendment to (Interim Balancing and Settlement Code for Open Access

Transactions) Regulation No. 2 of 2006 in order to facilitate the accounting of energy for banking by a generating company having captive consumption, who has no open access agreement with the licensees and having connection agreement only, has formulated terms and conditions for provision of banking facility to in-house captive generators. Further, the Commission also formulated a separate agreement called banking agreement, which is required to be entered into by the generators with the petitioners for availing banking facility by the generating companies, who have not entered into the open access agreement.

b) The Regulation No. 1 of 2017 came into force on and from the date of its publication in the gazette for the State of Telangana and it became effective from 25.03.2017. After the issuance of Regulation No.1 of 2017, a draft banking agreement was prepared by TSSPDCL and was forwarded to the Commission vide letter dated 22.07.2017 for approval of the same.

c) The Commission issued a public notice dated 19.09.2017 in the matter of approval for draft banking agreement to be entered by the TSDISCOMs for providing banking of energy generated by renewable energy sources, who are having captive consumption only and also placed the draft banking agreement in the website www.tserc.gov.in and directed all the stakeholders, interested persons and others to file their comments, objections and suggestions on the proposed agreement for banking services before the Commission on or before 5.00 pm on 07.10.2017 for finalizing the banking agreement. Whereas, in the proposed draft banking agreement, the following clause 5.14 was not incorporated.

> *"The DISCOM as a procurer of balance power of the banked energy shall as a payment security, deposit with the banking facility user in advance, by cash, means of a demand draft or a bank guarantee issued by a public sector bank, an amount equal to estimated charges towards billing based on the one month generation of the contracted capacity at normative PLF determined by the Commission and on the basis of the average*

pooled purchase cost of the previous year as determined by the Commission. This BG shall be valid for a year and shall be renewed every year by the DISCOM 15 days prior to the start of the next financial year."

d) Accordingly, the corresponding matter was not objected or commented by TSSPDCL as the existence of the said clause was very unknown to TSSPDCL.

e) Subsequently, TSSPDCL vide letter dated 17.10.2017 has filed the comments, suggestions and objections on the approval for draft banking agreement to be entered by the TSDISCOMs for providing banking of energy generated by renewable energy sources, who are having captive consumption only in the proforma as formulated in Regulation No.2 of 2015 being Conduct of Business Regulation. In this regard, it is stated that the Commission finally vide letter dated 05.03.2018 has approved and notified the banking agreement for in-house captive generators and hosted the document on the website the www.tserc.gov.in. Whereas, the Commission has made few modifications in the draft banking agreement and also added few new clauses to the agreement which has a huge financial impact on DISCOM and they wereincorporated without calling for suggestions from TSDISCOMs.

f) The Commission has added a new clause i.e., clause 5.14 in the banking agreement for in-house captive generators.

g) Firstly, this clause was not notified in the draft banking agreement issued by the Commission vide notice dated 19.09.2017 and it was incorporated in the final approved banking agreement. Further, the newly added clause was not even present in any open access agreement approved by the Commission and was incorporated only in banking agreement without any notice to TSSPDCL, which inclusively effects TSDISCOMs as the direction/order as such has an impact on consumers of DISCOM and TSDISCOM being a distribution licensee in order to benefit a class of generators cannot pass on the burden onto the consumers.

h) In view of the financial impact due to this, TSSPDCL has approached the Commission vide letter dated 27.04.2018 requesting to delete the clause from the banking agreement and issue the final banking

agreement with the amendment. TSSPDCL has awaited for the reply from the Commission, but did not receive any reply as such. So, another letter dated 24.05.2018 was again addressed to the Secretary of the Commission, requesting for the same, but still there was no response. So, TSSPDCL has addressed the difficulty to the nodal agency vide letter dated 20.10.2018 and nodal agency vide letter dated 22.11.2018 referred the same content matter and requested to do the needful.

i) Finally, the Commission vide letter dated 18.12.2018 has refused TSSPDCL's request for deletion of the deposition of DD and bank guarantee clause and informed that the model banking agreement has been approved by undertaking due consultation process of stakeholders. Therefore, there is no necessity of relooking at the same at this point of time and also stated that the clarifications sought by TSSPDCL do not affect large section of consumers nor it is huge burden to the DISCOMs, since a benefit has been provided to both the DISCOM and generator in a commercial agreement.

j) In pursuance to the aforesaid Commission's decision, the petitioners stated the following:

   i) The clause impacts the DISCOMs finance, as the in-house captive generator who generates the power injects into the grid after their captive utilization, which is highly unpredictable (depends on the consumption levels of their captive units) and unscheduled. Such unscheduled injection of power into grid shall destabilize the schedules of DISCOM causing huge penalties to be borne by DISCOM and further deforms the demand and supply side management system of DISCOM.

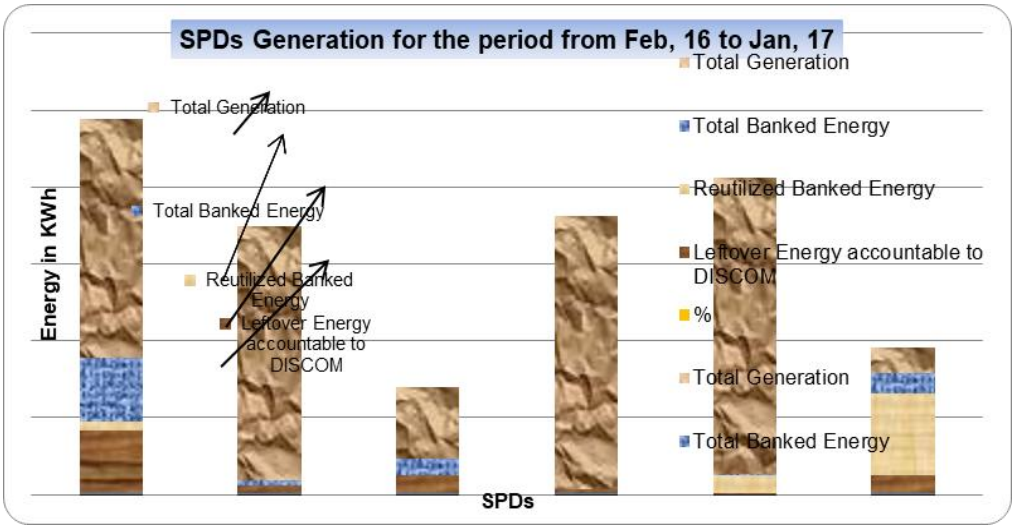
   ii) In addition to the above, banking facility is not only provided to the in-house captive generators but also to the open access generators. Where solar injected energy is allocated to the scheduled consumers and non-utilized energy by the scheduled consumers is being banked and rescheduled as drawls from banked energy to the open access consumers. Therefore, in this scenario, DISCOM as a single entity is not utilizing the solar based generation anywhere else; rather the injected energy

which is banked is again rescheduled to the consumers. Hence, the banked energy transaction is actually a huge loss to DISCOM in various aspects.

iii) Moreover, upon observation, it can be noticed that the solar power developers actually utilize their generated power completely for their captive/scheduled consumers by means of rescheduling energy from the banked energy and out of such leftover energy is only purchased by DISCOM at applicable rate as determined by the Commission. For clear statistical analysis the following is submitted for kind perusal. The below statistics are furnished with the actual data of few solar power developers who are connected to the TS grid and carrying out generation utilization under captive usage.

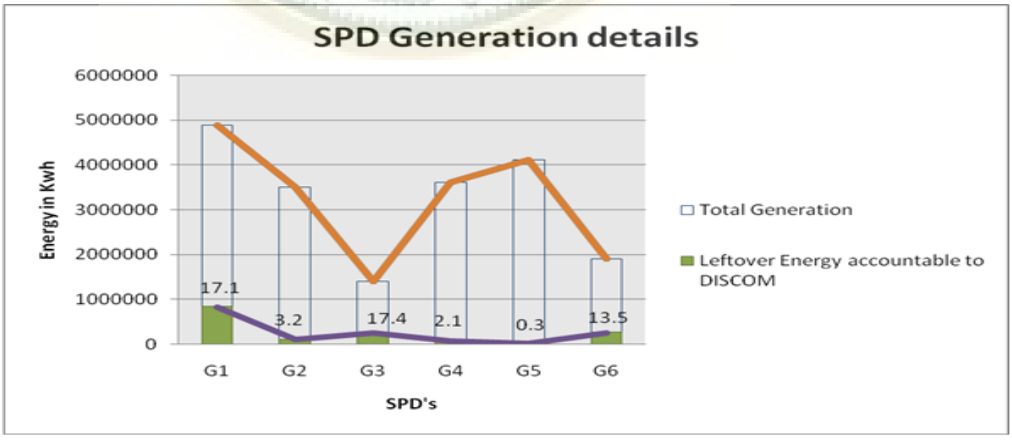
For the period from February, 2016 to January, 2017					
Generators	**Total Generation (i)**	**Total Banked Energy**	**Reutilized Banked Energy**	**Leftover Energy Accountable to DISCOM (ii)**	**% Unutilized to the total generation which is purchased by the DISCOM (ii/i) in %**
G1	4889719	1785935	951550	834385	17.1
G2	3496786	182910	71493	111417	3.2
G3	1402631	466314	221616	244698	17.4
G4	3616999	77104	0	77104	2.1
G5	4115611	269460	255077	14382	0.3
G6	1910271	1579347	1320810	258537	13.5

iv) The petitioners have placed a graph of SPDs generation details and complete utilization pattern of the SPD in the petition.



v) From the above graph, it can be observed that the banked energy from the total generation for each SPD is less and out of the total banked energy, the developer reschedules and utilizes to their captive / scheduled consumers to the maximum extent and out the left over which is due to the load shedding or less consumption from the reutilized banked energy shall only be left over at the end of banking year and such minor portion of the energy is only being sold to DISCOM by SPDs at average power purchase pooled cost as per regulations in force.

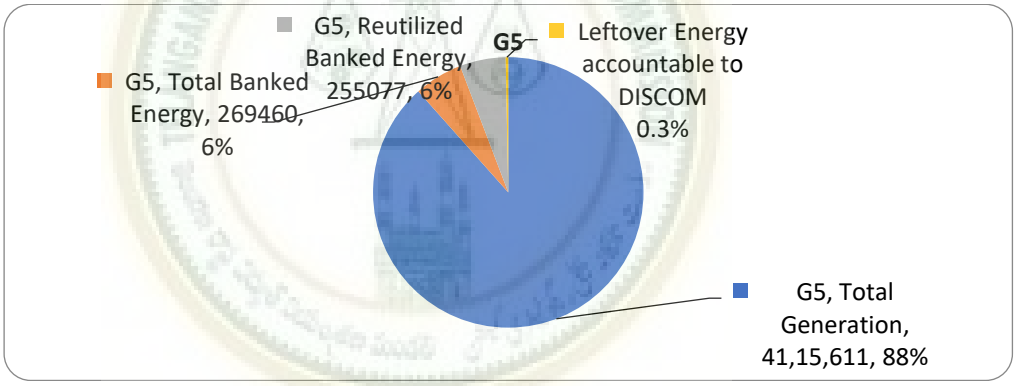
vi) The petitioners have placed another graph of SPDs total generation against left over energy which is accountable to DISCOM.



vii) From the above graph it is clear that the unutilized energy which is actually accountable to DISCOM purchase is 2% to 17% of the total energy generated by the generator and is very less when compared to the total generation of the SPD. The Commission's

directions to the Discoms to submit the bank guarantee or a demand draft to the generator for an amount equal to estimated charges towards billing based on the one month generation of the contracted capacity at normative PLF determined by the Commission and on the basis of the average pooled purchase cost of the previous year as determined by the Commission is highly unjustifiable as the effective injection of energy by the developer into DISCOM grid is very minimal compared to the total generation.

viii) Further, few SPDs reutilize their banked energy completely leaving very minor energy injections into the TS grid and therefore, DISCOM shall be liable to adjust the same at any determined rate which is very low. One such instance is extracted and retraced below in the graph for a single generator who has reutilized the complete energy from the banked energy.



ix) In view of this, DISCOM which shall utilize the balance power from the banked energy which is a very minor portion of the total generation, is required to deposit with the banking facility user in advance, by cash, means of a demand draft or a bank guarantee issued by a public sector bank, an amount equal to estimated charges towards billing based on the one month generation of the contracted capacity at normative PLF determined by the Commission and on the basis of the average pooled purchase cost of the previous year as determined by the Commission is highly injustice and is against the interest of DISCOM which actually burdens a lot.

x) As per clause 11 (e) of Telangana State Solar Power Policy (TSPP 2015) all Solar Power Projects (SPPs) shall be in must-run status that is injection from solar power projects shall be considered as deemed to be scheduled and solar power generation cannot be backed down also as it is renewable energy source which is under must run status. Further, the injection from renewable energy sources is highly variant and nonlinear which disturbs the stability of the grid and results in variant frequency. In order to maintain grid discipline and frequency, DISCOM as a whole entity backs down the conventional energy sources which burdens the DISCOM with lot of compensations and penalties. Hence, a stable generation is being backed down due to a non-stable generation for which DISCOM is being penalized.

xi) In-house generators actually draw the injected banked energy as per the applicable rules and regulations and such banked energy is again scheduled to the generator's account. After this, if there is any energy left unutilized at the end of financial year, then only such energy is deemed to be purchased by the DISCOM at average pooled purchase cost determined by the Commission. Hence, for the leftover banked energy, which is being unutilized is only being purchased by DISCOM, but major of the generation is being adjusted to the in-house generator only.

xii) Advance deposit calculation for an amount of billing on estimated one month generation of the contracted capacity at normative PLF is not correct due to the matter of the fact that the leftover banked energy which is less is only being purchased by DISCOM. Further, the balance power cannot be determined as it is highly depended on the consumption levels of the in-house captive consumer and the banked energy can also be completely utilized by the generator by rescheduling banked power for subsequent months and advance payment for such power which is actually an inadvertent energy which may be null for few years based on the scheduling and utilization of banked energy by the generator, shall have a huge impact on the business of DISCOM.

xiii) There are many in-house captive generators and open access consumers who shall approach DISCOM requesting to deposit the demand draft or bank guarantee for utilizing the banked energy which is actually not being scheduled or required to be utilized by DISCOM.

k) In the light of the provisions of the Act, 2003 and the regulations and rules set forth by the Commission, TSSPDCL is processing many open access transactions every month with a view to provide non-discriminatory open access to the consumers through Inter-State and Intra-State transmission or distribution network. For instance transactions detailed below are being accorded permissions for open access regularly through the network.

Open Access	**For the month of January, 2019**	
Details	**No.**	**Qty (MW)**
Intra-State		
Long term open access generators supplying power to captive consumers	12	34.3
Long term open access generators supplying power to third party consumers	26	121.2
Short term open access consumers availing power from third party generators	1	1.5
Total	**39**	**157.1**

l) The above generators are based on renewable sources and are having open access agreements with TSSPDCL and there are new generators who have applied for grid connectivity and few of the generators are in-house captive developers who shall approach TSDISCOMs for banking facility and deposition of such BG or DDs to all such developers by DISCOM shall impact the financial statistics of DISCOM which in fact impacts the ARR filed by DISCOM which finally results into huge burden on the low category consumers just for the sake of in-house captive generators who is actually injection very less energy to the DISCOM.

m) Any power procurement by DISCOM either for short term opening term

is purely mandated by the Ministry of Power guidelines and the injection of such infirm power by in-house captive generators without being scheduled properly is purchased by DISCOM as per applicable regulations issued by the Commission. But, deposition of bank guarantee and demand draft for such infirm power which is not required by DISCOM is only for the benefit of the developer and does not serve the purpose of deposition for such energy.

n) The clause of deposition of bank guarantee or demand draft by the DISCOM does not exist in standard wheeling and banking agreement for renewable sources of energy projects issued by Karnataka Electricity Regulatory Commission. Moreover, none of the other State ERCs have facilitated such provision to the solar power developers for deposition of demand draft or bank guarantee by DISCOM to the developer. Further, the open access agreement also precisely mandates the submission of demand draft and letter of credit by the developer to DISCOM towards the security deposit of wheeling charges and imbalance in supply and consumption of energy.

o) Also, the open access applicant shall deposit the demand draft and letter of credit for usage of the standby power from the DISCOM if the generator is unable to generate the power. Further, the supply is extended to the open access consumers during the non-generation period also, maintaining uninterrupted supply to the open access consumers which is not even planned to be availed from the DISCOM. But, in case of banked energy, the in-house captive generator does not act as a standby supply to DISCOM. Further, the banked energy remaining unutilized at the end of financial year shall only be purchased by DISCOM if and only if the developer is unable to utilize the banked energy completely. If the developer utilizes the energy, then supply or purchase of banked energy by the DISCOM does not arise at all.

p) The action of DISCOM being a distribution licensee which is obligated to supply power to their consumers, requirement to submit demand draft with the banking facility user, shall be a huge burden which does not serve the purpose of security mechanism as the excess injected energy as banked energy into the grid is actually an unaccountable and variant

which is disturbing the demand and supply management mechanism of DISCOM. Further, it is stated that the facility of banking is provided to the solar and wind generators only to encourage the renewable source of generation as their cost of generation was high approximately Rs. 6/- per unit during the initial years. But now the procurement cost from the solar and wind generators has come down drastically to the rate below Rs. 3/- per unit. Moreover, by the facilitation of banking to the solar and wind generators, the DISCOM have to back down their thermal generation when the consumers of the captive generators do not utilize their solar / wind energy and also DISCOM have to procure the energy from the market when the consumers of the captive generators schedule their energy when there is no generation from solar/wind generators. This is causing huge financial burden on DISCOM which will impact the regular consumer's tariff also.

q) This facility of providing the demand draft or bank guarantee for one month generation at average PLF is not there even for captive/open access consumers who have entered open access agreements with DISCOMs and any other state ERCs have directed to submit likewise so. Finally, sought the following reliefs –

> *"To accept the miscellaneous petition and amend the banking agreement for in-house captive generators by deleting the clause 5.14 from the banking agreement and approve the amended banking agreement as early as possible."*

2) Before the matter is undertaken for hearing the office of the Commission examined the petition. Though the petition is filed as miscellaneous petition following the format in the Conduct of Business Regulation, 2015, it was stated as a review petition. Accordingly, objections as to the maintainability were raised and following questions were raised by letter dated 19.02.2019.

a) The petition filed is with reference to communication of model banking agreement for in-house captive generators relating to bank guarantee to be provided to the generators. Explain under what provision the said decision is taken so as to attract powers of review by this Commission?

b) *Explain and state as to how a review petition is maintainable under section 94 (1) (f) of the Electricity Act, 2003 against a regulatory communication and notification?*

c) *How the data relating to general procurement and sale of energy is relevant to an issue relating to the provision made in respect of in-house captive generators for reviewing the communication issued by the Commission?*

d) *What is the relevance of the data relating to open access consumption and drawl in particular reference to in-house captive generators, who are not linked to open access and the proceedings of the Commission does not relate to general open access generation/consumption?*

e) *It is your case that the banked energy is completely reutilized leaving very minor quantity in the grid, which is very least, in that event, What is the reason that hampers the TSDISCOMs from providing commercial safety to an in-house captive generator?*

f) *How a review petition is maintainable in respect of a model agreement notified by the Commission after following due process as required under the Act, 2003?*

g) *How the review petition is maintainable when the original decision was communicated to the DISCOMs on 05.03.2018, as even assuming that review petition is maintainable, the period for filing the same being 75 days from the communication?*

h) *How the DISCOMs can calculate the review period from a letter sent by the Commission replying to a clarification sought by one of you and a non-party to the issue being the Transmission Corporation of Telangana Limited?*

i) *Is the review petition filed seeking review of the communication of the original model banking agreement on 05.03.2018 or clarification given in the letter of the Commission dated 18.12.2018?*

j) *The heading caption refers to the words 'In the matter of Review of decision dated 18.12.2018' coupled with reference to section 94 (1) (f) of the Electricity Act, 2003. The numbering style shown above the said reference does not reflect the said intention. Explain.*

k) The prayer in the petition states about amending the model agreement, more particularly clause relating to bank guarantee to be provided by the petitioners to in-house captive generators. The prayer does not constitute or amount to seeking a review. Explain.

l) Finally, the vakalat filed on behalf of the petitioner is not duly accepted by your counsel and not attested also.

3) In letter dated 17.05.2019, the petitioners replied as below:

a) On submission of draft banking agreement for in-house captive generators by TSSPDCL through application in the format of letter dated 22.07.2017 prayed the Commission to accept the submissions regarding clarification in respect of nodal agency, energy and demand settlement, banking charges and regarding approval of the draft banking agreement and to pass suitably orders/clarifications accordingly. The Commission calling for comments, objections and suggestions from all the stakeholders, interested persons and public at large in respect of the proposed draft agreement for providing banking services.

b) The Commission by virtue of issuing a public notice in the matter, treated the letter dated 22.07.2017 as petition.

c) TSSPDCL submitted its comments on the draft banking agreement of the Commission through letter dated 17.10.2017. The Commission by its letter dated 05.03.2018 communicated banking agreement for in-house captive generators with addition of clause 5.14, which was not there in the draft banking agreement which was placed in the website by the Commission.

d) The said clause 5.14 having been added in the final agreement communicated to TSSPDCL, which did not find place in the draft banking agreement placed in the website, TSSPDCL had no opportunity to place its comments in respect of the said clause, which clause is against the financial interest of TSSPDCL, an application in the form of review petition was filed before the Commission seeking amendment of banking agreement by deletion of clause 5.14.

e) Though the Commission did not pass a detailed order in regard to notification of banking agreement for in-house captive generators, but

the letter dated 05.03.2018 of the Commission notifying the said agreement in its website assumed the character of an order for the reasons mentioned above, which necessitated filing of the review petition.

f) The objections raised by the office of the Commission regarding maintainability of review petition and other procedural aspects go to the root of the matter treating the letter dated 22.07.2017 as an application and thereby calling objections, comments and suggestions from the stakeholders and public in general on draft banking agreement prepared by the Commission and then notifying on agreement in its website and also communicating the same to TSSPDCL vide letter dated 05.03.2018 making the notified banking agreement an order passed after due enquiry considering the comments and suggestions of the stakeholders.

g) The objections, comments and suggestions of the other stakeholders received by the Commission are not made available to TSSPDCL/the main stakeholders, on whose letter/application the Commission initiated enquiry by calling objections and comments from other stakeholders.

h) TSSPDCL sought the amendment of banking agreement by deletion of clause 5.14 is mainly on the ground that the said clause did not find place in the draft agreement on which objections, comments and suggestions were called for was incorporated afresh without giving an opportunity to TSSPDCL much less to the other stakeholders.

i) The rules of procedure cannot afford to defeat the right of a party before a Court of law or a Commission which is vested with the powers of Court. The full bench of the High Court of A.P. in P.Govinda Reddy and Others. Vs. Golla Obulamma on 14.10.1970, AIR 1971 AP 363 held as follows:

> *"It is a rule of procedure which cannot afford to deft or defeat the rule of substantive law. Thus, the Court has undoubted power to deal with the matter in controversy in relation to the rights and interests of the parties actually before it.*
>
> *The avowed object of the rules of procedure is to enable the Courts to do full justice between the parties according to their rights and liabilities as under law. They cannot militate against the very substantive law which they seek to give effect to. They can*

in no way affect an enforceable right already accrued to the parties under substantive law."

k) An application filed before the Court, Commission or competent authority cannot be rejected on the ground of quoting incorrect provision of law. The Hon'ble Supreme Court in Venture Global Engineering Vs. Satyam Computer Services Ltd. and Another on 11.08.2010 held as follows.

"We are of the opinion that in dealing with a prayer for amendment, Courts normally prefer substance to form and techniques and the interest of justice is one of most relevant considerations. Therefore, if a party is entitled to amend its pleadings, having regard to the justice of the case, the right of the party to amend cannot be defeated just because a wrong Section or a wrong provision has been quoted in the amendment petition. The approach of the High Court in this case, in rejecting the appellant's prayer for amendment, inter alia, on the ground that a wrong provision has been quoted in the amendment petition, is obviously a very hyper technical one. Mr. Salve rightly did not even try to defend the impugned order on the aforesaid technical ground adopted by the High Court."

k) In J.Kumaradasan Nair and Another Vs. Iric Sohan and Others on 12.02.2009 held as follows.

"It is also now a well-settled principle of law that mentioning of a wrong provision or non-mentioning of any provision of law would, by itself, be not sufficient to take away the jurisdiction of a court if it is otherwise vested in it in law. Wile (Sic., while) exercising its power, the court will merely consider whether it has the source to exercise such power or not. The court will not apply the beneficent provisions like Sections 5 and 14 of the Limitation Act in a pedantic manner. When the provisions are meant to apply and in fact found to be applicable to the facts and circumstances of a case, in our opinion, there is no reason as to why the court will refuse to apply the same only because a wrong provision has been mentioned. In a case of this nature, sub-section (2) of section 14 of the Limitation Act per se may not be applicable, but,

as indicated hereinbefore, the principles thereof would be applicable for the purpose of condonation of delay in terms of section 5 thereof."

l) In view of the above pronouncements of the Hon'ble Supreme Court and Hon'ble High Court an application filed by any party cannot be returned on the ground that it did not contain correct provision of law or it is not filed as per the procedure.

m) In regard to the objection (g) regarding delay in submission, TSSPDCL submitted its application in the format of letter dated 27.04.2018 seeking amendment to the banking agreement eliminating clause 5.14 on the ground that incorporation of such clause in the agreement shall have a huge impact and pressure from various solar power developers and will burden DISCOM financially. Since no action was taken on the said application dated 27.04.2018, an application in the form of letter dated 24.05.2018 was submitted requesting the Commission to accept the submissions of TSSPDCL and to pass suitable orders on deletion of clause 5.14 from banking agreement.

n) The Commission by letter dated 18.12.2018 passed orders to the effect that the model banking agreement has been approved by undertaking due consultation process of stakeholders and hence there is no necessity of relooking the same at that point of time. This order dated 18.12.2018 made TSSPDCL one of the main stakeholders to file the application for review of the order dated 05.03.2018 notifying model banking agreement.

o) Since the review petition under return having been filed on 16.02.2019 is in continuation of the applications dated 27.04.2018 and 24.05.2018 which were filed within time from the date of order dated 05.03.2018 and the same were disposed of by order dated 18.12.2018, becomes within time from the date of the last order dated 18.12.2018.

p) Notification of banking agreement for in-house captive generators without giving opportunity of being heard to TSSPDCL and others is against the principles of natural justice and hence the petitioner has to be given an opportunity of being heard by taking the petition under return on file.

q) The applicant/TSSPDCL request the Commission to treat the review petition under return as miscellaneous petition following the judgment of Hon'ble Supreme Court and Hon'ble High Court mentioned supra for doing substantive justice to the parties in the matter of notification of banking agreement for in-house captive generators.

r) The petitioner filed miscellaneous petition on behalf of TSSPDCL along with the revised vakalat and the fee. For convenience the returned review petition is filed a fresh as miscellaneous petition.

s) Finally, requested to admit the miscellaneous petition and register and heard regarding objections raised so far.

4) The petition has been taken up for hearing at SR stage as regards maintainability of the same. The Commission has heard the representative of the petitioner and perused the material on record. The submissions in nutshell are as below:

"… The representative of the petitioner stated that the petition is filed for amending the agreement to be entered by the licensees for providing banking of energy to the in – house captive generators. The issue arose out of regulation No.2 of 2017 being amendment to the regulation No.2 of 2006 relating to interim balancing and settlement code. While amending the banking regulation the Commission directed the licensees to propose suitable agreement to be entered by them to provide banking of energy for inhouse captive generator.

The DISCOMs proposed a draft agreement in August' 2017 and thereafter, the Commission initiated public consultation on draft agreement. After receiving the views of the stakeholders it has notified the approved draft agreement. The draft agreement notified in by the Commission in March' 2018 contained clause 5.14 which provided for facilitating the generator with cash, demand draft or bank guarantee towards one month of energy quantum to be provided by the DISCOMs to the generators till payment is made for the banked energy which has not been utilised. Such energy was required to be paid at the rate of pool cost if the generators fails to draw the said banked energy before end of the financial year.

The representative of the DISCOMs stated that such a condition is causing onerous burden on the DISCOMs as such they have written a letter to the

Commission and it was not entertained therefore the present petition is filed. The Commission sought to know as to why this petition should not be taken up for consideration under public hearing mode. The representative of the petitioner responded in the affirmative. …"

Commission's view

5) The Commission has examined thoroughly the submissions of the petitioner. The petitioner has sought amendments to the clause imposed in the model banking agreement for the in-house captive generator as extracted elsewhere in this order.

6) The Commission notices the background history. The model agreement for banking of energy for inhouse captive generator came to be approved by this Commission as a consequence of the Regulation issued by the Commission in Third Amendment to the Interim Balancing and Settlement Code, 2006 being the Regulation No. 1 of 2017. Even the concept of this agreement arose from an order passed by the Commission in O. P. No.94 of 2015 filed by M/s MLR Industries Limited, wherein the said industry had inhouse captive generation facility, but it was connected to the grid for banking of energy and it was not being facilitated with the utilisation of the banked energy.

7) At first instance on examination of the provision which is objectionable to TSSPDCL, appears to be prima facie a commercial arrangement made to protect the interest of the inhouse captive generators. This aspect does not affect any wheeling or banking agreement where no captive consumption is involved more particularly when the captive generating unit and captive consumption unit are not located in the same premises or stationed contiguously. Also, it is not attracted when the transmission or distribution system is used for wheeling energy either to third parties or captive consumption elsewhere other than the premises where the captive generating unit is located. Therefore, the request appears to be an afterthought arising out of misunderstanding of the concept or a thought of over protection of themselves.

8) It also appears that comparison is sought to be made in respect to Karnataka Electricity Regulatory Commission (KERC) orders and regulations. It is neither relevant nor appropriate as this model emerged out of situation where an industrial unit has established a solar generating plant within the premises where the industrial

unit is located. Even assuming that the said Commission's decision covers the situation, it is only of persuasive value and is not directory or mandatory for this Commission to follow the same.

9) The first point raised by the petitioners is that the clause inserted in the model agreement is done without notice for the first time. It is to be stated here that the model agreement has been put up for public notice and comments were sought from the stakeholders. After considering the views of the stakeholders, all the salient suggestions were considered to be incorporated in the final modal agreement. Consultation with stakeholders is prima facie to obtain best views and consider appropriate suggestions, which TSSPDCL was aware of. Therefore, the petitioners cannot now turn around and state that the model in draft stage did not provide for such clauses to comment upon.

10) The second point raised is that financially it is burdensome to TSSPDCL and there was likely instances of grid instability and quantum of energy being banked would affect their schedules. It is also stated that such consumers who are synchronised to the grid are huge in number. It also results in penalties and compensation due to backing down. It is surprising if at all it affects them so seriously, while the draft was notified, no such details, both technical and commercial, have not been placed before the Commission. Thus, there appears to be that they neither interested nor they intentionally delaying the scheme of inhouse captive consumption. Moreover, as stated earlier it does not affect or apply to the open access generators or captive consumers drawing power from elsewhere using the grid. It is also to be stated that TSSPDCL is aware of the demand for power of the inhouse captive consumer as also the capacity of inhouse captive power plant, therefore, cannot plead ignorance of the capacities and the volume energy that can possibly be injected into the grid for banking purposes.

11) The next point stated is that banking is a loss-making proposition. It is stated that the energy from solar open access is being banked and redelivered to the consumers but there is variation in utilisation and drawl. It has to be stated here that TSSPDCL is entitled banking charges in kind and whatever deliveries are made are subject to such charge. Moreover, the open access generator has to give schedules of generation in advance and the quantum of energy to be drawn by its consumers

under various other regulations. Linking up the said aspect with inhouse captive generator consumer is either misplaced or irrelevant. Thus, it appears that the reason set out now is not a correct proposition.

12) The next issue raised is that the existing consumers of open access and captive consumption are not having such a clause in the agreement for providing BG at pooled cost. The provision now made in the banking agreement is subtly distinct from the issue raised by TSSPDCL. The agreement is with reference to generator and not consumer. There might be open access generators and captive generators also, but their position with regard to the grid is quite different from that of inhouse captive consumer generator, as the generation and consumption take place in one premises without help of the grid and grid is used only for banking of energy that is left over after captive consumption. Either TSSPDCL is making unrealistic comparison with open access generators or seeking to place misunderstanding/misconception into an issue which has no bearing on TSSPDCL and in fact it earns them additional energy at no extra cost in the form of banking charges. Thus, this aspect is misplaced in the context of the agreement.

13) TSSPDCL sought to raise the issue of must run status of solar projects due to solar policy and backing down stable power in favour of unstable infirm power. It is their case that the same is affecting grid discipline resulting in compensation and penalty payments. The issue is absolutely unrelated point for consideration of the aspect brought herein. The additional energy generated and fed into the grid by inhouse captive generator would be consumed by itself as banked energy during the course of time. If at all they have any issue it is with respect to grid frequency, this can be effectively taken care of by informing the generator that it shall not generate excessively by conveying the same through the SLDC.

14) The point raised by TSSPDCL is that the energy left unutilized is only procured by TSSPDCL at average pooled purchase cost determined by the Commission which is the requirement of the other regulations, which has been inserted into the agreement also. TSSPDCL is greatly benefited at the time of delivery as in certain situations it helps in stabilising the frequency, though very minimally, at the same time the delivery of such energy would ensure that excess generation contracted power would get delivered which otherwise would have been the case of attracting penalties. Providing

for bank guarantees for banked energy is a safeguard provided to the generator towards such payment only and nothing more. Commercially this is a prudent arrangement between the parties that has been factored into the clauses in the agreement. Thus, there is no case for TSSPDCL for seeking amendment of the clause.

15) The point that is raised by TSSPDCL towards providing bank guarantee for one-month generator contracted capacity is nothing new but it is being provided to generators from whom power procurement is being made directly. As stated earlier, this provision is only a commercial arrangement between the parties to safeguard the interest of both the parties. Thus, the same cannot be found fault with by TSSPDCL.

16) The next point raised by TSSPDCL is that balance power left over is to be procured and paid by them after banked energy is utilized is unpredictable. Whereas, it depends on the facts and circumstances of each case in each year independently. Therefore, a commercial normative of one month has been taken into consideration for providing safeguard to the generator also in respect of the payment to be made to the generator. Nothing more can be read into the clause as is sought to be done by TSSPDCL.

17) The point is that there are many in-house captive and open access generators who will claim this benefit according to TSSPDCL. This aspect of existence of several generators ought to have been brought to the notice of the Commission at the time of consultative process undertaken on the draft agreement. Not bringing such information to the notice of the Commission cannot be a ground for change of clause in the model agreement for banking. At any rate, this incidence on TSSPDCL will be very minimal compared to the large number of consumers being served by them under various categories. TSSPDCL ought to have placed on the record the technical and commercial impact at the time of framing the model agreement for providing banking facility for the inhouse captive consumers. Further, the model agreement is not with reference to open access consumers or generators and it is limited to the consumer who has in-house captive generation, that is to say one who is producing energy and utilizing itself the same where the generating unit and the utilization is taking place where the businesses are located within one premises.

18) Further, TSSPDCL has also raised the point that the existing banking and

wheeling agreement does not provide for any security in the form of bank guarantee or demand draft. The Karnataka Electricity Regulatory Commission issued orders notifying the standard wheeling and banking agreement which only provided for letter of credit by the developer towards security deposit. It has to be stated here that where wheeling is involved and banking is availed, the model agreement notified by the Commission cannot be applied as it is not concerned with such a situation. Therefore, the drawing of comparison to the present situation does not arise.

19) The next issue raised by TSSPDCL is with regard to open access consumers and generators, who may require standby power in the event of failure of generator to generate or the consumer requiring more than the capacity allotted as such the generator or consumer are connected to TSSPDCL system. The model agreement does not envisage or is with reference to the said situation. As pointed out earlier, the model agreement is with reference to a consumer who has installed generation within its premises for its own consumption and such generation at times may be excessive which is pumped into the grid and the same is taken back at another time for its own requirement resulting in banking of energy for some time. Therefore, also the issue does not require reconsideration at this point of time.

20) As stated earlier, TSSPDCL is seeking to project a burden and liability for providing bank guarantees for in-house captive generators without having identified the issue or placing the details before the Commission with regard to technical and commercial aspects, which they have now done so in this petition. What has been factored into the model agreement is only commercial arrangement to benefit both TSSPDCL and the in-house captive generator. It cannot be said that such arrangement is onerous or atrocious if not illegal. It is also relevant to mention here that while supplying power to the consumers, TSSPDCL reviews the security deposit of the consumers annually and collect the variation as security against the consumption bills also. That being so, there is nothing wrong in proving similar facility to the generator also, which has been done by inserting the clause as notified by the Commission.

21) The replies to the objections of the office are neither appropriate nor relevant at this stage. However, the proposal to seek amendment of the model agreement stems from the fact that a single clause which is neither *ultra vires* the regulations nor

the Act, 2003, or constitutional law is sought to be deleted. What has been placed by way of clause is an equality of the parties who sign the agreement and it is commercially a prudent practice, that has been set in motion to safeguard the interest of generators who bank their energy. It is astonishing that when the petitioners are procuring power from generators under an agreement, they are supposed to open a letter of credit, whereas the present provision under issue needs a bank guarantee only and that too it is limited only for one month. Commercially and legally speaking there may not be anything wrong with the provision.

22) Moreover, there is subtle distinction between a case of open access consumer / generator who banks energy and the generator who consumes energy only for his own consumption and uses the grid only for supporting the requirement of banking the excess energy that is generated to be only drawn at later time. The petitioners appear to be either confused or are mixing up both situations as one. While the open access generator may schedule such the energy to his consumers, the inhouse captive generator has no such way let out except its own consumption, which may in most exceptional cases and situations remains unutilised and which is required to be procured by the petitioners. This situation arises mainly because there is limitation on the banking period as well as drawl period of banked energy, which has been placed at the behest of petitioners only.

23) Therefore, for all the above reasons, there is no requirement for amending the model agreement notified by the Commission for banking of energy insofar as in-house captive generator is concerned *suo moto* unless the said aspect is placed for consultation to the stakeholders.

24) Since the petitioners have sought amendment of the clause in the agreement, the Commission is of the view that this petition can be considered following due process of public consultation as envisaged in the Act, 2003 and regulations of the Commission. Towards this end, the office is directed to take this petition on the file of the Commission, number the same place a public notice on the website of the Commission along with paper publication duly inviting comments objections and suggestion from all the stakeholders.

25) The Commission makes it clear that the observations made herein above are

in the course of preliminary decision making only and the Commission is open to any other comments, objections and suggestions and these do constitute the final views of the Commission. All the comments, objections and suggestion will be taken into consideration while arriving at the final decision on the subject matter raised by TSSPDCL.

This order is corrected and signed on this the 2nd day of June, 2021.

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

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