TELANGANA STATE ELECTRICITY REGULATORY COMMISSION

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

O. P. No. 24 of 2021

Dated 16.08.2023

Present

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

Between:

Sri Prashanth Narayan G (PNG),
Old No.33 (New No.100),
Sannidhi Road, Basavanagudi,
Bangalore, Karnataka 560 ... Petitioner

AND

1. Southern Power Distribution Company of Telangana Ltd.,
   H. No.6-1-50, 5th Floor, Mint Compound,
   Hyderabad 500 063.

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

The petition came up for virtual hearing through video conference on 25.08.2021, 23.09.2021, 28.10.2021, 15.11.2021 and physical hearing on 20.12.2021, 03.01.2022, 31.01.2022, 11.04.2022, 25.04.2022, 02.05.2022, 18.08.2022 and 01.09.2022. The appearance of advocate / representative of the petitioner and respondents is as given below:

Date	Petitioner	Respondents
25.08.2021, 28.10.2021, 20.12.2021 03.01.2022, 31.01.2022 01.09.2022	Sri. Challa Gunaranjan, Counsel	Sri. Mohammad Bande Ali, Law Attaché

Date	Petitioner	Respondents
23.09.2021, 18.08.2022	Sri. Deepak Chowdary, Advocate	Sri. Mohammad Bande Ali, Law Attaché
25.04.2022, 02.05.2022	Sri. Deepak Chowdary, Advocate	Sri. M. Eshwardas, DE(IPC)
15.11.2021	Sri. M. Sridhar, Advocate representing Sri. Challa Gunaranjan, Counsel	Sri. Mohammad Bande Ali, Law Attaché
11.04.2022	Sri. N. Sai Phanidra Kumar, Advocate	Sri. Mohammad Bande Ali, Law Attaché

The petition having been heard through video conference on 25.08.2021, 23.09.2021, 28.10.2021, 15.11.2021 and through physical mode on 20.12.2021, 03.01.2022, 31.01.2022, 11.04.2022, 25.04.2022, 02.05.2022, 18.08.2022 and 01.09.2022. and having stood over for consideration to this day, the Commission passed the following:

ORDER

Sri. Prashanth Narayan G (petitioner) has filed a petition under Section 86 (1) (e) and (f) of the Electricity Act, 2003 (Act, 2003) read with Regulation No.2 of 2006 as amended by Regulation No.1 of 2017 under conduct of business regulation seeking to claim units fed into the grid from his 7 MW solar power project as banked energy or pay for the same. The averments of the petition are as below:

a. It is stated that the petitioner is a proprietary concern engaged in generation and sale of electricity and has established 7 MW solar power plant at Sirgapoor Village, Kalher Mandal, Medak District. The respondent No.1 is the distribution licensee operating within the area of the petitioner's project and its consumers. The 2nd respondent is the nodal agency appointed by the Commission under clause No.5 of Andhra Pradesh Electricity Regulatory Commission (Terms and Conditions of Open Access) regulation, 2005 (Regulation No. 2 of 2005) for the purpose of granting permissions for intra state open access.

b. It is stated that Section 42 (2) of the Act, 2003 mandates the introduction of open access in phased manner subject to conditions to be specified by the Regulatory Commissions. The erstwhile Commission for the State of Andhra Pradesh in exercise of powers conferred under Section 42(2) r/w 181(1) of the Act, 2003 had issued regulations on terms & conditions for allowing open access for supply of electricity to consumers through intra-state transmission and distribution networks, namely Regulation No.2 of 2005. The said regulation contained the guidelines for the licensees and open access users in the state

of Andhra Pradesh in the matter of availing open access by the users including generating companies and licensees.

c. It is stated that the Commission also issued the Andhra Pradesh Electricity Regulatory Commission (Interim Balancing and Settlement Code) regulation, 2006 (Regulation No.2 of 2006) on 11.06.2006 providing guidelines to the licensees and intra-state open access users in the state of Andhra Pradesh in the matters of scheduling of open access transactions, meter readings, energy accounting and settlements at entry points and exit points, banking conditions for mini-hydel and wind power projects etc. That the Government of Andhra Pradesh (GoAP) issued the solar power policy, 2012 (AP solar policy), vide G.O.Ms.No.39, dated 26.09.2012 and amendment to it vide G.O.Ms.No.44, dated 16.11.2012 to promote generation of solar power in the state. The objective of the solar policy is to encourage, develop and promote solar power generation in the state with a view to meet the growing demand for power in an environmentally and economically sustainable manner.

d. It is stated that above regulation was first amended vide Regulation No.1 of 2013, notified on 02.05.2013 and secondly vide Regulation No.2 of 2014 notified on 01.04.2014, to be in line with the solar power policy of the GoAP issued vide G.O.Ms.No.39, dated 26.9.2012 and as amended vide G.O.Ms.No.44, dated 16.11.2012. In the second amendment regulation, for the first time 'banking' has been defined, which included solar generation, in clause 2 (c) of the principal regulation. Further the appendix-3 also was substituted, which reads as under:

"Clause 2(c): (2) reads as under:' Banking' means a facility through which the unutilized portion of energy (underutilization or excess generation over and above scheduled wheeling) from any of the three renewable generation sources, namely wind, solar and min-hydel, during a billing month is kept in a separate account and such energy accrued shall be treated in accordance with the conditions laid down in Appendix-3 of the regulation.

Appendix-3

Clause 1: Banking allowed during all the 12 months.

Clause 2(d): states that the energy banked between the period from 1st April to end of the 31st January of each financial year which remains unutilized as on 31st January, shall be purchased by the Discoms, as per the wheeling schedule. The energy credited into banking during the month of February and March of each financial year will be carried forward to the month of April of the next financial year for the credit of the banking account for the next year.

Clause 2(f): The purchase price payable by the Discoms for unutilized banked energy will be equivalent to 50% of the Pooled Cost of Power Purchase, applicable for that financial year, as determined by the Commission under RPPO/REC regulation (1 of 2012). Discoms shall settle such purchase transactions with the generators by 31st March of each year."

e. It is stated that pursuant to A.P. State Reorganization Act, 2014 and the formation of the state of Telangana with effect from 02.06.2014. The Government of Telangana (GoTS) issued a new policy, Telangana Solar Power Policy, 2015 (solar policy 2015) with the object of developing solar park(s) with the necessary utility, infrastructure facilities to encourage developers to set up solar power projects in the state. It is pertinent to mention that under the newly formed state of Telangana, the AP solar power policy was continued to be effective until June, 2014 and for the projects commissioned during the stop gap of 01.07.2014 to 31.05.2015, the generators were given the option to adopt the solar power policy, 2015 and the petitioner has adopted the new policy.

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

"Clause 11(e) Power scheduling and Energy Banking:

For captive/third party sale, energy injected into the grid from date of synchronization to open access approval date will be considered as deemed energy banked.

The unutilized banked energy shall be considered as deemed purchase by DISCOM(s) at average pooled power purchase cost as determined by the TSERC for the year.

For Sale to DISCOMs, Energy injected into the grid from the date of synchronization to Commercial Operation Date (COD) will be purchased by the DISCOMs at the first year tariff of the project, as per the provisions of the PPA with DISCOMS".

g. It is stated that the Commission has once again amended Regulation No.2 of 2006, by way of 3rd Amendment and issued Telangana State Electricity Regulatory Commission (Interim Balancing and Settlement Code for Open Access Transactions) Third Amendment regulation, 2017 (Regulation No.1 of 2017), whereby appendix - 3 of the principal regulation was substituted and the relevant clauses 7 and 8 of Appendix-3 read as follows:

"APPENDIX-3

Terms & Conditions for Banking Facility allowed for Wind, Solar and Min-Hydel Power Generation:

For third party sale, the energy injected into the grid from the date of synchronization till the date prior to captive consumption or open access approval date will be considered as deemed banked energy. The unutilized banked energy shall be considered as deemed purchase by DISCOM(s) at the average pooled power purchase cost as determined by TSERC for the relevant year.

h. It is stated that the petitioner considering the incentives provided under the AP solar power policy had offered to setup a 10 MW solar power project at Sirgapoor village, Kalher mandal Medak district. In respect of the same, the petitioner on 18.02.2014 had submitted an application to then Central Power Distribution Company of Andhra Pradesh (APCPDCL) and sought permission for setting up of 10 MW solar power plant by paying the requisite fee, in turn vide letter dated 12.03.2014 has been granted permission for setting up of the solar power plant for sale of power to 3rd parties.

i. It is stated that the petitioner herein had initially completed installation of 3 MW out of the approved capacity of 10 MW and permission was accorded by Chief General Manager (Comml & RA) vide memo dated 19.06.2014 for synchronization of the same and accordingly was connected to grid on 29.06.2014. Subsequently the petitioner completed installation of 4 MW and permission was accorded by Chief General Manager (Comml & RA) vide memo dated 13.01.2015 for synchronization of the same and accordingly was connected to grid on 22.01.2015. The petitioner has invested an amount of about 52 crores, for setting up the above generation capacity, by pooling up the entire investment through equity. The petitioner's capacity of 3 MW which was synchronized on 29.06.2014 would fall under solar policy, 2012 and the remaining 4 MW synchronized on 22.01.2015 fall under solar policy, 2015.

j. It is stated that the petitioner after receiving commissioning certificate for 3 MW had initially entered into a PPA with its first consumer i.e., Dr. Reddy's Laboratories Private Limited for the capacity of 1 MW out of the 3 MW and in pursuant to the same had submitted an long terms open access (LTOA) application on 30.08.2014 to the 1st respondent for supply of power to its consumer. Whereas the respondents have failed to approve the petitioner's

application in time and the petitioner's consumer had terminated the PPA and thus was forced to search for new consumer/s. Subsequently it had entered into a PPA with its 2nd consumer i.e., M/s The Indian Hotels Company Limited, Unit Taj Falaknuma Palace (TAJ) on 28.02.2015 for the capacity of 1 MW out of 3 MW and resubmitted the application on 04.06.2015. In reply the 2nd respondent responded to the application on 19.09.2015, after an inordinate delay of over 108 days, rejecting it's application for the reason that 'it is not possible to limit generation capacity to 1 MW, when there is 7 MW generation as there is no separate metering arrangement available for two different capacities i.e., for 1 MW and 6.0 MW. Hence the power developer has to seek approval for 7 MW capacity to enable the EBC wing to settle the energy' and further directed it to submit a fresh application to the nodal agency based on the plant installed capacity along with sufficient consumer capacities for further processing of the open access application.

k. It is stated that, the petitioner herein had again entered into a PPA for supply of 6.0 MW power with its first consumer i.e., Dr. Reddy's Laboratories Limited on 27.10.2015 for the period 01.11.2015 to 31.03.2016. As 2nd respondent was not favoring to consider grant of LTOA for reasons best known and having regard to the financial constrains the petitioner was going through, it made an application on 07.10.2015 for short term open access (STOA). The 2nd respondent vide letter dated 26.11.2015 granted STOA approval for the period 01.11.2015 to 31.03.2016 for the entire 7 MW capacity, however, after a delay of 49 days which was in violation of clause 11 of the regulation.

l. It is stated that petitioner entered into extended PPA with existing customer, for the further period of 11 months i.e., from 01.04.2016 to 28.02.2017. The petitioner thereafter applied for STOA on 29.03.2016 and the 2nd respondent accorded approval on 02.04.2016. The petitioner yet again extended the PPA with its consumer for 7 months i.e., from 01.03.2017 to 30.09.2017 and sought STOA vide application dated 01.02.2017 and the 2nd respondent accorded the same on 30.03.2017 with a delay of 57 days, for the period 01.03.2017 to 30.9.2017. Though STOA was granted on 30.03.2017, considering the period from 01.03.2017, in effect the petitioner was deprived to schedule the power from 01.03.2017 to 29.03.2017. The power generated during all these days of non-scheduling on account of either delay in considering the STOA/LTOA

applications or the period from synchronization onwards, was just fed into grid, without the same being compensated.

m. It is stated that after the conclusion of the duration of the above said PPA's with its first consumer, the petitioner had entered into a fresh agreement with its 3rd consumer i.e., M/s Infosys Limited on 14.12.2017 for supply of 6.0 MW solar power generated from its plant through 33 kVA line, for a period of three years. As per the terms of the PPA, the date of commencement shall be from the date open access permission approved. The petitioner has by application dated 17.12.2017 sought STOA for supply of 6.0 MW to M/s Infosys Limited and 1 MW to Taj Hotels for the period 15.02.2018 to 14.01.2019. The Chief General Manager, IPC & RAC, TSSPDCL vide letter dated 16.10.2018 submitted feasibility report to 2nd respondent recommending grant of STOA for the period 15.02.2018 to 14.01.2019. Inspite of the same the 2nd respondent has neither granted approval for STOA nor rejected the same, despite favorable recommendation.

n. It is stated that as the duration for which STOA applied expired, without any response from the 2nd respondent, having no other alternative, the petitioner had submitted fresh application dated 31.01.2019 seeking LTOA for a period of two years, by paying requisite fee. It is pertinent to mention that till date the said application is still pending with the 2nd respondent. Be that as it may, during these periods from the synchronization of the 3 MW and 4 MW capacities till the approval of the STOA/LTOA, the power generated by it is continuously fed into the grid and lying in the bank.

o. It is stated that the petitioner sought for LTOA for supply of power to its consumer's and is eligible for same. Inspite of having the necessary technical feasibility to grant of LTOA to the grid, the respondents having utterly failed in performing their duties and which is a gross violation of the Act, 2003 and Regulation No.2 of 2005. It is further stated that the petitioner herein had filed a separate application before the Commission seeking directions for the grant of LTOA access.

p. It is stated that Section 70 of Indian Contract Act, 1872 specifically deals with the obligation of person enjoying benefit of non-gratuitous act and the same is iterated as follows:

"Where a person lawfully does anything for another person, or delivers anything to him, not intending to do so gratuitously, and such other person enjoys the benefit thereof, the latter is bound to make compensation to the former in respect of, or to restore, the thing so done or delivered".

In the circumstances based on the above principle, as the energy delivered by it from the date of synchronization till date to the grid has been utilized by respondent No.1 on account of inordinate delays in granting approvals of LTOA/STOA applications by the nodal agency, the petitioner is at a loss for not being compensated for the same.

q. It is stated that without prejudice to the above submission that the petitioner is entitled to claim for all those units which are delivered to grid and utilized by the respondent No.1 at the rate has to be determined by the Commission, even otherwise also the petitioner is entitled to claim for these units in terms of Regulation No.2 of 2006 as amended from time to time. The petitioner has generated energy and fed into the grid since the synchronization of the 3 MW and 4 MW capacities with effect from 29.06.2014 and 22.01.2015 respectively. As per the prevailing regulations in terms of appendix-3 to Regulation No.2 of 2006 as amended by Regulation No.2 of 2014, the energy fed into the grid is treated to be in bank and that the unutilized energy during the year shall be deemed to have been purchased by respondent No.1 at a tariff of 50% of pooled cost. Subsequently as this appendix-3 has been substituted by Regulation No.1 of 2017 on 22.03.2017, in terms of said substituted provisions the unutilized deemed banked energy is deemed to be purchased by respondent No.1 and shall pay tariff of average pooled power purchase cost. The statement of calculation of number of units fed into the grid and unutilized energy during the above period and the tariff payable thereon, for raising the present claim is filed as annexure. The petitioner has by letter dated 20.06.2017 requested respondent No.1 to pay for the unutilized deemed energy during the above period, as there is no response, the petitioner is constrained to file this present petition.

r. It is stated that the petitioner vide letters dt. 09.06.2020 had made a representation to the officials of the respondents, calling upon them to consider their representation seeking compensation for the units pumped to the grid from the date of synchronization of the plant. The officials of the respondent while

referring to the Regulation No.1 of 2017 rejected the petitioner claims by stating as follows:

> *"In this regard, it is to inform that the average pooled power purchase cost for the deemed Banked Energy i.e. energy injected into the grid from the date of Synchronization (DOS) till the date prior to open access approval date will be considered for the Wind/Solar/Mini Hydel Generators, if synchronized on or after 25th March, 2017 (As per Regulation No.1 of 2017 of TSERC).*
>
> *As the date of Synchronization of M/s Prashanth Narayan G solar power plant is 29.06.2014 (as per the records available with TSTRANSCO), the wheeled units to the grid from the Solar Power plant from DOS to date of agreement cannot be considered. Further the energy injected into the grid during the periods which were not covered in the agreement cannot be considered as banking, the details of which are furnished overleaf for information."*

s. It is stated that the petitioner has made a huge investment of about Rs.52 crores on the project believing and basing on the tall promises of the state, but however because of the actions of 2nd respondent – nodal agency coupled with the inherent administrative delays in allowing open access, it is bleeding and is finding very difficult even to pay salaries and maintain the project. But for the Governments assurances and promises and the various incentives offered under the policies, petitioner would not have been attracted to invest such huge investment within definitive returns. The petitioner is not able to even meet the day-to-day expenses leave about looking for any return of capital investment.

2. Therefore, the petitioner has sought the following prayer in the petition for consideration.

> *"To declare that the energy generated and fed into grid of the 1st respondent from the petitioner's 7 MW Solar Power Project during the period from the date of synchronization of respective capacities of 3 MW and 4 MW and grant of STOA/LTOA, excluding the period of open access allowed from 01.11.2015 to 31.03.2016, 01.04.2016 to 28.02.2017 and 31.03.2017 to 30.09.2017, till granting of LTOA, which is unutilized by petitioner is deemed to be purchased by 1st respondent and consequently direct the 1st respondent to pay for the said energy of 32603823 units at the tariff as may be decided by this Hon'ble Commission along with interest at the rate 12% per annum."*

3. The respondent No. 1 has filed its counter affidavit on 04.09.2021 as under:

a. It is stated that it is true that the petitioner approached the respondent No.1 as it then was for setting up of 10 MW solar power plant at Sirgapur village, Kalher mandal, Medak district, Telangana vide application dated 18.02.2014.

APCPDCL (now TSSPDCL) accorded technical feasibility for setting up of 10 MW solar power plant to petitioner at the above location for connectivity at 33 kV side of 33/11 kV Sirgapur SS on 33 kV Sirgapur feeder, emanating from 132/33 kV Narayankhed SS for supply of power from the solar power plant of the petitioner to the nearest SS point, as there existed sufficient capacity in the transmission/distribution network for wheeling the power from the solar power plant to the nearest substation point.

b. It is stated that the petitioner having completed the solar power project for the capacity of 3 MW, had submitted a LTOA application for transmission of 3 MW under third party sale on 30.08.2014 to the nodal agency/CE (Commercial & RAC) of STU. The nodal agency forwarded LTOA application of the petitioner to the respondent No.1 on 03.09.2014.

c. It is stated that as per clause 5.1 of regulations No.2 of 2005 (Terms and Conditions of Open Access), the Nodal Agency for processing the LTOA applications is state transmission utility (STU). The relevant clause is reproduced below:-

*"**5. Nodal Agency:***

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

d. It is stated that the contention of the petitioner that the respondents failed to approve the application of the petitioner in time is incorrect because a lengthy and time consuming study has to be taken up for according technical feasibility. The stages to be undergone for such study are submitted for the convenience of the Commission. It is stated that on receipt of the request from the nodal agency, technical feasibility study for processing the LTOA application of the petitioner was taken up. It is stated that an open access application shall have to be processed duly verifying the feasibility at various stages viz., line/feeder capacity, transmission and distribution capacity, substation feasibility, availability of metering provisions as per CEA norms and Commission preceding orders at the proposed consumer end to avail open access power, compatibility check of the installed ABT meters with the EBC software etc. The process also involves verification of design margins and margins available for spare transmission or distribution network where information of the whole transmission or distribution network is to be gathered at various levels.

e. It is stated that while the matter stood thus, the petitioner submitted a revised LTOA application for transmission of 1 MW power out of total installed capacity of 7 MW under third party sale on 04.06.2015 and the same was forwarded to the respondent No.1 on 05.06.2015 for furnishing the technical feasibility and the respondent No.1 has furnished the technical feasibility on 31.08.2015 to the nodal agency. But the LTOA application was rejected by the nodal agency vide letter dated 19.09.2015 stating that "*it is not possible to limit generation capacity 1 MW, when there is 7 MW generation as there is no separate metering arrangement available for two different capacities i.e., for 1 MW and 6 MW, Hence the power developer has to seek approval for 7 MW capacity to enable the EBC wing to settle the energy*" and as such the petitioner was advised to submit a fresh application to the nodal agency for the total installed capacity of the plant along with sufficient consumer capacities for further processing.

f. It is stated that, the petitioner has submitted STOA application dated 07.10.2015 to the nodal agency/SLDC and the same was received by the respondent No.1 for examination of the technical feasibility on 29.10.2015. After taking up the feasibility study, technical feasibility report was communicated to the nodal agency by the respondent No.1 on 10.11.2015. Consequently, TSSLDC accorded approval for STOA to the petitioner for transmission of 7 MW on 26.11.2015 for the period from 26.11.2015 to 31.03.2016. STOA agreement was concluded accordingly.

g. It is stated that as per clause 5.2 of regulation 2 of 2005 (Terms and Conditions of Open Access), nodal agency for processing the STOA application is State Load Dispatch Center (SLDC). The relevant clause is reproduced below:

> *"**5. Nodal Agency:***
>
> ***5.2*** *For short-term open access transactions, the Nodal Agency for receiving and processing applications shall be the State Load Dispatch Centre (SLDC). The SLDC shall, however, allow short-term open access transactions only after consulting the concerned transmission and/or distribution licensee(s) whose network(s) would be used for such transactions."*

h. It is stated that the Nodal Agency; forwarded the STOA application dated 01.02.2017 of the petitioner to the respondent No.1 on 04.02.2017 for the period from 01.03.2017 to 30.09.2017. The respondent No.1 issued technical feasibility on 28.03.2017. Consequently, STOA approval was accorded on 30.03.2017 for the period from 31.03.2017 to 30.09.2017.

i. It is stated that as per clause 11.3 of the regulation, the processing time for intra-State STOA application of period below 1 year is 30 days. The relevant clause is herewith reproduced below:

"11.3 The SLDC shall process the applications for Short-Term open access within the following time limits:

Duration for which open access is required	***Maximum processing time***
Up to one day	*12 hours*
Up to one week	*Two days*
Up to one month	*Seven days*
Up to one year	*Thirty days"*

In that view of the matter, the contention of the petitioner that a delay of 49 days & 57 days has occurred becomes incorrect and hence untenable.

j. It is true that the petitioner submitted STOA application dated 27.12.2017 under third party sale for the period from 15.02.2018 to 14.01.2019 for supply of 7 MW power to one of its existing consumers i.e., M/s The India Hotels Company Limited (HDS-681) and adding two new consumers i.e., M/s Infosys Limited (HBG-1934 at Habsiguda) and M/s Infosys Limited (CBC-946 at Cybercity) and removing one of its existing consumers i.e., M/s Dr. Reddy's Laboratories (MCL-713). The said application was forwarded to the respondent No.1 on 19.02.2018 for technical clearance. In view of the change in exit point for the above said STOA application, detailed feasibility study was initiated by the respondent No.1 and after completion of the study the respondent No.1 communicated technical feasibility to Nodal Agency on 16.10.2018. It is learnt that SLDC referred the matter to Telangana State Power Coordination Committee (TSPCC) since there was change in the consumers and that TSPCC on consideration of the matter rejected the request of the petitioner for Intra State STOA under 3rd party.

k. It is stated that petitioner has applied for LTOA application dated 31.01.2019 to the nodal agency for a period of two years i.e., from 20.02.2019 to 19.02.2021. The same was received by the respondent No.1 on 06.02.2019 for furnishing technical feasibility. Subsequently, the respondent No.1 initiated the feasibility study for processing the LTOA application of the petitioner. While the said LTOA application was the in process, the petitioner placed a revised LTOA application dated 29.07.2020 removing aforesaid two (2) exit points of M/s Infosys Limited and adding a new exit point of M/s Dr. Reddy's Laboratories

and the same was received by this respondent No.1 on 04.08.2020 for furnishing technical feasibility. Further, the respondent No.1 initiated the feasibility study for processing the revised LTOA application with change in exit points of the petitioner.

l. It is stated that as a prerequisite condition for processing the LTOA application, the developer is required to carry out the annual power quality testing of its solar power plant as per CEA (Technical Standards for connectivity to the Grid) (Amendment) regulation, 2012; NABL testing of the meters; periodic testing of all interface meters and its metering equipment at a NABL accredited laboratory which shall be tested at least once in five years as per Central Electricity Authority (Installation and Operation of Meters) regulations, 2006. But, the developer did not turn up to fulfil the said prerequisite condition and thereby failed to submit the same to the respondent No.1. Later, on receipt of the power quality test reports, technical feasibility reports, and relevant test reports, the same were submitted to the nodal agency on 16.08.2021 for processing the LTOA of the petitioner.

m. It is stated that the contention of the petitioner that the energy fed into the grid by the petitioner has to be treated as banked energy and such unutilized energy shall be deemed to have been purchased by this respondent No.1 at tariff of 50% of pooled cost is incorrect for the reason that there was no agreement during the excluded period reflected in the prayer.

n. It is stated that as per clause 12.1 of the Regulation No.2 of 2006 facility of banking of energy was available to wind and mini hydel projects only. The said clause is extracted below:-

> *"No generators other than the Wind and Mini Hydel power generators shall be allowed the facility of banking the electricity generated by them".*

o. It is stated that banking facility was later extended to the solar developers vide Regulation No.1 of 2013 with effect from 02.05.2013 (1st amendment to Regulation No.2 of 2006).

p. It is stated that as per Regulation No.2 of 2014 (2nd amendment to regulation 2 of 2006) which came into effect from 01.04.2014, banking facility can be availed by the solar power developers subject to certain terms & conditions for drawl of banked energy. As per the said condition the developers are required to communicate the block wise drawl from banked energy and the same shall be

wheeled to their consumer accordingly. For that matter solar power developer should have open access agreement with the DISCOM. Regulation No.2 of 2014 also clearly postulates that the unutilized energy which remained with the grid has to be purchased by the DISCOM at 50% of average pooled power purchase cost (APPC). Regulation No.2 of 2014 defines the word 'banking'. The same is extracted below:

"c(2) "Banking" means a facility through which the unutilized portion of energy (underutilization or excess generation over and above scheduled wheeling) from any of the three renewable generation sources namely Wind, Solar and Mini-hydel, during a billing month is kept in a separate account and such energy accrued shall be treated in accordance with the conditions laid down in Appendix-3 of the regulation."

q. It is stated that in the present case open access agreement did not exists between the petitioner and DISCOM during the relevant period and hence the petitioner is not entitled to claim that the energy fed into the grid has to be treated as banked energy and such unutilized energy shall be deemed to have been purchased by this respondent No.1 at Tariff of 50% of pooled cost.

r. It is stated that thus the solar energy which remained with the grid of this respondent No.1 due to under drawing of energy by a scheduled consumer was considered to be inadvertent energy prior to the issuance of Regulation No.2 of 2014. As per clause 10.3 of the Regulation No.2 of 2006 the solar generator is not entitled to claim any amount in respect of the injection of such inadvertent energy into the grid. Clause 10.3 and Clause 12.1 of the Regulation No.2 of 2006 are extracted below for ready reference:

"The under drawals by scheduled consumers and or OA consumers shall have impact on the Generator and on the DISCOM in whose area of supply the Exit point is located. Such under drawals at Exit point shall be treated as inadvertent energy supplied by the Generator to the DISCOM(s) and shall not be paid for by the DISCOM."

s. It is stated that AP Solar Power Policy, 2012 which came into effect from 26.09.2012, did not facilitate the provision of deemed banking of energy.

t. It is stated that the petitioner is very much aware that the provision of deemed banked energy was made available through Regulation No.1 of 2017 only (3rd amendment to Regulation No.2 of 2006).

u. It is stated that after the issuance of Telangana Solar Power Policy, 2015 which came into effect from 01.06.2015, introduced the concept of deemed banked

energy vide clause 11(e) of said policy as a promotional measure. The same is extracted below:

> *"For captive/third party sale, energy injected into the grid from date of synchronization to open access approval date will be considered as deemed energy banked.*
> *The purchase price payable by the DISCOMs for unutilized banked energy will be equivalent to 50% of the Pooled Cost of Power Purchase, applicable for that financial year, as determined by the Commission under RPPO/REC regulation (1 of 2012)."*

v. It is further stated that as per the powers vested under Section 108 of the Act, 2003, the State Commission shall be guided by such directions in the matters of policy involving public interest as the State Government may give it in writing to the state Commission. The Commission on receipt of such written directions regarding any policy from the Government, after conducting public hearing and after obtaining the comments from the stakeholders adopts the recommendation of the Government and directs the licensee to implement the same.

w. It is stated that any policy issued by the State Government has to be adopted by the DISCOM as per the terms & conditions or regulations formulated by the Appropriate Commission i.e., in the state level it is the State ERC. No specific orders/regulations are issued by the Commission relating to the deemed banking facility. Hence, the solar policy cannot be adopted by TSSPDCL without any specific directions or orders from the Commission. Therefore, respondent No.1 has acted as per the existing regulation which doesn't speak about deemed banked energy for the period from the date of synchronization to the date of open access approval and during non-agreement period. The provision of banking facility for the energy injected into the grid during non-agreement periods, shall reflect and impact the sales of respondent No.1 and the same would directly reflect in the true ups of respondent No.1 ARRs and shall finally burden the consumers of respondent No.1.

x. It is further stated that the Regulation No.2 of 2014 also detailed that the unutilized banked energy shall be purchased by DISCOM at 50% pooled power purchase cost in case of feeding of energy to the grid subject to the terms & conditions of Regulation No.2 of 2014. At the risk of reiteration, it is stated that the petitioner did not comply the requisite terms & conditions and hence the energy fed into the grid during the relevant period cannot be treated as banked

energy or deemed banked energy. Consequently, the petitioner cannot contend and claim that such energy is purchased by the respondent No.1.

y. It is further stated that the Commission has issued Regulation No.1 of 2017 i.e., Third Amendment to (Interim Balancing and Settlement Code for Open Access Transactions) regulation 2 of 2006 on 25.03.2017, wherein, the Commission has amended the Appendix-3 of Principal regulation and the relevant banking clauses of the said amendment are reproduced below:

"6. For captive generator, the energy injected into the grid from date of synchronization shall be considered as deemed banked energy.

7. For third party sale, the energy injected into the grid from the date of synchronization till the date prior to captive consumption to open access approval date will be considered as deemed banked energy.

8. The unutilized banked energy shall be considered as deemed purchase by DISCOM(s) at the average pooled power purchase cost as determined by TSERC for the relevant year."

It thus become very much clear that the concept of deemed banked energy comes into effect from the date of publication of Regulation No.1 of 2017 in the Gazette of State of Telangana which regulation was published in the Telangana Gazette on 25.03.2017. Since the solar power plant of the petitioner was synchronized on 29.06.2014 for 3 MW and additional 4 MW on 22.01.2015, prior to the effective date of Regulation No.1 of 2017 i.e., 25.03.2017 the petitioner is not entitled to claim that the energy fed into the grid during that period has to be treated as deemed banked energy.

z. It is stated that the intention of the 3rd amendment by way of Regulation No.1 of 2017 is mainly 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.

aa. It is stated that in view of the categorical clauses of Regulation No.1 of 2017 it becomes very much clear that the energy injected into the grid without any agreement prior to the effective date of Regulation No.1 of 2017 from the date of synchronization has to be treated as inadvertent energy as per clause 10.3 of the regulation 2 of 2006.

ab. It is stated that in the present case the petitioner injected/fed the energy without any open access agreement after 25.03.2017 i.e., the effective date of regulation 1 of 2017 and hence the petitioner is not entitled to contend that such energy shall be treated as deemed banked energy or banked energy and hence

cannot claim that such energy shall be considered as deemed purchased by this respondent No.1.

4. The respondent No. 2 has filed its counter affidavit on 07.09.2021 and stated as under:

a. It is stated that the petitioner filed the petition praying the Commission to declare that the energy generated and fed into the grid of respondent No.1 from the petitioner's 7 MW solar power project during the period from the date of synchronization of respective capacities of 3 MW and 4 MW and grant of STOA/LTOA, excluding the period of open access allowed from 01.11.2015 to 31.03.2016, 01.04.2016 to 28.02.2017 and 31.03.2017 to 30.09.2017, till granting of LTOA, which is unutilized by petitioner is deemed to have been purchased by respondent No.1 and to consequently direct the respondent No.1 to pay for the said energy of 3,38,00,913 units at the tariff as may be decided by the Commission along with interest @ 12% per annum.

b. It is stated that initially the petitioner had submitted a LTOA application for transmission of 3 MW under third party sale on 30.08.2014. The LTOA application of the petitioner was forwarded to the respondent No.1 on 03.09.2014 for furnishing the technical feasibility and the same was not received from respondent No.1.

c. It is stated that meanwhile, the petitioner has submitted a LTOA application for transmission of 1 MW power out of total installed capacity of 7 MW under third party sale on 04.06.2015 and the same was forwarded to the respondent No.1 on 05.06.2015 for furnishing the technical feasibility.

d. It is stated that the respondent No.1 has furnished the technical feasibility on 31.08.2015. During the processing of the LTOA application of the petitioner, the SLDC being the authority for carrying out the accounting and settlement of energy for the open access transactions vide clause 7 of the Regulation No.2 of 2006, has remarked as follows.

> *"As per amended Clause 10 and sub clause 10.5 of regulation 1 of 2013 (principal regulation 2 of 2006)*
> *In case of wind, mini-hydel and solar OA generators the actual generation during the month shall be deemed as scheduled energy. For the purpose of settlement in respect of scheduled/OA consumer availing supply from these OA generators, the actual generation during the*

month will be apportioned for each time block of the month and deviations reckoned accordingly.
Further, the existing meters at the entry point record the entire 7 MW power generation.
Hence, it is not possible to limit the generation capacity to 1 MW when there is 7 MW generation as there is no separate metering arrangement available for the two different capacities i.e., for 1 MW and 7 MW."

e. It is stated that therefore, the petitioner was informed vide letter dated 19.09.2015 that their LTOA application for 1 MW cannot be accepted and advised to submit a fresh application to the nodal agency for plant installed capacity along with sufficient consumer capacities for further processing.

f. It is stated that the petitioner has applied for STOA to TSSLDC i.e., nodal agency for STOA transactions. The technical feasibility was received from respondent No.1 on 10.11.2015 and the STOA approval was accorded to the petitioner for transmission of 7 MW on 26.11.2015 for the period from 01.11.2015 to 31.03.2016. The delay is due to processing of new STOA application as the petitioner has applied for the first time under STOA.

g. It is stated that the STOA approval was accorded after a delay of 57 days, it is submitted that the respondent No.1 has issued the technical feasibility on 28.03.2017 and the STOA approval was granted on 30.03.2017.

h. It is stated that the petitioner has submitted a STOA application under third party sale for the period from 15.02.2018 to 14.01.2019 for supply of 7 MW from their solar power plant to one existing consumer i.e., M/s The India Hotels Company Limited (HDS-681) and two new consumers i.e., M/s Infosys Limited (HBG-1934 and CBC-946).

i. It is stated that the application of the petitioner was forwarded to respondent No.1 for technical clearance and respondent No.1 has issued technical feasibility on 16.10.2018. In view of change in consumers, the issue was referred to TSPCC for issuing intra-State STOA to the petitioner and the committee on consideration has rejected the request of the petitioner for Intra STOA under third party.

j. It is stated that as per clause 10.6 of the Regulation No.2 of 2005, LTOA sought can be allowed in case the system studies conducted in consultation with other agencies involved including other licensees, determine that LTOA sought can be allowed without further system-strengthening, it has to intimate the applicant within 30 days. Clause 10.6 of the regulation 2 of 2005 reads thus:

"Based on system studies conducted in consultation with other agencies involved including other Licensees, if it is determined that Long-Term open access sought can be allowed without further system-strengthening, the Nodal Agency shall, within 30 days of closure of a window, intimate the applicant(s) of the same."

k. It is stated that the LTOA application in complete shape was received from the petitioner on 05.02.2019 but not on 31.01.2019 as averred by the petitioner. The LTOA application of the petitioner was forwarded to the respondent No.1 on 06.02.2019 for furnishing the technical feasibility and the same is pending with respondent No.1. Meanwhile, the petitioner has submitted a revised LTOA application dated 29.07.2020 by removing 2 Nos. exit points of M/s Infosys Limited and adding a new exit point of M/s Dr. Reddy's Laboratories. The revised LTOA application of the petitioner was again forwarded to the respondent No.1 on 04.08.2020 for furnishing the technical feasibility.

l. It is stated that respondent No.1 has furnished the technical feasibility report on 16.08.2021 and the LTOA approval was issued to the petitioner on 23.08.2021.

m. It is stated that, the licensee cannot adopt any policy issued by the State Government without the formulation of terms & conditions or regulations by the Appropriate Commission i.e., in the State level it is the State ERC. Until the issuance of regulation 1 of 2017 by TSERC, no specific orders/regulations were issued by the Commission for affecting the banking facility during the non-agreement period. Hence, the Telangana Solar Power Policy 2015 cannot be adopted by the respondents without any specific directions or orders from the Commission.

n. It is further stated that as per the mandate of the TSERC Regulation No.1 of 2017 shall come into force from the date of its publication in the Gazette for the State of Telangana and the regulation was published in the Telangana Gazette on 25.03.2017. As the solar plant of the petitioner was synchronized on 29.06.2014 for 3 MW and total 7 MW on 22.01.2015 i.e., much before the effective date of Regulation No.1 of 2017, the petitioner is not entitled for deemed banking of energy facility from the date of synchronization to the date of agreement. Further, the energy injected into the grid during the non-agreement periods cannot be considered as banking.

o. It is stated that therefore, the action of the respondent No.2 is perfectly legal and valid.

5. The petitioner has filed rejoinder on 30.04.2022 and prays the Commission to allow the petition as prayed for. The averments of the rejoinder petition are as below:

a. It is stated that admittedly the 1st LTOA application dated 30.08.2014 was not acted upon and mere statement that the process of granting open access has multiple stages and requires to pass through various procedures is neither here nor there, in as much as, as per the Regulation No.2 of 2005, the nodal agency is statutorily obligated to complete the process within 30 days in case of LTOA. No reasons have been assigned as to why application dated 30.08.2014 was neither rejected nor returned. Since the respondent No.2 has not been active the 1st LTOA, the petitioner due to change in the consumer, a revised LTOA was applied on 04.05.2015.

b. It is stated that even the 2nd LTOA application was not processed as per the timelines specified in the Regulation No.2 of 2005 and with a delay of about '108' days, respondent No.2 rejected the application by letter dated 19.09.2015, despite the respondent No.1 furnishing technical feasibility on 31.08.2015. The reason for rejection is also not in accordance with Regulation No.2 of 2005. Even with respect to 1st STOA application dated 07.10.2015, the approval was granted by 2nd respondent on 26.11.2015, with a delay of 20 days, which is in violation of timelines as specified in the regulation. Similarly, the 3rd STOA application dated 01.02.2017 was approved only on 30.03.2017, which is again with a delay of 27 days, which is unexplained. The respondent No.2 is consistently deviating the timelines fixed under the regulation, which is very much controllable and well within their hands.

c. It is stated that the 4th STOA application dated 17.12.2017, seeking open access from 15.02.2018 to 14.01.2019 was never considered within the timelines provided under Regulation No.2 of 2005. Strangely it is averred that TSSLDC, inspite of receiving technical feasibility of respondent No.1 on 16.10.2018, which itself is highly belated, had referred the matter to TSPCC, which is not even a statutory body. Under Regulation No.2 of 2005, it TSSLDC in conjunction with the respondent No.1, which is entrusted with the function of considering the STOA application and TSPCC has no role to play. It is also stated that TSPCC has rejected the petitioner's application which is again without jurisdiction. Firstly, TSPCC has no locus in consideration of STOA, secondly when application is made to TSSLDC, it is TSSLDC, which is

supposed to deal with the same as per Regulation No.2 of 2005, and admittedly TSSLDC has not passed any orders accepting or rejecting the said STOA. All the delay in this process is clearly attributable to the respondents, who during all this time were enjoying the benefits of the power injected into the grid without any demur.

d. It is stated that yet again, the 2nd LTOA application dated 31.01.2019, applied for period of two years from 20.02.2019 to 19.02.2021, has not been processed within time in terms of clause 10.5 of the Regulation No.2 of 2005, which mandates that the LTOA application shall be processed with 30 days after closure of the month. In fact, clause 10.7 stipulates that in case the application cannot be considered for want of system study and strengthening, the respondent No.2 should have notified the same within 30 days, which was never done. Thereafter, due to change of customer, the petitioner had submitted 3rd LTOA dated 29.07.2020 and even this application came to be approved on 29.09.2021 only after filing the O.P.No.23 of 2021 before the Commission. There is a delay of '419' days in granting the approval. The respondents are not correct in stating that the processing of LTOA was delayed on account of petitioner not complying with the requirements of Central Electricity Authority (Technical Standards for Connectivity to the Grid), (Amendment) regulation, 2012 and in fact, it was never put on notice or was asked for such compliance for the purpose of processing the said LTOA application. At any rate the consideration for grant of LTOA would be strictly in accordance with Regulation No.2 of 2005, which was never deviated from by the petitioner.

e. It is stated that it is incorrect to state that there should be a valid agreement either LTOA or STOA for the purpose of claiming the unutilized banked energy as deemed purchase, vide Regulation No.1 of 2017, under clause No.7 of Appendix-III, the banking facility was provided to all third-party generators from the date of synchronization till the date of open access and unutilized banked energy the petitioner is entitled to pooled purchase cost. Further, under clause 11(e) of the Telangana Solar Power Policy 2015, the petitioner is entitled to pooled purchase cost as envisaged under the policy. Further, any delay in approvals of the LTOA/STOA is attributable to the inaction of the respondents, therefore, cannot be held against the petitioner. Further, as the respondents

being entities of the state, they are bound by the policy directions issued by the State Government. Further, the Commission in O.P.No.94 of 2015 had taken judicial note of the fact that the Telangana Solar Power Policy 2015 issued by the GoTS was communicated to the DISCOMs for implementation with a copy to the Commission.

f. It is stated that without prejudice to the above, further, in respect of incentives granted under the policy by the State Government, the Commission has issued orders extending the incentives in respect of wheeling charges and cross subsidy surcharge. So therefore, if any clarity was sought to be in respect of banking facility provided under the policy and the relevant regulation, it was the duty of the respondents to seek clarification on the same from the Commission but for which it cannot be held against the petitioner.

g. It is stated that besides as the respondents had delayed the process of approving LTOA/STOA, they cannot now contend that the energy received by them and lying in the bank to be treated as inadvertent power. Further, the contention of respondents that as per clause 10.3 of Regulation No.2 of 2006, the power injected would be treated as inadvertent energy is also misconceived. The said Regulation No.2 of 2006 and in particularly clause No.10.3 and 12.1 have no application to the petitioner and in fact all the energy injected by the petitioner shall deemed to be scheduled energy as per the 2nd proviso to clause 4 of Regulation No.2 of 2006.

h. It is stated that the respondents placing reliance on Regulation No.1 of 2017 to contend that the energy injected from the date of synchronization into the grid shall be considered as deemed banked energy which is undisputed. In the case on hand the claim of the petitioner is with reference to the energy, which is banked during the period of consideration of STOA/LTOA and not that of the energy fed into the grid after synchronization and before approval of LTOA/STOA. The respondents have all the duty to consider the LTOA/STOA within the timelines specified in the regulation and any delay attributable to them cannot be detrimental to the petitioner. In fact, the petitioner is entitled to benefit of clause 8 r/w Appendix-III either under Regulation No.2 of 2014 or Regulation No.2 of 2017, which enables banking facility to the petitioner and recognizes the right of claim for the unutilized energy in the manner provided therein.

6. The respondent No. 1 has filed reply to rejoinder of the petitioner on 23.05.2022 as below:

a. It is stated that the contention of the petitioner that "*the process of granting open access has multiple stages and requires to pass through various procedures is neither here nor there*" is unsustainable in view of clauses 6 and 14 of APERC Regulation No.2 of 2005, which clauses clearly specify the criteria for allowing open access and the same are reiterated as below:

> *"6.* ***Criteria for allowing open access to transmission and/or distribution systems***
>
> *6.1 The long-term open access shall be allowed in accordance with the transmission planning criterion and distribution planning criterion stipulated in the State Grid Code and/or the Distribution Code and/or Indian Electricity Rules as the case may be.*
>
> *… …*
>
> *14.* ***Procedure for determining the available capacity of transmission and distribution (T&D) networks***
>
> *14.1 The licensees shall carry out load flow studies, system impact studies, etc., taking into account the existing capacity commitments and future projections of capacity requirements for open access users, load growth as projected by distribution licensees, growth of generation, network topology and consumption pattern, network investments, Repairs and Maintenance programs, etc. to determine the capacity available to accommodate open access transactions. While so determining the capacity available for open access transactions, capacity commitments to all existing users of the network and the system reliability margin shall be deducted."*

b. It is stated that thus, the technical feasibility study for granting open access approval is a lengthy and time consuming. The stages to be undergone for such study are submitted for the convenience of the Commission. It is stated that on receipt of the request from the nodal agency, technical feasibility study for processing the LTOA application of the petitioner was taken up. An open access application shall have to be processed duly verifying the feasibility at various stages viz., line/feeder capacity, transmission and distribution capacity, substation feasibility, availability of metering provisions as per CEA norms and TSERC regulations at the proposed consumer end to avail open access power, Compatibility check of the installed ABT meters with the EBC software etc. The process also involves verification of design margins and margins available for spare transmission or distribution network where information of the whole transmission or distribution network is to be gathered at various levels.

c. It is stated that while the matter stood thus, the petitioner submitted a revised LTOA application for transmission of 1 MW power out of total installed capacity of 7 MW under third party sale on 04.06.2015 and the same was forwarded to this respondent No.1 on 05.06.2015 for furnishing the technical feasibility and this respondent No.1 has furnished the technical feasibility on 31.08.2015 to the nodal agency. But the LTOA application was rejected by the nodal agency vide letter dated 19.09.2015 stating that "*it is not possible to limit generation capacity 1 MW, when there is 7 MW generation as there is no separate metering arrangement available for two different capacities i.e., for 1 MW and 6.0 MW, Hence the power developer has to seek approval for 7 MW capacity to enable the EBC wing to settle the energy*" and as such the petitioner was advised to submit a fresh application to the nodal agency for the total installed capacity of the plant along with sufficient consumer capacities for further processing.

d. It is stated that the petitioner has submitted STOA application dated 07.10.2015 to the nodal agency/SLDC and the same was received by this respondent No.1 for examination of the technical feasibility on 29.10.2015. After taking up the feasibility study, technical feasibility report was communicated to the nodal agency by the respondent No.1 on 10.11.2015. Consequently, TSSLDC accorded approval for STOA to the petitioner for transmission of 7 MW on 26.11.2015 for the period from 26.11.2015 to 31.03.2016. STOA agreement was concluded accordingly.

e. It is stated that TSSLDC forwarded the STOA application dated 01.02.2017 of the petitioner to this respondent No.1 on 04.02.2017 for the period from 01.03.2017 to 30.09.2017. This respondent No.1 issued technical feasibility on 28.03.2017. Consequently, STOA approval was accorded on 30.03.2017 for the period from 31.03.2017 to 30.09.2017.

f. It is stated that it is true that the petitioner submitted STOA application dated 27.12.2017 under third party sale for the period from 15.02.2018 to 14.01.2019 for supply of 7 MW power to one of its existing consumers i.e., M/s The India Hotels Company Limited (HDS-681) and adding two new consumers i.e., M/s Infosys Limited (HBG-1934 at Habsiguda) and M/s Infosys Limited (CBC-946 at Cybercity) and removing one of its existing consumers i.e., M/s Dr Reddy's Laboratories (MCL-713). The said application was forwarded

to the respondent No.1 on 19.02.2018 for technical clearance. In view of the change in exit point for the above said STOA application, detailed feasibility study was initiated by the respondent No.1 and after completion of the study, the respondetnNo.1 communicated technical feasibility to TSSLDC on 16.10.2018. It is learnt that SLDC referred the matter to TSPCC since there was change in the consumers and that TSPCC on consideration of the matter rejected the request of the petitioner for intra-State STOA under 3rd party.

g. It is stated that petitioner has applied for LTOA application dated 31.01.2019 to the nodal agency for a period of two years i.e., from 20.02.2019 to 19.02.2021. The same was received by this respondent No.1 on 06.02.2019 for furnishing technical feasibility. Subsequently, respondent No.1 initiated feasibility study for processing the LTOA application of the petitioner. While the said LTOA application was in process, the petitioner submitted a revised LTOA application dated 29.07.2020 removing aforesaid two (2) exit points of M/s Infosys Limited and adding a new exit point of M/s Dr. Reddy's Laboratories and the same was received by this respondent No.1 on 04.08.2020 for furnishing technical feasibility. Subsequently, TSSPDCL initiated feasibility study for processing the revised LTOA application with change in exit points of the petitioner.

h. It is stated that the contention of the petitioner that '*the respondents are not correct in stating that the processing of LTOA was delayed on account of petitioner not complying with the requirements of CEA (Technical Standards for Grid Connectivity) (Amendment) regulation, 2012 and in fact, it was never put on notice or was asked for such compliance for the purpose of processing the said LTOA application*' is not correct as not only CEA (Technical Standards for Grid Connectivity) but also TSTRANSCO solar guidelines clearly specifies that, '*The developer shall get the power quality assessed as per guidelines in the presence of DISCOM/TRANSCO MRT wing and submit the report to CGM (IPC)/TSSPDCL or CGM (IPC & RAC)/TSNPDCL*' which is very much in the knowledge of the petitioner. But, the developer did not turn up to fulfil the said prerequisite condition and thereby failed to submit the same to the respondent No.1.

i. It is stated that as per the powers vested under Section 108 of the Act, 2003, the State Commission shall be guided by such directions in the matters of policy involving public interest as the State Government may give it in writing to the

Commission. The Commission on receipt of such written directions regarding any policy from the Government, after conducting public hearing and after obtaining the comments from the stakeholders adopts the recommendation of the Government and directs the licensee to implement the same.

j. It is stated that thus, any policy issued by the State Government has to be adopted by the DISCOM as per the terms & conditions or regulations formulated by the Appropriate Commission i.e., in State level it is the State ERC. No specific orders/regulations are issued by the Commission relating to the deemed banking facility. Hence, the concept of deemed banked energy granted under TSPP-2015 policy cannot be adopted by respondent No.1 without any specific directions or orders from the Commission.

k. It is stated that further, the Regulation No.2 of 2014 also detailed that the unutilized banked energy shall be purchased by DISCOM at 50% pooled power purchase cost in case of feeding of energy to the grid subject to the terms & conditions of Regulation No.2 of 2014. Regulation No.2 of 2014 defines the word 'banking'. The same is extracted below:

"c(2) "Banking" means a facility through which the unutilized portion of energy (under utilization or excess generation over and above scheduled wheeling) from any of the three renewable generation sources namely Wind, Solar and Mini-hydel, during a billing month is kept in a separate account and such energy accrued shall be treated in accordance with the conditions laid down in Appendix-3 of the regulation.".

It is stated that at the risk of reiteration that the petitioner did not comply the requisite terms & conditions and hence the energy fed into the grid during the relevant period cannot be treated as banked energy or deemed banked energy. Consequently, the petitioner cannot contend and claim that such energy is purchased by the respondent No.1. The respondent No.1 has acted as per the existing regulation which doesn't speak about deemed banked energy for the period from the date of synchronization to the date of open access approval and during non-agreement period. The provision of banking facility for the energy injected into the grid during non-agreement periods, shall reflect and impact the sales of TSSPDCL and the same would directly reflect in the true ups of TSSPDCL ARRs and shall finally burden the consumers of TSSPDCL

l. It is further stated that the TSERC has issued Regulation No.1 of 2017 i.e., 3rd Amendment to Interim Balancing and Settlement Code for Open Access Transactions Regulation No.2 of 2006 on 25.03.2017, wherein, the

Commission has amended the Appendix-3 of principal regulation and the relevant banking clauses of the said amendment are reproduced below:

"6. For captive generator, the energy injected into the grid from date of synchronization shall be considered as deemed banked energy.

7. For third party sale, the energy injected into the grid from the date of synchronization till the date prior to captive consumption to open access approval date will be considered as deemed banked energy.

8. The unutilized banked energy shall be considered as deemed purchase by DISCOM(s) at the average pooled power purchase cost as determined by TSERC for the relevant year."

It thus become very much clear that the concept of deemed banked energy comes into effect from the date of publication of Regulation No.1 of 2017 in the Gazette for the State of Telangana which regulation was published in the Telangana Gazette on 25.03.2017. Since the solar plant of the petitioner was synchronized on 29.06.2014 for 3 MW and on 22.01.2015 for additional 4 MW, prior to the effective date of regulation 1 of 2017 i.e., 25.03.2017 the petitioner is not entitled to claim that the energy fed into the grid during that period has to be treated as deemed banked energy.

m. It is stated that the main intention of the 3rd amendment by way of Regulation No.1 of 2017 is mainly 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.

n. It is stated that in view of the categorical clauses of Regulation No.1 of 2017 it becomes very much clear that the energy injected into the grid without any agreement prior to the effective date of Regulation No.1 of 2017 from the date of synchronization has to be treated as inadvertent energy as per clause 10.3 of the Regulation No.2 of 2006. Hence the contention of the petitioner that '*it is incorrect to state that there should be valid agreement either LTOA or STOA for the purpose of claiming the unutilized banked energy as deemed purchase'* is baseless and untenable as the said Regulation No.1 of 2017 specifies the need for agreement for accounting of energy injected by the captive consumers having only the connection agreement. Moreover, the energy injected to grid shall be termed as banked energy/scheduled energy only. The accounting or settlement of such energy will be carried out as per Interim Balancing and Settlement Code for Open Access Transactions regulation, 2006 and its subsequent amendments.

o. It is stated that in the present case the petitioner injected/fed the energy without any open access agreement after 25.03.2017 i.e., the effective date of Regulation No.1 of 2017 and hence the petitioner is not entitled to contend that such energy shall be treated as deemed banked energy or banked energy and hence cannot claim that such energy shall be considered as deemed purchase by this respondent.

p. It is stated that the contention of the petitioner '*energy injected by the petitioner shall deemed to be scheduled energy as per 2nd proviso to clause 4 of Regulation No.2 of 2006*' is baseless as the clause 4.2 of Regulation No.2 of 2006 deals with energy scheduling of OA generators to their respective scheduled/OA consumers. The petitioner herein cannot be termed as OA generator as there exist no valid OA/banking agreement with the licensee. Further, the settlement of unutilized banked energy during agreement period will be carried out as per Interim Settlement and Balancing Code for Open Access regulation, 2006 and its subsequent amendments.

q. It is stated that hence, the allegations made by the petitioners that are not specifically dealt with herein are denied by this respondent. The petitioner may be put to strict proof of the same.

7. The respondent No. 2 has filed reply to the rejoinder of the petitioner on 14.06.2022 as below:

a. It is stated that as per clause 10.6 of the Regulation No.2 of 2005, LTOA sought can be allowed in case the system studies conducted in consultation with other agencies involved including other licensees, determine that LTOA sought can be allowed without further system-strengthening, it has to intimate the applicant within 30 days. As per clause 14.1 of this regulation

> *"The licensees shall carry out load flow studies, system impact studies, etc. taking into account the existing capacity commitments and future projections of capacity requirements for open access users, load growth as projected by distribution licensees, growth of generation, network topology and consumption pattern, network investments, Repairs and Maintenance programs, etc., to determine the capacity available to accommodate open access transactions."*

b. It is stated that hence, in order to confirm the above conditions, the LTOA application of the petitioner dated 30.08.2014 was forwarded to the licensee involved in the transaction i.e., respondent No.1 on 03.09.2014 for furnishing

the technical feasibility and the same was not received from respondent No.1. Without any information from the other licensee, the nodal agency could neither reject nor return the application of the petitioner.

c. It is stated that, while the matter stood thus, the petitioner had submitted a LTOA application for transmission of 1 MW power out of total installed capacity of 7 MW under third party sale on 04.06.2015. The same was forwarded to the respondent No.1 on 05.06.2015 for furnishing the technical feasibility and the respondent No.1 has furnished the technical feasibility on 31.08.2015. The LTOA application was rejected vide letter dated 19.09.2015 stating that 'it is not possible to limit generation capacity to 1 MW, when there is 7 MW generation as there is no separate metering arrangement available for two different capacities i.e., for 1 MW and 6.0 MW, Hence the power developer has to seek approval for 7 MW capacity to enable the EBC wing to settle the energy'.

d. It is stated that the contention of the petitioner that the reason for rejection is not in accordance with Regulation No.2 of 2005 is incorrect, as the accounting and settlement of energy for the open access transactions is carried out as per Regulation No.2 of 2006 and its subsequent amendments. The amended clause 10 and sub-clause 10.5 of Regulation No.1 of 2013 (principal Regulation No.2 of 2006) states as follows:

> *"In case of wind, mini-hydel and solar OA generators the actual generation during the month shall be deemed as scheduled energy. For the purpose of settlement in respect of scheduled/OA consumer availing supply from these OA generators, the actual generation during the month will be apportioned for each time block of the month and deviations reckoned accordingly"*

e. It is stated that the LTOA transactions in respect of conventional generators are settled in 15-minute time blocks on both entry and exit point side and any excess injections or under drawls are treated as inadvertent power. Whereas for solar generators, the energy is settled based on monthly generation on generator side and excess generation is taken as banked energy. Therefore, giving approval for part capacity is not possible in respect of solar generators.

f. It is stated that further, as the existing meters are located at the entry point for recording the entire 7 MW power generation and in such view of the matter, it is not possible to restrict the generation capacity to 1 MW. Hence, the petitioner was advised to submit a fresh application to the nodal agency for the total

installed capacity of the plant along with sufficient consumer capacities for further processing.

g. It is stated that the petitioner has applied for STOA to TSSLDC i.e., nodal agency for STOA transactions vide applications dated 27.10.2015 and 28.10.2015 for the period from 01.11.2015 to 31.03.2016 and the same were transmitted to the respondent No.1 for technical clearance. The respondent No.1 issued clearance on 10.11.2015 and the STOA approval was accorded to the petitioner for transmission of 7 MW on 26.11.2015 for the period from 26.11.2015 to 31.03.2016. The delay was caused due to processing of new STOA application as the petitioner has applied for the first time under STOA.

h. It is stated that the petitioner has submitted the 3rd STOA application dated 01.02.2017 for the period from 01.03.2017 to 30.09.2017 and the same was forwarded to the respondent No.1 on 04.02.2017 for technical feasibility. The respondent No.1 issued clearance on 28.03.2017 and consequently the STOA approval was accorded to the petitioner on 30.03.2017 for the period from 31.03.2017 to 30.09.2017. The delay in issuing the STOA approval by the nodal agency was caused because of the delay in getting the technical feasibility from respondent No.1.

i. It is stated that the petitioner submitted STOA application dated 27.12.2017 under third party sale for the period from 15.02.2018 to 14.01.2019 for supply of 7 MW power to one of its existing consumers i.e., M/s The India Hotels Company Limited (HDS-681) and adding two new consumers i.e., M/s Infosys Limited (HBG-1934 at Habsiguda) and M/s Infosys Ltd (CBC-946 at Cybercity) and removing one of its existing consumers i.e., M/s Dr Reddy's Laboratories (MCL-713). The said application was forwarded to respondent No.1 on 19.02.2018 for technical clearance and TSSPDCL had issued technical clearance on 16.10.2018. In view of the change in consumers, the issue was referred to TSPCC for issuing intrastate STOA to the petitioner and the committee on consideration has rejected the request of the petitioner for Intra STOA under third party.

j. It is stated that the petitioner has applied for LTOA vide application dated 31.01.2019, which was received in complete shape from the petitioner on 05.02.2019, to the nodal agency for a period of two years i.e., from 20.02.2019 to 19.02.2021. The application of the petitioner was forwarded to the

respondent No.1 on 06.02.2019 for furnishing the technical feasibility. When the feasibility report from TSSPDCL was still awaited, the petitioner submitted a revised LTOA application dated 29.07.2020 removing two (2) exit points of M/s Infosys Limited and adding a new exit point of M/s Dr. Reddy's Laboratories and the same was again forwarded to the respondent No.1 on 04.08.2020 for furnishing the technical feasibility.

k. It is stated that respondent No.1 furnished the technical feasibility report on 16.08.2021 and the LTOA approval was issued to the petitioner on 23.08.2021.

l. It is stated that the respondent No.2 being the nodal agency for intra-state long term open access can process the LTOA application only in consultation with the other licensees involved and issue open access approval only after it is determined that the open access can be allowed. In the present case also the same procedure was followed and the respondent No.2 has issued the open access approval to the petitioner after the concerned DISCOM i.e., respondent No.1 had issued technical feasibility.

m. It is stated that as per the powers vested under Section 108 of the Act, 2003, the State Commission shall be guided by such directions in the matters of policy involving public interest as the State Government may give it in writing to the state Commission. The Commission on receipt of such written directions regarding any policy from the Government, after conducting public hearing and after obtaining the comments from the stakeholders adopts the recommendation of the Government and directs the licensee to implement the same. Thus, the licensee cannot adopt any policy issued by the State Government without the formulation of terms & conditions or regulations by the Appropriate Commission i.e., in State level it is the State ERC.

n. It is stated that until the issuance of Regulation No.1 of 2017 by TSERC, no specific orders/regulations were issued by the Commission for affecting the banking facility during the non-agreement period. Hence, the Telangana Solar Power Policy 2015 cannot be acted upon by the respondents without any specific directions or orders from the TSERC.

o. It is stated that as per the mandate of the TSERC Regulation No.1 of 2017 shall come into force from the date of its publication in the Gazette of State of Telangana and the regulation was published in Telangana Gazette on 25.03.2017. As the solar plant of the petitioner was synchronized on 29.06.2014

for 3 MW and total 7 MW on 22.01.2015 i.e., much before the effective date of Regulation No.1 of 2017, the petitioner is not entitled for deemed banking of energy facility from the date of synchronization to the date of agreement.

p. It is stated that hence, the petitioner having synchronized its plant prior to 25.03.2017, cannot be claim that the energy injected from the date of synchronization to the date of open access approval has to be treated as deemed banked energy, as there were no applicable regulations for availing such facility retrospectively even though the TSPP-2015 provided such banking facility from the date of synchronization. As submitted supra the policy cannot be implemented by the Licensees without any specific directions from the TSERC. Hence, it becomes very much clear that the energy injected into the grid from the date of synchronization without any agreement prior to the effective date of Regulation No.1 of 2017 cannot be treated as deemed banked energy.

q. It is stated that the contention of the petitioner "*energy injected by the petitioner shall deemed to be scheduled energy as per 2nd proviso to clause 4 of regulation 2 of 2006*" is incorrect as clause 4.2 of Regulation No.2 of 2006 deals with energy scheduling of OA generators to their respective scheduled/OA consumers. The petitioner herein cannot be termed as OA generator as there was no valid open access agreement of the petitioner with the licensee.

r. It is stated that the averments and allegations made by the petitioner which are not specifically admitted or denied may be deemed to have been denied by this respondent.

8. The Commission has heard the parties to the petition and considered the material available to it. The submissions on various dates are noticed below, which are extracted for ready reference.

Record of proceedings dated 25.08.2021:

"… … The counsel for the petitioner stated that the matter is coming up for the first time and it involves payment of amounts for the energy generated and fed into the grid for the period before open access on long term basis. A counter affidavit is to be filed by the respondents. The representative of the respondents sought time of two weeks for filing counter affidavit. The counter affidavit shall be filed on or before the date of hearing with advance copy served on the counsel for petitioner, who shall file rejoinder, if any, by the date of hearing with a copy served on the respondents. Accordingly, the matter is adjourned."

Record of proceedings dated 23.09.2021:

"… … The advocate representing the counsel for the petitioner stated that the counsel is unable to attend the hearing due to preoccupation in the Hon'ble High Court and therefore, the case may be adjourned to any other date. The representative of the respondents has no objection. Accordingly, the matter is adjourned."

Record of proceedings dated 28.10.2021:

"… … The counsel for petitioner stated that the counter affidavit had been received and he needs some time to file rejoinder. Accordingly, time is granted for filing rejoinder and the matter is adjourned. The rejoinder, if any shall be filed on or before 12.11.2021 duly serving a copy of the same on the respondents either physically or through email and the proof of such service may be filed with the Commission."

Record of proceedings dated 15.11.2021:

"… … The advocate representing the counsel for petitioner stated that he needs further time to file rejoinder in the matter. Accordingly, the matter may be adjourned to any other date. The Commission directs the advocate representing the counsel for petitioner that the rejoinder shall invariably be filed by the next date of hearing duly serving the same to the respondent through email or in physical form. Accordingly, the matter is adjourned."

Record of proceedings dated 20.12.2021:

"… … The counsel for petitioner stated that he needs further time to file rejoinder in the matter as he will be filing the same during this week. Accordingly, the matter may be adjourned to any other date. The Commission directs the counsel for petitioner that the rejoinder shall invariably be filed by the next date of hearing duly serving the same to the respondents through email or in physical form. Accordingly, the matter is adjourned."

Record of proceedings dated 03.01.2022:

"… … The counsel for petitioner stated that he needs further time to file rejoinder in the matter as the authorized signatory to the same is not available, as such the rejoinder will be filed in about two weeks. The representative of the respondents has no object to the same. Accordingly, the matter is adjourned."

Record of proceedings dated 31.01.2022:

"… … The counsel for petitioner stated that he needs further time to file rejoinder in the matter as the authorized signatory to the same is undergoing treatment for COVID-19. However, he stated that he has required the petitioner to make alternate arrangements and will definitely file the same within a week. The representative of the respondents has opposed the same. But in the circumstances, the Commission is inclined to grant adjournment by granting time for filing rejoinder. Accordingly, the matter is adjourned."

Record of proceedings dated 11.04.2022:

"… … The counsel for petitioner stated that he needs further time to file rejoinder in the matter as the authorized signatory for the same is not available for signing the rejoinder and that therefore, a short time may be given. The representative for the respondents has also opposed the same as he had sufficient time for filing the rejoinder. The Commission, noticing the several dates of adjournment for the same reason, has pointed out that why it should not impose costs for non-filing of the rejoinder. However, the advocate pleaded for one last chance for filing the rejoinder. Accordingly, the matter is adjourned."

Record of proceedings dated 25.04.2022:

"… … The counsel for petitioner stated that the rejoinder will be filed during the course of the day duly serving a copy of the same to the respondents. The matter may be taken up at the earliest date for making submissions. The officer present on behalf of the respondents stated that the authorized representative of the respondents is on long leave and hence sought adjournment of the matter. Accordingly, the matter is adjourned."

Record of proceedings dated 02.05.2022:

"… … The counsel for petitioner stated that the rejoinder is already filed and a copy of the same is given to the respondents. The matter may be taken up for hearing on any other date. The officer present on behalf of the respondents stated that the authorized representative of the respondents is on long leave and hence sought adjournment of the matter. Accordingly, the matter is adjourned."

Record of proceedings dated 18.08.2022:

"… … The counsel for petitioner stated that the rejoinder is already filed and a copy of the same is given to the respondents. The matter may be taken up for hearing on any other date. He needs time to make submissions in the matter. The representative of the respondents opposed the request made by the advocate representing the counsel for petitioner. However, the Commission considered the request of the advocate representing the counsel for petitioner. Accordingly, the matter is adjourned."

Record of proceedings dated 01.09.2022:

"… … The counsel for petitioner stated that the matter involves payment of energy charges for the power injected into the grid prior to grant of LTOA to the petitioner.

The counsel for petitioner while elaborating the issue sought to rely on the orders of the Hon'ble ATE. It is his case that the transmission licensee being the nodal agency has not followed the regulation on open access in case of granting LTOA. While under the regulation, the petitioner is entitled to be communicated as to whether it would be allowed to avail LTOA within 30 days of the closure of the window, which is taken as end of calendar month. The petitioner was allowed LTOA after three years after the period of allowing LTOA expired. In support of this statement, he has explained various dates applicable to the case to demonstrate that there is a violation of the regulation. Even this permission came to be given only pursuant to a petition filed by the petitioner before the Commission in O.P.No.23 of 2021.

The counsel for petitioner stated that the petitioner's project was established pursuant to and in terms of the solar policy notified by the Government and it is entitled to the benefits set out therein. The petitioner had established the project and synchronized it with the grid and thereafter applied for LTOA. There was no intimation from the respondents as to the running or stoppage of the petitioner's project till LTOA is granted. In the absence of the same, the petitioner went on to generate power and fed the same into the grid. The distribution licensee had used the power fed into the grid and benefited by selling of the same to its consumers. The petitioner in this matter is now seeking payment for the supply of power at the rate appropriately decided by the Commission or allowing it to use the same for consumption by its consumers. Neither of these aspects have been considered by the distribution licensee.

The counsel for petitioner stated that the solar policy provided for banking energy, but the respondents have denied the same to the petitioner. The

licensees have not given effect to the orders of the Government as also the policy of the Government of India. Thereby, they have caused the loss to the petitioner by denying the benefit of the units fed into the grid prior to allowing open access for either banking and utilization later or for effecting sale to its consumers. The petitioner had been contracting with the consumers but in the absence of LTOA the consumers were leaving from its fold. The Commission had given effect to the solar policy of the Government of Telangana and notified Regulation No.1 of 2017. This regulation specifically provided for banking of energy and payment of charges for the energy injected into the grid or allowing it to be used for sale to its consumers. The same is squarely applicable to the facts of this case.

The counsel for petitioner would urge upon the Commission to consider giving effect to the provisions of the Act, 2003, solar policy of the Government of Telangana and the National Tariff Policy along with the regulation notified by it, which require and mandate encouraging renewable sources of energy. The Commission is required to decide as to which of the licensee has to compensate the petitioner in respect of the energy generated and fed into the grid before it is allowed to avail open access on long term basis. It is needless to say the principles of section 70 of the Contract Act would squarely apply to the present situation where the distribution licensee has drawn the power and sold to its consumers and such power was not fed into the grid by the petitioner in a gratuitous manner. There are lapses on the part of both the licensees. In support of his contention, he has relied on the judgment of the Hon'ble Supreme Court reported in AIR 1962 SC 779 as followed in AIR 1968 SC 1218 and further followed in 2019 (5) SCC 341. Further, he relied on the judgment rendered by the Hon'ble Supreme Court in the matter of M/s PTC India Limited vs. CERC reported in 2010 (4) SCC 603 with regard to the applicability of the regulation. The said judgment explained the concept of regulation as also the status of the regulation made by the Commission.

As such, the counsel for petitioner would endeavour to submit that the petitioner is entitled to compensation or damages for the energy injected into the grid. In this particular case, there cannot be a denial that the regulation made by the Commission has to be given effect to as the issue arose subsequent to the regulation of 2017.

The representative of the respondents stated that the petitioner is not entitled to any relief as the petitioner's project had injected power on its own volition in the guise of claiming the benefit of the regulation of 2017. As such, the petitioner was given the treatment in case of the power injected by it into the grid by not accepting the same as banked energy. The Commission may consider as to whether the distribution licensee is liable to pay for the energy which was injected contrary to the regulation.

The licensee submits that the Commission may consider that the licensee has been put to grave loss due to inadvertent injection of power, which resulted in other penalties. It is his case that the Commission may consider whether delay in according permission for LTOA constitutes or invites any loss to the petitioner and if so, which of the licensees has to bear the same.

The counsel for petitioner would emphasize that even if regulation of 2017 or the solar policy was not available for application, the Commission has ample power under section 86 of the Act, 2003 to safeguard the interests of the generators more particularly renewable sources as mandated therein.

Alternatively, the Commission is required to consider section 70 of the Contract Act with regard to non-gratuitous act, which has to be compensated for which the judgments have already been referred. The Commission may consider and decide the matter."

9. The respondents have filed written submissions on 08.09.2022 as below:

a. It is stated that the learned counsel for the petitioner in the above case by placing reliance on a decision in '*PTC India Limited Vs. Central Electricity Regulatory Commission'* (2010) 4 Supreme Court cases 603 rendered by a constitution bench, submitted that the Commission is empowered to grant relief in regard to claim in respect of the units of energy injected by the petitioner from the date of synchronization excluding the period of open access allowed from 01.11.2015 to 31.03.2016, 01.04.2016 to 28.02.2017 and 31.03.2017 to 30.09.2017 even though there is no specific provision of the Act, 2003 regulation or rule made thereunder.

b. It is stated that a perusal of the cited decision indicates that considering the importance of the question, the matter was referred by a three-Judge bench of the Hon'ble Supreme Court to the Constitution Bench formulating the following question:-

"Whether the Appellate Tribunal has jurisdiction to decide the question as to the validity of the regulations framed by the Central Commission."

c. It is stated that the crucial points that arose for determination are as follows: -

"(i) Whether the Appellate Tribunal constituted under the Electricity Act, 2003 ("2003 Act") has jurisdiction under Section 111 to examine the validity of Central Electricity Regulatory Commission (Fixation of Trading Margin) regulations, 2006 framed in exercise of power conferred under Section 178 of the 2003 Act?

(ii) Whether Parliament has conferred power of judicial review on the Appellate Tribunal for Electricity under Section 121 of the 2003 Act?

(iii) Whether capping of trading margins could be done by the CERC ("Central Commission") by making a regulation in that regard under Section 178 of the 2003 Act?"

d. It is stated that the Hon'ble Constitution Bench having referred to various decisions cited by the parties the conclusion that the Appellate Tribunal for Electricity has no jurisdiction to decide the validity of the regulations framed by the Central Electricity Regulatory Commission (CERC) under Section 178 of the Act and that the validity of the regulations may however be challenged by seeking judicial review under Article 226 of the Constitution of India.

e. It is stated that the learned counsel for the petitioner drew the attention of the Commission to para 56 of the cited decision (furnished to the Hon'ble Commission) which reads as follows: -

> *"Similarly, while exercising the power to frame the terms & conditions for determination of tariff under Section 178, the Commission has to be guided by the factors specified in Section 61. It is open to the Central Commission to specify terms & conditions for determination of tariff even in the absence of the regulations under Section 178. However, if a regulation is made under Section 178, then, in that event, framing of terms & conditions for determination of tariff under Section 61 has to be in consonance with the regulation under Section 178."*

f. It is stated that it is very much clear from the perusal of the aforementioned extract of the decision relied on by the counsel for petitioner that the Hon'ble Court referred to the powers of the Commission while exercising the power to frame the terms & conditions for determination of tariff under Section 178 with reference to the factors specified in Section 61. The Hon'ble Court further observed that it is open to the Central Commission to specify terms & conditions for determination of tariff in the absence of regulations under Section 178. But the said observations/findings of the Hon'ble Court are not at all in respect of general powers of the Commission to grant a particular relief, as that of the relief sought in the present case.

g. It is stated that the decision cited by the learned counsel for the petitioner is not at all applicable to the facts and circumstances of the present cases.

h**.** **T**he alternate submission made by the learned counsel for the petitioner is with reference to Section 70 of the Contract Act, 1872.

i. It is stated that the learned counsel for the petitioner by placing reliance on the decisions in (1) *State of West Bengal Vs B.K.Mondal & Sons*, 1962 Supp (1) SCR 876: AIR 1962 SC779; (2) *Mulamchand Vs State of Madhya Pradesh*, AIR 1968 SC1218; and (3) *Mahanagar Telephone Nigam Limited Vs Tata Communications Limited*, (2019) 5 Supreme Court Cases 341, submitted that the petitioners are entitled for compensation under Section 70 of the Contract Act 1872. The Section 70 of the Contract Act 1872 reads as follows:

> *"Where a person lawfully does anything for another person, or delivers anything to him, not intending to do so gratuitously, and such other person enjoys the benefit thereof, the latter is bound to make compensation to the former in respect of, or to restore, the thing so done or delivered."*

j. The learned counsel for the petitioner placed reliance on Para 18 of the decision in '*State of West Bengal Vs B.K.Mondal & Sons'*, 1962 Supp (1) SCR 876: AIR 1962 SC779 and the same reads as follows:

> *"There is no doubt that the thing delivered or done must not be delivered or done fraudulently or dishonestly nor must it be delivered or done gratuitously. Section 70 is not intended to entertain claims for compensation made by persons who officiously interfere with the affairs of another or who impose on others services not desired by them. Section 70 deals with cases where a person does a thing for another not intending to act gratuitously and the other enjoys it. It is thus clear that when a thing is delivered or done by one person it must be open to the other person to reject it. Therefore, the acceptance and enjoyment of the thing delivered or done which is the basis for the claim for compensation under Section 70 must be voluntary. It would thus be noticed that this requirement affords sufficient and effective safeguard against spurious claims based on unauthorised acts. If the act done by the respondent was unauthorised and spurious the appellant could have easily refused to accept the said act and then the respondent would not have been able to make a claim for compensation. It is unnecessary to repeat that in cases falling under Section 70 there is no scope for claims for specific performance or for damages for breach of contract. In the very nature of things claims for compensation are based on the footing that there has been no contract and that the conduct of the parties in relation to what is delivered or done creates a relationship resembling that arising out of contract."*

k. The learned counsel for the petitioners placed reliance on the following in Para 6 of the decision in '*Mulamchand Vs State of Madhya Pradesh*', AIR 1968 SC 1218 and Para 8 of '*Mahanagar Telephone Nigam Limited Vs Tata Communications Limited'* and the same read as follows:

> *"In other words, if the conditions imposed by Section 70 of the Indian Contract Act are satisfied then the provisions of that section can be invoked by the aggrieved party, to the void contract. The first condition is that a person should lawfully do something for another person or deliver something to him; the second condition is that in doing the said thing or delivering the said thing Ike must, not intend to act gratuitously; and the third condition is that the other person for whom something is done or to whom something is delivered must enjoy the benefit thereof. If these conditions are satisfied, Section 70 imposes upon the latter person the liability to make con sensation to the former in respect of, or to restore, the thing done or delivered. The important point to notice is that in a case falling under Section 70 the person doing something for another delivering something to another cannot sue for the specific performance of the contract, nor ask for damages for the breach the contract, for the simple reason that there is no contract between him and the other person for whom he does something to whom he delivers something. So where a claim for compensation is made by one person against another under Section 70, it is not on the basis of any subsisting*

contract between the parties but a different kind of obligation. The juristic basis of the obligation in such a case is not founded upon any contract or tort but upon a third category of law, namely, quasi contract or restitution."

l. It is stated that it is very much clear from the perusal of the cited decisions that, to attract the ingredients of Section 70 of the Contract Act, that when a thing is delivered or done by one person, it must be open to the other person to reject it and that there must be acceptance and enjoyment of the thing delivered.

m. It is stated that in the present case, the energy injected was neither accepted nor enjoyed by the respondents. Therefore, the petitioner is not entitled to claim compensation for the energy thrusted upon the respondents without their consent.

n. It is stated that the respondents rely upon the order in O.P.No.32/2014 passed by the Hon'ble Karnataka Electricity Regulatory Commission (KERC) on 26.11.2015 in '*Lalpur Wind Energy Private Limited Vs Karnataka Power Transmission Corporation Limited & Others'* wherein, similar question fell for consideration. The Hon'ble KERC extracted the commentary under Section 70 of the contract Act by the Learned Authors, Pollack & Mulla, 14th Edition, Volume II and the same reads as follows:

"… … A claim on the basis of something done against the express provisions of statute cannot be claimed under this Section. … "
"…Where the Defendant informed the Plaintiff that he did not want the work done, the work was not done lawfully. …"
"… … The voluntary acceptance of the benefit of the work done or under delivery is the foundation of the claim under Section 70. The person on whom the benefit is conferred, enjoys the benefit voluntarily. It means that the benefit must not have been thrust upon him without his having the option of refusing it. Nobody has a right to forcing the benefit upon another. …"

o. It is stated that the Hon'ble KERC having extracted the said commentary of Section 70 observed as follows in Para 9(e) at Page 21(6 line from downwards) and the same reads as follows:

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

p. It is stated that it thus become very much clear from the aforementioned decision of KERC and also from the decisions cited by the learned counsel for

petitioners that the petitioners cannot take aid of Section 70 of the contract Act to claim compensation in respect of the energy thrusted upon by them to the grid of the respondents without their consent and knowledge.

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

r. It is stated that as per applicable regulations in force, the energy generated by renewable power developers, which was under drawn by the scheduled consumers and fed into the grid was earlier considered to be inadvertent energy and the same was free of cost as per clause 10.3 of the Regulation No.2 of 2006.

s. It is stated that banking facility was later extended to solar developers vide Regulation No.1 of 2013. The concept of deemed banked energy was not introduced as a promotional measure of renewable source.

t. It is stated that the terms & conditions for drawl of banked energy were amended by way of Regulation No.2 of 2014 which precisely formulated that the developers need to communicate the block wise drawl from banked energy and the same shall be wheeled to their consumer accordingly as per regulations in force. As per Regulation No.2 of 2014 banking facility was provided to the solar power developers who have open access agreement. Regulation No.2 of 2014 further provides that the unutilized banked energy is deemed to have been purchased by DISCOM at 50% APPC.

u. It is stated that if for the sake of arguments even if the energy injected by the petitioners for the periods referred in petition, construed to be deemed banked energy, then the settlement of such energy has to be carried out as per Regulation No.2 of 2014 which was applicable for that particular period.

v. It is stated that the Telangana Solar Power Policy 2015, which came into effect from 01.06.2015, cannot be applied to the present case without there being any direction or guideline of the Commission as per Section 108 of the Act, 2003.

w. It is stated that therefore, respondent No.1 has acted as per Regulation No.2 of 2014 which does not speak about deemed banked energy for the period from the date of synchronization to the date of open access approval.

x. It is stated that in the circumstances mentioned above, the respondents stated that the Commission may be pleased to appreciate the fact that the petitioner is not entitled to the facility of deemed banked energy without any regulation for those periods mentioned in the petition.

y. It is stated that the Commission while issuing Regulation No.1 of 2017 clearly stated that the said regulation was mainly intended 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, by entering a separate agreement.

z. The respondents alternatively stated that clause 2(d) & (f) of Appendix 3 of regulation 2 of 2014 reads thus:

"(d) The energy banked between the period from 1st April to end of 31st January of each financial year which remains unutilized as on 31st January, shall be purchased by the Discoms, as per the wheeling schedule.

(f) The purchase price payable by the DISCOMs for unutilized banked energy will be equivalent to 50% of the Pooled Cost of Power Purchase, applicable for that financial year, as determined by the Commission under RPPO/REC regulation (1 of 2012)."

aa. It is stated that the Commission may be pleased to appreciate the fact that the energy banked during the respective periods mentioned in the petition, during which the petitioners had no agreement relating to banking of energy with the respondent No.1. More so, there was no regulatory framework for applying the Government policy in respect of deemed bank energy for those particular periods.

10 The question that arises for consideration in the given facts and circumstances of the case is, whether the petitioner is entitled to any payment for the unutilized energy injected into the grid from its 7 MW solar power plant from the date of synchronisation of respective capacities of 3 MW on 29.06.2014 and 4 MW on 22.01.2015 by omitting the time period when either STOA/LTOA has been allowed at irregular intervals by the respondents and by examining the issue of treatment of alleged banked energy as canvassed by the petitioner.

11. At the cost of repetition, the provisions quoted and relied upon for filing the present petition are reproduced below:

A) <u>Section 86(1)(e) of the Electricity Act, 2003</u>

86. Functions of State Commission:- (1) The State Commission shall discharge the following functions, namely: -

(a) … …

… …

(e) promote co-generation and generation of electricity from renewable sources of energy by providing suitable measures for connectivity with the grid and sale of electricity to any person, and also specify, for purchase of electricity from such sources, a percentage of the total consumption of electricity in the area of a distribution licence; "

B) Regulation No.2 of 2005 'Terms and Conditions of Open Access' notified on 01.07.2005

… …

5. Nodal Agency

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

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

10 Procedure of application for Long Term open access

… …

10.5 All applications received within a calendar month e.g., during 1st April to 30th April, shall be considered to have been filed simultaneously. This window of a calendar month shall keep rolling over i.e., after the expiry of a monthly window, another window of the duration of next calendar month shall commence.

10.6 Based on system studies conducted in consultation with other agencies involved including other Licensees, if it is determined that long-term open access sought can be allowed without further system-strengthening, the Nodal Agency shall, within 30 days of closure of a window, intimate the applicant(s) of the same.

10.7 If, on the basis of the results of system studies, the Nodal Agency is of the opinion that the long-term open access sought cannot be allowed without further system-strengthening, the Nodal Agency shall notify the applicant of the same within 30 days of closure of a window.

… …

11. Procedure of application for Short-Term open access

… …

11.3 The SLDC shall process the applications for Short-Term open access within the following time limits:

Duration of which open access is required	***Maximum processing time***
Up to one day	*12 hours*
Up to one week	*Two days*
Up to one month	*Seven days*
Up to one year	*Thirty days*

12. The undisputed facts of this case are –

a) The petitioner considering the incentives provided under the AP Solar Power Policy 2012 has applied on 18.02.2014 to respondent No.1 for grant of connectivity for its proposed to set up 10 MW solar power plant under 3rd party sale at Sirgapur Village, Kalher Mandal, Medak District and is under the jurisdiction of respondent No.1 (distribution licensee/ the then APCPDCL (presently TSSPDCL).

b) The respondent No.1 has communicated the technical feasibility report to the petitioner vide letter dated 12.03.2014 for the proposed 10 MW solar power plant for 3rd party sale, connectivity at 33 kV voltage level with interconnection point at 33/11 kV Sirgapur substation.

c) The petitioner had initially completed installation of 3 MW, out of 10 MW approved capacity, of solar power plant and informed the same to Respondent No.1 on 07.05.2014, in turn respondent No.1 on 19.06.2014 has given permission for synchronization of 3 MW to the grid subject to fulfilment of all the departmental procedures. Accordingly, the 3 MW solar power plant was synchronised to the grid at 33 kV side of 33/11 kV Sirgapur substation (in the presence of officials of respondent Nos.1&2 and the petitioner) and commissioned on 29.06.2014 as per the departmental procedure.

d) Subsequently, the petitioner vide letter dated 05.12.2014 informed the respondent No.1 about the completion of additional 4 MW totalling to 7 MW out of 10 MW and the respondent No.1 has given permission on 13.01.2015 for synchronization of additional 4 MW to the grid subject to fulfilment of all the departmental procedures. Accordingly, the additional 4 MW was synchronised to the gird and commissioned on 22.01.2015 in the presence of officials of respondent Nos.1&2 and NREDCAP.

13. From the pleadings it is noticed that subsequent to synchronization of 3 MW solar power plant, petitioner applied for LTOA as well as STOA in particular time periods. Though, the respondents gave permission for STOA in short spells but, according to petitioner they were given with a considerable delay. The LTOA was never considered earlier to 2021 and even that was accorded sanction only after the petitioner had approached this Commission vide O.P.No.23 of 2021 as tabulated below:

LTOA Application	**Date**	**Date on which Respondent No.2 forwarded application to Respondent No.1 for furnishing technical feasibility**	**Date on which Respondent No.1 furnished technical feasibility to Respondent No.2**	**Date of Approval/ Rejection of Application by Nodal agency (Respondent No.2)**	**Reasons**
First LTOA Application after entering PPA with	30.08.2014	03.09.2014	Not sent	Neither granted approval	As the respondents failed to approve LTOA

LTOA Application	Date	Date on which Respondent No.2 forwarded application to Respondent No.1 for furnishing technical feasibility	Date on which Respondent No.1 furnished technical feasibility to Respondent No.2	Date of Approval/ Rejection of Application by Nodal agency (Respondent No.2)	Reasons
Dr. Reddy's Laboratory Pvt. Ltd. (MDK-123) for One (1) MW				nor rejected	application the OA Consumer terminated the PPA. Hence LTOA application has become infructuous.
Second LTOA Application after entering PPA with another consumer M/s The Indian Hotels Company Ltd, Unit Taj Falaknuma Palace (HDS-681) for One (1) MW on 28.02.2015	04.06.2015	05.06.2015	31.08.2015	Rejected on 19.09.2015 and advised to submit a fresh application for plant installed capacity with sufficient consumer capacities	As there was no possibility to limit generation capacity to 1 MW, when there is 7 MW generation as there is no separate metering arrangement available for two different capacities i.e., for 1 MW and 6 MW. The applicant vide letter dated 22.09.2015 stated that they have already submitted application for 1 MW and the balance 6 MW power generated can be treated as banked units so that they can allocate the banked units to the consumer once the balance 6 MW open access started and in case they could not utilize

LTOA Application	Date	Date on which Respondent No.2 forwarded application to Respondent No.1 for furnishing technical feasibility	Date on which Respondent No.1 furnished technical feasibility to Respondent No.2	Date of Approval/ Rejection of Application by Nodal agency (Respondent No.2)	Reasons
					the banked units, they agreed to supply to DISCOM at the then prevailing pooled purchase cost as well.
First STOA application after executing PPA again with Dr. Reddy's Laboratory Pvt. Ltd. (RRN-713) for 6 MW on 21.10.2015 1 MW to HDS-681 6 MW to RRN-713	28.10.2015 for the period from 01.11.2015 to 31.03.2016	29.10.2015	10.11.2015	Approved on 26.11.2015 for the period from 26.11.2015 to 31.03.2016	
Second STOA application after extending PPA for eleven (11) months with Dr. Reddy's Laboratory Pvt. Ltd.	29.03.2016 for the period from 01.04.2016 to 28.02.2017			Approved on 02.04.2016 for the period from 02.04.2016 to 28.02.2017	
Third STOA Application after further extending PPA with Dr. Reddy's Laboratory Pvt. Ltd.	01.02.2017 for the period from 31.03.2017 to 30.09.2017	04.02.2017	28.03.2017	Approved on 30.03.2017 for the period from 31.03.2017 to 30.09.2017	
Fourth STOA Application after entering PPA for 6 MW with M/s Infosys Ltd. (HBG-1934 and	27.12.2017 for the period from 15.02.2018 to 14.01.2019	19.02.2018	16.10.2018	Neither granted approval nor rejected	

LTOA Application	Date	Date on which Respondent No.2 forwarded application to Respondent No.1 for furnishing technical feasibility	Date on which Respondent No.1 furnished technical feasibility to Respondent No.2	Date of Approval/ Rejection of Application by Nodal agency (Respondent No.2)	Reasons
CBC-946) on 14.12.2017					
Third LTOA Application	31.01.2019 for a period of two years	04.08.2020	16.08.2021	Approved on 23.08.2021	Only after the petitioner approached the Commission vide O.P.No.23 of 2021. LTOA agreement entered on 23.09.2021
Revised application after entering PPA with Dr. Reddy's laboratories Ltd. (MCL-713) for 6 MW and1 MW to HDS-681.On 16.08.2021 petitioner submitted the relevant test reports as per CEA Regulations, 2006	29.07.2020				

14. The petitioner vide letter dated 09.06.2020 had made a representation to the respondents, calling upon them seeking compensation for the units injected to the grid from the date of synchronisation of the plant. Respondent No.2 has rejected the petitioner claims vide letter dated 19.06.2020 stating that the average pooled power purchase cost for the deemed banked energy i.e., energy injected into the grid from the date of synchronisation till the date prior to open access approval date will be considered, if the plant is synchronized on or after 25.03.2017 (as per Regulation No.1 of 2017), as the synchronisation of the petitioner's solar power plant is 29.06.2014, the wheeled units to the grid from the date of synchronisation to the date of agreement cannot be considered. Further, stated that the energy injected into the grid during the periods which were not covered in the agreement cannot be considered for banking.

15. As per clause 5.1 of Regulation No.2 of 2005 the nodal agency for receiving and processing the LTOA applications is State Transmission Utility (STU) i.e., TSTRANSCO. The Clause 5.2 of Regulation No.2 of 2005 says the nodal agency for receiving and processing STOA applications is State Load Dispatch Centre (SLDC) which is the business activity of TSTRANSCO itself or Respondent No.2.

16. The Clauses 10 and 11 of Regulation No.2 of 2005 '*Terms and Conditions of Open Access'* notified on 01.07.2005 specifies the procedure and timelines for the process of LTOA and STOA respectively. The clause 10.6 of Regulation No.2 of 2005. is clear and emphatic that LTOA has to be allowed by the nodal agency within 30 days from the date of closure of window, intimate the applicant for open access that the same is being granted or otherwise for the reasons thereof. Further, clause 11.3 of Regulation No.2 of 2005 specifies the maximum processing time limits within which the SLDC shall process the applications for STOA. From the dates and events as recorded in the pleadings the Commission notices that delay has occurred time and again in respect of any application made by the petitioner, be it LTOA or STOA (except in case of second STOA application). The nodal agencies did not communicate to the petitioner their decisions either granting or refusing LTOA or STOA from time to time within the time period as stipulated in the applicable regulation. Onus rests on the nodal agencies to ensure compliance of provisions of the Act, 2003 and regulations made thereunder. The nodal agencies being the facilitators are expected to provide requisite facility on deciding the grant or otherwise of LTOA or STOA.

17. The respondent No.2 contended that it is following the procedure for processing the open access application in consultation with the licensee (herein respondent No.1) involved and issuing open access approval only after it is determined that the open access can be allowed. It appears from the pleadings that the nodal agencies though made correspondence with respondent No.1 (TSSPDCL/Licensee) to ascertain the technical feasibility they are at laxity in getting the appropriate information within the timelines as specified in the regulation and has abdicated their responsibility to intimate/notify their decision either granting or refusing LTOA/STOA as the case maybe, within the time period as specified in the regulation. It is appropriate to state that respondents have to act in a cohesive manner for a perfect compliance of the applicable regulation duly adhering to the timelines specified in the regulation.

18. Respondent No. 2 contested that as per clause 10.3 of Regulation No.2 of 2006 the petitioner is not entitled to claim any amount in respect of the injection of such inadvertent energy into the grid. The clause 10.3 of the Regulation No.2 of 2006 which specifies that "*The underdrawals by Scheduled Consumers and/or OA Consumers shall have impact on the Generator and on the DISCOM in whose area of supply the Exit point is located. Such underdrawals at Exit point shall be treated as inadvertent energy supplied by the Generator to the DISCOM(s) and shall not be paid for by the DISCOM*" is for 'Settlement for OA Generator at Entry Point' and is applicable during the period when availing open access. As such, the respondents contention cannot be considered.

19. At the same time the respondent No.1 who allowed synchronization ought to have taken precautions to intimate nodal agencies expeditiously as to technical feasibility or otherwise of allowing the LTOA or STOA, as the case may be. The respondent No.1 cannot now advert that it had to do lot of exercise/procedure for allowing such open access. This lapse on the part of respondent No.1 caused the delay of disposal of LTOA or STOA applications of the petitioner. The respondents further contested that the processing of open access is delayed on account of petitioner not complying with the requirement of CEA Regulations, 2012 "*Technical Standards for Connectivity to the Grid*". As contended by petitioner it was never put on notice to the petitioner, whereas during all this time it is enjoying the benefits of the power injected into the grid without any demur. As noted from the pleadings, the petitioner from the date of synchronisation of its first 3 MW out of 7 MW installed capacity has been generating power and is being injected into the grid of respondent No. 1 at 33 kV voltage level. It is the respondent No.1, which has practically benefited in all respects since the open access consumer has been served by respondent No.1, as such the loss or compensation has to be borne by the respondent No.1 alone.

20. The solar power plant of petitioner is covered under two (2) solar power policies issued by the State Government viz.,

a) *<u>AP Solar Power Policy–2012</u> (before formation of Telangana State) with effect from 26.09.2012 till 2017 vide G.O.Ms.No.39 dated 26.09.2012 r/w its amendment vide G.O.Ms.No.44 dated 16.11.2012 inter alia to promote generation of Solar Power in the State to encourage, develop and promote solar power generation in the State with a view to meet the*

growing demand for power, in an environmentally and economically sustainable manner.

The clauses under solar power policy relevant to the present case are reproduced below:

5. Open Access for Third Party Sale: Intra-state Open Access clearance for the whole tenure of the project or 25 years whichever is earlier will be granted within 15 working days of application to both the generator and consumer irrespective of voltage level.

… …

7. Conditional Banking: Banking of 100% of energy shall be permitted for one year from the date of banking. The settlement of banked energy will be done on monthly basis. However, banked units cannot be consumed/redeemed from February to June and also during TOD hours as amended from time to time. Developer will be required to pay 2% of the banked energy towards banking charges. Suitable amendment will be incorporated in the concerned regulation of State ERC.

b) Telangana Solar Power Policy–2015 (after formation of Telangana State) which came into effect from 01.06.2015, announced by the Government of Telangana which aims at creating an enabling environment for prospective solar power developers to harness substantial quantum of solar power in the best possible manner. This in turn is expected to meet the objective of GoTS to provide competitive, reliable power supply to its consumers and also to ensure a sustainable fuel mix in the long run and which provided several incentives and benefits to the solar projects set-up within the Telangana State.

The clauses under solar power policy relevant to the present case are reproduced below:

"11. Ease of Business – Enabling Provisions

… …

e) Power Scheduling and Energy Banking

… …

For captive/third party sale, energy injected into the grid from date of synchronization to open access approval date will be considered as deemed energy banked.

The unutilized banked energy shall be considered as deemed purchase by DISCOM(s) at average pooled power purchase cost as determined by TSERC for the year.

… …

21. In the newly formed Telangana State, AP Solar Power Policy-2012 was continued to be effective till June, 2014 and for the projects commissioned during the stop gap of 01.07.2014 to 31.05.2015, the generators were given the option, and the petitioner has opted for the Telangana Solar Power Policy-2015.

22. It is the contention of the respondents that any policy issued by the State Government has to be adopted by the DISCOM as per the regulations formulated by

the Commission and the concept of deemed banked energy granted under TSPP-2015 policy cannot be adopted by respondents without any specific directions or orders from the Commission. The respondents cannot state that the Commission has not formulated regulations. In fact, the Commission in pursuance of AP Solar Power Policy-2012 has notified Second Amendment to "*Interim Balancing & Settlement Code for Open Access Transactions*" on 01.04.2014 (Regulation No.2 of 2014, 2nd amendment to Regulation No.2 of 2006) [adopted by TSERC vide Regulation No.1 of 2014 notified on 10.12.2014] wherein for the first time 'banking' has been defined, which included solar generation. Further, consequent to promulgation of the Telangana Solar Power Policy-2015, the Commission notified Regulation No.1 of 2017 third amendment to Regulation No.2 of 2006, on 25.03.2017, wherein the Appendix-3 has been further amended for allowing banking facility to wind, solar and mini-hydel power generation. The important clauses of both the regulations which are relevant to the present case are reproduced hereunder:

i) *Regulation No.2 of 2014 (2nd amendment to Regulation 2 of 2006) notified on 01.04.2014*

2(c): Banking' means a facility through which the unutilized portion of energy (underutilization or excess generation over and above scheduled wheeling) from any of the three renewable generation sources, namely wind, solar and min-hydel, during a billing month is kept in a separate account and such energy accrued shall be treated in accordance with the conditions laid down in Appendix-3 of the regulation.

Appendix-3

1. Banking allowed during all the 12 months.

… …

2(d) The energy banked between the period from 1st April to end of the 31st January of each financial year which remains unutilized as on 31st January, shall be purchased by the Discoms, as per the wheeling schedule. The energy credited into bank during the month of February and March of each financial year will be carried forward to the month of April of the next financial year for the credit of the banking account for the next year.

… …

2(f) The purchase price payable by the DISCOMs for unutilized banked energy will be equivalent to 50% of the Pooled Cost of Power Purchase, applicable for that financial year, as determined by the Commission under RPPO/REC regulation (1 of 2012). DISCOMs shall settle such purchase transactions with the generators by 31st March of each year.

ii) *Regulation No.1 of 2017 (3rd amendment to Regulation No.2 of 2006) notified on 25.03.2017*

Appendix-3

1. Banking charges shall be adjusted in kind @ 2 % of the energy delivered at the point of drawl.

… …

7. For third party sale, the energy injected into the grid from the date of synchronization till the date prior to captive consumption to open access approval date will be considered as deemed banked energy.

8. The unutilized banked energy shall be considered as deemed purchase by DISCOM(s) at the average pooled power purchase cost as determined by TSERC for the relevant year.

… …

23. With regard to the applicability of the regulations, the petitioner has relied on the judgment rendered by the Hon'ble Supreme Court in the matter of M/s PTC India Limited Vs. CERC reported in 2010 (4) SCC 603. The said judgment rendered by a constitution bench explained the concept of regulation as also the status of the regulation made by the Commission. In this particular case, there cannot be a denial that the regulations made by the Commission has to be given effect to.

24. It is the contention of the petitioner that the energy delivered by it from the respective dates of synchronization till date to the grid has been utilized by the respondent No.1 on account of inordinate delays in granting approvals of LTOA/STOA applications by the respondents and due to which the petitioner sustained loss and that loss has to be compensated by the respondents. In support of this contention the petitioner has drawn attention over Section 70 of the Indian Contract Act, 1872 which deals with the obligation of person enjoying of non-gratuitous act to compensate and referred to judgments of "*the State of West Bengal Vs. B.K.Mondal and sons*", "*Mulamchand Vs. State of Madhya Pradesh*" as also "*Mahanagar Telephone Nigam Vs. Tata Communications Limited*". Whereas, respondents contended that the energy injected by the petitioner should be treated as inadvertent free power by not accepting it as banked energy and sought to rebut the Contract Act, 1872 by explaining the provision by relying on the very same judgments, which are cited for the petitioner. The ratios of these judgments would endeavour to understand the concept of one–party delivering goods non gratuitously and the other party enjoying the benefits of such goods, even though, there is no written contract between them as there is offer and acceptance by the actions of the parties, the Commission views that neither Section 70 of the Contract Act nor the judgments referred to above will fit into the facts

and circumstances of the case.

25. The respondents vehemently opposed to the relief sought by the petitioner by relying on the findings of Karnataka Electricity Regulatory Commission (KERC) in the petition vide O.P.No.32 of 2014 in between "*Lalpur Wind Energy Private Limited Vs. The Karnataka Power Transmission Corporation Limited and others*", as also consequent appeal vide Appeal No.37 of 2016 on the file Hon'ble APTEL where under the order of KERC was upheld. The findings of the KERC and Hon'ble APTEL run through similar situation did not appreciate the status of the parties on either side.

26. The Commission is of the considered view that the Regulation No.2 of 2014 is applicable only to the existing open access users and there is no provision of deemed banked energy for the energy injected into the grid from the date of synchronization. However, the Regulation No.1 of 2017 which has come into force from the date of its publication in the official Gazette i.e., from 25.03.2017, has a provision of deemed banked energy for the energy injected into the grid from the date of synchronisation. Further, the Commission is of the considered view that, the Regulation No.1 of 2017 shall have prospective effect and not retrospective effect.

27. Therefore, the Commission considers that the petitioner is entitled for compensation, for the energy injected into the grid from its 7 MW solar power plant from the date of publication of the Regulation No.1 of 2017 in the official Gazette (i.e., from 25.03.2017) by omitting the intermittent time periods of STOA and prior to date of approval of LTOA which has to be treated as deemed banked energy as per the provisions of Regulation No.1 of 2017 and such unutilized banked energy shall be payable by respondent No.1 at average pooled power purchase cost as determined by TSERC for the relevant year.

28. Thus, the petition is allowed in terms of Regulation No.1 of 2017 as mentioned at paras 27 & 28 above. Further it may be appropriate to direct respondent No.1 to pay for the same in terms of Regulation No.1 of 2017. However, the respondent No.1 can set off the energy so paid for, against their renewable power purchase obligation for the relevant financial year.

29. Accordingly, the petition is disposed of, but in the circumstances, the parties shall bear their own costs.

This order is corrected and signed on this the 16th day of August, 2023.

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

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