



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

O. P. No. 19 of 2016

&

I. A. No. 12 of 2016

Dated 30.06.2017

Present

Sri. Ismail Ali Khan, Chairman

Sri. H. Srinivasulu, Member

Between:

M/s. Yantra Green Power Pvt. Ltd.,
Plot No. 1303 & 1304, Sy. No. 11 / 27, 2nd Floor,
Khanamet, Hi-Tech City, Ayyappa Society,
Madhapur, Hyderabad – 500 081.

... Petitioner

And

M/s. Southern Power Distribution Company of
Telangana Limited, # 6-1-50, Mint Compound,
Hyderabad – 500 063.

... Respondent

This petition came up for hearing on 09.08.2016 and 14.06.2017. Sri. P. Srinivasa Rao, Counsel for the petitioner appeared on both the days. Sri. Y. Rama Rao, Standing Counsel for the respondent alongwith Smt. Priya Iyengar, Advocate was present on 09.08.2016 and Sri. Y. Rama Rao, Standing Counsel for the respondent alongwith Sri B. Vijay Bhaskar, Advocate is present on 14.06.2017. The petition alongwith interlocutory application having stood for consideration to this day, the Commission passed the following:

ORDER

M/s. Yantra Green Power Private Limited (petitioner) has filed a petition under sec 86 (1) (e) and (k) of the Electricity Act, 2003 (Act, 2003) seeking exemption from wheeling charges as decided in O. P. No. 78 of 2015 determining wheeling charges

for the control period 2015 – 2019 in terms of the policy of the government dated 01.06.2015.

2. The petitioner stated its case in the following heads and paragraphs below.

A. Incorporation of Petitioner Company:-

3. The petitioner stated that it is a company incorporated under the provisions of Companies Act, 1956 with the Registrar of Companies, Hyderabad and certificate with a corporate Identity bearing Number, U40108AP2013PTC087049–2013-14. It has been incorporated as per the objectives set out under the Articles of Association, to set up a solar photovoltaic grid interactive power plant (plant) with a capacity of 5 MW for the purpose of captive use. It has acquired the landed property to construct necessary plant for generation and operation situated at Nagwar Village, Raikod Mandal, Medak District, Telangana. The petitioner with a view to develop the solar power as there is opportunity due to reforms introduced in the electricity sector and the country recognised the need to generate energy through non-conventional sources. The Board of Directors of the petitioner decided to establish a power plant for production of energy and at the same time also to provide employment to some persons to run the power plant and carrying the business after the plant commences its operation.

b. The Solar Policy introduced by Union of India as well by the state:-

4. The petitioner stated that the Government of India (GOI) have recognized the importance of solar energy as one of the future sources of energy and launched the National Solar Mission on 14.11.2009 under a brand name 'Solar India' with an objective to maximise generation of power from solar energy. The erstwhile composite state of Andhra Pradesh has framed certain guide lines and a policy called as 'A. P. Solar Policy 2012' and government orders were issued in G. O. Ms. No. 39 dated 26.09.2012. The Objectives of this policy is to promote generation of power from solar, as the solar power is one of the important renewable energy source. The objectives of the policy are 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, to attract investment in the state for the establishment of solar power plants, to promote investments for setting up manufacturing facilities in the state, which can generate gainful local employment and

also to encourage decentralized, distribution, generation system in the state to reduce T & D losses. These are some of the objectives and the purpose sought to be achieved under the said Policy.

5. The petitioner stated that the state has issued Solar Policy, 2012 and certain incentives have been provided in favour of the developer of solar power to encourage the immediate production of solar power particularly to reduce the gap between demand and supply position of power. Therefore, the wheeling and transmission charges for power generated from solar projects were exempted in addition to other benefits which were set out in the said policy. Thereafter, certain amendments were made to the policy and the government has issued orders in G. O. Ms. No. 44 dated 16.11.2012. Nonetheless the purport and the tenor of policy originally made, was not changed. In effect, the incentives were provided. There are no wheeling and transmission Charges for the solar power developers as per the guidelines provided under the said policy.

6. The petitioner stated that it after construction of buildings and installation of required machinery to made it ready for generation and supply of energy it applied to the respondent for issuing certificate about the technical feasibility for grid connectivity at 33 kV voltage level for starting generation for the 5 MW, capacity captive solar power project to its sister concern. The respondent after conducting the necessary inspection had certified and the same was communicated to it by letter dated 06.07.2013. Consequent upon the said certificate it had entered into a Power Purchase Agreement (PPA) dated 16.08.2013 for captive purpose with, M/s. Vivimed Labs Limited the 'Power Procurer' having their Industry situated at Bonthapalli Village, Jinnaram Mandal, Medak District bearing HT connection No. MDK-920. The respondent has issued a certificate dated 07.01.2015 to it for synchronization of the plant to the grid. Thus, it was authorised to inject the power generated into the grid and the same can be utilized by the power procurer in terms of the PPA entered between the petitioner that is power producer and power procurer. It made an application dated 03.10.2015 to the nodal agency for grant of a Long Term Intra-State Open Access Agreement (LTOA). The respondent has granted approval and communicated the concluded LTOA agreement on 25.01.2016. The said LTOA agreement is for a period from 23.01.2016 to 29.10.2025 with the respondent DISCOM.

Part C. Tariff Orders:-

7. The petitioner stated that the state of Andhra Pradesh was bifurcated and the state of Telangana has been carved out of with fixation of certain geographical area by advent of A.P. Reorganisation Act, 2014. It is submitted that after formation of state of Telangana, this Commission has been constituted and the Commission had issued Regulation No. 1 of 2014 dated 10.12.2014 (Adoption of Previously Subsisting Regulations, Decisions, Directions or Orders, Licenses and Practice of Directions) etc. The Commission had given directions to the respondent DISCOM as per the tariff order dated 09.05.2014 by the erstwhile APERC is applicable for the period from 17.05.2014 to 31.03.2015. The wheeling charges collected from NCE generators (solar, wind and min-hydel) are refunded by adjusting the bills.

8. This Hon'ble Commission has issued order determining the retail supply Tariffs for FY 2015-16 Retail supply by an order dated 22.03.2015. Similarly this Hon'ble Commission has also determined the Wheeling Tariff for the 3rd control period applicable for FY 2015-16 to 2018-19. As per the procedure the required publication was made duly inviting the objection, suggestions from the general public and the interested persons. As per the contents of the order dated 27.03.2015 passed for the 3rd control period there was a request with regard to levy of Wheeling Charges from the Solar power developers and the same shall be exempted from levy. This was after conclusion of hearing scheduled by the Hon'ble Commission. It was contended that the wheeling charges have to be exempted by the respondent in view of the earlier policy in vogue.

9. The petitioner sought to place reliance on the relevant portion at paragraph 26 in page 27 of the wheeling tariff order on the issue regarding levy of wheeling charges on solar developer reads as follows for better appreciation of the same by the Commission

“26. (A) Objections:- Sri Ananth Nakirikati of Arhyama solar power Pvt. Ltd and Sri L. K. Baid of Bhagyanagar India Limited objected to the levy of wheeling charges on solar developers. They said that in the Tariff order dated May 9, 2014, issued by erstwhile APERC for wheeling charges for 3rd control period, vide Page.87, says “In line with the government policy there shall be no wheeling charges for Non-Conventional Energy generators using wind, solar, and Mini

Hydel sources". Therefore, by levying the wheeling charges, TSSPDCL has been violating/ignoring the government orders and regulatory Commissions orders. Therefore, they requested the Commission to extend the benefits in the policy to solar developers.

(B)DISCOMs Response: DISCOMs have not replied to the objection as it was raised after public hearing.

(C) Commission's view:- There is no policy issued in this regard by the Government of Telangana applicable for FY 2015-16 to 2018-19."

This Commission held that "there is no policy issued in this regard by the Government of Telangana applicable for FY 2015-16 to FY 2018-19". As such, the benefit of exemption was not granted to the solar developers.

The Telangana solar power policy, 2015:-

10. The petitioner stated that state of Telangana in its wisdom has evolved a policy known as Telangana Solar Power Policy, 2015. The objectives of the policy were provided, as per clause 4 envisaged, the eligibility for the incentives for a period of 10 years from the date of commissioning and shall remain applicable for a period of 5 years. Clause 11 of the policy specifically postulates that the state has prepared certain measures for improving the ease of doing Business. The benefits for developers, entrepreneurs etc., were provided including the exemption of wheeling and transmission charges for captive use within the state. The said policy has been duly communicated by the Secretary of the Government, Department of Energy to the distribution companies, transmission and generating utilities of the state, stating that the approval of policy, 2015 and they were directed to take necessary action in the matter of providing incentives in the tariff structure. The copy of the same was also communicated to the Commission. Basing upon the approval of the policy stated above, the Chief General Manager of the respondent had written to the CE / Transco and CGM, TSNPDCL to grant certain exemption of charges for solar as per the policy of 2015. Therefore, it is pertinent to note that the state policy is in use and the benefits as granted in the policy have to be extended by the concerned authorities. However, the respondent denied this exemption of wheeling charges to the petitioner which is unjust and illegal being a state instrumentality. It is relevant to mention here that the state after issue of the above policy, 2015 has provided a mechanism known as "Single

Window Mechanism” for solar power projects and as per the policy have to be implemented in its letter and spirit.

11. The petitioner stated that respondent has been levying the wheeling charges in respect of the petitioner and it was demanded as per bills issued to the power procurer. It was paid by them and in turn is deducting from the payment of the petitioner. It has been repeatedly bringing it to the notice of respondent about the existence of solar policy, 2015 issued by the state of Telangana and espousing its case for implementation of the directions communicated to the respondent by the state. In fact, the respondent is playing vital role in implementing the solar policy and had written to the other utilities such as TSGENCO, TSTRANSCO and other distribution companies of the state. However, the respondent has been unilaterally declined to grant exemption from levy of wheeling charges under the aforementioned policy of 2015, orally stating that, there is no directions from the Commission in its wheeling tariff determination order dated 27.03.2015. Admittedly, it amounts to promissory estoppel, though the state is intended and provided exemption of wheeling charges as an incentive by issuance of necessary policy, to have such benefit and it was legitimate expectation for which indisputably the petitioner is entitled to the benefit and the statutory scheme framed by the state which is in force and all other departments of the state are providing the benefits and incentives.

12. The petitioner stated that it is not in dispute that, the state in its domain and in a larger interest to develop the electricity sector provided certain incentives to the solar power developers such as petitioner and it is an admitted fact the same is in force and operating the field. The petitioner has set up the generating plant by raising funds borrowing from the banks and financial institutions basing upon the policy of the state wherein incentives were provided under the solar power policy, 2015. There may be a short gap in view of the state bifurcation and the review of the policy for further continuation with some modifications, alterations and additions by the present state. Nonetheless, the original solar Policy, 2012 in relation to the power development and the present policy of 2015 is more or less on the similar lines. The benefit is under the same set of guidelines to achieve the objective of promotion of power generation through Non-Conventional source more particularly solar plants. However, the same have been ignored by the respondent and in *de horse* to the policy, the wheeling

charges are being levied on the petitioner and enforcing collection of the same. The policy is issued for encouraging and development of solar power and not for curtailing the incentives. At any rate the present policy of 2015, of the state is also in furtherance of such objectives.

13. The petitioner stated that the Commission has also got ample power to promote co-generation and generation of electricity from renewable source under sec 86 (1) (e) of Act, 2003. Therefore, the generating plants using renewable sources of energy are required to be viewed as separate generating system for local area consumption as and when connected to the grid under the Act, 2003. The energy is consumed primarily in the respective local area leading to reduction in T & D losses. The respondent has neither exempted the wheeling charges nor even chosen to place before the Commission the need to meet the requirement of implementation of solar policy of 2015. Interestingly on the other hand the respondent has chosen to exempt the supervision charges in line with the solar policy of 2015 which fact was borne on record by its letter dated 30.07.2015 of the respondent. Similar treatment in respect of wheeling charges, more particularly in favour of captive consumers is not undertaken by the respondent. It is stated that when it comes to grant of exemption benefit of wheeling charges denied stating that, the order dated 27.03.2015 issued by the Commission in regard to 3rd control period, did not provide and allowed them to do so, which is wholly unjust, irrational and contrary to the above policy in force. It is incumbent on the respondent to ensure compliance of the policy in total, once the scheme is framed under a policy and was entrusted to the agency for implementation. Therefore, the practice of declining the benefit in part and providing other benefit even without permission of the Commission is absolutely unjust, untenable and the same is hit by *doctrine of promissory estoppel*, more particularly the state has evolved a solar policy, 2015 and it is in force. Therefore, since, the circumstances as envisaged under the policy have not ceased to exist, the Commission is required to revisit the determination of wheeling charges and levy of the same in so far as the petitioner is concerned in view of the prevailing circumstances.

14. The petitioner has raised the following GROUNDS in the petition.

a) The wheeling tariff order for the 3rd control period was early to the solar policy, 2015 came into force with effect from 01.06.2015, the benefit of the state provided under the guidelines shall not be denied to the petitioner.

b. The respondent should have seen that the policy decision issued by the state government providing exemption of wheeling charges to a developer shall be binding on it, as it is owned by the state. When the principle authorised to provide exemption benefit, the respondent was directed to take appropriate action for implementation of the policy, there is no justification on the part of the respondent to deny the benefit and levy the wheeling charges which were directed to be exempted under the policy, 2015 in force.

c. In the order dated 27.03.2015 passed by the Commission determining wheeling charges for the 3rd control period for FY 2014-15 to 2018-19, though an issue has been framed, in respect of exempting wheeling charges to the captive solar plants, the same could not be acceded in view of the non-availability of the state solar policy as on that date. Hence, it is implied and the Commission had left it open to state and its instrumentalities to urge the said issue after the solar policy of the state came into force, so that it can issue necessary orders in tune with the said policy. As such, the Commission has to revisit the issue and appropriate orders in tune with the solar policy are required to be passed. The respondent is required to give effect to the state government policy as it is bound by *doctrine of promissory estoppel* and against the principles of legitimate expectation.

d. Due to solar policy of 2015 issued by the state, the respondent had themselves granted benefit of exemption of supervision charges without reference to the orders of the Commission. However, when it comes to wheeling charges which was specified under the very same policy was denied on the ground that there is no direction from the Commission which is nothing but contrary to the solar policy of 2015.

e. The state in its wisdom has taken a decision and issued and a separate mechanism for solar power projects and they have been established in a single window system. It is crystal clear that, the state is committed to encourage the solar power projects and to develop the generation of energy. However, the benefit of exemption of wheeling charges under solar policy, 2015 is being denied by the respondent which is unjust, illegal and contrary to the said policy.

f. The respondent ought to have seen that once the policy by the state government has been issued involving public interest, the same shall be implemented by the respondent and put in practice it being a state government owned instrumentality. But denying the benefit of exemption of wheeling charges and curtailing the incentive which was provided by the state in larger interest of electricity sector to promote the solar power is illegal, unjust and untenable.

15. The petitioner stated very fact that the respondent did not implement the solar policy of the state for the reasons best known to them and levying wheeling charges is contrary to the existing policy from the petitioner. Further no prejudice or harm would be caused to the respondent by implementing the solar policy, 2015 in its letter and spirit as the respondent is owned and controlled by the state. Since the principal owner directed its subordinate or agent to do something, it is the bounden duty of the respondent to put it in practice. Per contra, grave injustice and prejudice would be caused to the petitioner as they would suffer on account of curtailing the benefit of exemption from levying the wheeling charges and it will lead to a severe financial crisis apart from hardship caused to the petitioner and the dependents on the industry. If the present demand of levy of wheeling charges are nothing but high handed action of the respondent against the plant and it would have to close down its plant if the same is continued. Further, it would be very difficult to bear the burden of wheeling charges. All those dependents on the industry, including workers and their families and those indirectly dependent would be affected due to the levy and imposition of wheeling charges. The petitioner has a good case on merits and has all chances of succeeding in the present matter.

16. The petitioner stated that it came to know that some of the solar power project generators have approached the Commission and the Commission was pleased to grant interim direction to the respondent not to levy the wheeling charges. Unless such an interim order is made and the collection of wheeling charges is stayed, pending disposal of the main case of the petitioner, the very purpose of filing of this case would be rendered infructuous.

17. The petitioner has sought the following prayer in the petition

- a) "To exempt the petitioner from the levy of wheeling charges as decided by the Hon'ble commission in its Order dated 27.03.2015 in O. P. No. 78 of 2015 in terms of solar policy of 2015 Government of Telangana notified by letter to the respondent on 10.06.2015.
- b) To declare that the action of Respondent in demanding / levying of wheeling charges in pursuance of wheeling tariff order dated 27.03.2015 for the 3rd control period for FY 2014-15 to 2018-19 in so far as O. P. No. 78 of 2015 passed by the Hon'ble Commission as illegal, contrary to the Telangana State Solar Policy, 2015 which came into effect from 01.06.2015 passed by the Hon'ble Commission."

18. The petitioner has also filed a separate petition seeking interim orders by reiterating the facts and contentions made in the main petition. However, it sought the following interim prayer.

"That this Hon'ble Commission may be pleased to grant interim order directing the respondent not to levy / collect wheeling charges from the petitioner company or its consumer during the pendency of the original petition above and pass any other order/s to meet the ends to justice and equity."

19. The respondent has filed counter-affidavit on the following lines.

- a) M/s. Yantra Green Power Private Limited, the petitioner has applied for Grid Connectivity vide letter dated 11.03.2013 setting-up 5 MW Solar Power Plant at Nagwar (Village), Raikod (Mandal), Medak District under captive use and requested evacuation feasibility for their proposed project.
- b) Based on the field reports, the respondent has communicated the technical feasibility for Grid Connectivity of the proposed 5 MW Solar Power Plant to the petitioner vide letter dated 06.07.2013. Later, on receipt of work completion report from the petitioner, the respondent has accorded approval for synchronization of 5 MW Solar Power Project vide letter dated 16.07.2015. Accordingly, the 5 MW Solar Power Plant of M/s. Yantra Green Power Private Limited was synchronized to the grid on 18.07.2015.
- c) It is to submit that the petitioner has applied for Intra-State Long Term Open Access (LTOA) with the Nodal Agency viz., Chief Engineer (Plg, Comml, & Coord) / TSTransco on 03.10.2015 for transmission of 5 MW from M/s. Yantra

Green Power Private Limited located at Nagwar (Village), Raikod (Mandal), Medak District to Captive User viz., M/s. Vivimed Labs Limited located at Banthapalli (Village), Jinnaram (Mandal), Medak District (HTSC No.MDK-920) and in turn the Nodal Agency vide letter dated 08.10.2015 has requested the respondent to furnish the necessary technical feasibility report.

d) The respondent, based on the field reports, has furnished the technical feasibility report to the Nodal Agency, vide letter dated 03.12.2015 and the Nodal Agency has accorded approval vide letter No. TSTRansco / 8 / 2015-16, dated 19.12.2015 to the petitioner for entering LTOA agreement with the respondent and also informed that the petitioner has to pay Wheeling and SLDC charges for the contracted capacity irrespective of the actual power flow and also bear wheeling losses in kind as per the Tariff Orders issued by the TSERC from time to time.

e) Accordingly, the petitioner has entered into Long Term Open Access agreement with TSSPDCL on 22.01.2016 for a period from 23.01.2016 to 29.10.2025.

f) Article 5.1 of the LTOA agreement stipulates that *“For Transmission and Wheeling Services provided to the Open Access User for all charges as specified in clause 17 of the regulation as applicable and the Open Access User will pay TSSPDCL in accordance with the rates / charges specified by the Commission or the Nodal Agency (in case of congestion) from time to time, on the basis of the settlement statement determined in accordance with the Balancing and Settlement Code approved by the Commission as amended from time to time. In the event of the usage of the transmission system of TSTRANSCO allongwith the distribution system of the TGSSPDCL by the Open Access User, the TSSPDCL shall pass on the appropriate charges to TSTRANSCO within 15 days of the receipt of the charges by the TSSPDCL, in accordance with clause 18 of the Regulation.”*

g) In this connection it is to submit that clause 17.1 of Regulation 2 of 2005 specifies that

“The charges for the use of the transmission and / or distribution system by an open access user shall be regulated as under:

(i) Open Access users connected to the transmission / distribution system shall pay the transmission charges and / or wheeling

charges and any other applicable charges as determined by the Commission from time to time, and notified in the relevant Tariff Order or otherwise, and as per the conditions stipulated therein: Provided that the wheeling charges so payable shall be subject to a minimum level, as fixed by the Commission in the relevant Tariff Order or otherwise.”

h) It is to submit that the open access users are liable to pay wheeling charges as applicable and as notified in the Tariff Order issued by TSERC from time to time.

i) It is to submit that the clause 8 of Andhra Pradesh Solar Power Policy-2012 states that the incentives under the policy are applicable to the Solar Power Developers who have commissioned their Solar Power Plant by June 2014 and the incentives will be in force for a period of 7 years from the date of implementation. Whereas, Solar Power Plant of the petitioner was commissioned on 18.07.2015 i.e., after the specified date of June, 2014, hence the petitioner is not entitled for any incentives under the Andhra Pradesh Solar Power Policy-2012.

The Andhra Pradesh Solar Power Policy - 2012

j) In reply to para 5, it is to submit that erstwhile State of Andhra Pradesh in the year 2012 had issued G. O. Ms. No. 39 Energy (RES-A1) Department, dated 26.09.2012 notifying the Andhra Pradesh Solar Power Policy - 2012 in exercise of its powers conferred under section 108 of the Electricity Act, 2003. Subsequently, issued an amendment to the Policy in G. O. Ms. No. 44 Energy (RES-A1) Department, dated 16.11.2012 whereby G. O. Ms. No. 39 is amended.

k) As per the above said Policy, the Solar Power Plants which wheel and transmit power to Grid are exempted from payment of wheeling and transmission charges.

Tariff Order:

l) The APERC has issued the Orders dated 09.05.2014 in the matter of determination of wheeling charges for 3rd MYT control period (FY 2014-15 to FY 2018-19) and directed to publish a public notice in two English and two Telugu daily newspapers on 10.05.2014.

- m) As per the said tariff order there shall be no Wheeling Charges for Non-Conventional Energy generators using Wind, Solar and Mini-Hydel sources in line with the said Policy.
- n) In view of the State bifurcation, TSSPDCL has not implemented the Distribution Business Tariff Order dated 09.05.2014 for the FY 2014-15. As TSSPDCL has not implemented the Tariff Order, many solar generators have filed cases before High Court and TSERC.
- o) Subsequently TSDiscoms have filed with TSERC their ARR and Filings for Proposed Tariff for its Distribution Business for third control period for the period 2015-19.
- p) Subsequently, through public consultation process the TSERC issued the Tariff Order dated 27.03.2015 for Wheeling Tariff for the Distribution Business for 3rd Control period (2014-15 to 2018-19) effective from 01.04.2015 wherein it is mentioned that the DISCOMs are supposed to follow the terms and conditions of Tariff Order dated 09.05.2014 as long as it is in force.
- q) As per the directions of TSERC, the earlier Tariff Order dated 09.05.2014 is applicable for the period from 17.05.2014 to 31.03.2015. Based on the direction of TSERC the wheeling charges are collected from NCE generators (Solar, wind and mini-hydel) for the period from 17.05.2014 to 31.03.2015 were refunded by adjusting in the future bills.
- r) It is to submit that in the Wheeling Tariff order dated 27.03.2015 with regard to objections received from NCE generators for exemption of wheeling charge as envisaged in wheeling tariff order dated 09.05.2014 on NCE projects, the Commission viewed that there is no policy issued in this regard by the GoTS applicable for FY 2015-16 to FY 2018-19. Hence, as there is no direction on exemption of wheeling charges for the NCE generators (solar, wind and mini-hydel) plant for the FY 2015-16 to 2018-19, wheeling charges are being imposed from 01.04.2015 to consumers availing power from NCE generators also.
- s) In reply to that para 7 to 10, it is submitted that the Govt. of Telangana has announced the Telangana Solar Power Policy 2015 which is effective from 01.06.2015, wherein, the wheeling and transmission charges are exempted for captive use within the state. They will be charged as applicable for third party sale.

t) Further, it is submitted that as per section 86 (a) of Electricity Act, 2003 the Commission determines the Wheeling Tariff Order for distribution licensees, which has to be implemented by the respective DISCOMs, wherein collection of wheeling charges is part of the Wheeling Tariff Order.

u) In addition to this, it is submitted that TSSPDCL has implemented the Telangana Solar Power Policy 2015 to the extent as directed by TSERC Commission. In this context, it is to submit that as per the amendment order to the Cross Subsidy Surcharge order for FY 2015-16 issued by TSER Commission dated 11.08.2015, amended the paragraph 3.2.8 of the Cross Subsidy Surcharge order dated 27.03.2015 as

“3.2.8 The Cross Subsidy Surcharge applicable to different categories of consumers availing open access, except to those consumers who are availing solar power through open access from the Solar Generators located within the state of Telangana to whom the Cross Subsidy Surcharge is exempted, at different voltages in the area of supply of the respective Licensees, is as given below.”

u) In view of the above, the Cross Subsidy Surcharge for FY 2015-16 is exempted to the consumers who are availing solar power through open access from the Solar Generators located within the state of Telangana as directed by TSER Commission.

v) Further, in view of the direction of TSERC in the Wheeling tariff order dated 27.03.2015, exemption of wheeling charges collected from NCE generators (Solar, wind and mini-hydel) for the period from 17.05.2014 to 31.03.2015 was affected as per the Wheeling tariff order dated 09.05.2014 issued by APERC by adjusting in the future bills (By means of Refund).

x) As there are no directions by the TSERC on exemption of wheeling charges for captive consumers as per the Telangana Solar Power Policy-2015, wheeling charges are being levied and collected from NCE captive consumers also.

y) It is submitted that the TSERC has recently issued amendment order dated 31.12.2016 amending its order dated 27.03.2015 by adding the following after paragraph 49 of its order dated 27.03.2015.

“Provided that the wheeling charges shall not be applicable to the Solar Power Projects as per the directives of the Govt. of Telangana, as given below.

Provided further that the Govt. of Telangana shall reimburse the Discoms, the sum of money due to the exemption of the wheeling charges to the Solar Power Projects as stated in first proviso to the para 49. In the event of non-reimbursement by the Govt. of Telangana of the wheeling charges so exempted, the Discoms shall continue to levy the wheeling charges as applicable before this amendment plus the sum accrued as arrears from such consumers who are exempted under this amended order.”

z) In this regard, it is submitted that TSSPDCL is required to comply or implement the stipulated regulations or orders as passed or amended by TSERC from time to time.

20. The counsel for the respondent was present. The counsel for the petitioner was not present at the time of hearing, however, presented himself at the time of passing of daily order and requested that his presence may be recorded and the matter may be disposed of as decided at the time of hearing. We consider his request and treat that he was present for the matter.

21. The counsel for the respondent submitted that the relief of exempting levy of wheeling charges and cross subsidy surcharge as directed by the Commission from 31.12.2016 had been implemented in favour of the petitioner. Nothing survives in this petition, therefore same may be dismissed.

22. We notice from the orders passed by us on 31.12.2016 in O. P. Nos. 6 and 7 of 2016 that we had exempted levy of cross subsidy surcharge for the year 2016-17 valid upto 31.03.2017. Likewise, we had also passed an order on the same date in O. P. Nos. 78 and 79 of 2015 regarding exemption of levy of wheeling charges insofar as solar projects are concerned and the same is valid for the control period 2015-19. Thus, we had already substantially granted relief to the petitioner in this petition, albeit vide the above said orders. The counsel for the respondent submitted that the matter can be disposed of on the lines submitted by him, however, we notice that this arguments is in deviation of the submissions of the counter-affidavit. We also felt that such deviation is necessitated in view of the fact that this Commission had already passed modification orders to the original orders in respect of cross subsidy surcharge and wheeling charges. Therefore, nothing survives in the present petition, even if the

petition is kept pending on the file of this Commission for want of arguments by the counsel for the petitioner.

23. Accordingly, we dispose of the present petition in terms of the orders of this Commission as stated above and as no further orders are required in this petition. There shall be no order as to costs.

This order is corrected and signed on this the 30th day of June, 2017.

**Sd/-
(H. SRINIVASULU)
MEMBER**

**Sd/-
(ISMAIL ALI KHAN)
CHAIRMAN**

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