

Record of proceedings dated 29.07.2021

Case No.	Name of the Petitioner(s)	Name of the Respondent(s)
O. P. (SR) No. 7 of 2021	Sri Allu Venkat Reddy	District Collector, Vikarabad & TSTRANSCO

Petition filed seeking initiation of action under sections 142 and 146 of the Act, 2003 against the respondents.

Sri P. Chengal Reddy, Advocate for petitioner has appeared through video conference. The counsel for petitioner stated that the matter involves taking action against non-compliance of the order dated 07.08.2017 in O. P. No. 17 of 2016 of the Commission by the Collector. The petitioner made representation in November, 2017 requesting the Collector to pass orders in terms of the rules subsisting with regard to works of the licensee. Till date no action is taken nor amounts towards acquisition / damages have been paid to the petitioner. The petitioner has lost his land due to laying of towers and lines by the licensees. Having heard the arguments of the counsel for petitioner, the matter is reserved for orders.

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Case No.	Name of the Petitioner(s)	Name of the Respondent(s)
R. P. (SR) No. 48 of 2020 In O. P. No. 27 of 2020	M/s. L & T Metro Rail (Hyderabad) Ltd.	TSSPDCL

Review petition filed seeking review of the order dated 19.10.2020 in O. P. No. 27 of 2020 passed by the Commission.

Sri Avinash Desai, Advocate for review petitioner has appeared through video conference. The counsel for review petitioner stated that the Commission dismissed the original petition while observing about actions and inactions of the licensee in giving effect to the order of the Commission. He pointed out that several observations went against the licensee in the matter of extending the benefit of deration of maximum demand as sought by the petitioner within such time of the Commission's order. The Commission ought to have disposed of the matter, instead dismissed the petition. Therefore, the present review petition is filed seeking review of the order.

Having heard the arguments of the counsel for review petitioner, the matter is reserved for orders.

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Case No.	Name of the Petitioner(s)	Name of the Respondent(s)
O. P. No. 9 of 2021	M/s. Madhucon Sugar & Power Industries Limited	TSNPDCL

Petition filed Seeking determination of the tariff and fixed cost in respect of 24.2 MW bagasse based cogeneration project.

Sri Challa Gunaranjan, Advocate for the petitioner and Sri Mohammad Bande Ali, Law Attachee for respondent have appeared through video conference. The counsel for petitioner stated that the matter involves determination of tariff for the cogeneration project. The project was originally established in the year 2008 and the petitioner has been undertaking sale of energy to the DISCOMs under short term sale.

The counsel for petitioner stated that the petitioner's project is a renewable source of energy and it will aid the DISCOMs in complying with the renewable power purchase obligation as mandated in the Act, 2003, National Electricity Policy and National Tariff Policy. He has referred to various provisions applicable in Act, 2003, the NEP and NTP. He referred to the RPPO trajectory fixed by the Commission as well as the Government of India. He pointed out that there is a vast difference in the non-solar trajectory of RPPO. The Commission had fixed only the minimum percentage of RPPO at 0.9% of total sales of DISCOMs, however, they can procure higher quantum of power under non-solar as there is no restriction in the Commission's trajectory. It will also aid the DISCOMs to comply with the trajectory fixed by the Government of India. The Government of India fixed 10.75% towards non-solar power. Therefore, the DISCOMs should procure power under renewable sources from the petitioner and others.

The counsel for petitioner stated that the tariff now sought in this petition has been elaborately explained. Further, the counsel for petitioner identified certain parameters with regard to determination of tariff based on CERC Regulation. He has referred to the capital cost, debt equity ratio, interest on working capital and O and M

expenses. He stated that all the other parameters are taken from the order of the Commission only.

The counsel for petitioner stated that the tariff parameters to be considered were determined from time to time by the then combined Commission and this Commission also. This project being of the year 2008, the parameters mentioned in the order of the year 2004-09 have to be considered. The petitioner has submitted the parameters in terms of the CERC Regulation as well as the combined APERC orders. The petitioner's project is in the 14th year of operation. The combined APERC had determined tariff for 11th to 20th year of operation by its order in O. P. No. 8 of 2014 dated 23.08.2014, which has been adopted by this Commission. This Commission also passed orders in the year 2018 fixing tariff for the control period FY 2018-20. The counsel for petitioner pointed out the variations that need to be considered, which are at a difference to generic parameters in the case of the petitioner.

The counsel for petitioner adverted to the contentions of the respondent that the tariff cannot be determined unless there is an agreement between them and rebutted it by explaining the provisions of sections 62, 86 (1) (a) and (b) of the Act, 2003. It is his case that variable cost is being determined by the Commission, this petition is limited to determination of fixed cost only. He also stated that the petitioner is a cogeneration project and the respondents have sent a letter stating that they are willing to enter into an agreement provided the entire capacity is sold to them, which is uncalled for as it is a captive cogeneration plant. He sought determination of tariff so as to enable the parties to enter into an agreement for sale of energy by the petitioner to the respondents.

The representative of the respondent stated that the petitioner had been supplying power to the DISCOMs all these years through the short term procurement process and never came forward to sign the PPA. Had the petitioner approached the DISCOM at the relevant time, the petitioner's case would have been considered. He opposed the contention that the DISCOMs are not required to enter into an agreement before the tariff is determined by the Commission by explaining the provisions of the Act, 2003. It is his case that the DISCOM is willing to enter into an

agreement and procure the power provided the petitioner is agreeable to sell the entire capacity of the unit.

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

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Chairman

Case No.	Name of the Petitioner(s)	Name of the Respondent(s)
O. P. No. 2 of 2021	Indian Railways	TSTRANSCO & TSDISCOMs

Petition filed seeking declaration as deemed distribution licensee in the State of Telangana and grant of consequential reliefs.

Sri Pulkit Agarwal, Advocate for the petitioner and Sri Mohammad Bande Ali, Law Attachee for respondents have appeared through video conference. The counsel for petitioner stated that the petition is filed for declaration of Indian Railways as deemed distribution licensee in the State of Telangana and also allow open access. He stated that the railways is governed by the Railways Act, 1989. It is a deemed licensee pursuant to the provisions of the Act, 2003. He has explained the provisions of licence in the Act, 2003 and exemptions given under the Act, 2003 in sections 173 and 174. He has referred to orders passed by the Central Electricity Regulatory Commission and the Hon'ble Appellate Tribunal for Electricity in support of the case for deemed distribution and open access. He also referred to the judgment of the Hon'ble Supreme Court in the matter of Northern Railways against U. P. Power Corporation, wherein an analysis of the Railways Act has been made. The Hon'ble ATE held that the railways is entitled to as deemed licensee status as also open access while considering the order passed by the Maharashtra Electricity Regulatory Commission.

The counsel for petitioner stated that they have been making request for open access since 2016. After dodging the issue for quite some time, the licensee has required them to install ABT compliant meters for allowing open access. Thereafter, the DISCOMs have informed that the railways are liable to pay the wheeling charges and cross subsidy surcharge. When it was pointed out by the railways that it is not liable to pay the same, it was informed that they are treating railways as an ordinary consumer. It is his case that railways is not liable to pay wheeling charges and cross subsidy surcharge as the power is not being drawn at 33 KV but it is availed at 132

KV. The relevant provision for this purpose is section 39 and not section 42 of the Act, 2003. Section 39 of the Act, 2003 involves non-discriminatory open access in transmission and as such, they are liable to pay transmission charge only, such drawl does not attract cross subsidy surcharge levied under section 42 of the Act, 2003.

Therefore, the counsel for petitioner sought declaration of the railways as deemed licensee and to allow open access. The representative of the respondents sought time to make submissions in this matter. He also requested that all the orders and judgments referred by the petitioner be made available to the respondents for arguing the matter.

In view of the request made by the representative of the respondents, the matter is adjourned.

Call on 25 .08.2021 at 11.30 A.M.

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Chairman

Case No.	Name of the Petitioner(s)	Name of the Respondent(s)
O. P. No. 2 of 2020	M/s. Tejas India Solar Energy Private Limited	TSSPDCL & TSTRANSCO

Petition filed seeking directions to the respondents to synchronize the plant and consequently grant long term open access permission.

Sri P. Vikram, Advocate for petitioner and Sri Mohammad Bande Ali, Law Attachee for respondents have appeared through video conference. The counsel for the petitioner stated that the petitioner is seeking synchronization of the project. There was delay in completing the project and as such, the DISCOM encashed the performance bank guarantee. The petitioner was informed by the banker about the encashment of bank guarantee. The project had been established pursuant to the policy of the Government of Telangana on solar generation. The plant was ready since 2019, even now, though request had been made for synchronization, no action is initiated by the DISCOM. On the other hand, the representative of the respondent stated that the project was not completed in time, hence the bank guarantee has been encashed. The petitioner also did not make an application to the licensee for synchronization of the project after its completion. However, the counsel for

petitioner stated that the request had been made to the licensee for synchronization of the project, soon after the petitioner was ready for generation of power from the plant.

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

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Chairman

Case No.	Name of the Petitioner(s)	Name of the Respondent(s)
R. P. (SR) No. 4 of 2019 in O. P. No. 8 of 2017 & I. A. No. 8 of 2021	M/s. Shree Cement Limited	TSSPDCL & Vedanta Limited (Previously known as Sesa Sterlite Limited)

Review petition filed seeking review of the order dated 01.11.2018 passed in O. P. No. 8 of 2017.

I. A. filed seeking amendment in the prayer of the review petition.

Sri P. Vikram, Advocate for the review petitioner, Sri D. N. Sarma, OSD (Legal & Commercial) alongwith Sri Mohammad Bande Ali, Law Attachee for respondent No. 1 and Sri Hemanth Singh, Advocate for respondent No. 2 have appeared through video conference. The counsel for the petitioner stated that the arguments in the matter were already completed on the earlier date of hearing. The only aspect that is remaining is with regard to allowing the application for amendment of the prayer. He stated that there was a typographical error while seeking review of the order of the Commission. Therefore, this application is filed to correct the said typographical error. He sought to rely on the judgment referred by the respondents with regard to amendment of the pleadings and stated that the same is in favour of the review petitioner for the purpose of this amendment. The representative of the respondent No. 1 stated that the submissions have already been made in the review petition and the Commission may consider refusing the review petition, as there is no error in the order of the Commission. The counsel for petitioner stated that the review petition is intended solely to correct the finding in respect of the relief No. 1 in the main petition by applying the principle as decided in respect of the relief No. 2 in the main petition.

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

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Chairman

Case No.	Name of the Petitioner(s)	Name of the Respondent(s)
O. P. No. 7 of 2019	M/s. Prathmesh Solar Farms Private Limited	TSTRANSCO, M/s. Mytrah Agriya Power Private Limited, CGM (Comml & RAC) TSSPDCL

Petition filed questioning the action of the TSTRANSCO in allowing another project to utilize the facilities developed by the petitioner contrary to the regulations.

Smt. Swapna Seshadri, Advocate for the petitioner, Sri Y. Rama Rao, Advocate for respondent No. 1, Sri. Avinash Desai, Advocate for respondent No. 2 and Sri Mohammad Bande Ali, Law Attachee for respondent No. 3 have appeared through video conference. The counsel for the petitioner stated that the submissions on the part of the petitioner have been concluded on the earlier date of hearing.

The counsel for the respondent No. 1 stated that the matter does not attract the jurisdiction of the Commission, as it is a dispute between two generators. Section 86 (1) (f) of the Act, 2003 is not intended for resolution of disputes between the generators. Insofar as transmission lines are concerned, the same are owned and maintained by the transmission licensee, ones they have been constructed and handed over to the transmission licensee. It is the duty and right of the transmission licensee to use the available towers and lines according to the requirement and neither of the parties have any authority over the transmission towers and line.

The counsel for respondent No. 2 stated that the said respondent had requested respondent No. 1 to make available the transmission towers and line to an extent of four towers as it is facing land availability and right of way issues. In pursuance of the above said request, the transmission licensee required the respondent No. 2 to have an agreement with the other generator, who had established the said line for sharing purpose and thereafter, it will consider further action in favour of the respondent No. 2. Accordingly, it entered into an arrangement with the petitioner for utilization of four towers for stringing the line of the respondent No. 2 to that extent. Thereafter, the plant for synchronization to the grid was undertaken.

The case of the counsel for respondent No. 2 is that the respondent No. 2 separately applied for establishment of transmission line by stringing another line on the existing towers laid by the petitioner. Having permitted the respondent No. 2 to lay additional line upto four towers by the petitioner, it cannot now allege that action be taken against the respondent for using the entire stretch of the line. The claim that there are damages also does not arise. The counsel for the respondent No. 2 relying on various documents filed by the petitioner and respondent No. 2, stated that no relief can be granted to the petitioner in the matter as the damages alleged have not been quantified, violation of safety norms alleged has not been shown specifically shown with reference to any rule or regulation and there is no action required for alleged violation of the respondent No. 1 in allowing the respondent No. 2 to lay the line contrary to and without following safety standards as notified by the Commission.

The counsel for petitioner stated that the petition is maintainable as has been held by the Hon'ble Supreme Court in M/s. Gujarat Urja Vikas Nigam Limited Vs. ESSAR Power Limited reported in 2008 (4) SCC 755. It is the case of the counsel for petitioner that the dispute squarely falls within the jurisdiction of the Commission as it is between two generators and the licensee. In the above said judgment, the Hon'ble Supreme Court interpreted the word 'and' appearing in section 86 (1) (f) of the Act, 2003 to mean either 'and' or 'or' and it can be used vice versa. In this case, the petitioner and respondent No. 2 are generators and the respondent No. 1 is the licensee. It is also her case that transmission licensee itself upon the request of the respondent No. 2 had required them to sign an agreement for extending permission. Thus, the action of the transmission licensee is also violative of the statutory rules and regulations. It has been alleged that despite informing the licensee about the stringing of the line without taking a load shedding, the transmission licensee did not bother to take safety measures and endangered the life and property of the people working around there.

The counsel for respondent No. 2 stated that there is no specific pleading about safety and damages as also the correspondence made by the respondent No. 2 with respondent No. 1 including the plan submitted for execution of work for transmission line. The counsel for petitioner would urge that since the line has been

executed by the petitioner appropriate relief may be granted as sought for in view of the material available on record.

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

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Chairman

Case No.	Name of the Petitioner(s)	Name of the Respondent(s)
O. P. No. 8 of 2021	M/s. Singareni Collieries Company Limited	TSDISCOMs

Petition filed seeking resolution of disputes regarding billing u/s. 86 (1) (f) of the Act, 2003.

Sri. P. Siva Rao, counsel for petitioner and Sri. D. N. Sarma, OSD (Legal and Commercial) along with Sri. Mohammad Bande Ali, Law Attachee, of TSSPDCL for the respondents have appeared through video conference. The representative of the respondents stated that the petition involved specific issues arising out of the PPA dated 18.01.2016. The Commission had considered all the aspects raised in the present petition while determining the tariff in the year 2017. This PPA came to be entered originally for establishment of the power project and coal linkage had been agreed on the basis of MOU and not under fuel supply agreement. The fuel considered for the project is of the variety of G-9 to G-15. Also, the coal supply is under bridge linkage and not under the regular agreement of supply.

The representative of the respondents stated that the petitioner had approached the Hon'ble ATE alleging that the Commission had invoked the provisions of Central Electricity Regulatory Commission's Regulation on tariff in a sporadic manner and not considered all the aspects. Some of the issues are subject matter of appeal as well as this petition. In order to appreciate the issue, the representative explained the provisions of the PPA with reference to the issues in the present petition.

The representative of the respondents stated that the petitioner had exceeded the generation quantum as fixed by the Commission in the tariff order and therefore, the state load despatch centre had to give instructions to back down the generation. Excess generation beyond the demand would result in system frequency being enhanced over and above the normative figure of 50 HZS. Such excess of system

frequency would involve and result in unscheduled interchange charges on the DISCOMs. Excess generation over and above the demand would cause system losses and it may result in tripping of the grid. As regards UI charges, he has referred to a judgment of the Hon'ble Supreme Court rendered in the matter of the then Central Power Distribution Company of Andhra Pradesh, which had explained the concept of UI charges and its importance. Several times, the SLDC had to back down other units in view of excess generation by the petitioner. It had also issued notice regarding the excess generation done by the petitioner. In this context, section 33 of the Act, 2003 provides for functions of the SLDC, wherein it is allowed to levy penalty for violating the directions of the SLDC. The amount leviable is only Rs. 5.0 lakhs only. However, the DISCOMs would be burdened with additional expenditure of Rs. 30 Crores, as they have to pay the fixed charges and also incentives over and above normative PLF.

The representative of the respondents stated that the SLDC has specific functions assigned to it under section 32 of the Act, 2003. The Hon'ble ATE also considered the issues of SLDC regarding unscheduled interchange and the necessity to maintain the system frequency. The petitioner ought to have limited the generation to the extent of tariff order as ordered by the Commission. However, it has taken the generation figures as approved in the ARR of DISCOMs. The ARR of the DISCOMs is only a tentative estimation of the requirement of power and cannot be the basis for generation by the petitioner. The petitioner can only generate according to its tariff order.

The representative of the respondents stated that the water charges claimed by the petitioner is in excess of the tariff order. In fact, the Commission had allowed excess amount more than what has been spent by the petitioner towards this head as could be seen from the true up petition and the original tariff order. The said charges are part of the O and M expenses and have to be spent in accordance with the approval of the Commission in the tariff order of the petitioner. The true up petition clearly demonstrates that this claim now made is contrary to the factual position. The respondents are not required to consider payment of any amount over and above the tariff order as modified in the true up petition of the petitioner.

The representative of the respondents referred to the provisions in section 70 of the Indian Contract Act and the connected judgments rendered by the Hon'ble Supreme Court. It is his case that no one can have gratuitous benefit according to the said provision. The petitioner originally relied on the said provision, but has rescinded such contention in his reply. It is stated that the provisions of the PPA become subservient to regulation and the provisions of regulation are subservient to Act, 2003. As such, the inconsistent provisions in the PPA to the regulation have to be inline with the regulation. In the instant case, the petitioner cannot claim any amounts on the basis of the provisions of the PPA, as the same have to be read in conjunction with the regulation subsisting at the relevant time.

The representative of the respondents explained about the high frequency by placing the provisions of code of interface as notified by the combined APERC as also the grid code as notified by the Commission including the latest regulation on deviation settlement. It is his case that deviation from the scheduled generation is permissible but violation of the order passed by the Commission is impermissible. The petitioner has also attracted the CAG paragraph on the fuel aspect and other charges.

The representative of the respondents stated that the Commission may consider refusing any relief as claimed by the petitioner as the same are contrary to the regulations of the Commission and orders passed thereof.

The counsel for the petitioner sought time to make submissions in reply and sought for an early date. Accordingly, the matter is adjourned.

Call on 09.08.2021 at 11.30 AM.

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Chairman

Case No.	Name of the Petitioner(s)	Name of the Respondent(s)
O. P. No. 59 of 2018	TSDISCOMs	APGENCO, APTRANSCO & APDISCOMs

Petition filed seeking certain directions to APGENCO and APDISCOMs

Sri. Mohammad Bande Ali, Law Attachee of TSSPDCL for the petitioners has appeared through video conference. There is no representation on behalf of the

respondents. The representative of the petitioner sought time of six months for reporting status of the matter. In view of the request, the matter is adjourned.

Call on 29.11.2021 at 11.30 A.M.

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