

Record of proceedings dated 15.02.2021

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

TSDISCOMs Vs. Nil

Petition for amendment to the banking agreement for in – house captive generators by deleting the clause 5.14 from the banking agreement and approve the amendment.

Sri Mohammad Bande Ali, Law Attachee for the petitioner has appeared through video conference. The representative of the petitioner stated that the petition is filed for amending the agreement to be entered by the licensees for providing banking of energy to the in – house captive generators. The issue arose out of regulation No. 2 of 2017 being amendment to the regulation No. 2 of 2006 relating to interim balancing and settlement code. While amending the banking regulation the Commission directed the licensees to propose suitable agreement to be entered by them to provide banking of energy for inhouse captive generator.

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

The representative of the DISCOMs stated that such a condition is causing onerous burden on the DISCOMs as such they have written a letter to the Commission and it was not entertained therefore the present petition is filed.

The Commission sought to know as to why this petition should not be taken up for consideration under public hearing mode. The representative of the petitioner responded in the affirmative. Therefore, the matter is reserved for orders.

Sd/-
Member

Sd/-
Member

Sd/-
Chairman

O. P. (SR) No. 16 of 2019

TSDISCOMS Vs. Nil

Petition for amendment to the regulation on security deposit

Sri Mohammad Bande Ali, Law Attachee for the petitioners has appeared through video conference. The representative of the petitioners stated that the petition is filed for amending the Regulation No. 6 of 2004 relating to security deposit as adopted by the Commission with regard to certain aspects. The Commission sought to know from the petitioners' representative as to whether the petition is required to be considered through public hearing mode. The representative of the petitioners replied in the affirmative as to the process to be undertaken by the Commission on the issue. Therefore, the matter is reserved for orders.

Sd/-
Member

Sd/-
Member

Sd/-
Chairman

O.P. (SR) No. 33 of 2019

TSDISCOMs Vs. -Nil-

Petition filed seeking amendment to the Regulation No. 4 of 2005 being the terms and conditions of determination of tariff for wheeling and retail sale of electricity.

Sri Mohammad Bande Ali, Law Attachee for the petitioners has appeared through video conference. The representative of the petitioners stated that the petition is filed for amending the Regulation No. 4 of 2005 on the aspect of determination of tariff for wheeling and retail sale of electricity as adopted by the Commission with regard to certain aspects. The Commission sought to know from the petitioners' representative as to whether the petition is required to be considered through public hearing mode. The representative of the petitioners replied in the affirmative as to the process to be undertaken by the Commission on the issue. Therefore, the matter is reserved for orders.

Sd/-
Member

Sd/-
Member

Sd/-
Chairman

O. P. (SR) No. 10 of 2020

TSSPDCL Vs. -Nil-

Petition filed seeking amendment to certain clauses of APERC Regulation No. 2 of 2006 (interim balancing and settlement code for open access transactions) read with its amendments thereof and adoption vide TSERC Regulation No. 1 of 2014.

Sri Mohammad Bande Ali, Law Attachee for the petitioners has appeared through video conference. The representative of the petitioners stated that the petition is filed for amending the Regulation No. 2 of 2006 as adopted by the Commission with regard to certain aspects. The Commission sought to know from the petitioners' representative as to whether the petition is required to be considered through public hearing mode. The representative of the petitioners replied in the affirmative as to the process to be undertaken by the Commission on the issue. Therefore, the matter is reserved for orders.

Sd/-
Member

Sd/-
Member

Sd/-
Chairman

R. P. (SR) No. 4 of 2019
in
O. P. No. 8 of 2017

M/s. Shree Cement Limited Vs. 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

Sri M. Abhinay Reddy, Advocate for the review petitioner, Sri Mohammad Bande Ali, Law Attachee for respondent No. 1 and Sri Lakshyajit Singh Baggwal, Advocate for the respondent No. 2 have appeared through video conference. The counsel for the review petitioner stated that the review petition is filed for reviewing the order passed by the Commission. The counsel for the 2nd respondent stated that the review petition is directed against the TSDISCOMs in the contents, but the prayer seeks reliefs against all the respondents. If the review petitioner is seeking relief against the DISCOMs, the 2nd respondent need not file a counter affidavit as otherwise it is required to file counter affidavit and for that purpose the respondent needs sufficient time. This aspect is required to be clarified by the review petitioner. The counsel for the review petitioner stated that the matter may be adjourned to a short date as the senior counsel will appear and argue the matter. The representative of the DISCOMs

stated that they have also filed a review petition against the said order, which is also listed today for hearing. The representative also stated that there is an application for condoning the delay for 87 days, which is beyond 75 days as provided in the business regulation of the Commission. In view of the request of the review petitioner, the same is adjourned.

Call on 22.02.2021 at 11.30 A.M.

Sd/-
Member

Sd/-
Member

Sd/-
Chairman

R. P. (SR) No. 22 of 2019
&
I. A. No. 5 of 2020
In
O. P. No. 8 of 2017

TSSPDCL Vs. M/s. Shree Cement Limited

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

Application filed to condone the delay in filing the review petition in O.P. No. 8 of 2017 filed by M/s Shree Cement Private Limited.

Sri Mohammad Bande Ali, Law Attachee for the review petitioner and Sri M. Abhinay Reddy, Advocate for the respondent have appeared through video conference. The counsel for the respondent in this review petition stated that the respondent has also filed a review petition, which is also listed today for hearing. The present review petition is filed by the DISCOM for reviewing the order passed by the Commission. The representative of the review petitioner stated that this matter may be adjourned alongwith the review petition filed by the original petitioner. He stated that they have also filed an application for condoning the delay for 87 days, which is beyond 75 days as provided in the business regulation of the Commission. The said delay has been explained in detailed which may be condoned. The Commission observed that the review petitions of both parties will be taken together and the application for the delay will also be heard at that time. In view of the request of the parties, as also as the connected review petition is adjourned, this review petition is also adjourned.

Call on 22.02.2021 at 11.30 A.M.

Sd/-
Member

Sd/-
Member

Sd/-
Chairman

O.P. No. 63 of 2018

M/s Srinivasa Power Private Limited Vs. TSSPDCL

Seeking determination of tariff for the period 11th to 20th year of the project.

Sri P. Srinivasa Rao, Advocate for the petitioner and Sri Mohammad Bande Ali, Law Attachee, TSSPDCL for the respondent have appeared through video conference. The counsel for the petitioner stated that the petition is filed for determination of tariff of the project for the period 11th to 20th year in terms of the PPA entered by the petitioner with the respondent. The petitioner has filed the necessary details in the petition itself for enabling the Commission to determine the tariff. The respondent had filed a counter affidavit stating that it is continuing to implement the order passed by the erstwhile APERC in the year 2014 as adopted by this Commission.

The counsel for the petitioner stated that this petition is filed for a specific determination of this project's tariff for the period from 11th to 20th year of operation. The order of the erstwhile APERC cannot be fastened on the petitioner as there was no notice nor its view were taken into consideration by the said Commission. Moreover, the said order of the then APERC stood challenged before the Hon'ble ATE by some of the generators and the Hon'ble ATE remanded the matter to the present APERC in the year 2016 insofar as the generators, who have approached it. The Hon'ble ATE made it clear that no benefit will be created to others, who have not approached the tribunal and accepted the order of the Commission. But in the case of the petitioner as it had no notice while determining the generic tariff by the then APERC, the consequences of the said order are not applicable to the petitioner.

The Hon'ble ATE while deciding the appeal relied on the decision of the Hon'ble Supreme Court in the matter of Transmission Corporation of Andhra Pradesh Vs. Sai Renewable Power Limited as decided on 08.07.2010. The counsel for the petitioner made specific submissions by relying on the said judgment as also the judgment of the Hon'ble ATE. He has quoted extensively from the said orders to emphasize the point that the Commission is alone the authority to determine the tariff and that in the absence of the notice the orders of the then APERC as also the Hon'ble ATE cannot place fetters on the petitioner seeking the present relief. He also

pointed out that the law rendered by the Hon'ble Supreme Court under Article 142 of the Constitution of India is binding on this Commission.

The counsel for the petitioner while relying on the decision of the Hon'ble Supreme Court as also the provisions of the Electricity Act, 2003, narrated the background sequence of events and the orders passed by the erstwhile APERC upto the order of the Hon'ble Supreme Court. He sought to emphasize that the provisions made by the erstwhile APERC in the order dated 20.06.2001 as upheld by the Hon'ble Supreme Court would continue to apply to the case of the petitioner. He has shown the relationship between the order of the Commission and the PPA as regards determination of tariff for 11th to 20th year. Thus, he has sought orders from the Commission for allowing the petition by determining the tariff for 11th to 20th year period exercising powers under section 62, 64 and 86 of the Act, 2003.

The counsel for the petitioner as part of his arguments also relied on the aspect of notice and communication as provided in the Act, 2003, Business Regulations of the Commission and general principles of notice. It is his case that the erstwhile APERC has not issued any notice before passing the order, nor communicated it after passing the same to the petitioner. Likewise, the petitioner had no notice of the appeal filed by certain generators as also the order passed thereon subsequently by the Hon'ble ATE. The petitioner cannot be subjected to any conditions imposed in the absence of notice of such orders passed by any authority.

The representative of the respondent submitted that the petition ought not to have been entertained by the Commission, as the petitioner has completed 10 years of the project in the year 2002 and the petition is filed in the year 2018. There is a delay beyond reasonable time for filing a money suit, which is three years under the Limitation Act. The petitioner had also not approached the Commission in time as the order of the APERC in the year 2014 and the Hon'ble ATE in the year 2016. The respondent is implementing the order passed by the then APERC as adopted by the Commission and the petitioner cannot claim any relief on the basis of the order of the Hon'ble ATE. This Commission may not consider the present request of the petitioner for the reason that in the absence of notice, it does not amount to non-application of the order of the Commission. If at all, the petitioner had any grievance

against the order of the APERC, it should have filed appeal before the Hon'ble ATE. Now the period for appeal and review have already expired.

The representative of the respondent stated that the counsel for the petitioner submitted various arguments which are neither relevant nor appropriate. Though excellent efforts have been made to explain the law, it only resulted in confusing the Commission. There is no dispute with regard to application of the tariff or implementation of the existing PPA. Though the Commission has jurisdiction to decide the tariff, the petitioner having accepted the order of the APERC, cannot turn round and say that fresh determination of tariff is made insofar as the project is concerned contrary to subsisting orders and the provisions of the PPA. The present petition may be dismissed.

Having heard the submissions of the counsel for the petitioner and the representative of the respondent in detail, the matter is reserved for orders.

Sd/-
Member

Sd/-
Member

Sd/-
Chairman