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

O. P. No. 94 of 2015
&
I. A. Nos. 3 & 4 of 2016

Dated: 04.08.2016

Present
Sri. Ismail Ali Khan, Chairman
Sri. H. Srinivasulu, Member
Sri. L. Manohar Reddy, Member

Between:

M/s. MLR Industries Private Limited,
4E, 4th Floor, Surya Towers, S.P. Road,
Secunderabad – 500 003. … Petitioner.

And

1. Chairman & Managing Director,
   Southern Power Distribution Company of TS Ltd.,
   Mint Compound, Khairathabad, Hyderabad-500004.

2. Chief General Manager (Comml & RAC).
   TSSPDCL, Corporate Office,
   6-1-50, 2nd Floor, Mint Compound,
   Hyderabad-500063. … Respondents.

This petition came up for hearing on 23.12.2015, 15.06.2016 and 04.07.2016. Sri. M. Mohan Rao, Counsel for the petitioner appeared on 23.12.2015 and 04.07.2016. Sri. B. Adinarayan Rao, Senior Advocate along with Sri. M. Mohan Rao, Counsel for the petitioner appeared on 15.06.2016. Sri. Y. Rama Rao, Standing Counsel for the respondents along with Sri. P. Venkatesh, Advocate appeared on 23.12.2015. Sri. Y. Rama Rao, Standing Counsel for the respondents along with Smt. Priya Iyengar, Advocate appeared on 15.06.2016 and 04.07.2016. The petition having stood for consideration to this day, the Commission passed the following:

ORDER

M/s. MLR Industries Limited (petitioner) has filed a petition seeking banking facility solar power exported on captive utilization basis by petitioner itself under sec 86 (1) (e) and (f) of the Electricity Act, 2003 (Act, 2003) read with regulation No. 2 of 2015 being the conduct of business regulation of the commission.

2. The petitioner stated that the erstwhile Government of Andhra Pradesh (GoAP), in order to promote generation of power from green sources introduced "The Andhra Pradesh Solar Policy, 2012" (policy 2012) 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 by G. O. Ms. No. 39, dated 26.09.2012 and G. O. Ms. No. 44, dated 16.11.2012. This was planned to contribute to the overall economic development, employment generation and improvement in public services by provision of electrical energy for various needs.

3. The petitioner stated that the above policy guidelines, included all the registered companies, Central and State Power Generation / Distribution Companies and Public / Private Sector Power Project Developers who are eligible for setting up of solar power projects, either for the purpose of captive use and / or for selling of electricity. It is stated that as part of the announced mechanism banking of 100% of energy shall be permitted on yearly basis 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 time of day (TOD) hours as amended from time to time. The developer will be required to pay 2% of the banked energy towards banking charges.

4. The petitioner is a company incorporated in the year 2000 under the Companies Act, 1956, has been operating a continuous automatic pasta manufacturing plant at Bibinagar Village & Mandal, Nalgonda District, Telangana State, in a plot having an area of 27 acres. In order to overcome the difficulties faced during summer period and during peak hours daily, it having been encouraged by the support from the Government for solar power, proposed setting up of a captive solar power plant based on fixed PV cells of 2.00 MW capacity within the factory premises itself.

5. The petitioner stated that it had applied on 17.05.2013 for approval for setting up of the 2.00 MW solar power generating unit at Bibinagar within the factory premises to the then Central Power Distribution Company of Andhra Pradesh (APCPDCL) (now Telangana State Southern Power Distribution Company Limited, TSSPDCL) along with necessary fees and taxes and other supported documents. A feasibility study report was prepared by the then TSSPDCL based on which it had taken up setting up of the solar project in the year 2013 thereafter a letter was addressed to the petitioner company bearing letter No. CGM (Comml & RAC) / IPC / F. MLR / D. No. 5032 / 13, dated 03.10.2013 by the Chief General Manager (Comml & RAC), TSSPDCL directing it to furnish an undertaking on Rs.100/- Non-Judicial Stamp Paper. Accordingly, it had given the undertaking dated 30.09.2014 and the same is extracted in the petition.

6. The petitioner stated that it completed the 2.00 MW solar power generating plant at Bibinagar, which was synchronized with the grid through 132 / 33 KV sub-station on 16.10.2014 situated at Bibinagar. It has been drawing its power from TSSPDCL through a dedicated 33 KV transmission line. It incurred a total expenditure of Rs.16 crores for the solar power project till this date. It stated that the Chief General Manager (Commercial & RAC) of TSSPDCL, vide their letter No. CGM (Comml & RAC) / IPC / F. MLR / D. No. 3159 / 14, dated 18.11.2014 confirmed that the 2.00 MW capacity in house captive solar power plant of petitioner located at Bibinagar in Telangana State was grid connected and synchronized on 16.10.2014. As part of the same communication the Chief General Manager has also mentioned that the eligibility of renewable energy certificates (RECs) are subject to fulfillment of APERC and CERC Regulations as the plant is a captive plant and is wishing to avail banking facility.

7. The petitioner stated that in order to reduce the transmission losses for the power that is generated and exclusively consumed by the petitioner on an exclusive captive power basis, the solar power generated is drawn by the continuous pasta process plant through LT cables connected to the existing 415 V Bus Bar. The excess power generated during peak day time which could not be consumed alone is exported to the grid through the 33 KV line for which necessary metering as stipulated by TSSPDCL / TSTRANSCO / SLDC has been provided.

8. The petitioner stated that the harmonics have been checked and certified for suitability of all the connected equipments in the circuit by the Divisional Engineer, MRT & Transformers, Nalgonda, vide his letter No. DE / MRT & Transformers / NLG / F: MLR Solar / D. No. 49 / 2015, dated 24.04.2015, addressed to SE (O&M), Nalgonda. It is stated that the petitioner in its letter dated 16.06.2015, requested TSSPDCL to approve the excess power banking facility for consumption by its own plant as per the extant guidelines with effect from 16.10.2014 onwards, being the date of synchronization. By way of reply to the petitioner's letter dated 16.06.2015 the Chief General Manager (Comml & RAC) had issued a letter bearing No. CGM (Comml & RAC) / IPC / F. MLR / D. No. 773 / 15, dated 24.08.2015 stating that its request to adjust the power pumped into the grid as banked energy without any valid agreement is not considered by TSSPDCL management. It is not the mistake on part of the petitioner. If there is an intention to enter into any such agreement the process can be completed within one week.

9. The petitioner stated that in G. O. Ms. No. 39, dated 26.11.2012 issued by the then GoAP which deals with the Andhra Pradesh Solar Power Policy, 2012 (AP Policy), wherein it is specifically mentioned at para No. 7 that the Banking of 100% energy shall be permitted of that year. Almost similar provision is introduced by the present Telangana Government (GoTS) in the Telangana Solar Power Policy 2015 (Telangana policy) at para No. 11 sub-para (e). It stated that if the banking facility as provided in Telangana Policy is not provided even after establishing 2 MW solar power project by spending huge amounts of more than Rs.16 crores it will incur huge financial loss and on the other hand the TSSPDCL is receiving the power through grid generated by it. It is also stated that the company through its Solar PV Generating Unit has been generating power from 16.10.2014 onwards, the particulars of which are given in the petition. It may be observed from the above data that a significant quantity of power generated during peak day time period could not be utilized at the time of generation and had to be exported. This was planned and done on the assurance of banking facility being available for captive power generating units.

10. The petitioner stated that it does not have any intention to sell this power to any third party or give it back to TSSPDCL. It in addition to the generated power also consumes power purchased from TSSPDCL through the same 33 KV dedicated line

through the 1503 KVA transformer installed at the plant since beginning. In other words it is stated that even after consumption of the captive power generated through the solar facility, the petitioner is required to continue procuring additional power from TSSPDCL continuously. It is a part of the Bambino Group of Companies which has been manufacturing and supplying pasta products for over three decades, whose products are also exported. The group has been providing employment to significant number of persons in various districts of Telangana.

11. The petitioner stated that the Telangana policy is the vision document issued by the GoTS and is a policy statement made by the government. The said policy encompasses the entire gamut of operations between solar power projects and the TSSPDCL. The petitioner applied for and obtained all permissions as per law before setting up of the 2 MW solar power project at Bibi Nagar. Subsequent to the setting up of the project, the same was synchronized with the grid on 16.10.2014. The various communications and correspondence between it and the TSSPDCL is clear to the extent that the petitioner power project is synchronized with the grid and the excess power is being banked with the respondents. As per the policy and the Act, 2003, it is entitled to utilize the banked power also per Clause 11 (e) of the policy of 2015. Clause 11 (e) is very elaborate and exhaustive and provides for various situations. In fact, for captive projects like the petitioner, once the energy is injected into the grid from the date of synchronization, the petitioner is eligible to utilize the banked energy. It is pertinent to note here that the entire policy document does not provide for a formal agreement between the parties in the absence of which it is deemed that from the date of synchronization would enable the petitioner to reap benefits under the Telangana policy. In fact, the solar power policy of the then GoAP issued as G. O. Ms. No. 39, dated 26.09.2012 also does not provide for an agreement between a solar power project and the TSSPDCL. In such light of facts, it is but natural to bank upon the policy document of the government. It addressed a letter dated 16.06.2015 to the TSSPDCL requesting it to approve the excess power banking facility for consumption of its own plant with effect from 16.10.2014 that is from the date of synchronization. To the astonishment of it, the TSSPDCL issued a reply dated 24.08.2015 stating that there is no regulation / order facilitating banking of power for in house power plants without any agreement and hence the request of it was rejected. In this regard it is stated that neither G. O. Ms. No. 39 nor the new Telangana policy of the GoTS provide for any

agreement for in house power plants in the absence of which the reply dated 24.08.2015 by TSSPDCL is illegal, bad in law and cannot be acted upon. In fact, it is incumbent upon the TSSPDCL to permit / allow the petitioner company to utilize the banked energy which is lying to its credit right from the date of its synchronization with the grid. No logic nor any law would prevent it to utilize the banked power nor encash the same. As the policy does not provide for encashing the banked power, it is but clear that the same can be utilized by it, more so, when the TSSPDCL are charging 2% as banking charges. The TSSPDCL action in refusing to allow it to avail the banked power is without any just basis and is against the spirit of the policy document. In fact, Clause 17 of the policy document provides for issuing clarifications to remove difficulties in a situation which is not provided for. In the present scenario, it is just and necessary that the TSSPDCL permit it to utilize / avail the banked power and it is ready and willing to pay the 2% banking charges as per the policy.

12. The petitioner stated that the cause of action arouse on 26.09.2012 and on 16.11.2012 when the then GoAP passed G. O. Ms. No. 39, and G. O. Ms. No. 44 respectively and introduced the Andhra Pradesh Solar Power Policy, 2012 and on 17.05.2013 when it applied for approval for setting up of 2.00 MW solar power generating plant at Bibinagar within the factory premises and on 16.10.2014 when it after completing the establishing 2.00 MW Solar PV generating plant synchronized with the grid through 132 / 33 KV, and on 18.11.2014 when the Chief General Manager (Comml & RAC) of TSSPDCL confirmed that 2.00 MW capacity of in-house solar power plant of it was connected to grid and synchronized and on 24.04.2015 when the Divisional Engineer MRT & Transformers, Nalgonda addressed a letter to Superintending Engineer (O&M), Nalgonda about the installation of automatic meter readings (AMRs) etc., and on 16.06.2015 when the petitioner company addressed a letter to the Chief General Manager (Comml & RAC), requesting to approve the excess power banking facility for consumption of the petitioner company's plants within the factory premises as per the guidelines provided in respect of solar power policy in 2012 as well as in 2015 and finally on 24.08.2015 when the Chief General Manager (Comml & RAC) replied vide letter dated 24.08.2015 stating that it's request to adjust the power pumped into the grid as banked energy without any valid agreement is not considered by the TSSPDCL management in the absence of any agreement and as such the request cannot be considered and all other subsequent dates.

13. In view of the foregoing submissions the petitioner has sought following prayer.

i) "The respondents be directed for approving the banking facility for the power exported on exclusive captive utilization basis by the petitioner company with effect from the date of synchronization i.e., from 16.10.2014.

ii) The respondents be directed to give credit for the exported power approximately 1.3 million units actually exported from 16th October, 2014 to 30th September, 2015 and further power exported to the grid thereafter."

14. The petitioner stated that it is a private limited company and part of an existing bambino group company, engaged in manufacturing of vermicelli and pasta products having its factory at Bibinagar Village and Mandal, Nalgonda District. It is running a continuous process industry 24 x 7 and manufactures its products round the clock basis and providing employment to about 400 persons.

15. The petitioner stated that basing on the assurances given by the erstwhile GoAP and subsequently as per the guidelines given by the GoTS, it installed a captive solar PV power generation plant of 2.00 MW capacity with banking facility for the power exported during day time. It was commissioned and synchronized with grid on 16.10.2014 and has been continuously exporting power to TSSPDCL as part of the banking facility, which is meant for consumption in night time as per the policy guidelines issued by the erstwhile GoAP as well as our present GoTS. The petitioner also buys power from TSSPDCL for its additional needs.

16. The petitioner stated that in terms of the above guidelines it is entitled to banking facility of the exported power within a period of twelve months. As no such permission / agreement for banking of excess power was given / executed by TSSPDCL. It was compelled to approach the Commission on 26.10.2015 by filing the present original petition seeking following reliefs as mentioned supra. The petitioner sought to rely on the grounds in the original petition and sought the same to be read as part and parcel of interlocutory application. The said O. P. came up for hearing on 23.12.2015 as the respondents sought time for filing counter and hence the matter is adjourned to 13.04.2016. It is further stated that the Commission also observed as a part of the order as under.

"The counsel for the respondents has sought time to file counter affidavit in the matter as it is coming up for the first time and also to inform the feasibility of allowing banking of energy".

17. The petitioner stated in fact it decided to file an application before the Commission to advance the date of hearing from 13.04.2016 to any nearer date and another application seeking directions to the respondents permitting it to utilize the power generated by it and also the power exported to the grid till the disposal of original petition pending on the file of the Commission.

18. The petitioner stated that the TSSPDCL is raising bills against it for the entire power utilized by them and the petitioner is paying the same in full, though from 16.10.2014 onwards the cumulative energy exported by the petitioner company to the grid to the tune of 20,07,564 KWH, (upto 27.03.2016) which is lying with TSSPDCL towards the banking facility which cost itself comes to Rs.159.40 lakhs at the present rate. It further stated that at the time of establishing the captive solar power project it had spent approximately Rs.16.00 crore to complete the solar power plant for which they raised loans from the banks. It is obliged to pay Rs.270.00 lakhs per annum towards principal installments and interest on the amount of loan borrowed by it for establishing the solar power project. The payment of installment and interest to the bank in addition to the payment of the bills raised by the TSSPDCL for the entire energy utilized by the petitioner are the liabilities that are eating away the liquidity and consequently it is facing lot of difficulties and financial crunch in conducting its present day to day business activities. If this position continues further, the company will have no other option except to wind up the company which will result the 400 workers will be on the street apart from several other problems the petitioner has to face. Therefore, the Commission may pass appropriate interim orders after advancing the date of hearing or else, the petitioner will suffer irreparable loss.

19. The petitioner therefore stated that the Commission may permit it to utilize the power generated by it and also the power exported to the grid till the disposal of original petition pending on the file of the Commission or else it is highly impossible to run the unit with this sort of liquidity crunch. The correspondence between the petitioner and the respondent No. 2 which is referred to in page No. 68 and 69 of the material papers is proof positive to pass appropriate interim directions on this application.

20. The petitioner therefore prays that the Commission may be pleased to advance the date of hearing from 15.06.2016 to any nearest or earliest date to hear the matter and to pass appropriate interim orders as the Commission may deem fit and proper in the facts and circumstances of the case.

21. The petitioner filed a second petition by stating and reiterating the submissions made earlier in the main petition as well as the other interlocutory petition. It therefore prays that the Commission may be pleased to direct the respondent No. 2 to permit the petitioner company to utilize the power generated by captive solar power project, which includes exported power to the grid by way of credit in kind, till the disposal of original petition pending before the Commission.

22. The respondents have filed their counter affidavit to the petition filed by the petitioner, which is as follows.

"a) The erstwhile GoAP in the year 2012 had issued G. O. Ms. No. 39 Energy (RES. A1) Department dated 26.09.2012 notifying the AP Policy and subsequently, issued another G. O. Ms. No. 44 Energy (RES,A1) Department dated:16.11.2012 whereby G. O. Ms. No. 39 is amended.

b) As per the said amendment, the following are the conditions specified with effect from providing of banking facility to solar power plants.

"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 APERC."

c) The petitioner has submitted an application dated: 17.05.2013 for 2 MW capacity in-house captive solar power plant. During the process of issuing the technical feasibility for settling up the plant, The petitioner has submitted the following undertaking dated: 07.10.2013 to APCPDCL

"*We hereby undertake that the power generated from the proposed 2 MW captive power plant will be 100% utilized for our industry (captive) i.e., MLR Industries Private Limited (Sc No. NLG-846) bibinagar. Both*

the proposed power plant and our industry are existing in the same premises. The power injected after captive use (if any) calculated on monthly basis will be utilized by MLR Industries Private limited as per the applicable regulations of APERC for the time being in force (including any modifications/amendments that may be issued by APERC from time to time) while availing the benefits available under banking, net metering and eligibility for RECs."

d) From the above, it is clear that the petitioner is well aware about the facts that the settlement of energy under third party or captive are governed by the prevailing regulations of the then APERC as adopted by TSERC and amendments if any issued by TSERC.

e) All intra state open access transactions are governed by the open access regulations issued by the then APERC that is Regulation 2 of 2005 and 2 of 2006 and its subsequent amendments that is Regulation 1 of 2013 and 2 of 2014.

f) As per the clause 12 of Regulation 2 of 2005, the applicant willing to avail open access shall enter into an open access agreement that is LTOA agreement or STOA agreement based on requirement, which has banking facility.

g) Further, as per Regulation No. 2 of 2014, (Second Amendment to Interim Balancing & Settlement Code of Open Access Transactions) Regulation No. 2 of 2006.

Definition for "Banking":

"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.*

Terms & Conditions for Banking facility allowed to Wind, Solar and Mini-hydel Power Generation:

1. *Banking allowed during all the 12 months;*
2. *Drawals are subject to the following conditions:*

a. *The Banking year shall be from April to March.*

b. *Banking charges shall be in kind @ 2% of the energy delivered at the point of drawal.*

c. *Drawals from banked energy shall not be permitted during the five (5) month period from 1st April to 30th June and 1st February to 31st March of each financial year. In addition, Drawal of banked energy druring the Time of Day (ToD) applicable during peak hours, as specified in the respective Retail Supply Tariff Order, shall also not be permitted throughout the year".*

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. The energy credited into bank during the month of February & 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.*

e. ***Generators have to communicate time block wise banked energy withdrawal schedule and allocations to respective Open Access/ Scheduled consumers at least ten (10) days before the commencement of billing cycle.***

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.*

h) From the above, it is clear that the conditions specified for banking are governed by an Agreement and based on scheduling of energy by the generator that is an entry and exit points are to be specified for settlement of energy and for providing banking facility. But petitioner is an in house captive solar generator. The generator has neither entered into any open access agreement that is long term open access or short term open access nor scheduled any generation.

i) The petitioner is aware of the fact that they have to follow the regulations of the Commission for availing the banking facility which are governed by

regulation 2 of 2005 and 2 of 2006 and its subsequent amendments. The petitioner has not approached any of the nodal agency that is CE / Planning / TSTRANSCO for LTOA or CE / SLDC / TSTRANSCO for STOA for entering the open access Agreement.

j) No such order / regulations and agreements are issued by TSERC for providing banking facility for in-house power plants for the power inadvertently injected into the grid and without any Open Access Agreement."

23. The petitioner has filed written submissions as follows upon directions to the parties at the time of hearing.

"a) It is stated that the petitioner sought for approval for setting up a 2-00 MW solar power plant at Bibi Nagar within its factory premises to the then Andhra Pradesh Central Power Distribution Company Limited (APCPDCL) on 17.05.2013. The APCPDCL by a letter dated 03.10.2013 called upon the petitioner to furnish an undertaking to the effect that the power generated from the proposed captive power plant will be 100% utilized for captive consumption and the power injected after captive use, if any, to the grid, shall be treated as inadvertent power and at free of cost to APCPDCL. This communication from the APCPDCL was on the basis of the then existing Interim Balancing and Settlement Code for Open Access Transactions, being Regulation No. 2 of 2006 notified by then APERC which do not provide for banking of solar energy. This assumption is without noticing the amendment brought in by Regulation No. 1 of 2013, which was gazetted on 02.05.2013, by virtue of which the solar energy was included as source of renewable power and thus became eligible for banking. The petitioner went ahead and established a 2-00 MW solar power plant and submitted an undertaking to the TSSPDCL on 30.09.2014. In the said undertaking, the petitioner did not include the statement that excess energy injected into the grid, would be inadvertent power. This undertaking is based on the amendment brought into Regulation No. 2 of 2006 by Regulation No. 1 of 2013 and Regulation No. 2 of 2014. By Regulation No. 2 of 2014, the definition of 'banking' was introduced which was placed below clause 2 (c) of the principal Regulation as extracted above in the counter affidavit of the respondent.

b) Realizing the said facts, the respondents accepted the undertaking without any protest. Accordingly, the power plant of the petitioner was completed and

the petitioner informed the second respondent vide letter Ref. No. MLR / CGM / TSSPDCL / 18 / 9 / 14 dated 18.09.2014 to accord permission for synchronization of 2 MW Solar Power Plant. Thereafter it was synchronized with the grid by the respondent's subordinates and the Chief General Manager (Commercial & RAC), TSSPDCL had confirmed that the power plant was grid connected and synchronized on 16.10.2014. It is not out of place to submit that the entire project was completed under the supervision of the personnel belonging to the respondents for which the petitioner paid requisite supervisory charges to the respondents.

c) It is stated that in fact by a letter dated 16.06.2015, the petitioner informed the Chief General Manager, TSSPDCL about the completion of project and sought for approval to bank the excess power produced as per the existing applicable Regulations. By a letter dated 24.08.2015, the petitioner was informed by the TSSPDCL that the regulation to adjust the power pumped into the grid as banked energy, without any valid agreement, is not considered by its management and it is further stated that as regulations / orders are not facilitating banking of the power for in house power plants without any agreement and hence the request for banking of power cannot be considered. It is this communication that is being challenged in this proceedings instituted under sec 86 of the Act, 2003 before this Commission on the reliefs as mentioned in the original petition.

d) In the reply filed by the respondents, they have extensively quoted about the orders issued by the government from time to time, which also provide for banking facility. They referred to the regulations issued by the APERC as adopted by the TSERC and the amendments issued thereto. It is stated that the intra-state open access transactions are governed by open access regulations and the amendments thereto and as per Regulation No. 2 of 2014, whereunder banking was allowed, is pursuant to an agreement, and in the absence of any open access agreement, the said Regulations have no application to the petitioner and as such they are entitled to treat the power injected into the grid after captive consumption as inadvertent power.

e) The question that arises for consideration by this Commission is as to whether the petitioner is required to enter into an agreement with the

respondents for the purpose of banking the power injected by it into the grid after captive consumption.

f) It is stated that the respondents never called upon the petitioner to enter into any agreement for the purpose of availing the banking facility. For the first time, they raised the issue by their communication dated 24.08.2015. If execution of an agreement is a condition-precedent, the respondents ought to have called upon the petitioner to enter into an agreement to enable it to bank the energy, in response to the letter dated 16.06.2015. In fact, in the letter dated 16.06.2015, the petitioner has specifically requested as under: "Accordingly, we request you to furnish a draft agreement to be executed by us in this regard." Thus, having failed to furnish a draft agreement and since there is no such agreement for which consent is obtained from the Commission, the respondents cannot make non-execution of the agreement as the basis for rejection of the request of the petitioner for banking. They are not clear as to what type of agreement, the petitioner shall have to enter with them.

g) But, looking at the communication dated 24.08.2015, the main reason for rejection appears to be that there are no regulations / orders which facilitate banking of power by the captive power plant without any agreement. It is stated that the Regulation No. 2006 provides for entering into open access agreement where the power generated by the open access generator to be supplied to open access consumer, which provides for utilization of the transmission system and / or distribution system of the licensees. Thus, the agreement contemplated by the said regulation is in respect of open access generator for utilizing transmission or distribution system, but not by a captive generator whose consumer is located within its premises and where no utilization of the transmission and / or distribution system of the licensee is involved. But, that does not mean that the petitioner is not entitled to utilize banking facility.

h) It is stated that the theme and the pith and substance of the regulation is a generator, generating electricity and utilizing the transmission system and delivering the energy to a consumer at a distant place, is allowed banking of energy and the denial of the same to a generator and consumer who does not utilize the transmission system would be patently discriminatory. The regulations require entering into an agreement for utilizing the transmission system. The fact remains that in this case, the petitioner is also drawing the

power from the licensees and the generator is connected to the grid. Thus, the regulations are equally applicable to the in house generating.

i) Further, the denial of the benefit to the petitioner is contrary to the policy enunciated by the GoTS, for the purpose of encouraging non-conventional energy. In fact, the GoTS had unveiled its solar power policy, 2015 which provides for solar rooftop projects and evacuation of excess power to the grid. All solar projects are eligible for incentives declared under the policy which among other things also inclusive of banking.

j) Under the policy, "100% of energy shall be permitted for all captive and open access / scheduled consumers during all 12 months of the year. Banking charges shall be adjusted in kind @ 2% of the energy delivered at the point of drawal".

k) Thus as per the policy, captive generators are entitled to banking facility, subject to the restrictions. This is in tune with regulations No. 2 of 2006 as amended from time to time. These policy directive are binding on the Commission under section 108 of the Act, 2003, as the policy is in public interest aiming at encouraging the production and use of 'clean energy' and thereby helping in building up a pollution free planet. Further this Commission did not disown or reject the policy of the GoTS. Further the DISCOMs, being government companies are bound by the policy of the State, subject to Sec 65. The said section 65 had no application herein, as no subsidy is involved. Even the fixation of banking charges by the Government is in tune with Regulation No. 2 of 2006, which fixes the banking charges at 2% of the delivered energy, which was also fixed by GoTS. The policy mentions of agreement, only when SPP sells energy to DISCOMs, but not otherwise.

l) Further the action of the DISCOM in refusing to pay for the power injected into grid, is nothing but, an act of unjust enrichment. The petitioner never intended to inject power as a 'freebie'. It did not give undertaking to the respondent to treat it as 'inadvertent power'. The undertaking without such terms was accepted and thus it is clear that the respondents are aware of the fact that they are not getting free power.

m) This is a classic case covered by sec 70 of the Indian Contract Act, 1872, which reads as under:-

"**Obligation of person enjoying benefit of non-gratuitous act**:-

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".

n) As can be seen, the petitioner never supplied power to the grid, treating it as inadvertent power. But it was treated as available for banking. When banking is not available, it becomes sale. But it is never supplied as free. Thus the respondent cannot claim that it will not pay for the energy supplied by the petitioner.

o) In view of the above, it is stated that the denial of banking facility and treating the power injected by the petitioner into the grid as inadvertent power and refusing to allow banking in accordance with the Regulations, is nothing but arbitrary, illegal and discriminatory, and there is no basis for the rejection. Hence, the petitioner requests the Commission to direct the respondents to treat the power injected by the petitioner as banked energy and revise the bills issued by the respondents and thereby refund the excess amounts collected from the petitioner with reasonable interest.

24. The respondents have filed their written submissions in reply to the written submissions filed by the petitioner, which are as follows.

"a) In reply to para 1 of the written submission of M/s. MLR Industries Limited it is stated that the petitioner has submitted that a Regulation 1 of 2013 was issued by APERC as an amendment to Regulation 2 of 2006, wherein, the Commission has included solar energy as source of renewable power and thus became eligible for banking.

b) The petitioner claim for eligibility for availing the banking facility for solar plants under Regulation No. 2 of 2006 read with amendment Regulation 1 of 2013, but whereas, in the same regulation at clause 3 to the extent of application is reproduced below.

'The Interim Balancing & Settlement Code set out in this Regulation shall apply to Open access Generators, Schedule consumers and OA consumers'

c) From the above clauses, it is clear that the Regulation Nos. 2 of 2006 and 1 of 2013 are not applicable for in house captive generators. Further, the petitioner has stated that they have submitted an undertaking dated: 30.09.2014, the clause V of the undertaking is reproduced below.

> "*The Solar Power pumped into grid after captive consumption, if any, will be banked and utilized later for captive consumption by M/s. MLR Industries Private Limited only"*

d) Based on the undertaking submitted by the petitioner, synchronization approval was accorded to the petitioners power plant vide CGM / Comml & RAC) memo 13.10.2014. In the approval, the petitioner was directed to approach CE / SLDC for availing the banking facility.

e) Further, while issuing the certification of synchronization also the petitioner was informed vide CGM (Comml & RAC) letter dated 18.11.2014 that eligibility of RECs are subject to fulfillment of APERC & CERC regulations as the plant is captive plant and you are wishing to avail banking facility. From the above, it is clear that at every instant the petitioner was informed to follow the Commission's applicable Regulations and approach CE/SLDC for availing banking facility.

f) In reply to para 2 & 3 of the written submission, it is stated that the petitioner is well aware of banking facility which is guided by the conditions as per Regulation Nos. 2 of 2006, 1 of 2013 and 2 of 2014. In the introduction para of Regulation No. 2 of 2006 is as below.

> *'The Commission notified the APERC (Terms and Conditions of open Access) Regulation, 2005 (No 2 of 2005) which came into force w.e.f 01.07.2005. Clause 19.4 of that Regulation provides that the balancing and settlement of energy and demand shall be done in accordance with the balancing and Settlement Code to be approved by the Commission'*

g) The Commission has notified Regulation No. 2 of 2006 for settlement of energy and demand for the open access transactions for which the terms and conditions for open access were determined under Regulation No. 2 of 2005. As per clause 5 of Regulation No. 2 of 2005, the nodal agency for all the long term open access transactions is State Transmission Utility (STU) and for short term open access transaction, the nodal agency is State Load Dispatch Centre (SLDC). Further, Clause 12 of the said Regulations is reproduced below.

"Based on the intimation by the Nodal agency to the open access applicant, the applicant shall execute an open access agreement with the concerned Licensee(s)".

h) From the above, the petitioner intending to avail banking facility who is well aware of Regulation No. 2 of 2006 has to approach the Commission for determination of banking facility for in-house captive power plants which was nor covered in Regulation No. 2 of 2006 or either approach the nodal agency for availing Long term or short term open access facility.

o) As per clause 7 of Regulation No. 2 of 2006, the SLDC shall undertake the accounting of energy for each time block on monthly basis with the assistance of the Energy Billing Centre (EBC). The DISCOM at every instant has informed the petitioner to approach the CE/SLDC for availing banking facility.

p) In reply to 4 & 5 of the written submission, it is stated that the DISCOM shall enter into open access agreement based on the approval from the nodal agency to the open access applicant. In this case, the petitioner inspite of approaching the nodal agency for availing open access facility is blaming the DISCOM that they have never called the petitioner to enter the Agreement.

q) In reply to para 6 & 7 of the written submission, it is stated that even though the generator is an in-house captive generator, it is a grid connected generator. After utilizing the power generated for captive use the balance power will be fed into the grid. Once the excess power is injected into the grid, it shall be guided by the existing terms and conditions. Further, the petitioner has also referred to Regulation No. 2 of 2014 and stated that they are eligible for banking facility. Wherein, point "e" of Appendix-3 of Regulation 2 of 2014 is as following.

"Generators have to communicate time block wise banked energy withdrawal schedule and allocations to respective Open Access / Scheduled consumers at least ten (10) days before the commencement of billing cycle".

r) The petitioner requested for availing banking facility addressing a letter dated 16.06.2015 to CGM / Commercial / TSSPDCL for the banked energy units for the period from October, 2014 to September, 2015 that is the period includes two financial years April, 2014 to March, 2015 and April, 2015 to March, 2016. Certain clause in Appendix – 3 of Regulation 2 of 2014 are reproduced below.

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. The energy credited into bank during the month of February & 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.

e. Generators have to communicate time block wise banked energy withdrawal schedule and allocations to respective Open Access / scheduled consumers at least ten (10) days before the commencement of billing cycle.

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.

As per the above clause it is clear that banking facility shall be availed as per the conditions of Regulations and not as and when the petitioner intends.

s) In reply to para 8 of the written submission, it is stated that as per the AP policy & Telangana Policy banking facility has been provided for the solar projects. Any policy issued by the state government have to be adopted by the DISCOM as per the terms and conditions or regulations formulated by the appropriate Commission that is in state level it is the state 'ERC'. But there are no specific orders / regulations issued by the Commission for affecting the banking facility for in-house captive generators.

t) Hence, the following is stated before the Commission in regard to the petitioner claim

i) As the petitioner requested to consider the energy pumped from October, 2014 to September, 2015 as banked energy cannot be considered, as there is no proviso or order / regulations and agreements as issued by Commission for providing banking facility for in-house captive power plants.

ii) The petitioner has not approached nodal agency as informed before commissioning the Solar Plant for entering into agreement for availing

banking facility as nodal agency is the authorized entity for approval of banking facility.

iii) Whereas as per the regulations set by Commission, banking facility can be availed as per the terms and conditions set within an agreement entered duly by both the parties and TSSPDCL does not have any authority to apply or request to enter into an agreement without the prior application of applicant to the nodal agency.

iv) It is brought to the notice to Commission on the issue of Karnataka state which is similar to the petition filed by M/s. MLR Industries Limited wherein, the KERC has given its order dated 08.07.2014 stated that.

> 'The Commission had issued Draft Wheeling and Banking Agreements (WBA) for RE projects under Non-REC route and for RE captive Power Plants under REC route, inviting comments / suggestions / views from stakeholders and also held a public hearing in the matter on 25.06.2014. After duly considering the comments /suggestions / views at the stakeholders, the Commission has finalized the standard formats of WBA.'

Hence, in line to the order of KERC, if the Commission issues WBA agreement, then we will enter into on WBA agreement for this project and also for the upcoming solar projects commissioned on the similar grounds hereafter, from the date of order being issued."

25. We have heard the learned senior counsel Sri. B. Adinarayan Rao for the petitioner and the counsel for the respondent and directed the parties to file written submissions, which have been filed and extracted above. The issue raised in the original petition is with reference to availing banking facility by the petitioner in respect of its captive power plant and involves interpretation of the provisions of the Act and the Regulations made thereunder.

26. We may gainfully notice the provisions of the Act, 2003 as well as the Regulation being Regulation No. 2 of 2006 and amendments made to it in the year 2013 and 2014. Section 42 of the Act, 2003 reads as follows:

“42. Duties of distribution Licensee and open access:-

(1) It shall be the duty of a distribution licensee to develop and maintain an efficient, co-ordinated and economical distribution system in his area of supply and to supply electricity in accordance with the provisions contained in this Act.

(2) The State Commission shall introduce open access in such phases and subject to such conditions, (including the cross subsidies, and other operational constraints) as may be specified within one year of the appointed date by it and in specifying the extent of open access in successive phases and in determining the charges for wheeling, it shall have due regard to all relevant factors including such cross subsidies, and other operational constraints:

Provided that such open access may be allowed before the cross subsidies are eliminated on payment of a surcharge in addition to the charges for wheeling as may be determined by the State Commission:

Provided further that such surcharge shall be utilised to meet the requirements of current level of cross subsidy within the area of supply of the distribution licensee:

Provided also that such surcharge and cross subsidies shall be progressively reduced and eliminated in the manner as may be specified by the State Commission:

Provided also that such surcharge shall not be leviable in case open access is provided to a person who has established a captive generating plant for carrying the electricity to the destination of his own use.

(Provided also that the State Commission shall, not later than five years from the date of commencement of the Electricity (Amendment) Act, 2003 by regulations, provide such open access to all consumers who require a supply of electricity where the maximum power to be made available at any time exceeds one megawatt.)

(3) Where any person, whose premises are situated within the area of supply of a distribution licensee, (not being a local authority engaged in the business of distribution of electricity before the appointed date) requires a supply of electricity from a generating company or any licensee other than such distribution licensee, such person may, by notice, require the distribution licensee for wheeling such electricity in accordance with regulations made by the State Commission and the duties of the distribution licensee with respect

to such supply shall be of a common carrier providing non-discriminatory open access.

(4) Where the State Commission permits a consumer or class of consumers to receive supply of electricity from a person other than the distribution licensee of his area of supply, such consumer shall be liable to pay an additional surcharge on the charges of wheeling, as may be specified by the State Commission, to meet the fixed cost of such distribution licensee arising out of his obligation to supply.

(5) xxx
(6) xxx
(7) xxx
(8) xxx "

27. Likewise the Act, 2003 also requires the Commission to encourage renewable sources of energy. In this regard, Section 86 (1) (e) of the Act, 2003 reads as follows:

"86.Functions of State Commission:-

(1) The State Commission shall discharge the following functions, namely: -

(a) xxx
(b) xxx
(c) xxx
(d) xxx
(e) promote cogeneration 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;

(f) xxx
(g) xxx
(h) xxx
(i) xxx
(j) xxx
(k) xxx"

28. Giving effect to the provisions of the Act, 2003 for providing the open access, the Commission had adopted the regulation notified by the erstwhile APERC in Regulation No. 2 of 2005 being Andhra Pradesh Electricity Regulatory Commission (Terms and Conditions of Open Access) Regulation, 2005. One of the provisions of the said Regulation deals with balancing of demand and energy and it is stated therein

"19.4 Energy and Demand Balancing: All open access users, and the users covered under clause 7.2, shall make reasonable endeavor to ensure that their actual demand or actual sent-out capacity, as the case may be, at an inter-connection does not exceed the Contracted Maximum Demand or allocated sent-out capacity for that inter-connection:

Provided that for carrying out balancing and settlement of energy and demand at all entry and exit points relating to open access agreements, the licensee shall strictly adhere to the Balancing and Settlement Code to be approved by the Commission, from time to time."

29. Pursuant to the above provision the erstwhile APERC provided for another regulation in Regulation No. 2 of 2006, namely, Andhra Pradesh Electricity Regulatory Commission (Interim Balancing and Settlement Code) Regulation, 2006. The said regulation at clause 12 reads as follows:

"**12**. BANKING:

12.1 No generators other than the Wind and Mini Hydel power generators shall be allowed the facility of banking the electricity generated by them:

Provided that in the case of existing users of wheeling facility, the energy already banked as per the subsisting agreements as on the date of coming into force of this Regulation, shall be allowed to be wheeled as hithertofore till the expiry of the balance period available for utilization of the banked energy;

Provided, however, that in the case of generators whose cases are pending appeals in the Hon'ble High Court of Andhra Pradesh and / or the Hon'ble Supreme Court, this provision shall be applicable subject to the final decision of the High Court and / or the Supreme Court, as the case may be.

12.2 The banking facility to the Wind and Mini Hydel power generators shall be subject to the conditions specified in Appendix – 3. "

30. The above provision was amended by Regulation 1 of 2013, namely, A.P. Electricity Regulatory Commission (Interim Balancing & Settlement Code for Open Access Transactions) First Amendment Regulation, 2013 and the following provisions are inserted –

"Amendment of Clause 12 of Principal Regulation:

(a) Sub Clause 12.1 in the principal Regulation shall be substituted as under;

"No Generators other than the Wind, Mini-hydel and Solar power generators shall be allowed the facility of banking the electricity generated by them".

(b) Sub Clause 12.2 in the principal Regulation shall be substituted as under;

"The banking facility to the wind, mini-hydel and Solar power generators shall be subjected to the conditions specified in Appendix-3".

31. The regulation was further amended by regulation No. 2 of 2014, namely, Andhra Pradesh Electricity Regulatory Commission (Interim Balancing & Settlement Code for Open Access Transactions) Second Amendment Regulation, 2014. The amendments made to the principal regulation are as follows:

"2. Inclusion of a definition for "Banking":

The following definition is included below the clause 2 (c) of the principal regulation.

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.

3. Xxx

4. Amendment to Appendix-3 in the Principal regulation (Regulation No.2 of 2006):

Appendix-3 in the principal Regulation is hereby substituted as under:

Appendix-3

Terms & Conditions for Banking facility allowed to Wind, Solar and Mini-hydel Power Generation:

1. Banking allowed during all the 12 months.
2. Drawals are subject to the following coditions.
   a. The Banking year shall be from April to March.
   b. Banking charges shall be in kind @ 2% of the energy delivered at the point of drawal.
   c. Drawals from banked energy shall not be permitted during the five (5) month period from 1st April to 30th June and 1st February to 31st March of each financial year. In addition, Drawal of banked energy during the Time of the Day (ToD) applicable during peak

hours, as specified in the respective Retail Supply Tariff Order, shall also not be permitted throughout the year".

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. The energy credited into bank during the month of February & 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.
e. Generators have to communicate time block wise banked energy withdrawal schedule and allocations to respective Open Access / Scheduled consumers at least ten (10) days before the commencement of billing cycle.
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."

32. A bare reading of the provisions of the Act along with the Regulations as extracted above would demonstrate that the Act, 2003 provided for charges for utilizing the distribution system, with only exception that any surcharge determined by the Commission would not apply to a generator or consumer using generation derived from its own generating plant for its own purpose and not undertaking sale. While providing for access to the system be it transmission or distribution in exercise of powers conferred to make regulation, the Commission choose to not to exempt any category of consumers from payment of wheeling charges or transmission charges.

33. However, in exercise of the power of subordinate legislation, the Commission appropriately and inline with the provisions of the Act, 2003, made provisions for entering into agreements for availing such access and also for settlement of charges for the usage of system as well as storing the excess energy generated and to be used subsequently.

34. We notice that the provisions of the Act, 2003 prima facie enable the Commission to determine transmission and wheeling charges apart from determine cross subsidy surcharge to be levied and collected by the transmission and distribution licensees as the case may be. From the provisions of the regulations extracted above, the primary object derived is that open access is permissible and such open access would have to be subjected to settlement in terms of the settlement code notified under the regulation. In the normal transactions, a generator would establish a plant at one location and may intend to sell such energy to third parties by using the system. Else, a generator may establish a generating station at a different place than that of the manufacturing facility and consume the entire generation for such manufacturing facility by using the transmission or distribution system.

35. The regulation made in the year 2005 speaks of access to the system and regulation of 2006 brings forth the applicable methodology and exemptions in respect of settlement of accounts between a generator or consumer on one hand and transmission and distribution licensees on the other hand. One of the salient futures of settlement code as extracted above provides for banking of the energy generated to be consumed later either for self consumption or for sale to third parties. The provisions of banking underwent changes from time to time to capture the realities and new sources / technologies. The regulations primarily provided exemption for wind and hydel sources in respect of banking later included solar energy also.

36. Coming to the instant case, the basic facts which are not disputed are not discussed. Suffice it to state that the petitioner is a food processing unit and has established a solar power plant within the premises of the manufacturing facility for consuming the energy generated using the renewable source of solar energy. It has been strongly contended that the energy generated from the solar unit is being substantially utilized for manufacturing activity only. Certain part of generation is fed into the grid as the same is in excess of requirement of the petitioner.

37. The excess energy according to the petitioner can be utilized by the petitioner itself in the lean hours by banking the energy during the day. The generating unit is established primarily for captive consumption and it is also located within the premises of the petitioner unit only. In such an event, it does not amount to using the transmission or distribution system. It is also the case of the petitioner that it never

intended to sell such excess energy to the DISCOM eventhough excess energy is generated from its solar plant, but drawback such energy from the system subject to payment of banking charges. It is stated that the petitioner has regular power supply from the DISCOM and the same is utilized in the absence of availability of energy generated from the solar plant.

38. The counsel for the respondent strenuously sought to point out that the movement the system is utilized for whatever reason it may be, the petitioner is required to avail open access and enter into agreement with the transmission or distribution licensee as the case may be. It is also contended on behalf of the respondent that the Act and the Regulations do not contemplate availing banking or usage of system without paying for the same as per the charges determined by the Commission. Since, the Regulations made by the Commission or any orders passed by the erstwhile APERC do not provide for banking of energy without any agreement whatsoever. Even otherwise, the petitioner ought to have entered into an agreement before commencing production of solar energy so as to avail banking facility.

39. In the instant case, we notice from the record that the petitioner has offered to enter into an agreement and had stated so in an affidavit filed before the respondents on 30.09.2014 specifically as noted below:

> "i. Agree to pay the charges for the power drawn by the Solar Generator for synchronization of the Unit at corresponding HT tariff.
>
> ii. Any inadvertent power pumped into the grid during the period of synchronization will be free of cost to TSSPDCL and we will not claim for it.
>
> iii. Whenever the grid is tripped or there is no supply on the feeder, then no solar power will be pumped into grid from the solar generator.
>
> iv. When there is no solar power generation activity, we do not have any auxiliary consumption.
>
> v. The solar power pumped into grid after captive consumption, if any, will be banked and utilized later for captive consumption by MLR Industries Private Limited only.
>
> vi. We will not avail concessional / promotional transmission or wheeling charges and waiver of electricity duty as per APERC regulation number 01/2012 dated 21.03.2012 to avail REC benefits."

The undenying fact is that the manufacturing facility and the generator are located in the same premises. The subtle distinction between a general case and this case is that captive generation is completely within the parameters specified in the electricity rules and it is not required to utilize the system but for the requirement of sending the excess generation into the grid. Since the petitioner has itself agreed to enter into agreement, such concession itself would be a definite case for this Commission to agree to the request of the petitioner. In these circumstances, we have no other go except to direct the licensee to provide banking of energy to the petitioner.

40. We take judicial notice of the fact that the solar policy issued by the Government of Telangana State communicated to the DISCOMs for implementation with a copy to the Commission, wherein it has been stated as below:

> "All SPPs shall be awarded must run status that is injection from solar power projects shall be considered as deemed to be scheduled.
>
> Banking of 100% of energy shall be permitted for all Captive and Open Access / Scheduled consumers during all 12 months of the year. Banking charges shall be adjusted in kind @ 2% of the energy delivered at the point of drawal.
>
> The banking year shall be from April to March. Banked units cannot be consumed / redeemed in the peak months (Feb to June) and in the peak hours (6 pm to 10 pm). The provisions on banking pertaining to drawal restrictions shall be reviewed based on the power supply position of the State.
>
> 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.
>
> For Sale to DISCOMs, Energy injected into the grid from 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."

41. The petitioner also contended that from the date of initial synchronization of the plant to the grid, it has been pumping the excess generation into the grid and had

several times requested the DISCOM to provide for such additional generation to be banked and supplied to the petitioner itself between 12 A.M. and 6 A.M. or else pay for the same. It is borne out from the record that the respondents have after protracted correspondence refused to accede to either of the requests of the petitioner. They are continuing to import the additional energy generated by the solar project and the additional energy pumped into the grid. It has been contended by the respondents that such energy pumped into the grid by the captive generator is treated as inadvertent power and the same is accounted for the benefit of licensee only. This submission of the licensee runs contrary to the above stated policy provisions, therefore, cannot be accepted.

42. We are constrained to state that the Act, 2003 mandates us to encourage renewable sources of energy and hitherto at present the Government is seeking to encourage such renewable sources more particularly solar power. Now that it has come to our notice, we deem it appropriate to state that the state and more particularly the licensees cannot enrich themselves at the cost of ordinary generators especially the renewable sources generation projects. This would amount the negating the provisions of the Act, 2003 and the policy adopted by the government earlier based on which the project has been established. Moreover such action also contravenes sec 70 of the Indian Contract Act, 1872 where a person enjoying the benefit of non gratuitous act. Thus the respondents are bound to make good the loss suffered by the petitioner.

43. The licensee has not uttered a word about the allegation that is getting unjust enrichment. It is contended by the respondents that there is no agreement between parties for undertaking purchase of energy and that the energy pumped into the grid is inadvertent power. In the absence of the agreement the licensee is not bound pay any amount. But surprising as seen from the record, it has itself allowed the project to get synchronized and allowed the energy to be pumped. It is in the teeth of the communication requesting for agreement to be entered and also for payment for the energy delivered in to the grid. The attitude of the licensee that it is gratis made by the project developer and the petitioner absolutely not entitled for any amounts, is nothing short of unjust enrichment.

44. The respondents sought to place before the Commission a situation arising before Karnataka Electricity Regulatory Commission, wherein the said Commission provided for by making regulation in respect of wheeling and banking of energy in non-REC route and also for renewable energy sources under REC route. We may observe the said argument is not binding on this Commission and it even does not suit the facts in the instant case. The Karnataka Commission was putting in place agreements where the system of transmission and distribution is being utilized for whom banking facility has been allowed. Same is not the situation in this case, as the generation and consumption of the solar power are within the same premises. This argument fails in the circumstances explained above and is accordingly rejected.

45. That the contention of the respondents is acceptable that an agreement should be entered into in view of the concession made by the petitioner that it is willing to enter into any agreement required by the DISCOM, eventhough, neither the Act, 2003 nor Regulations made by the Commission contemplate entering into any agreement in the event of captive consumption or for that matter in respect of banking energy. Practically speaking the situation arising in this case is that of a quid-pro-qo situation though not recognized by either the Act, 2003 or the Regulations made by the Commission. Therefore, it is axiomatic that the respondents ought to have taken advantage of the renewable source generation and benefitted from it. Alas the DISCOM is neither understanding the peculiar situation nor it has stopped the occurrence of generation and feeding into the grid at the first instance itself.

46. In the circumstances of the narrative explained above, we are constrained to allow the case of the petitioner. To give effect to this conclusion, we deem it appropriate to allow the prayer of the petitioner.

47. Therefore, we give the following directions:

i) The respondents are directed for approving the banking facility for the power exported on exclusive captive utilization basis by the petitioner company with effect from the date of synchronization that is from 16.10.2014.

ii) The respondents are directed to give credit for the exported power approximately 1.3 million units actually exported from 16.10.2014 to 30.09.2015.

iii) The respondents shall further calculate the power exported to the grid from 01.10.2015 till the credit is given to the petitioner and then treat all the energy as banked.

iv) Release such banked energy at the request of the petitioner as per its requirement after collecting the banking charges in kind.

v) If the total energy cannot be banked and released, pay the petitioner the relevant tariff applicable from time to time as per Regulation in force.

vi) Ensure banking facility in the future and after entering into an agreement with the petitioner.

vii) Release the amounts due to the petitioner if the energy already required to be banked but cannot be banked, within a period 4 weeks from the date this order.

viii) File a report about compliance of this order within a period of 6 weeks from the date of this order.

48. For the foregoing reasoning, discussion and directions, we allow the original petition. The interlocutory applications made by the petitioner stand closed in view of the disposal of the original petition itself. The parties shall bear their own costs.

This order is corrected and signed on this the 4th day of August, 2016.

Sd/-	**Sd/-**	**Sd/-**
(L. MANOHAR REDDY)	**(H. SRINIVASULU)**	**(ISMAIL ALI KHAN)**
MEMBER	**MEMBER**	**CHAIRMAN**

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