



TELANGANA ELECTRICITY REGULATORY COMMISSION
'Vidyut Niyantran Bhavan', G.T.S. Colony, Kalyan Nagar, Hyderabad 500 045

O. P. No. 24 of 2023

Dated 14.10.2024

Present

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

Between

M/s. DRES Energy Private Limited,
Regd. Office at: No.55, Solar Tower,
6th Main, 11th Cross, Lakshmaiah Block,
Ganganagar, Bengaluru, Karnataka 560 024.

... Petitioner

AND

1. Transmission Corporation of Telangana Limited,
Vidyut Soudha, Somajiguda, Hyderabad – 500 082.
2. Southern Power Distribution Company of Telangana Limited,
Corporate Office, # 6-1-50, Mint Compound,
Hyderabad 500 063.

... Respondents

The petition came up for hearing on 15.11.2023, 14.12.2023 and 11.01.2024. Sri. Deepak Chowdary, counsel for the petitioner appeared on 15.11.2023 and 14.12.2023. Sri. K. Gopal Chowdary, Advocate on behalf of Ms. Mazag Andrabi, counsel for petitioner appeared on 11.01.2024. Sri. Mohammad Bande Ali, Law Attaché being the representative of the respondents appeared on 15.11.2023, 14.12.2023 and 11.01.2024. The petition having been heard and having stood over for consideration to this day, the Commission passed the following:

ORDER

M/s. DRES Energy Private Limited (petitioner) has filed a petition under Section 86(1)(f) of the Electricity Act, 2003 (Act, 2003) seeking directions to the

respondents to grant LTOA for (19) years to its 8 MW solar power project located at Lingampally village, Munipally mandal, Medak district and to settle the energy injected into the grid for the period from 09.05.2023 to 16.05.2023 and consequential reliefs. The averments in the petition are extracted below:

- a. It is stated that petitioner is a generator as defined in Section 2 (28) of the Act, 2003 and is engaged in the business of generation and sale of solar energy. It owns and operates a solar power based captive generating plant of 8 MW (DC) solar power project located at Lingampally village, Munipally mandal, Medak district, state of Telangana (solar project). The entire energy from the said 8 MW solar project is being drawn by its captive user, Dr. Reddy's Laboratories Limited, within the area of supply of Southern Power Distribution Company of Telangana Limited (TGSPDCL). For supplying energy to its captive user, the petitioner is availing long-term open access (LTOA) granted by the respondent No.1 and is therefore, an open access generator as defined in the Andhra Pradesh Electricity Regulatory Commission (APERC) Interim Balancing and Settlement Code Regulation, 2006 being Regulation No.2 of 2006.
- b. It is stated that the respondent No.1 is the Transmission Corporation of Telangana Limited (TGTRANSCO), constituted under Section 39 of the Act, 2003. TGTRANSCO undertakes various functions including but not limited to planning, construction, and maintenance of the transmission network of the state of Telangana. TGTRANSCO has been designated as the nodal agency for receiving and processing applications for grant of LTOA. The TGSPDCL is a government owned company entrusted with the function of distribution of electricity in certain districts of the state of Telangana. The petitioner has entered into LTOA agreement with TGSPDCL for transmission and wheeling of electricity from the petitioner's 8 MW solar project to its captive user through the system of the TGTRANSCO and TGSPDCL.
- c. It is stated that on 01.07.2005, the APERC notified the APERC (Terms and Conditions of Open Access) Regulations, 2005 (Regulation 2 of 2005) (OA regulation) to allow open access for supply of electricity to consumers. The open access regulation set out the norms for open access to intrastate transmission and distribution systems of licensees in the state. The provisions of the OA regulation relevant to the instant petition are reproduced herein below

“2. **Definitions**

(i) *In this Regulation, unless the context otherwise requires:-*

... ..

(b) *"applicant" means a person who makes an application to the Nodal Agency for open access and includes any person engaged in generation, a licensee or any consumer eligible for open access under this Regulation;*

... ..

(e) *“contracted capacity” in the context of open access for supply to consumers means the capacity contracted in megawatts (MW) or kilowatts (kW) for transmission and/or wheeling to a consumer under open access;*

... ..

4. **Categorization of open access users**

The open access users of the transmission and/or distribution system(s) shall be classified as follows:

(a) *Long-Term Open Access User: Any user of the transmission and/or distribution system(s) entering into an open access agreement with the concerned licensee(s) for a period of two years or more shall be categorised as a Long-Term Open Access User.*

10. **Procedure of application for Long Term open access**

10.1 *The Nodal Agency (STU) shall make available the format of application for open access requiring broadly the details as set out in Annexure-1 to this Regulation, to the general public in physical form at its offices and in electronic printable form at its website.*

10.2 *An application for long-term open access shall be filed with the STU by the applicant, with a copy to the concerned transmission/distribution licensee(s). The application shall be accompanied by a non-refundable processing fee as prescribed by the Commission in the Tariff Orders, or otherwise, from time to time:*

Provided that till such time the processing fee is so prescribed by the Commission, it shall be Rs.10,000.

10.3 *The Nodal Agency shall acknowledge the receipt of an application made under clause 10.2 above within 24 hours of the receipt of the application.*

10.4 *If after submission of the open access application, the applicant becomes aware of any material alteration in the information contained in the application, the applicant shall promptly notify the Nodal Agency of the same:*

Provided that in case the Nodal Agency is made aware of the material alteration in the information contained in the application already submitted under clause 10.2 above, the Nodal Agency shall treat the application as if the same was received on the date the applicant notifies it of the said alteration.

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

of a monthly window, another window of the duration of the next calendar month shall commence.

- 10.6 *Based on system studies conducted in consultation with other agencies involved including other Licensees, if it is determined that Long-Term open access sought can be allowed without further system-strengthening, the Nodal Agency shall, within 30 days of closure of a window, intimate the applicant(s) of the same.*
- 10.7 *If, on the basis of the results of system studies, the Nodal Agency is of the opinion that the Long-Term open access sought cannot be allowed without further system strengthening, the Nodal Agency shall notify the applicant of the same within 30 days of closure of a window. Thereafter, at the request of the applicant, which shall be made within 15 days of such notification by the Nodal Agency, the Nodal Agency shall carry out further studies, if required, to identify the scope of works involved and intimate the same to applicant within 30 days of receipt of such request from the applicant. The Nodal Agency shall also inform the applicant of the probable time frame for execution of the works involved after consultation with the concerned licensee(s).*

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- 12.4 *Minimum term and renewal of the Open Access Agreement: The minimum term of an open access agreement is such term as the parties may agree and set out in the agreement subject to the provisions of clause 4 above. A long-term open access agreement between a long-term user and the licensee may be renewed for a further term of two years or more without the requirement of a fresh open access application, on receipt of at least three (3) months' notice from the concerned long-term user to the concerned licensee(s) and the Nodal Agency, before the expiry of the Agreement. In case, no notice is provided by the Long-Term user, the Long-Term user shall forgo his right over the allotted capacity. ...”*

A bare perusal of the afore quoted regulations makes the following abundantly clear:

- i. Any person including a generator, licensee or consumer can make an application for grant of LTOA that is open access for two or more years.
- ii. An application for grant of LTOA will be submitted and processed under clause 10. As per the procedure set out in clause 10, an application for grant of LTOA made within a particular calendar month shall be considered to have been made within the window which expires with the close of the relevant calendar month. After the submission of the application, TGTRANSCO will undertake system studies to ascertain if the LTOA sought by the applicant can be granted with or without system strengthening and the results of the said system studies must be intimated to the applicant within 30 days of closure of the window. If the

system studies reveal that LTOA cannot be allowed without further system strengthening, TGTRANSCO is obligated to augment the system to provide LTOA to the applicant. It is, therefore, clear that in terms of clause 10 of the OA regulation, Open access cannot be denied in either scenario and must be allowed, with or without system strengthening within 30 days of closure of the window.

- iii. Under clause 12.4, an LTOA grantee can apply for renewal of its LTOA agreement for a period of two (2) years or more. Pertinently, there is no requirement for a fresh application in case of renewal of LTOA agreement and the LTOA grantee is only required to give notice to TGTRANSCO (3) months' prior to the expiry of the LTOA agreement.
- iv. The OA regulation does not in any way whatsoever restrict the grant of LTOA to a period of two (2) years only.
- d. It is stated that on 24.11.2014, the Commission by way of TGERC (Adoption) Regulation, 2014 adopted all regulations, decisions, directions, orders, licenses, and practice directions issued by the erstwhile APERC in existence and in force as on the date of constitution of the TGERC. The regulation specifies that all the adopted regulations, decisions, directions, orders, licenses, and practice directions shall continue to have effect until duly altered, repealed, or amended, by the TGERC. Accordingly, the Commission has adopted the 2005 OA regulation, as amended from time to time.
- e. It is stated that on 01.06.2015, the Energy Department, Government of Telangana (GoTG), issued the Telangana Solar Power Policy 2015 (solar policy) to realize and harness its vast solar power potential. The operative period of the solar policy was 5 years from the date of issuance thereof and the various benefits/incentives/exemptions available to solar power projects under the said policy are available for a period of ten (10) years from the date of commissioning of the solar power project. The relevant extracts of the solar policy are reproduced herein below –

"4. OPERATIVE PERIOD

This policy shall come into operation with effect from the date of issue and shall remain applicable for a period of five (5) years. All Solar Projects that are commissioned during the operative period shall be eligible for the incentives declared under this policy, for a period of ten

(10) years from the date of commissioning - unless otherwise the period is specifically mentioned.

... ..

11. **EASE OF BUSINESS – ENABLING PROVISIONS**

The State, in order to encourage solar based generation, has prepared the following measures for improving the ease of doing business. However the project developer has to ensure that the generation is within the time limit stipulated in the PPA or within a maximum period of 2 years from the date of application whichever is earlier, failing which the provisions under this policy automatically stands cancelled. The following provisions are for Solar Power Projects (SPP) and solar parks, wherever applicable.

... ..

m) **Open Access**

Intra-state Open Access clearance for the tenure of the project will be granted as per TSERC regulations amended from time to time. In absence of any response or intimation from Solar Policy Cell (SPC) to the generator within twenty-one (21) working days, then such application shall be deemed to have been given open access.”

- f. It is stated that pertinently, the solar policy provides that intrastate open access will be granted for the life of the solar power project as per the regulations of TGERC, as amended from time to time and in the absence of any response or intimation from the nodal agency to the generator within twenty-one (21) working days, open access shall be deemed to have been granted. These incentives are guaranteed by the solar policy and neither TGTRANSCO nor TGSPDCL has the power to revoke the incentives given by GoTG in consultation with TGTRANSCO and the TGSPDCL.
- g. It is stated that basis the representations made by the GoTG by way of the solar policy and the TGERC by way of the OA regulation, the petitioner proceeded to set up the 8 MW solar power for supply of electricity under open access to its captive user(s).
- h. It is stated that further thereto, the petitioner executed shareholders agreement (SHA) and power purchase agreement dated 20.01.2016 (PPA) with Dr. Reddy's Laboratories Limited for supply of electricity from the 8 MW solar project.

- i. It is stated that the petitioner commissioned the 8 MW solar project on 25.03.2017. After the commissioning of the 8 MW solar project, the petitioner applied for and was granted LTOA as follows –

Date of application	Date of Approval	Date of LTOA Agreement	Validity Period
06.04.2017	27.04.2019	08.05.2019	09.05.2019 to 08.05.2019
21.10.2020 (Renewal notice)	11.02.2021	19.04.2021	09.05.2021 to 08.05.2023

The petitioner craves liberty to place the LTOA agreements on record if this Commissions so directs.

- j. It is stated that on 23.11.2022, TGTRANSCO by way of letter bearing No.CE (Comml & RAC)/SE/DE/Comml/ADE–OA/F.OA/D.No.55/22 issued the following directions to the petitioners’ 8 MW solar project –

“... ..

- a) *The entire plant capacity of the open access generators has to be allocated either to one or multiple scheduled consumers, without any CUF for the Consumer in all the renewal/fresh open access applications, so that the open access capacity is same on both generator side and consumer side (total of all consumer capacities).*
- b) *The open access is to be permitted within the CMD of the consumer.*
- c) *For the existing Open Access generators, if the CMD of the consumer is less than the plant capacity, then open access will be allowed up to the CMD and the balance left over plant capacity of the generator will be treated as banked energy.*

In view of the above, it is requested to ensure that the open access capacity is same on both generator side and consumer side (total of all consumer capacities, limited to the CMD of respective consumers) while submitting the LTOA renewal/revision applications.”

- k. It is stated that a bare perusal of the afore quoted extracts of the letters makes it clear that TGTRANSCO has crafted a requirement of open access capacity being same at the entry and exit points. It is stated that such a requirement has no basis, is patently illegal and contrary to the OA regulation as well as the 2006 B & S regulations and the petitioner reserves its right to challenge this action of TGTRANSCO.

- l. It is stated that on 23.01.2023, the petitioner, in view of the imminent expiry of and with a view to renew the LTOA granted to its 8 MW solar project, attempted to submit a notice for renewal of its LTOA under clause 12.4 of the OA

regulation. However, TGTRANCO refused to accept the notice and directed the petitioner to file a fresh application for grant of LTOA.

- m. It is stated that on 24.01.2023, the petitioner, further to the directions of TGTRANSCO, submitted a fresh application for grant of LTOA for the 8 MW solar project.
- n. It is stated that on 28.01.2023, TGTRANSCO informed the petitioner that its application is not in line with the direction issued by TGTRANSCO by way of letter dated 23.11.2022 and directed the petitioner to revise its application to align it with the said directions.
- o. It is stated that on 17.02.2023, the petitioner, further to the directions of TGTRANSCO, yet again submitted a fresh application for grant of LTOA for the remaining life of the 8 MW solar project that is 19 years. At this juncture, it is pertinent to refer to clause 10.6 of the OA regulation which mandates TGTRANSCO to communicate its approval of LTOA within 30 days of closure of the window as well as the subsequent solar policy which mandates TGTRANSCO to intimate its approval of LTOA within twenty-one (21) working days, failing which open access shall be deemed to have been granted. Accordingly, TGTRANSCO was mandated to grant open access to the petitioner by 31.03.2023. Further, since the solar policy allowed for grant of open access for the life of the solar power project and the OA regulation do not impose any restriction whatsoever on the period for which LTOA can be granted, TGTRANSCO was obliged to grant the LTOA for the period specified by the petitioner in its application.
- p. It is stated that on 02.03.2023, TGSPDCL directed the petitioner to submit (i) documents to demonstrate the captive status; and (ii) the latest power quality test (PQT) reports along with latest NABL test reports of ABT metering equipment, of its 8 MW solar project. On 20.03.2023, the petitioner submitted all documents sought by TGSPDCL for the 8 MW solar project. On 23.03.2023, in terms of clause 11 (m) of the solar policy, LTOA for the petitioner's 8 MW solar project was deemed to have been granted for the period specified in its application. Further, by 31.03.2023, in line with clause 10.6 of the OA

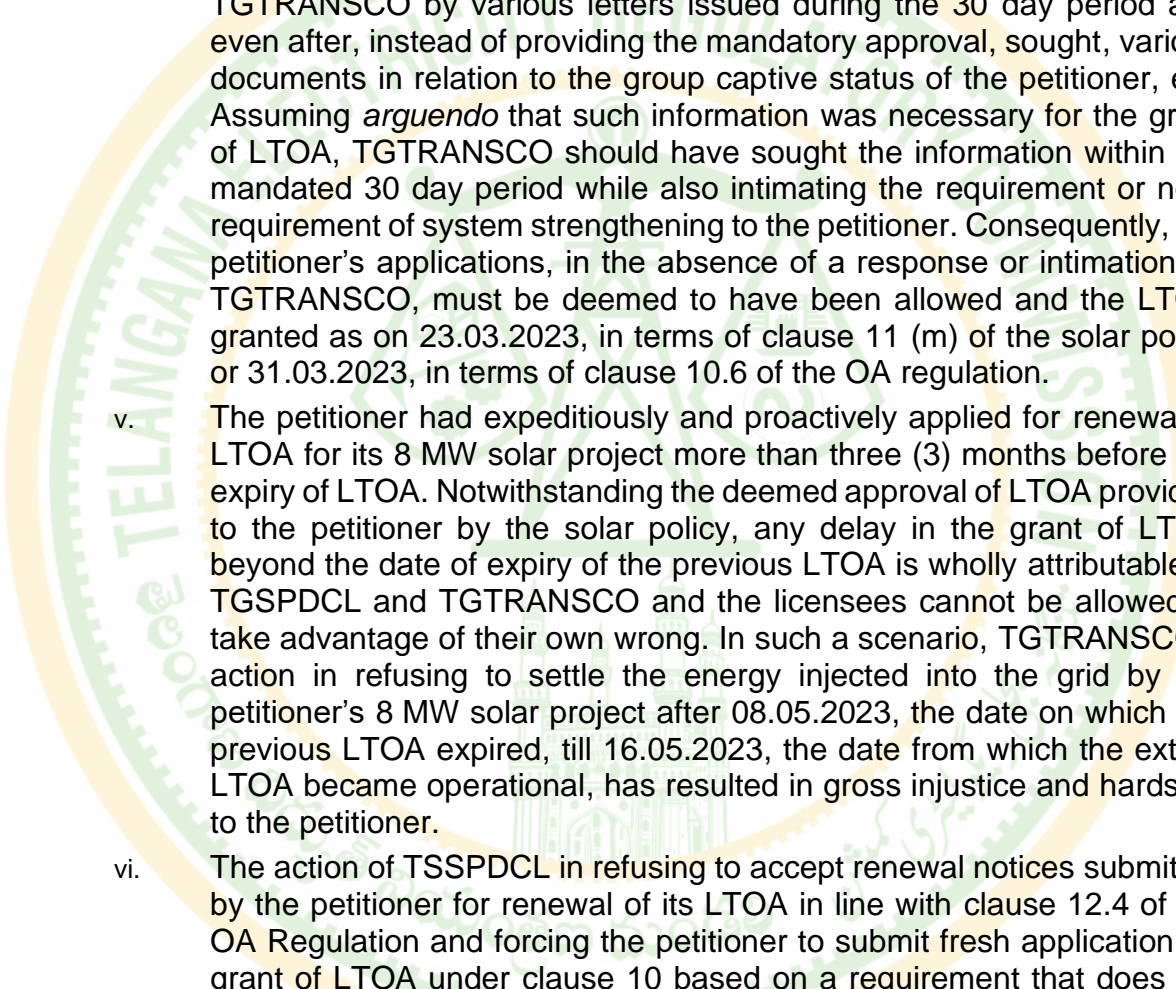
regulation, TGTRANSCO should have intimated its approval for grant of LTOA to the petitioner.

- q. It is stated that on 18.05.2023, TGSPDCL, 44 days after the deemed grant of LTOA, directed the petitioner to submit a letter of credit (LC) for an amount of INR Rs.83,94,900/- (Rupees Eighty-Three Lakh Ninety-Four Thousand Nine Hundred Only) and a demand draft for an amount of Rs 24,44,692/- (Rupees Twenty-Four Lakhs Forty-Four Thousand Six Hundred and Ninety-Two Only) for the 8 MW solar project.
- r. It is stated that on 30.05.2023, the petitioner, in line with the directions of TGSPDCL, submitted the LC for its 8 MW solar project.
- s. It is stated that on 09.06.2023, after an inordinate delay of 4 months from the date of petitioners' fresh application for grant of LTOA, TGSPDCL executed LTOA agreement with the petitioner for transmission of power from the 8 MW solar project to Dr. Reddy's Laboratories Limited [LTOA agreement (2023)]. Regarding the LTOA agreement (2023), the petitioner states as follows –
- i. While the petitioner had sought LTOA for the life of the 8 MW solar project that is 19 years by way of a fresh application under clause 10 of the OA regulation and not under clause 12.4 thereof, in line with the directions of TGTRANSCO, the petitioner has only been granted LTOA for a period of two (2) years.
 - ii. Despite having denied the petitioners' application for renewal and making the petitioner submit multiple applications for grant of LTOA, TGSPDCL is treating the current grant of open access as a renewal.
 - iii. The LTOA previously granted to the 8 MW solar project expired on 08.05.2023, however, TGSPDCL has without any reason whatsoever made the extant LTOA effective only from 17.05.2023 to 16.05.2025, despite the petitioner having started the process of grant of LTOA as early as January 2023.

It is stated that in executing the LTOA agreement (2023), TGSPDCL has clearly acted in violation of the OA regulation, which provide for both fresh grant as well as renewal of open access approval within 30 days

from the close of the window and long-term open access for any period exceeding 2 years.

- t. It is stated that on 12.06.2023, the petitioner submitted the demand draft for its 8 MW solar project.
- u. It is stated that subsequently, TGTRANSCO undertook the energy settlement for the petitioner and its captive user and issued the energy and demand settlement statements for the months of April 2023 and May 2023 (settlement reports). A bare perusal of the settlement reports makes the following abundantly clear –
 - i) For the month of May 2023, TGTRANSCO has only settled the energy injected into the grid between 01.05.2023 till 08.05.2023 (the date on which the previous LTOA expired) and 17.05.2023 (the date from which the extant LTOA becomes operational) and 31.05.2023.
 - ii) Accordingly, TGTRANSCO has not provided settlement for energy injected into the grid by the petitioner and/or consumed by the captive user between 09.05.2023 and 16.05.2023 that is during the period of deemed LTOA approval.
- v. It is stated that the petitioner is filing the instant petition being aggrieved by the arbitrary, unfair and illegal actions of the respondents detailed hereinabove. The Commission has the necessary jurisdiction to entertain the present petition and to provide the reliefs sought hereunder. The petitioner's solar project is in the state of Telangana and the entire power generated from the solar project is being consumed by captive users through the InSTS and distribution system of TGSPDCL. Therefore, the Commission can exercise its regulatory powers under Sections 86 (1) (f) of the Act, 2003 to entertain the present petition and provide the reliefs as sought by the petitioner on the grounds set out below:
 - i. The action of TGSPDCL and TGTRANSCO in only granting LTOA for 2 years and denying LTOA for the remaining life of the 8 MW solar project is arbitrary, illegal and in contravention of the OA regulation. A bare perusal of the OA regulation makes it abundantly clear that there is no limit on the period for which LTOA can be granted. Au contraire, the OA regulation clearly and specifically provide that LTOA will be granted for two (2) or more years. Pertinently, TGSPDCL has arbitrarily granted LTOA for a period of only two (2) years as against the desired period of 19 years without any reasoning.

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- ii. The clause 12.4 of the OA regulation, which allows renewal of LTOA, also provides for renewal of LTOA for a period of two (2) or more years.
 - iii. The action of TGSPDCL and TGTRANSCO in granting LTOA for only a period of 2 years is also in violation of the solar policy which provides that intrastate open access will be granted for the life of the solar power.
 - iv. The petitioner had further to the directions of TGTRANSCO, applied for grant of LTOA for the 8 MW solar project by way of the application dated 17.02.2023. In terms of clause 10 of the OA regulation, TGTRANSCO is mandated to respond or intimate its decision to the petitioner within 30 days of the closure of the window that is 31.03.2020. To circumvent the provisions of the OA regulation and delay the grant of LTOA, TGTRANSCO by various letters issued during the 30 day period and even after, instead of providing the mandatory approval, sought, various documents in relation to the group captive status of the petitioner, etc. Assuming *arguendo* that such information was necessary for the grant of LTOA, TGTRANSCO should have sought the information within the mandated 30 day period while also intimating the requirement or non-requirement of system strengthening to the petitioner. Consequently, the petitioner's applications, in the absence of a response or intimation by TGTRANSCO, must be deemed to have been allowed and the LTOA granted as on 23.03.2023, in terms of clause 11 (m) of the solar policy or 31.03.2023, in terms of clause 10.6 of the OA regulation.
 - v. The petitioner had expeditiously and proactively applied for renewal of LTOA for its 8 MW solar project more than three (3) months before the expiry of LTOA. Notwithstanding the deemed approval of LTOA provided to the petitioner by the solar policy, any delay in the grant of LTOA beyond the date of expiry of the previous LTOA is wholly attributable to TGSPDCL and TGTRANSCO and the licensees cannot be allowed to take advantage of their own wrong. In such a scenario, TGTRANSCO's action in refusing to settle the energy injected into the grid by the petitioner's 8 MW solar project after 08.05.2023, the date on which the previous LTOA expired, till 16.05.2023, the date from which the extant LTOA became operational, has resulted in gross injustice and hardship to the petitioner.
 - vi. The action of TSSPDCL in refusing to accept renewal notices submitted by the petitioner for renewal of its LTOA in line with clause 12.4 of the OA Regulation and forcing the petitioner to submit fresh application for grant of LTOA under clause 10 based on a requirement that does not emanate from any of the Commissions' regulations, is in contravention of the APERC OA Regulations, which regulations guarantee non-discriminatory open access to all applicants in line with the mandate of the Act, 2003. The OA regulations clearly allow the petitioner to renew its LTOA by submitting a notice for the same 3 months before the expiry of the LTOA agreement.
 - vii. The intent and words of the OA regulations is/are unambiguous and there can be no doubt that the said regulation does not stipulate the requirement of corresponding entry and exit point capacities. Had the Commission deemed it necessary to impose any such requirement, it could only have done so by amending its OA regulation to incorporate

the requirement into the procedure for grant of LTOA. As such, by imposing the requirement of corresponding entry and exit point capacities, the respondents are trying to amend the OA regulation, which the respondents cannot do. The petitioner reiterates that any change in the procedure for grant of LTOA can only be affected by an amendment to the Commissions' OA regulation.

- viii. The TSSPDCL and TSTRANSCO, being instrumentality of state and licensees of the Commission, are duty bound to act in a fair and reasonable manner and within the four walls of the powers and functions conferred on them. That while on one hand the GoTG has invited private investments into the state for development of the renewable energy sector by guaranteeing incentives under the solar policy, on the other hand, the TSSPDCL and TSTRANSCO, by the afore stated actions, is clearly acting in complete disregard of the aim and objective of the GoTG as well as its own responsibilities in the capacity of being licensees under the Act, 2003. The incentives under solar policy formed the basis of the petitioner's decision to invest in the state of Telangana instead of the states of Karnataka, Gujarat, Maharashtra, Andhra Pradesh, etc.
- ix. It is a settled position of law that even if a policy is not statutory and binding in nature, so long as the policy has created a legitimate expectation in the minds of those to whom it applies, the authority will have to abide by such a policy.
- x. The appellant has injected 285600 units from its 8 MW solar project in the Grid during the period 09.05.2023 to 16.05.2023 and TSTRANSCO has not settled these units against the captive users consumption. Notwithstanding the arguments taken in the foregoing paragraphs, TSSPDCL has sold this energy to its consumers and financially benefited from such sale. The petitioner's act of supplying energy to the grid is a non-gratuitous act and accordingly, in terms of Section 70 of Indian Contract Act, 1872 since TGSPDCL has enjoyed the benefit of the petitioner's non-gratuitous act, TGSPDCL is bound to provide compensation to the petitioner for such energy.
- xi. That the TGSPDCL cannot be allowed to take benefit of its own inaction. It is a settled principle of law that a person cannot be permitted to take undue and unfair advantage of his own wrong to gain favourable interpretation of law. In this regard, the Petitioner places reliance on *Kusheshwar Prasad Singh v. State of Bihar* [2007 (11) SCC 447].
- xii. The respondents are not only acting in contravention of the extant regulations of the Commission but also the Act, 2003, the National Electricity Policy (NEP) and the National Tariff Policy (NTP) which mandate promotion of RE. The actions of the TGSPDCL and TGTRANSCO have a contrary impact. It is incumbent upon the respondents, which are licensees of the Commission, to act in furtherance of the objectives of the Act, 2003 and the policies issued thereunder.
- w. It is stated that the present petition is being filed without prejudice and the petitioner reserves its right to claim such other relief as may be available to it under law.

2. Therefore, the petitioner has sought the following reliefs.

- “i) To direct TGSPDCL and TGTRANSCO to grant long-term open access for a period of nineteen (19) years to the Petitioner’s 8 MW solar project in terms of the APERC (Terms and Conditions of Open Access) Regulations, 2005 (Regulation 2 of 2005), as amended from time to time.*
- ii) To declare that the petitioner’s 8 MW solar project is entitled to long term open access from 09.05.2023 and accordingly, direct TGSPDCL to amend the extant LTOA agreement dated 09.06.2023 to reflect the start date of the agreement as 09.05.2023 instead of 17.05.2023.*
- iii) To direct TGTRANSCO to settle the energy injected into the grid by the petitioner’s 8 MW solar project between 09.05.2023 and 16.05.2023.*
- iv) To direct TGSPDCL to provide compensation to the petitioner for 285600 units of energy injected into the grid between 09.05.2023 to 16.05.2023 at the average pooled power purchase cost as determined by TSERC for the FY 2023-24 in line with Telangana State Electricity Regulatory Commission (Interim Balancing and Settlement Code for Open Access Transactions) Third Amendment Regulation, 2017.”*

3. The respondent No.1 has filed its counter affidavit praying to dismiss the petition with costs in the interest of justice, The averments thereof are extracted as below:

- a. It is stated that at the outset, clause 21 of Regulation 2 of 2005 being Terms and Conditions of Open Access and clause 13 of Regulation No.2 of 2006 being Interim Balancing & Settlement Code of Open Access Transactions, adopted by the Commission vide Regulation No.1 of 2014, provide Dispute Resolution Mechanism. The same are extracted below: -

Regulation 2 of 2005

21. Dispute Resolution

All disputes and complaint shall be referred to the Nodal Agency for resolution:

Provided that when the Nodal Agency is itself a party to the dispute, the dispute shall be referred for resolution to the Forum for Redressal of Consumer grievances set up under Regulation No. 1 of 2004:

Provided further that in case of wheeling of power from the captive generating plants, any disputes regarding the availability of transmission facility shall be adjudicated upon by the Commission.

Regulation 2 of 2006

13. DISPUTE RESOLUTION

All disputes and complaints shall be referred to the SLDC for resolution, which shall not decide a matter without first affording an opportunity to

the concerned parties to represent their respective points of view. The decisions of the SLDC shall be binding on all parties.

... ..

It is stated that renewal of LTOA for next two years has already been granted to the petitioner, jurisdiction to decide the issue raised by the petitioner vests with CGRF/SLDC in view of the afore mentioned clauses. Hence, the respondent states that the Commission has no jurisdiction to entertain this petition. The petition is, therefore, liable to be dismissed for want of jurisdiction.

- b. It is stated that as per clause 4 of OA regulation, any user of the transmission/distribution systems entering into open access agreement for a period of two years or more shall be categorized as LTOA user. As per clause 12.4 of OA regulation, the user may renew the LTOA for a further period of 2 years or more on receipt of at least 3 months' notice to the nodal agency before expiry of the open access agreement.
- c. It is stated that the petitioner had initially entered into LTOA agreement for transmission of 8 MW power from their solar power project located at Lingampally village, Munipally mandal, Sangareddy district under captive usage for the period from 09.05.2019 to 08.05.2021, which was later renewed for a further period from 09.05.2021 to 08.05.2023.
- d. It is stated that the contention of the petitioner that the requirement notified by the respondents to maintain the same open access capacity at both entry and exit points being contrary to the OA regulation as well as the 2006 B & S regulation is incorrect.
- e. It is stated that there is a mention of only one contracted capacity as per OA regulation, which is same for both generator and consumer that is the capacity contracted in megawatts (MW) or kilowatts (KW) for transmission and/or wheeling to a consumer under open access. This cannot be different for generator and consumer. However, previously the CUF capacity of the solar generation was allowed as the open access capacity of the consumer as solar CUF is around 25% only. The settlement of energy on consumer side was done by apportioning the monthly generation into all the time blocks of the month and there by the consumer gets average capacity in each time block. While so, TGSPDCL has addressed a letter to the nodal agency that is TGTRANSCO

stating that this facility is causing huge burden on TGDISCOMs for the reason that all solar generators have been generating the maximum power over and above the open access capacities of OA consumers during the day time and have been injecting in to the grid and as a result of which the DISCOMs are compelled to back down the conventional generators with whom the DISCOMs are having long term PPAs. Consequently, the DISCOMs are made to pay penalties and fixed charges. The same consumers are buying power from power exchanges under short term open access with their remaining CMD during night time instead of buying from DISCOMs. Therefore, to avoid this scenario, TGSPDCL, after doing consultations with TGTRANSCO and TGSLDC, has requested nodal agency to stop giving open access based on CUF of the generator and also requested to keep the same capacity for generator and consumer. It is stated that the said request of TGSPDCL does not contradict the OA regulation since the concept of average capacity on consumer side is for the purpose of settlement of energy is as per 2006 B & S regulation but not for fixing open access capacity which is bound by OA regulation.

- f. It is stated that considering the above scenario, all the open access users were informed vide letter dated 23.11.2022 to ensure that the entire plant capacity of the open access generators is allocated among the scheduled consumers, limited to the CMD of respective consumers, while submitting the LTOA renewal/revision applications. This is completely in line with OA regulation as there is only one term for open access capacity that is contracted capacity which is same for both generator and consumer.
- g. It is stated that the petitioner had submitted a LTOA application on 24.01.2023 for renewal of their LTOA for 8 MW solar plant. On verification, it was observed that their application was not in line with the TGTRANSCO and TGDISCOM decision communicated vide letter dated 23.11.2022 to ensure that the entire plant capacity of the open access generators is allocated either to one or multiple scheduled consumers limited to the CMD of respective consumers as their scheduled consumers are also drawing power from other open access generators under LTOA. Therefore, the petitioner was requested vide letter dated 28.01.2023 to submit a revised LTOA renewal application duly revising

the OA capacity of all the consumers proportionate to the total plant capacity, limited to the CMD of respective consumers, instead of proposed allocation for processing of renewal of LTOA.

h. It is stated that the petitioner had submitted a revised LTOA application on 17.02.2023 for renewal of LTOA for a further period from 09.05.2023 to 25.03.2042 for transmission of 8 MW under captive use and the same was forwarded to the licensee involved in the transaction that is TGSPDCL on 20.02.2023 for furnishing the technical feasibility.

i. It is stated that as per clause 10.6 of the OA regulation, LTOA sought can be allowed in case the system studies conducted in consultation with other agencies involved including other licensees, determine that LTOA sought can be allowed without further system-strengthening. Clause 10.6 of the Regulation 2 of 2005 reads thus:

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

In this case, as there is change in allocation of generated energy from petitioner’s solar plant to their scheduled consumers and as these consumers are also drawing power from other open access generators under LTOA, the nodal agency could process the renewal only after the receipt of feasibility from TGSPDCL. Without any information from the other licensee, the nodal agency can neither reject nor return the application of the petitioner.

j. It is stated that the TGSPDCL has furnished the technical feasibility for renewal of LTOA of the petitioner on 28.04.2023 and the same was processed accordingly and LTOA renewal approval was issued on 16.05.2023.

k. It is stated that -.

A) The RE-DSM Regulation No.3 of 2018 has come into force from 01.04.2023.

B) For effective implementation of the same, schedules of all RE generators are necessary, which are now being obtained through Renewable Energy Management Centre (REMC) portal.

- c) As per clause No.3.2 of Forecasting, Scheduling, Deviation Settlement and Related Matters for Solar and Wind generators being Regulation No.3 of 2018, the regulation is applicable to generators who are supplying power to DISCOMs or to 3rd parties or captive consumption through open access and selling power within or outside the state with a capacity of 5 MW or above.
- d) To supply power to DISCOMs or to 3rd parties through open access by any generator, they shall have valid agreement with DISCOM. Hence (REMC) portal is designed in such a way that, the generators cannot upload their schedules in REMC portal without having a LTOA approval/valid agreement with DISCOMs. Any revision in schedules of one generator will lead to revision of DSM charges of all generators.
- e) Since, the schedules are not available for the generators, who are not having valid agreements; the calculation of DSM charges is not possible. The DSM charges are being calculated for all generators who have uploaded the schedules in the REMC portal.
- f) In view of the above, to overcome the above issues, it was decided to issue LTOA renewal approval from prospective date only and not to issue from retrospective date that is from expiry of previous LTOA agreement but was issued with validity from the next day of issue of LTOA approval that is for the period from 17.05.2023 to 16.05.2025 instead of 09.05.2023.
- l. It is stated that the contention of the petitioner that as per clause 10.6 of OA regulation, the nodal agency is required to communicate the LTOA approval within 30 days of closure of window and hence the LTOA of the petitioner's 8 MW solar power project was deemed to have been granted for the period specified in its application by 31.03.2023 is incorrect and untenable for the reason that the petitioner was already having LTOA agreement till 08.05.2023.
- m. It is stated that the CEA (Technical Standards for Grid Connectivity) Regulation, 2007 (CEA regulation 2007) specifies for the power quality test to be performed every year and the clause 18 of CEA (Installation and Operation of Meters) Regulation, 2006 (CEA regulation 2006) insists the NABL testing of metering equipment to be performed for every five years. Therefore, granting of LTOA

for longer periods as requested by the petitioner will make the monitoring of the above technical system aspects, such as power quality, periodical testing of metering equipment, difficult for the licensees involved and also deprive both the petitioner and the respondents from adopting the market developments in order to maintain the grid discipline.

- n. It is stated that under Section 43 of the Act, 2003, the TGDISCOMS have the universal service obligation of providing supply to applicants and hence invariably need to ensure the distribution network capability. TGTRANSCO would also need to ensure the availability of intrastate transmission network for meeting such load/demand, for complying with the mandate of Section 43 of the Act. Hence, LTOA has been limited to the period of 2 years as per the OA regulation.
- o. It is stated that the petitioner has stated that TSTRANSCO undertook the energy settlement for the petitioner and its captive user and issued the energy and demand settlement statements for LTOA period, 01.05.2023 to 08.05.2023 and 17.05.2023 to 31.05.2023, only, it is stated that the energy and demand settlements could not be carried out as there was no valid open access agreement for the period from 09.05.2023 to 16.05.2023.
- p. It is stated that the energy generated from the solar plant of the petitioner is injected into the network of the TGSPDCL in whose area the solar plant is located and thus utilized by only TGSPDCL. The TGTRANSCO is the nodal agency for only processing of intrastate LTOA applications and thereby issuing the LTOA approvals and does not involve in the energy transactions of the open access users.
- q. In the circumstances mentioned above, it is stated that the action of the TGTRANSCO is perfectly legal and valid. The petitioner has failed to make out a case for seeking the reliefs in this petition. Hence, it is prayed the Commission to dismiss the petition.

4. The respondent No.2 has filed counter affidavit and the averments stated there in are extracted as below:

- a. It is stated that as per clause 5 of OA regulation, the nodal agency for processing the LTOA applications is state transmission utility (STU) and for

processing STOA applications is state load dispatch center (SLDC). The relevant clause is reproduced below: -

“5. Nodal Agency:

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

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

- b. It is stated that as per clause 4 of OA regulation, any user of the transmission/distribution systems entering into open access agreement for a period of two years or more shall be categorized as LTOA user. Further, as per clause 12.4 of OA regulation, the user may renew the LTOA for further period of 2 years or more on receipt of at least 3 months' notice to the nodal agency before expiry of the agreement.
- c. It is stated that the petitioner's 8 MW solar power project located at Lingampally village, Munipally mandal, Sangareddy district was synchronized to the grid on 25.03.2017. The petitioner applied for LTOA as per clause 10.2 of OA regulation for the periods from 09.05.2019 to 08.05.2021 and from 09.05.2021 to 08.05.2023. The TGSPDCL duly treating the petitioner as a LTOA user had concluded LTOA agreement with TGSPDCL for the period from 09.05.2021 to 08.05.2023.
- d. It is stated that the petitioner submitted its renewal LTOA application dated 17.02.2023 to the nodal agency which was forwarded to the TGSPDCL on 20.02.2023 for furnishing the remarks on the said representation.
- e. It is stated that TGSPDCL vide letter dated 02.03.2023 requested the petitioner to submit the documents to demonstrate the captive status and to submit the latest power quality test (PQT) reports along with latest NABL test reports. The petitioner after 18 days vide letter dated 20.03.2023 submitted the latest PQT reports and documents for establishing the captive status. After verification of the documents submitted by the petitioner, this respondent communicated its technical feasibility to the nodal agency on 28.04.2023 and the nodal agency

accorded LTOA approval to the petitioner for the period from 17.05.2023 to 16.05.2025.

- f. It is stated that the LTOA for longer period of 19 years as sought by the petitioner will make the task of the TGSPDCL to monitor the technical system parameters, such as power quality, periodical testing of metering equipment, very difficult for the reason that the petitioner is obligated to perform power quality test every year as per CEA regulation, 2007 and NABL testing of metering equipment for every five years as per clause 18 of CEA regulation, 2006. Further, the LTOA for such longer period will deprive both the petitioner and the TGSPDCL from adopting the market developments in order to maintain the grid discipline.
- g. It is stated that as per clause 10.6 of OA regulation nodal agency is required to communicate its approval of LTOA within 30 days of closure of window and hence LTOA for the petitioner's 8 MW solar power project was deemed to have been granted for the period specified in its application by 31.03.2023 is incorrect and untenable for the reason that as the petitioner was already having LTOA agreement till 08.05.2023.
- h. It is stated that further, the contention of the petitioner that, TGSPDCL executed LTOA agreement with the petitioner with an inordinate delay of 4 months is baseless and hence untenable. The petitioner has submitted the requisite documents for processing the renewal LTOA after conducting PQT in the month of April, 2023 and TGSPDCL has furnished technical feasibility vide letter dated 28.04.2023 for the said renewal of LTOA transaction for the period from 09.05.2023.
- i. It is stated that the LTOA approval was granted to the petitioner by the nodal agency for the period from 16.05.2023 to 15.05.2025. Whereas for the purpose of entering the LTOA agreement by this respondent, the petitioner is required to submit payment securities by way of letter of credit (LC) towards imbalance in supply and consumption of electricity which is calculated for 10 days energy charges and demand draft towards security deposit for wheeling charges for the period of 2 months calculated as per wheeling tariff schedule. The petitioner took 20 days from the date of approval for submission of the said security

deposit and LC. It is stated that, after submitting the said payment securities vide letter dated 30.05.2023, the TGSPDCL has concluded the LTOA on 09.06.2023.

- j. It is stated that, the delay was attributable to the petitioner too as the petitioner is obligated to submit the latest PQT reports and NABL test reports which were received by this respondent in the month of April after the petitioner conducting the PQT in the month of April 2023. It is incorrect on the part of the petitioner to contend that the respondents should have granted LTOA within stipulated timelines in spite of its default in delay in submission of power quality test reports. In addition, during the said delayed period, the petitioner was already having LTOA agreement for the period up to 08.05.2023 during which period, the settlements to their captive consumers were being carried out. Hence, the contention of the petitioner is baseless.
- k. It is stated that, the respondent executed LTOA agreement with the petitioner for the period from 17.05.2023 to 16.05.2025 only as per the approval accorded by TGTRANSCO. Hence, the contention of the petitioner is untenable.
- l. It is stated that, the contention of the petitioner that it has injected 285600 units during the period from 09.05.2023 to 16.05.2023 which was sold by TGSPDCL to its consumers for benefit is untenable and baseless for the reason that the energy injected into the grid cannot be stored and it would be consumed instantly and there would be no option for this TGSPDCL either to accept or reject the said energy at the cost of paying deviation charges and fixed charges to the long term generators, coal based generators, who entered PPAs with the DISCOM as the said injected energy is unscheduled and variant in nature moreover the same energy injected in the absence of any agreement. Further, the petitioner cannot take aid of Section 70 of the contract Act to claim compensation in respect of the energy thrust upon by them to the grid of the respondents without their consent and knowledge.
- m. It is stated that this respondent has furnished the technical feasibility vide letter dated 28.04.2023 for the open access transaction of the petitioner's 8 MW plant from 09.05.2023 only. The petitioner itself has submitted the satisfactory PQT reports after conducting the PQT in the month of April 2023. This TGSPDCL

cannot be made responsible for the default on the part of the petitioner in submitting the PQTs as mandated by CEA regulations, 2007.

n. It is stated that the averments and allegations made in the petition that are not specifically dealt with herein may be deemed to have been denied by the TGSPDCL. The petitioner may be put to strict proof of the same. It is, therefore, prayed the Commission to dismiss the petition with costs.

6. The petitioner has filed a rejoinder to the counter affidavit of the respondent No.1 and the averments of it are extracted below:

a. It is stated that the petitioner denies that this Commission does not have the jurisdiction to entertain the instant petition or that the petition is liable to be dismissed for want of jurisdiction. The petitioner states that the instant dispute is between a generator and licensees of the Commission and as such, under Section 86 of the Act, 2003, the petitioner has the statutory right to approach this Commission for adjudication of a dispute which concerns the intrastate transmission and wheeling of electricity and this Commission has the jurisdiction and power to adjudicate upon such dispute. The jurisdiction of this Commission cannot be taken away by a regulation subservient to the Act, 2003.

b. It is stated that be that as it may, the instant issue deals with the availability of transmission facility to be availed by a captive generating plant and as such, the Commission has the jurisdiction to entertain this petition. Additionally, a generator is not a 'complainant' under the TSERC (Establishment of Mechanism for Redressal of Grievances of the Consumer), Regulation, 2015 and as such, is not required to approach the SLDC/CGRF/Ombudsman (forums for redressal of grievances of the consumers) in case of any dispute arising under the extant regulations of the Commission.

c. It is stated that the petitioner reiterates that prior to 17.02.2023, it had tried to submit notices on 23.01.2023 and 24.01.2023 for renewal of LTOA and TSTRANSCO had refused to accept the same.

d. It is stated that the petitioner states that while the requirement for matching open access capacity at entry and exit points has no basis, is patently illegal and contrary to the OA regulation as well as the 2006 B and S regulation, the said issue has not been agitated in the captioned petition and therefore, need

not be address by the petitioner in rejoinder or the Commission in its determination of the issue at hand. The petitioner reserves its right to challenge this action of TSTRANSCO in separate proceedings.

- e. It is stated that insofar as the reason for rejection of the petitioner's applications dated 23.01.2023 and 24.01.2023 is concerned, the petitioner reiterates that the said issue is not part of the dispute raised in the captioned petition and reserves its right to challenge this action of TSTRANSCO in separate proceedings.
- f. It is stated that as regards TGTRANSCO's contention that as there is change in allocation of generated energy from petitioner's solar plant to their scheduled consumers and as these consumers are also drawing power from other open access generators under LTOA, the nodal agency could process the renewal only after the receipt of feasibility from TGSPDCL, the petitioner states that it has been availing LTOA for 8 MW energy since 2016. As such, despite the baseless requirements imposed by TGTRANSCO regarding matching entry and exit point capacities, there has been no change in the LTOA capacity of the petitioner and therefore, on the technical feasibility of the state network. The impact is only on the settlement of the energy. As such, once the petitioner had complied, under protest, with the new requirements of TGTRANSCO, LTOA could have been expeditiously renewed in line with clause 12.4 of the OA regulation. Be that as it may, even if TSSPDCL was required to provide technical feasibility for grant of LTOA, in terms of the OA regulation, TGTRANSCO was mandated to communicate its decision to the petitioner within 30 days of closure of the window. TGTRANSCO failed in fulfilling the mandate of the OA regulation.
- g. It is stated that as regards the contents of the counter, it is pertinent to note TGTRANSCO's admission that TGSLDC had conveyed its decision on the technical feasibility of the grant of LTOA to the petitioner on 28.04.2023 that is 29 days after submission of the PQT report and other documents by the petitioner that is 20.03.2023. Despite the undue delay on the part of TGSPDCL in communicating its decision on technical feasibility and instead of acting promptly as is the mandate of the OA regulation, TGTRANSCO communicated

its LTOA approval to the petitioner on 16.05.2023 that is after a further delay of 18 days.

- h. It is stated that as regards the contents of the counter, the petitioner reiterates that the delay in grant of approval for renewal of LTOA is wholly attributable to the respondents in as much as the petitioner had started the process of renewal of LTOA three (3) months prior to the expiry of its LTOA agreement. While the respondents are obligated to act promptly and convey their approval for grant of LTOA within 30 days from the close of the window, the respondents unduly delayed the grant of LTOA approval by approx. 3 months. In such a scenario, if the respondents need to overcome any issues that were created, in the first place, due to their own inaction, it would be unfair and illegal to do so in a manner that causes an unwarranted financial injury to the petitioner, especially when the petitioner has acted thoroughly in accordance with the Commission's OA regulation as well as the baseless and illegal directions of the respondents herein. Notwithstanding the aforesaid, the petitioner states that it had repeatedly requested the respondents for login details for the REMC portal but the respondents refused to share the same.
- i. It is stated that the petitioner reiterates that in terms of the OA regulation, the TGTRANSCO is mandated to intimate its approval to an applicant within 30 days of closure of the window and in terms of the solar policy, in the absence of any response or intimation from the nodal agency to the generator within twenty-one (21) working days, open access shall be deemed to have been granted. Accordingly, the petitioner stated that the LTOA must be deemed granted from 10.03.2023 or 31.03.2023. Since the petitioner's previously granted LTOA was valid up till 08.05.2023, LTOA should be deemed granted from 09.05.2023.
- j. It is stated that the Commission has, in its wisdom, not restricted the period of LTOA to 2 years or any other period and on the contrary, specifically categorized open access for a period of two (2) years or more as LTOA. Additionally, the solar policy, pursuant to which the petitioner set up and commissioned its solar project, allowed for grant of open access for the life of the solar power project that is 25 years. Accordingly, in line with the extant

regulations of the Commission and the solar policy, the LTOA can and should be granted for a period of upto 25 years.

- k. It is stated that as regards the submission of TGTRANSCO that LTOA for 19 years will make monitoring of technical system parameters difficult, it is pertinent to point out that TGTRANSCO has in the paragraphs under reply itself admitted that the petitioner is obligated to undertake PQT annually in line with the CEA regulation, 2007 and testing of metering equipment every five years as per clause 18 of the CEA regulation, 2006. In addition to the admitted tests, a CEIG inspection of the petitioner's solar project is also conducted annually. This begs the question of how can monitoring of technical system parameters be difficult when such checks have already been put in place under the Act, 2003. Further, the submission of TGTRANSCO that LTOA has been restricted to a period of 2 years for compliance with Section 43 of the Act, 2003, the petitioner vehemently denies the same. The petitioner would like to point out that the said Section 43 is applicable to all distribution companies of all states in India. The distribution and transmission companies of all other states, while complying with Section 43, allow LTOA for the life of power projects. If the respondents are unable to monitor and manage their system or discharge their obligations under the Act, 2003 or to ensure availability of intrastate transmission network, then the flaw lies with them and the petitioner cannot be penalized for the respondents' failures. As regards adopting market developments to maintain grid discipline, the petitioner submits that all relevant market developments are incorporated into the regulations of the Commission from time to time and the petitioner is mandated to comply with the same.
- l. It is stated that the petitioner reiterates that the delay in execution of the LTOA agreement (2023) is attributable to the respondents and as such, the petitioner is entitled to the settlement of energy injected by it into the grid between 09.05.2023 to 16.05.2023.
- m. It is stated that it is denied that the actions of TGTRANSCO were legal or valid. The petitioner states that it has, by way of its pleadings and documentary proof, established beyond doubt that the respondents failed to fulfil the mandate of the Commission's extant regulations and in discharge of their duty to grant LTOA and renew the LTOA agreement in the manner set out in the OA

regulation. The delay is wholly attributable to the respondents and the petitioner cannot be made to suffer for the actions of the respondents. Accordingly, the petitioner urges the Commission to grant the prayers sought in the petition.

7. The petitioner has filed a rejoinder to the counter affidavit of the respondent No.2 and the averments thereof are extracted below:

- a. It is stated that the petitioner reiterates that prior to 17.02.2023, it had tried to submit notices on 23.01.2023 and 24.01.2023 for renewal of LTOA and TGTRANSCO had refused to accept the same.
- b. It is stated that as regards the contents of the counter, it is pertinent to point out that TSSPDCL has in the paragraph under reply explicitly admitted that –
 - (i) despite having received the petitioner's application for grant of LTOA application on 20.02.2023, it acted on the LTOA application for the first time on 02.03.2023 that is 10 days after the receipt of the LTOA application, and
 - (ii) it conveyed its decision on the technical feasibility of the grant of LTOA to the petitioner on 28.04.2023 that is 39 days after submission of the PQT report and other documents by the petitioner that is 20.03.2023.
- c. It is stated that undeniably, there was a delay of 49 days on the part of TSSPDCL in the grant of LTOA. In this regard, the petitioner states that it is settled law that if a statute provides for a thing to be done in a particular manner, then it must be done in that manner and in no other manner. The clause 10.6 of the OA regulation clearly mandates the communication of approval of LTOA within 30 days of closure of the window and as such, TGTRANSCO and TGSPDCL should have acted promptly to ensure the communication of their approval to the petitioner within 30 days.
- d. It is stated that regarding TGSPDCL's contention that the petitioner submitted the PQT report and NABL test report after a delay of 18 days, the petitioner respectfully submits that the respondents are wilfully misleading the Commission. The petitioner states that it had proactively started the process for PQT and other tests in February 2023 that is before the directions were issued by TSSPDCL by way of letter dated 02.03.2023. Pursuant thereto, the petitioner engaged the services of M/s Ganga Calibration Services Private Limited, an

approved vendor of TGSPDCL, (vendor) for carrying out the PQT and other tests. Accordingly, the PQT and other tests were carried out under the supervision of TGSPDCL. The vendor installed a data collection device at the metering point of the petitioner which collected the relevant data during the period 13.02.2023 and 20.02.2023. On 20.02.2023, the vendor disconnected the data collection device for retrieval of data and preparation of the report. The petitioner understands from its discussions with the vendor that the reports were prepared on 23.02.2023 and submitted to TGSPDCL on 24.02.2023 for confirmation and signatures. The reports were finally signed by TSSPDCL on 14.03.2023 and shared with the petitioner by the vendor on 16.03.2023. Thereafter, the petitioner stated that the PQT and other test reports to TGSPDCL on 20.03.2023. Accordingly, the petitioner cannot be held accountable for the time taken in preparation and submission of PQT and other test reports.

- e. It is stated that the Commission has, in its wisdom, not restricted the period of LTOA to 2 years or any other period and on the contrary, specifically categorized open access for a period of two (2) years or more as LTOA. Additionally, the solar policy, pursuant to which the petitioner set up and commissioned its solar project, allowed for grant of open access for the life of the solar power project that is 25 years. Accordingly, in line with the extant regulations of the Commission and the solar policy, LTOA can and should be granted for a period of upto 25 years.
- f. It is stated that as regards the contention of the TGSPDCL that LTOA for 19 years will make monitoring of technical system parameters difficult, it is pertinent to point out that TGSPDCL has in the paragraph under reply itself admitted that the petitioner is obligated to undertake PQT annually in line with the CEA regulation, 2007 and testing of metering equipment every five years as per clause 18 of the CEA regulation, 2006. In addition to the admitted tests, a CEIG inspection of the petitioner's solar project is also conducted annually. Thus the question of how can monitoring of technical system parameters be difficult when such checks have already been put in place under the Act, 2003. The petitioner would also like to point out that all other states in India allow LTOA for the life of the power project and if the respondents are unable to

monitor and manage their system, then the flaw lies with them, and the petitioner cannot be penalized for the respondents' failures. As regards adopting market developments to maintain grid discipline, the petitioner submits that all relevant market developments are incorporated into the regulations of the Commission from time to time and the petitioner is mandated to comply with the same. Accordingly, the contents of paragraph under reply are baseless and incorrect.

g. It is stated that the petitioner reiterates that in terms of the OA regulation, the TGTRANSCO is mandated to intimate its approval to an applicant within 30 days of closure of the window and in terms of the solar policy, in the absence of any response or intimation from the nodal agency to the generator within twenty-one (21) working days, open access shall be deemed to have been granted. Accordingly, the petitioner stated that the LTOA must be deemed granted from 10.03.2023 or 31.03.2023. Since the petitioner's previously granted LTOA was valid up till 08.05.2023, the LTOA should be deemed granted from 09.05.2023.

h. It is stated that the petitioner denies that its allegation that there has been an inordinate delay of 4 months in the grant of LTOA is baseless or untenable and reiterates the contents of paragraph 3.6 above. Admittedly, while the PQT and other test reports were submitted by the petitioner on 20.03.2023, the TGSPDCL furnished the technical feasibility for the renewal of LTOA to TGTRANSCO on 28.04.2023 that is after a delay of 39 days. The petitioner states that had TGSPDCL acted promptly, TGTRANSCO would have renewed the LTOA well before the expiry of the previous LTOA agreement. For the convenience of the Commission, the petitioner would like to set out a timeline of the relevant events in the grant of LTOA herein below to demonstrate that the delay is wholly attributable to the respondents –

DATE	EVENTS	DELAY
17.02.2023	Fresh application for grant of LTOA submitted by the petitioner	In terms of solar policy, LTOA would be deemed to have been granted from 10.03.2023. In terms of the OA regulation, approval should have been granted by 31.03.2023.

DATE	EVENTS	DELAY
20.02.2023	TSTRANSCO forwarded petitioner's application to TGSPDCL for technical feasibility	--
02.03.2023	Letters issued by TGSPDCL to the petitioner demanding documents pertaining to captive status and reports of PQT and other tests	Delay 10 days from application
20.03.2023	PQT reports and other reports submitted by petitioner	-
28.04.2023	TGSPDCL communicated the technical feasibility of petitioner's LTOA to TGTRANSCO	39 days from submission of reports
08.05.2023	Existing LTA Agreement expiry date	
16.05.2023	CE/(Comm J & RAC)/TSTRANSCO accorded approval for renewal of LTOA agreement	88 days from application
18.05.2023	TGSPDCL directed the petitioner to submit a LC for an amount of Rs.80,65,200/- and a demand draft for an amount of Rs.5,80,257/-	-
30.05.2023	Petitioner submitted the LC	-
09.06.2023	TGSPDCL executed LTOA agreement (2023) with the petitioner	116 days from application

- i. It is stated that the petitioner states that securing a letter of credit from a bank is time consuming process and not within the control of the petitioner. The petitioner stated the letter of credit as soon as it was issued by its bank. Be that as it may, the dispute in the instant petition relates to the period 09.05.2023 to 16.05.2023 and as such, the alleged delay in the submission of letter of credit is not material to the dispute at hand.
- j. It is stated that it is denied that TGSPDCL did not have the option to reject or accept the energy injected by the petitioner into the grid during the period 09.05.2023 to 16.05.2023. There is no doubt that TGSPDCL has the power to direct the petitioner to shut down its 8 MW solar project if the petitioner is allegedly injecting power into grid without an agreement or in violation of any extant applicable regulations. While the petitioner had informed TGSPDCL about the imminent expiry of the LTOA agreement dated 19.04.2021 and

applied for renewal of the same as early as on 17.02.2023, the TSTRANSCO gave its approval to such renewal on 16.05.2023, after an inordinate delay of 3 months in contravention of clause 10 of the OA regulation. During this period, the TGSPDCL did not issue any instructions to the petitioner to stop injection of energy into the grid. On the contrary, TGSPDCL willingly and intentionally allowed the petitioner to inject energy into the grid to take advantage of free power. In such a scenario, if TGSPDCL does not provide settlement of or compensation for energy injected into the grid during the period 09.05.2023 to 16.05.2023, the petitioner will suffer gross injustice and hardship. The petitioner states that had the petitioner's application for renewal of its LTOA agreement been approved promptly by TGSPDCL, the instant dispute would not have arisen at all.

- k. It is stated that the petitioner urges the Commission to grant the prayers sought in the petition.
8. The Commission has heard the parties and also considered the material available to it. The submissions made by the parties on various dates are extracted for ready reference.

Record of proceedings dated 15.11.2023:

"... .. The counsel for petitioner stated that the counter affidavit has not been received by him. The representative of the respondents stated that insofar as DISCOM is concerned, the counter affidavit had already been filed. The counsel for petitioner stated that the counter affidavit in respect of TSTRANSCO is also required to be filed. The Commission has observed that the counter affidavit of the DISCOM may be made available to the counsel for petitioner and the counter affidavit on behalf of TSTRANSCO shall be filed within a period of two weeks and thereafter, the counsel for petitioner may file the rejoinder, if any within two weeks thereafter or by the date of hearing. In these circumstances, the matter is adjourned."

Record of proceedings dated 14.12.2023:

"... .. The counsel for petitioner stated that the petitioner is yet to file the rejoinder in the matter and he needs time to file the same. The representative of the respondents has no objection. In these circumstances, the matter is adjourned."

Record of proceedings dated 11.01.2024:

"... .. The advocate appearing on behalf of the counsel for petitioner stated that the petition is filed for considering the LTOA date contrary to the request made by the petitioner. The petitioner had availed LTOA in the year 2019 and later got extension in 2021. The issue pertains to further extension in 2023, wherein the nodal agency had changed the start date of LTOA to another date

other than the date when earlier permission expired at its discretion, thereby causing a loss to the petitioner towards the energy injected into the grid.

The advocate appearing on behalf of the counsel for petitioner stated that the petitioner had applied for renewal of the LTOA on 23.01.2023 by way of notice that is three months prior to the expiry of the existing LTOA permission on 09.05.2023. The said application was not accepted by the respondent and instead required the petitioner to file a revised application seeking long term open access. Thereafter, the nodal agency pointed out certain deficiencies and required the petitioner to file a fresh application for the same. Thereupon the petitioner has filed a fresh application on 17.02.2023 along with necessary information. The major requirement on the part of the respondent was that the petitioner ought to have provided the latest power quality test report in terms of the CEA Regulation as has been addressed by the distribution licensee on 02.03.2023.

The advocate appearing on behalf of the counsel for the petitioner stated that the application would fall under the window for the month of February, 2023 under the Regulation No.2 of 2005 and the nodal agency should convey its acceptance within a month of closure of the window that is by 31.03.2023. However, the permission was accorded on 17.05.2023 based on the feasibility report of the distribution licensee in April, 2023. This date of LTOA is falling beyond the date of completion of the earlier permission on 08.05.2023 by 9 days.

The advocate appearing on behalf of the counsel for the petitioner further stated that the LTOA was signed after four months of the application made by the petitioner in June 2023. Setting out these facts, he stated that the Act, 2003 provides for non-discriminatory open access under Section 2 (17), yet the licensees are creating hindrances and delaying the permission for open access. It is his case that in massive grid a capacity of 8.00 MW would not make any difference, however, the licensees have delayed the approval of LTOA and thereby caused loss to the petitioner.

The advocate appearing on behalf of the counsel for the petitioner stated that the petitioner had made an application for a period of 19 years however, the period is limited to 2 years only. The provision in the Regulation No.2 of 2005 as adopted by the Commission would envisage that the LTOA would be for a period of 2 years or 'more' but strangely the nodal agency had limited the approval for 2 years only instead of allowing the same for the life period of the plant. This is nothing but violating the Act and regulations in force.

The advocate appearing on behalf of the counsel for the petitioner stated that with the changing the date of approval, the petitioner had lost energy which is injected into the grid to the tune of 2,85,600 units. Since the nodal agency and the licensee have caused delay and also changed the start date of LTOA, the petitioner had injected the energy non-gratuitously and thus, attracted sec 70 of the Indian Contract Act, 1872. The said energy has to be banked and accounted for sale as and when the petitioner provides the schedule for its consumption through its consumers or pay for the same at the pooled cost rate as provided in the regulations.

The advocate appearing on behalf of the counsel for petitioner sought the prayers mentioned in the petition be accepted.

The representative of the respondents stated that the petitioner had not complied with the requirement of the regulations and procedure as set out by the nodal agency as also the distribution licensee and thereby it itself caused delay, thus, no fault lies on the respondents. The petitioner being aware of the requirements to be complied with while making the application has ostensibly did not choose to enclose the requisite information for consideration. The nodal agency as well as the licensee were not at fault and as and when the information was sought, which was provided thereof, the application was considered by them. The petitioner cannot allege the lapses on the part of the nodal agency as well as distribution licensee as they have strictly followed the procedure as set out in the Act and regulations. In fact, the nodal agency and distribution licensee hastened the process of approving the application by communicating expeditiously the deficiencies in the application as also the lack of information with other authorities so as to conclude the agreement for long term open access.

The representative of the respondents would endeavour to state that the nodal agency did not deviate from the stipulations in the Act and regulations and no information extraneous to the provisions has been sought. As soon as the application is complete in all respects, the approval was accorded for LTOA. If the delay is there, it is on the part of the petitioner only for which the respondents are not liable for compensate for the alleged loss. The petitioner is not entitled to any relief as prayed for.

The advocate appearing on behalf of the counsel for petitioner stated that the respondents have acted contrary to the Act and regulations and attempted to frame their own set of rules and regulations by requiring the petitioner to file fresh application or to submit the information which is either in their possession only or could have been asked well in advance as was done earlier. All the actions were within their knowledge, yet they acted contrary to the provisions of requiring the information or documentation as required. Interestingly the procedure for renewal of LTOA has been deviated by them, which is contrary to the earlier renewal in the year 2021. The respondents have no authority to frame their own procedures causing hardship to the petitioner.

The advocate appearing on behalf of the counsel for the petitioner stated that nothing precluded the nodal agency and the licensee to inform and comply with the procedure as set of in the regulations read with the provisions of the Act, 2003. Significantly, the understanding with regard to long term open access period as provided in the regulation is misconceived. The provision emphatically makes it clear that the LTOA shall be for a period of two years or 'more' and cannot be limited to two years only. The petitioner being a solar project would be available for further period and as such applied for a period of 19 years. The same has been negated by limiting the LTOA to two years only without any reasons. As such, the petitioner is entitled to the reliefs as prayed for.

Having heard the argument of the parties, the matter is reserved for orders. The parties are at liberty to file written submissions within one week that is the respondents shall file written submissions within a week from today and if required the petitioner will file its written submissions within a week thereafter."

9. The core issue raised in the present petition is with reference to renewal of LTOA upon conclusion of the earlier period and payment of charges for the energy injected into the grid during the interregnum period after the end of the earlier LTOA agreement and commencement of the subsequent of the LTOA agreement.

10. From the facts set out by the parties it is abundantly clear that the petitioner followed the applicable regulations to the extent required. However, the respondents are failed to comply with the regulations and there is much left to be desired in the matter. In as much as the petitioner followed the regulation and applied for renewal of the LTOA agreement for further period of 19 years that is the life of the plant. However, such renewal application did not find acceptance at the hands of the respondents for the reason that they had communicated a separate letter in November, 2022 purporting to provide for the generation capacity being similar on generation side as well as consumer side also, it should be within the CMD of the consumer and in case of the CMD being the less than the plant capacity of the open access generator then the open access will be allowed up to CMD only.

11. The petitioner applied for open access renewal on 24.01.2023. It was not entertained, and the petitioner was informed about modifying the LTOA renewal application and making a fresh application in terms of the letter issued on 23.11.2022. The petitioner in compliance of the requirement made an application on 17.02.2023 for the calendar month of February 2023 and respondents were required to grant the petitioner the LTOA within 30 days of the closure of window. The petitioner is entitled to LTOA permission on 31.03.2023.

12. The petitioner sought to rely on the then subsisting regulation on open access and also the solar policy notified by the GoTG. In terms of the regulation the petitioner claimed that it is entitled to the renewal of LTOA for a period beyond 2 years and as such it has made application for the same. The respondents did not allow open access in terms of the regulation and only granted 2 years extension. However, such extension was commenced beyond the expiry of the earlier period of LTOA and it resulted in energy generated being injected into the grid being not accounted either in favour of the consumer of the petitioner or not paying for the energy so injected by the licensee. This period is identified as 09.05.2023 to 16.05.2023 which has to be settled by the distribution licensee.

13. In the first instance the respondents are at fault for not entertaining the application for renewal of the LTOA agreement which was filed in accordance with the regulation the application was filed 3 months prior to the expiry of the existing LTOA agreement. The respondents issued letter on 23.11.2022 providing for the following point which were summarised above-

- a. The entire plant capacity of the open access generators has to be allocated either to one or multiple scheduled consumers, without any CUF for the consumer in all the renewal/fresh open access applications, so that the open access capacity is same on both generator side and consumer side (total of all consumer capacities).
- b. The open access is to be permitted within the CMD of the consumer.
- c. For the existing open access generators, if the CMD of the consumer is less than the plant capacity, then open access will be allowed up to the CMD and the balance left over plant capacity of the generator will be treated as banked energy.

14. This letter of the respondent is its own making and is not provided in the regulation, the action the respondent in insisting compliance of their own decisions contrary to the subsisting regulation cannot be accepted. Based on such letter asking the petitioner to file a fresh application for LTOA is also contrary to the regulation and also amounts to overreaching the regulation. When the regulation is specific as the clauses extracted by the parties, any deviation thereof would constitute a violation of the said regulation.

15. In the instant case the petitioner earnestly applied for renewal of the LTOA and it is the respondents who have forced the petitioner to file fresh application citing the letter dated 23.11.2022 which is contrary to the Act, 2003 and regulation. The respondents further delayed the grant of LTOA in the name of ascertaining the feasibility for providing the same. After receipt of application the licensee realised that there are deficiencies in the application which have to be complied with. The deficiencies identified by the licensee were hither to have to be complied even for the renewal of LTOA. After receipt of application the distribution licensee informed the petitioner that it requires PQT reports and NABL test reports for ABT metering. Apart for the above the distribution licensee also sought the following documents.

1. Memorandum of Articles
2. Articles of Association
3. Shareholding pattern of the generator and the captive consumer (group captive if any) duly certified by CA for the FY 2022-23
4. Certificate of Incorporation issue by registrar of Companies.
5. The generation along with its consumption details and captive consumption details month wise for the complete annual year FY 2022-23.

16. The petitioner submitted the documents as per its submission on 20.03.2023. Yet the application of the petitioner for extension of LTOA was not considered by the nodal agency on 31.03.2023 which is one month from the closure of window. The licensees have committed a delay of 28 days even to issue feasibility report on the expiry of one month period after closure of the window. It is strange to note that the LTOA agreement was subsisting prior to the said date of SLDC seeking information and it had no occasion to monitor that the data was partially reporting. The actions of the respondents in communicating their requirements for according renewal or fresh consideration of the application or LTOA seem to be after thoughts to delay the grant of the same.

17. It is appropriate to notice that the petitioner was very prompt in responding to the letters issued by the respondents and also providing the information as desired by them. The extension or allowing of LTOA is not new to the respondents or there are changes in the application that is adding of new consumers or deleting of existing consumers thereby changing of exit points for the power injected into the grid in respect of petitioner generation. Therefore, the Commission is not inclined to subscribe to the contentions that there is delay and laxity on part of the petitioner.

18. The petitioner has claimed charges for the energy injected into the grid in the interregnum period from the date of expiry of the earlier LTOA agreement while entering fresh LTOA after a gap of 10days. In this regard the petitioner has identified the number of units. The licensees have neither stopped the petitioner from generating power on and after completion of the LTOA agreement till the fresh permission is accorded nor are considering the same for payment whilst such a request made by the petitioner to adjust the same to the consumers of the petitioner.

19. The petitioner also stated that if the licensee is not inclined to allocate the power injected into grid, to the consumers of the petitioner, then they should have paid for

the same at pooled cost in terms of the regulation of the commission. It is also contended by the petitioner that it has not undertaken any gratuitous act and is entitled to payment of charges for the energy injected into the grid. In this context the petitioner is seeking to rely on Section 70 of the Indian Contract Act, 1872 (Contract Act). The Commission is of the view that the injection of energy into the grid is neither gratuitous nor voluntary as long as the licensees have not informed the generators that they have to stop production when the term of LTOA has expired. The licensees cannot take the energy injected into the grid free of cost having not informed the generator to stop production of energy. By this method they cannot unjustly enriched at the cost of the generator.

20. The sequence of the events and the actions taken by the licensees including the nodal agency appear to be intended to thwart the process of compliance of provision of Act, 2003 with reference to open access as provided thereof. The nodal agency ought to have renewed the LTOA agreement from the day it had expired and not from the day of their choice as it is not a case of fresh permission, but it is only a continuation of existing permission. The nodal agency or the licensees cannot frame any procedure or guideline at their whims and fancies and require the generators to comply the same contrary to the subsisting provisions of the Act, 2003 and regulations made thereof as is noticed in respect of letter dated 23.11.2022.

21. The acts of the nodal agency supported by the licensees and SLDC do not confirm to the provisions of the Act, 2003 and the regulations subsisting as on that date, further reference to Regulation No.2 of 2018 and steps taken thereof are either relevant nor appropriate to the facts in issue. The core issue in the petition does not relate to the aspects of forecasting and scheduling, but relates to allowing open access on long term basis and for paying charges for the energy injected into the grid thus the said contentions could not support the action of the nodal agency. It is also strange on the part of the nodal agency to state that the LTOA was subsisting till 08.05.2023 and denying that it should have allowed by 31.03.2023 both the aspects do not run together. If the LTOA was subsisting nodal agency ought not to have asked for filing of fresh application. Having done so it is bound to comply the regulation if there was no system requirement as provided in the subsisting regulation as on that date. Thus, the respondents have failed to comply with act and regulations.

22. This leaves the Commission to the irresistible understating that the respondents undertook interpretation of their own choice and also allowed open access to their choice dates instead of continuing the existing LTOA. This has resulted on not accounting for energy injected into the grid from 09.05.2023 to 16.05.2023.

23. Another contention raised by the respondent No.2 that due to injection of energy by the petitioner's power plant that it had to suffer a loss of deviation charges for deviations in schedule and payment of fixed charges to the generators who are coal based and had to be backed down and the energy so injected is thrust on them without consent and or their knowledge. This argument is preposterous to be made in the context of present day, scenario of having DAS. Soon after expiry of LTOA agreement, nothing prevented the licensee from estopping the generator to generate further. Having allowed the generator to generate and now contending that it has been thrust upon them resulting in deviation charges and payment of fixed charges is nothing short of unbecoming of itself in the teeth of technological improvement.

24. The Commission is of the view that in the absence of any extension or modification of the grid system the petitioner ought to have been continuing with open access on and from the day when the previous LTOA expired. Having not done so the distribution licensee has to pay for the energy injected into the grid as it has supplied to it non gratuitously and sold to the end consumer duly collecting the necessary tariff as specified by the Commission.

25. In these circumstances the prayer sought by the petitioner in this petition is allowed in the following terms-

- i) The TGSPDCL and TGTRANSCO to grant long-term open access for a period of nineteen (19) years as there is not restriction in the subsisting regulation as on that date to the petitioner's 8 MW solar project.
- ii) The petitioner's 8 MW solar project is entitled to long term open access from 09.05.2023 and accordingly, TGSPDCL to amend the existing long term open access agreement dated 09.06.2023 to reflect the start date of the agreement as 09.05.2023 instead of 17.05.2023.

- iii) The TGSPDCL to settle the energy injected into the grid by the petitioner's 8 MW solar project between 09.05.2023 and 16.05.2023 by ascribing the same to the consumers of the petitioner.
- iv) In the event of such energy being not ascribed to the consumers of petitioner, the TGSPDCL has to pay compensation to the petitioner for 285600 units of energy injected into the grid between 09.05.2023 to 16.05.2023 at the average pooled power purchase cost as determined by Commission for the FY 2023-24, applying the provisions of Telangana State Electricity Regulatory Commission (Interim Balancing and Settlement Code for Open Access Transactions) Third Amendment Regulation, 2017.

26. The petition is disposed in terms of the directions in paragraph 25, but in the circumstances without any costs.

This Order is corrected and signed on this the 14th day of October, 2024.

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

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