ANDHRA PRADESH ELECTRICITY REGULATORY COMMISSION

4th Floor, Singareni Bhavan, Red Hills, Hyderabad 500 004

FRIDAY, THE 26TH DAY OF MAY

TWO THOUSAND TWENTY THREE

PRESENT

Justice C.V. Nagarjuna Reddy, Chairman
Sri Thakur Rama Singh, Member

Original Petition Nos. 61 and 62 of 2022

Between:

Balaji Energy Pvt. Ltd.

… Petitioner

And:

1. **Southern Power Distribution Company of AP Ltd. (APSPDCL)**
2. **Transmission Corporation of Andhra Pradesh Ltd.(APTRANSCO)**
3. **Chief Engineer/Andhra Pradesh State Load Dispatch Center(APSLDC)**

... Respondents

These two Original Petitions (O.Ps) have come up for final hearing on 03.05.2023 in the presence of Sri S.Ravi, learned Senior Counsel and Sri M.Naga Deepak, learned Counsel for the petitioners; and Sri P. Shiva Rao, learned Standing Counsel for the respondents; that upon carefully considering the material available on record and after hearing the arguments of both parties, the Commission passed the following:

COMMON ORDER

1. These O.Ps raise common issues related to the settlement of banked energy under Regulation 2 of 2006 (Interim Balancing and Settlement Code for Open Access Transactions). Hence, they are heard and being disposed of together.

2. The petitioner owns two mini hydel power plants with capacities of 2x1.5 MW (O.P.No.61) and 2x4 MW (O.P.No. 62) at Somasila village of SPSR Nellore district and has been wheeling the energy generated from these plants to third parties under intrastate open access and also through IEX under interstate open access. As per Appendix-3 of Regulation 2 of 2006, mini hydel, solar and wind-based generators are allowed to bank their unutilized wheeled energy with the DISCOMs under intrastate open access. Accordingly, the petitioner has been banking the unutilized portion of the wheeled energy with the DISCOMs. In this regard, disputes have arisen between the petitioner and respondents on the settlement of banked energy. In light of the disputes, the petitioner has filed the present petitions seeking the following reliefs:

A) To direct the respondents to allow the energy injected from the date of synchronisation to the Commercial Operation Date (COD) as deemed banking units, i.e., 3,09,876 units in respect of its 2x1.5 MW plant (O.No.61) and 30,72,250 units in respect of its 2x4 MW plant (O.P.No.62);

B) To direct the respondents to adjust the admitted banked energy of 27,06,935 units (O.P.No.61) and 1,15,82,527 units (O.P.No.62) for the years 2017-18 to 2021-22 to the third party consumer Pushpit Steels Pvt. Ltd.;

C) To direct the respondents to pay interest at 12% on quarterly rest for the delayed period till the amounts for the banked energy, i.e., 30,16,811 units (O.P.No.61) and 1,46,54,777 units (O.P.No.62) are received by the petitioner;

D) To direct the respondents to revise the energy settlements considering banking charges rate at 2% instead of 5% and credit the resulting banked energy to the account of the petitioner.

3. In support of its contentions, the petitioner has stated the following:

A. The 2 x 1.5 MW power plant (O.P.No.61) was synchronised with the grid on 07.11.2017 and the full load test was conducted on 30.11.2017 whereas the 2x4 MW power plant (O.P.No.62) was synchronised with the grid on 29.11.2017 and the full load tests for the 1st and 2nd units were conducted on 02.12.2017 and 15.12.2017 respectively. In the context of electricity generation, synchronization is the date on which the frequency of the power plant is matched with the grid and the power plant gets connected to the grid and the entire electricity generated by a plant gets injected into the grid and the COD is the date on which the plant is commercially operable. The successful conduct of a full load test is treated as the COD. As per the model PPA prescribed by APERC, and as available on the website of APERC, COD for Non-Conventional Power Projects is the date of synchronization of the first unit of the project. Hence, the power generated and supplied to the respondents from the time of Synchronization itself is eligible for banking. However, the respondents considered 05.01.2018 as COD as against the synchronisation and full load test dates which were much earlier.

B. As per OA Regulation, the petitioner is eligible for 17,17,548 units in respect of the 2x1.5 MW power plant (O.P.No. 61) and 30,72,650 units in respect of the 2x4 MW power plant (O.P.No.62) from the synchronisation date to COD whereas respondent No.1 settled 14,07,672 units only (O.P.No.61) and refused to settle any units (O.P.No.62). As against the petitioner's eligibility of banked units of 30,16,811 in respect of the 2x1.5 MW power plant (O.P.No.61) and 1,46,54,777 in respect of the 2x4 MW power plant (O.P.No.62) from synchronisation up to 2021-22 as per Joint Meter Readings, the banking units settled by the respondents and as available in the banking account of the petitioner are 27,06,935 units

(O.P.No.61) and 1,15,82,527 units (O.P.No.62) only. The respondents allowed banking facility to the petitioner in respect of the 2x1.5 MW power plant (O.P.No.61) vide letter dated 23.06.2018 whereas the same facility was denied to the 2x4 MW power plant (O.P.No.62) which is arbitrary and opposed to the Article 14 of the constitution of India, contrary to the provisions of OA Regulations and approved standard format PPA.

C. As per clause 12.2 read with Appendix-3 of Regulation 2 of 2006, the energy injected into the grid from the date of synchronization to COD ought to be considered as deemed banked energy. As per the second proviso to clause 4.1 of the above Regulation, the actual electricity injected into the grid shall be deemed to be the scheduled energy and as per the first proviso to clause 10.3, under drawals shall be treated as input into banking in accordance with clause 2(c)(2) and there is no inadvertent power. As per clause 10.5, the actual generation during the month shall be deemed as scheduled energy and should be accounted for.

D. The Commission observed in the order dated 02.03.2019 (related to the fourth amendment to Regulation 2 of 2006) that even mini hydel plants are entitled to claim the benefit of banked energy units on par with wind and solar units from the date of synchronization.

E. The Commission clarified in its order dated 02.05.2015 in O.P.No.59 of 2014 that the banked energy generated prior to the amendment would be entitled to the benefit as the same is covered by Regulation 2 of 2006.

F. As per clause 7.1 of Regulation 2 of 2006, the intrastate open access energy settlement has to be carried out every month. However, the energy settlements in respect of these mini hydel power plants were delayed by about 6 to 12 months resulting in the heavy accumulation of the banked energy. As per Appendix-3 of the said Regulation, the unutilized power can be utilized only from July to December of that year and January of the

succeeding year. However, due to the delay in the energy settlements beyond the stipulated period, the banked units were neither credited to its banking account nor adjusted to the account of the petitioner's OA consumer.

G. The Commission in the order dated 15.12.2021 in O.P.Nos. 83 and 84 of 2021 provided an option to the DISCOMs either to make the payment within two months for the unutilised banked energy or permit the petitioners to avail this energy during the next six months on the expiry of two months' time in the event of non-payment. The petitioner also stands on the same footing.

H. As per clause 3(b) of Appendix-3 of Regulation 2 of 2006, the banking charges shall be 2% in kind. However, the respondents have been deducting banking charges at 5% instead of 2% from the FY 2019-20 without any authority or orders of the Commission.

I. The petitioner filed W.P.No.3733 of 2021 before the Hon'ble High Court of AP seeking a settlement of energy injected into the grid. The reliefs claimed in the said WP are distinct and do not overlap with the reliefs claimed in the present petitions.

4. In the counters filed to the above O.Ps, respondent No.3 stated the following:

A. The petitioner submitted undertakings on 100/- stamp papers stating that power exported to the grid from the plants would be provided free of cost until the entering into of the Open Access Agreements. Therefore, the claim of the petitioner is contrary to the said undertakings and is not permitted in law. Even otherwise, the petitioner is barred from claiming energy injected up to C.O.D (date of entering into Open Access agreement) due to the law of limitation as the cause of action to claim deemed purchase of such unutilized banked energy arose on 31.01.2019

(O.P.No.61) and 31.04.2019 (O.P.No.62) whereas the petitions were filed on 16.11.2022.

B. As per amendments made to Appendix-3 of Regulation 2 of 2006 in the year 2016, only those solar and wind power plants mentioned in para 2 of Appendix-3 are eligible for deemed banking of energy injected into the grid between the date of synchronisation and COD. Mini hydel power plants are not mentioned in the said para. It is only through the 4th amendment made to Regulation 2 of 2006 in 2019 which came into effect on 11.03.2019 that the mini hydel power plants have been extended the above benefit. But, the petitioner is claiming the deemed banking benefit for the energy injected into the grid from 01.12.2017 to 05.01.2018, i.e., for the period much prior to the above said date of 11.03.2019.

C. In respect of the banked energy for the period from FY 2017-18 to FY 2020-21, the adjustment period has already expired by 31.01.2022. Therefore, the petitioner cannot claim for the adjustment of banked energy for the above period at this juncture. The admitted unutilized banked energies in the said period are 12,99,263 units (O.P.No.61) and 39,54,776 units (O.P.No.62) which will be accounted for to the extent the claims are within limitation.

D. As far as the banked units for FY 2021-22 are concerned, they can be adjusted/utilized up to 31.01.2023 as per Regulation 2 of 2006. Therefore, as of the date of filing of the petition, i.e.16.11.2022, the cause of action has not arisen for making any claim towards deemed purchase of unutilized banked energy.

E. The banked units claimed by the petitioner are incorrect. The petitioner is put to strict proof of its claim in this regard.

F. The petitioner already filed W.P.No. 3733 of 2021 regarding the settlement of banked units for the period from Oct 2019 to Dec 2019 and

Apr 2020 to Jun 2020. The said periods are also covered in these petitions. Hence, these petitions are not maintainable.

G. As per clause 13 of Regulation 2 of 2006, it is the APSLDC which is the competent authority to decide disputes regarding the settlement of energy or the balance number of utilised banked energy, and such a decision is binding on the generator and the licensee. Therefore, the petitioner may be directed to approach APSLDC for the resolution of the disputes raised in these petitions.

H. The amounts claimed towards interest on due amounts are yet to be ascertained (the petitioner has not claimed any specific amount). Therefore, the interest liability does not arise and the petitioner is not entitled to any interest in this regard.

I. As per the new wind and solar policies announced by the GoAP vide G.O.Ms.Nos. 1 and 2 dated 03.01.2019, the banked energy has to be adjusted at 5% in kind. Hence, banked energy was adjusted at 5% in kind from 01.04.2019 onwards, Therefore, the contention of the petitioner that the banking charges shall be collected only at 2% in kind even after 01.04.2019 is not correct.

5. In the rejoinder to the counter filed by respondent No.3, the petitioner stated as follows:

A. The undertakings were given for the purpose of synchronization which are one-sided and prepared by the department. As the respondents do not entertain applications for open access in the absence of such undertakings, the same were given without free consent in violation of section 19 of the Indian Contract Act, 1872. Clause (d) of the undertakings specifically states that the undertakings have to abide by the rules and regulations of APERC, /CERC/APSPDCL/ APTRANSCO/GoAP

and any higher authority from time to time. Hence, the undertakings cannot override the law of the land including Regulation No. 2 of 2006.

B. The Hon'ble Supreme Court taking cognizance of the COVID-19 pandemic has exercised its powers under Article 142 of the Constitution of India and has excluded the period from 15.03.2020 to 28.02.2022 for the purpose of limitation. In view of the above position, the claim is within the period of limitation. Further, the banked units accumulated due to the delay in their settlement by APSLDC despite the petitioner's continuous pursuance. Hence, the limitation clause is not applicable in this case as the delay is on account of APSPDCL/APSLDC.

C. As per clauses 2(c)(2), 10.3 and 10.5 of Regulation 2 of 2006, there shall be no inadvertent energy in respect of mini hydel power plants. Therefore, the contention of the respondents that prior to 11.03.2019, the mini hydel plants are not eligible for deemed banked energy between the date of synchronisation and COD is not correct. Further, APSPDCL vide its letter dated 23.06.2018 informed APSLDC to take further action for payment of deemed banked energy from the date of synchronisation to COD as per Regulation No. 2 of 2006 as amended from time to time.

D. The Commission has categorically held in the order dated 02.03.2019 (related to the fourth amendment to Regulation 2 of 2006) that mini hydel generators were not included in Clause 2 of Appendix-3 due to an inadvertent omission or oversight and accordingly included mini hydel generators to avail all the benefits which solar and wind power generators are entitled to as per Appendix-3 of Regulation 2 of 2006. Even otherwise, the petitioner is entitled to the said relief in terms of the Commission's order dated 02.05.2015 in O.P. No. 59 of 2014.

E. The Commission in its order dated 15.12.2021 in OP Nos. 83 and 84 of 2021 dated directed the DISCOMs to adjust the banking units in the

ensuing years if the payment is not made within two months and the petitioner's case is also similar. The respondents cannot deny the benefit of the banking facility to the petitioner as failure to account for the said units within the stipulated time is due to their negligence.

F. The unutilized banked units claimed by the petitioner are correct. The petitioner has enclosed a detailed statement indicating the banked units along with the petition and the same are as per the settlements done by APSPDCL.

G. The issues raised in W.P.No. 3733 of 2021 are with regard to the settlement of generated units whereas the issues raised in the present O.Ps are banked units.

H. The petitioner is entitled to interest on the cost value of the banking units as the DISCOM sold this energy and realized the proceeds but not adjusted the banked units. Hence, the petitioner is entitled to the interest as per the terms between the open access consumer and the petitioner.

I. The G.O.Ms.Nos.1 and 2 have not yet been implemented by the Commission. Hence, no reliance can be placed on the said GOs in respect of the adjustment of banked energy at 5% in kind.

6. Having regard to the respective pleadings and submissions of the learned counsel for the parties, the following points arise for adjudication:

A. Whether the reliefs claimed in the present petitions part of the W.P.No.3733 of 2021 filed by the petitioner before the Hon'ble High Court of AP?;

B. Whether the present petitions are entertainable when Regulation 2 of 2006 specifies that all disputes and complaints shall be referred to APSLDC and that the decision of APSLDC shall be binding on all parties?;

C. Whether the energy injected into the grid by the petitioner's plants from the synchronization date to COD can be treated as deemed banked energy?;

D. What is the actual quantum of energy banked by the petitioner between FY 2017-18 to FY 2021-22 and can any limitations be applied to the above quantum?;

E. Is the petitioner entitled to the interest for the period of delay until the amounts for the banked energy are received?; and

F. Are the respondents justified in considering banking charges at a rate of 5% in kind as per G.O.Nos. 1 and 2 dated 03.01.2019 while carrying out the intrastate open access energy settlements for wind, solar and mini hydel power plants?

Point A:

The Commission examined the W.P.No.3733 of 2021 filed by the petitioner and observed that the reliefs claimed in the said WP are distinct from the reliefs claimed in these petitions. The petitioner in W.P.No.3733 of 2021 prayed the Hon'ble High Court of AP to direct APSPDCL and APSLDC to consider the actual generation during the month as scheduled at the time of energy settlement and direct the respondents to pay a total amount of Rs.2,77,55,739/- to the petitioner along with 12% interest at quarterly rests; whereas, in the present petitions, the petitioner sought reliefs related to the banked energy which has arisen due to the partial non-utilization of the energy injected by the petitioner into the grid by its third party open access consumer. Therefore, the contention of respondent No.3 that the above Writ Petition was filed regarding the settlement of banked units is not correct and the subject matter of the Writ Petition is different from that in the present O.Ps. This point is, accordingly, answered.

Point B:

It is the plea of respondent No.3 that under Clause 13 of Regulation 2 of 2016 all disputes shall be referred to the APSLDC for resolution and that the decision of the APSLDC shall be binding on all parties. There is no dispute on the existence of such a clause in the Regulation.

Sri S.Ravi, learned Senior Counsel for the petitioner, has submitted that the said Clause is applicable if there is a dispute; and that, in the instant case, no such dispute exists as regards the banked units. In support of this submission, he relied upon the DISCOMS and Generator's Settlement Abstracts (for short "Settlement Abstracts") signed by the officials of APSPDCL, APTRANSCO, APPCC and also APSLDC, i.e., respondent No.3. Based on these documents, the learned Senior Counsel submitted that, in the absence of any dispute, respondent No.1 has illegally not permitted the petitioner to draw the banked units and, hence, a dispute between the petitioner on one side and respondent No.1 on the other side has arisen, which is amenable for adjudication by this Commission under Section 86(1)(f) read with 86(1)(k) of the Electricity Act, 2003.

We have perused the copies of the Settlement Abstracts filed along with the rejoinder. Some of these Abstracts contain the signatures of the Chief Engineer or ED, APSLDC, as the case may be. Therefore, to the extent of the Abstracts which contain the signatures of the representative of the APSLDC-3rd respondent, no dispute regarding banked energy could be said to exist. In the absence of such a dispute, clause 13 of Regulation 2 of 2006 does not get attracted. It is only in respect of the claims of the petitioner, which are not supported by the Settlement Abstracts signed by the APSLDC representative that the necessity of referring the dispute to respondent No.3 may arise. The Commission proposes to discuss, in detail, the Settlement Abstracts at the appropriate stage.

In this regard, there is one more reason for not accepting the respondent's objection. Under Section 86(1) (f) of the Electricity Act, 2003 a duty is cast on the State Commission to adjudicate upon the disputes between the licensees, and generating companies and to refer the disputes for arbitration. Undisputedly, the Electricity Act, 2003 being the plenary legislation will override any Rule or Regulation. In other words, any Rule or Regulation shall be subservient to the plenary legislation. When a genuine dispute is raised by a party, it is the duty of the Commission to adjudicate such disputes without standing on technicalities. The purport of clause 13 of Regulation 2 of 2006 is obviously not to oust the jurisdiction of this Commission, but only to facilitate the parties to get the disputes resolved in the first instance by approaching APSLDC. Reading clause 13 otherwise would make the said clause fall foul of Section 86(1)(f) of the Act. Therefore, in appropriate cases, irrespective of clause 13, the Commission can choose to adjudicate the disputes. In the Commission's view, the present cases on hand fall in this category where there does not seem to be much dispute on the fact of the petitioner banking the energy. The dispute, if at all, is confined only to the quantum of energy so banked, as some of the Settlement Abstracts do not contain the signatures of the APSLDC representative. Therefore, the Commission does not find any merit in the objection regarding the maintainability of the O.Ps.

Point C:

The petitioner relied upon clauses 2(c)(2), 4.1, 10.3, 10.5, 12.2 and Appendix-3 of Regulation 2 of 2006, the Commission's order dated 02.05.2015 in O.P.No.59 of 2014 and the order dated 02.03.2019 (related to the fourth amendment to Regulation 2 of 2006) in support of its submission that the energy injected into the grid from its plants starting from the date of synchronisation to COD should be treated as deemed banked energy.

Respondent No.3, on the other hand, contended that the petitioner submitted undertakings on 100/- stamp papers with an undertaking that the energy exported to the grid from the plants would be provided free of cost until the execution of the Open Access Agreements and that as per Appendix-3 of Regulation 2 of 2006 (in force between petitioner's plants' synchronization date and COD), the petitioner is not eligible to claim the deemed banked energy. The clauses relied upon by the petitioner in support of its arguments are extracted below:

Clause 2(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."***

Second proviso to clause 4.1: **"*Provided also that the Wind based, Solar based or Mini-Hyde! Open Access Generators shall not be required to provide a day-ahead wheeling schedule and the actual electricity injected by them shall be deemed to be the scheduled energy."***

clause 10.3: ***"The underdrawals by Scheduled Consumers and/or OA Consumers shall have impact on the Generator and on the DISCOM in whose area of supply the Exit 'point is located. Such underdrawls at the Exit point shall be treated as inadvertent energy supplied by the Generator to the DISCOM(s) and shall not be paid for by the DISCOM. Provided that, such underdrawals shall be treated as input into Banking in accordance with clause 2(c)(2); if such energy is sourced from Wind, Solar and Mini-hydel Generators."***

Clause 10.5: ***"In case of Wind, Mini-Hydel and Solar OA Generators the actual generation during the month shall be deemed as Scheduled Energy. For the purpose of settlement in respect of scheduled/QA consumer availing supply from these OA Generators, the actual generation during the month will be apportioned for each block of the month and deviations reckoned accordingly".***

Clause 12.2: ***"The banking facility to the wind, mini-hydel and Solar power generators shall be subjected to the conditions specified in Appendix-3".***

From the above, it is evident that clauses 4.1 and 10.5 are not related to banking. Though clause 10.3 confers a right on the intrastate open access wind, solar and mini-hydel Generators to bank the under-drawls at the exit

points, the word '**Banking**' defined in clause 2(c)(2) restricts this facility only to underutilized scheduled energy or the energy that exceeds the scheduled energy. Since energy is not scheduled by the open access wind, solar and mini-hydel generators from the synchronisation date to COD, clauses 10.3 and 2(c)(2) do not support the petitioner's claim. As regards clause 12.2, it explicitly states that the banking facility for the wind, mini-hydel and Solar power generators is subject to the conditions specified in Appendix-3. Para 2 of Appendix-3 (in force between the petitioner's plants' synchronization date and COD) only provides the deemed banking facility for energy injected into the grid by solar and wind power projects specified in GO.Ms.No.8, dated 12.02.2015, and GO.Ms.No.9, dated 13.02.2015, from the synchronization date to COD. However, mini-hydel power plants, including the petitioner's plants, are not mentioned in these G.Os. It was only from 11.03.2019 (well after the COD of the petitioner's plants) that the Commission, through the 4th amendment to Regulation 2 of 2006, extended the deemed banking facility to all the intrastate open access wind, mini-hydel and Solar power plants for the energy injected into the grid between their synchronization date and COD. As the 4th Amendment has not been given retrospective operation and the petitioner has achieved COD/entered into the OA agreement much before the 4th Amendment came into force, the benefit of the said amendment is not available to it.

As regards the order dated 02.05.2014 in O.P.No. 59 of 2014, it may be noted that Hetero Wind Power Limited had banked energy between 1st January 2014 to 31st March 2014, which it was entitled to utilize in the subsequent financial year as per the then prevailing Regulation 2 of 2006. However, the 2nd amendment to Regulation 2 of 2006, which was effective from 01.04.2014, prevented the company from utilizing the banked energy in the following financial year. Recognizing this piquant situation, the

Commission on the ground of avoiding extreme hardship, permitted the company to utilize the banked energy during the period from July to December of the subsequent financial year invoking its power under clause 15 (Power to Remove Difficulties) of Regulation 2 of 2006. The said order, passed in a peculiar fact situation cannot be followed when admittedly the petitioner does not possess a right under the extant Regulation prior to 11.03.2019 for the deemed banking facility from the date of synchronisation to the date of COD. In the absence of a specific declaration of COD, the date of granting Open Access (OA) has to be treated as COD. The learned Senior Counsel for the petitioner has fairly not disputed this position. Even otherwise, the 'Banking' definition in Regulation 2 of 2006 enables the plants to claim the banking facility only on the energy being scheduled from the plants which can only happen after the petitioner enters into open access agreement for wheeling of energy to third parties/captive use. Consequently, no parallel can be drawn between O.P.No.59 of 2014 and the current petitions.

For the aforementioned reasons, the petitioner could not claim deemed banking energy from the synchronization date to COD/the date of OA agreement. Hence, it is unnecessary to delve into other aspects related to this issue, such as the undertakings submitted by the petitioner and the law of limitation.

Point D:

Respondent No.3 has pleaded that the adjustment period in respect of banking energy from 2017-18 up to 2020-21 has expired by 31.01.2022; and that, therefore, at this juncture, the petitioner cannot claim adjustment of banking units. That the admitted unutilized banked units for this period have been arrived at as 12,99,263 units in OP No.61 of 2022 and 39,54,776

units in OP No.62 of 2022 by respondent No.3; and the said units of power will be accounted for to the extent that they are within the period of limitation.

Per contra, the petitioner in its rejoinders has pleaded that there is a delay in settlement by respondents 1 and 3 for more than six to ten months, as a result of which the banking units accumulated heavily.

As per clause 3(d) of Appendix-3 to Regulation 2 of 2006, the banked energy which remained unutilized as of 31st January of each financial year shall be deemed to have been purchased by the DISCOMs as per the wheeling schedule.

The learned Senior Counsel for the petitioner has drawn our attention to the statement showing the details of the banking account (year-wise) as settled by APSLDC. As could be seen from the above, there were delays in settlement ranging from 118 days to 413 days for the years 2018-19, 2019-20 and 2020-21. The learned Senior Counsel has also relied upon the correspondence between the petitioner and APSLDC, wherein it has requested the respondents to permit them to sell the banked units.

On a careful reading of the above material, we are inclined to accept the submission of the learned Senior Counsel that due to delays in settlement of the quantum of banked energy and also for not permitting the petitioner to draw the banked energy, the petitioner could not draw the banked energy. The petitioner cannot, therefore, be penalized for the inaction on the part of respondents 1 and 3 in permitting the petitioner to draw the banked energy.

As regards the aspect of limitation in approaching this Commission, the Hon'ble Supreme Court in its order dated 10.01.2022 in Miscellaneous Application No.21 of 2022 in Miscellaneous Application No.665 of 2021 in Suo Motu Writ Petition (c) No. 3 of 2020 excluded the period from 15.03.2020 to 28.02.2022 for the purpose of computation of limitation in view

of the Covid Pandemic. Therefore, the petitions are deemed to have been filed within the limitation period.

Coming to the quantum of banked energy, it is the contention of the learned Senior Counsel for the petitioner that the banked energy has been quantified under various DISCOM OA Generator Settlement Abstracts, which have been filed from PP 171 to 185 in O.P.No.61 of 2022 and PP 184 to 215 in O.P.No.62 of 2022. From a perusal of these Settlement Abstracts, we find that while some Settlement Abstracts contain the signatures of the APSLDC representative, a few of them do not contain such signatures. Sri P.Shiva Rao, learned Standing Counsel for the respondents, fairly submitted that to the extent of the quantum of energy shown in the Settlement Abstracts and signed by the APSLDC representative, the petitioner may be permitted to draw the banked energy and that for the balance quantum in respect of which APSLDC has not signed the settlement of abstracts, the dispute may be referred to the APSLDC for adjudication. The learned Senior Counsel for the petitioner has accepted this submission.

In light of the above, respondent No.1 is directed to permit the petitioner to draw the quantum of banked energy post entering the OA agreements to the extent it is certified by the APSLDC representative in the energy Settlement Abstracts. Such drawals shall be permitted only as per Clause 3(c) of Appendix-3 to Regulation 2 of 2006. The petitioner is permitted to file its claim for the uncertified quantities of the banked energy before respondent No.3 within one month. Within one month thereafter respondent No.3 shall settle the quantum of banked energy. On such settlement, respondent No.1 shall permit the petitioner to draw the banked energy as per Clause 3(c) of Appendix-3 to Regulation 2 of 2006.

This point is, accordingly, answered.

Point E:

Regulation 2 of 2006 and the Open Access Agreements do not explicitly stipulate payment of interest to the open access users due to the delays in the settlement of energy. Therefore, the Commission is not inclined to award any interest to the petitioner in this regard.

Point F:

Though G.O.No.s 1 and 2 dated 03.01.2019 specify that banking charges shall be 5% in kind, the commission has not made appropriate amendments to Regulation 2 of 2006. Therefore, respondents Nos. 1 and 3 shall collect the banking charges only at 2% in kind as per the extant Regulation while wheeling the banked energy.

7. In the result, the O.Ps are disposed of in terms of the above.

Sd/-	**Sd/-**
Thakur Rama Singh	**Justice C.V. Nagarjuna Reddy**
Member	**Chairman**