ANDHRA PRADESH ELECTRICITY REGULATORY COMMISSION

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

O.P.No. 12 of 2015

Dated 6.08.2016

Present

Sri Justice G. Bhavani Prasad, Chairman

Dr. P. Raghu, Member

Sri P. Rama Mohan, Member

Between:

M/s Indira Power Private Limited, Old No.16, New No.12 Wheatcrofts Road, Nungambakkam, Chennai – 600 034.

….Petitioner

AND

1. The Chairman & Managing Director, Southern Power Distribution Company of Andhra Pradesh Limited, H.No.19-13-65/A, Kesavayanagunta, Tiruchanoor Road, Tirupati – 517 501.
2. Executive Director, P&MM & IPC, Southern Power Distribution Company of Andhra Pradesh Limited, H.No.19-13-65/A, Kesavayanagunta, Tiruchanoor Road, Tirupati – 517 501.
3. Chief Engineer/IPC, APPCC, Vidyut Soudha, Hyderabad.
4. Chief General Manager, P&MM,IPC, Southern Power Distribution Company of Andhra Pradesh Limited, H.No.19-13-65/A, Kesavayanagunta, Tiruchanoor Road, Tirupati – 517 501.
5. Superintending Engineer (Operation), Southern Power Distribution Company of Andhra Pradesh Limited, Vidyut Bhavan, A.K.Nagar, Dargamitta, Nellore – 524 001.
6. The Executive Director, Transmission Corporation of Andhra Pradesh Limited (AP Transco), Vidyut Soudha, Khairatabad, Hyderabad – 500 082.
7. The Chairman & Managing Director, Transmission Corporation of Andhra Pradesh Limited (AP Transco), Vidyut Soudha, Khairatabad, Hyderabad – 500 082.
8. The Chief Engineer, Comml. & SLDC, Transmission Corporation of Andhra Pradesh Limited (AP Transco), Vidyut Soudha, Khairatabad, Hyderabad – 500 082.

…Respondents

This petition has come up for hearing lastly on 18th June 2016 in the presence of Sri Vinod Kumar, learned counsel for the petitioner and Sri P. Shivarao, learned standing counsel for the respondents. After carefully considering the material available on record and after hearing both parties, the Commission passed the following:

O R D E R

A petition under section 86 (1) of the Electricity Act, 2003 read with Regulation 55 of the Andhra Pradesh Electricity Regulatory Commission – Conduct of Business Regulations, 1999, essentially praying for,

(a) granting of an interim injunction restraining the respondents from deducting wheeling losses at the rate of 8.08%, in so far as the same is contrary to the Andhra Pradesh Solar Power Policy 2012 pending disposal of the petition;

(b) directing the respondents to permit the petitioner banking as per Andhra Pradesh Solar Power Policy 2012, of the 116337 units and subsequent adjustment of the same that were injected into the grid from 30.06.2014 to 19.08.2014, the date of starting of third party sale and permitting the petitioner to bank the injected power;

(c) granting an interim injunction restraining the respondents from raising monthly bills as applicable to HT-II consumers in so far as the same is arbitrary, pending disposal of the petition;

(d) declaring that the petitioner's 700 kWp solar power plant is entitled to avail import power for use in its premises whenever there is nil self-generation without having to obtain a HT service connection with contracted minimum demand of 70 kVA and consequently direct refund of sums collected towards security deposit, development charges at the time of providing HT connection to the petitioner as well as sums collected towards monthly HT bills along with interest at 12% p.a. from the date of payment to the respondent till refund is made by the respondent;

(e) declaring that the petitioner's 700 kWp solar power plant is entitled to net power export arrangement in respect of the power imported from the grid for use at its premises whenever there is nil self-generation by the plant;

(f) directing the respondents to refund the sums collected as Security Deposit of two months wheeling charges of Rs. 2,42,584/- from the petitioner along with interest at 12 % p.a. from the date of payment of Rs. 2,42,584/- till refund is made by the respondent;

(g) declaring that the deduction of wheeling and transmission losses at 8.08% in respect of the power generated at the petitioner's plant is illegal and contrary to the Andhra Pradesh Solar Power Policy 2012 and consequently direct deduction of wheeling and transmission losses on actuals;

(h) declaring that the condition imposed by the 8th respondent stating that the buyer shall not be entitled to take credit of the power purchased under this agreement, to meet its renewable energy sourcing requirement / RPO obligations by its Letter No. CE/Comml. & SLDC / SE (SLDC)/REC/D.No.203 dated 19.08.2014 is illegal and contrary to law;

(i) clarifying as to whether the Zero Transmission / Wheeling charges and Banking Facility offered by the AP Solar Policy 2012 vide G.O.Ms. No.39 dated 26.09.2012 subsequently amended vide G.O. Ms. No.44 dated 16.11.2012 and approved by this Commission vide its Transmission / Wheeling Tariff Orders dated 09.05.2014 falls under concessional / promotional benefits as per CERC Regulation 2010;

(j) passing such other orders as deemed fit in the circumstances of the case; and

(k) directing the respondents to pay costs of the present proceedings to the petitioner.

2. Thereafter, by a memo filed on 2nd April 2016, the petitioner prayed to permit the petitioner to give up certain prayers as in the original petition. The prayers that were given up include prayers (a) and (c), being interim reliefs, not being pressed as the matter is now coming up for final hearing; and prayers (f), (h) and (i). The surviving prayers of the petition are (b),(d),(e),(g),(j) & (k) stated above.

3. The materially significant averments of the petitioner in respect of the surviving prayers briefly are as hereunder:

a. M/s Indira Power (P) Ltd., a company incorporated under the provisions of the companies Act, 1956 is involved primarily in the business of setting up of power plants and generating electricity and has a 700 kWp solar PV power plant at Karur Village, Tada Mandal, SPSR Nellore Dist.

b. The solar plant is connected to the B.V. Palayam Distribution Sub-Station through 11 kV transmission line and currently selling the power generated to third party consumer(s), having been commissioned on 30th June, 2014.

c. The Government of Andhra Pradesh had by G.O.Ms.No.39 dated 26.09.2012 notified the Andhra Pradesh Solar Power Policy 2012 to, inter-alia, promote and encourage generation of solar power which is clean and most environmental friendly. The policy enables setting up solar power plants for captive use as well as for selling it in terms of the Electricity Act, 2003. Under the policy, various incentives are extended to encourage production of solar power to reduce the present gap between demand and supply. Such incentives include non-levy of wheeling and transmission charges for wheeling of power within the State through the DISCOM's grid, non-levy of cross-subsidy charges for third party sale, exemption from Electricity Duty for sale within the State, refund of VAT, refund of stamp duty, levy of actual transmission and wheeling losses and registration charges paid for purchase of land for setting up the plant etc. In terms of the policy, drawl of reactive power by solar power plant is to be charged as determined by the Commission.

d. On 16.09.2013 the petitioner submitted to APSPDCL under the policy, its proposal for setting up its Solar PV power plant, which was granted vide letter dated 23.11.2013.

e. Unlike Thermal Power Plants, which require around 10% as start up power to run its auxiliaries, for solar power plants there are no auxiliaries, which are required to be run for restarting generation.

The quantum of electricity required to restart a solar PV power station is very minimal. The primary requirement of solar PV stations for power from external sources is for use for basic lighting etc., during the night hours when there is no generation in a solar plant. The demand requirement for such standby power in a month for a 700 kWp capacity solar PV station will be approximately 15 kVA.

f. The petitioner had by its letter dated 10.10.2013 sought certain information from the third respondent (Chief Engineer/ IPC/APPCC) under a copy to second respondent (Executive Director, P&MM&IPC, APSPDCL), including the requirement to avail start-up / standby power and the applicable tariff for the same.

g. By letter dated 22.10.2013 the second respondent (Executive Director P&MM&IPC, APSPDCL) informed the petitioner that all issues will be dealt with as per the tariff order of the Commission.

h. In response by letter dated 26.10.2013, the petitioner informed the second respondent (Executive Director, P&MM&IPC, APSPDCL) that it is not able to ascertain the applicable charges from the tariff order and therefore requested for the details and further by another letter dated 28.11.2013, the petitioner, inter-alia, sought permission to use the existing LT connection for its captive / stand by use.

i. The fourth respondent (Chief General Manager/P&MM&IPC/APSPDCL) by letter dated 18.12.2013 informed the petitioner that it is mandatory for the petitioner to have a HT service connection with a contracted maximum demand of 70 kVA for all its electricity requirements not supported by its own generation.

j. The above said stipulation communicated by the fourth respondent (Chief General Manager/P&MM&IPC/APSPDCL) was an onerous one for the petitioner whose plant capacity is only 700 kWp and the power to be drawn from the grid each month by the plant would not be more than 15 kVA. A HT connection with minimum demand of 70 kVA, when the actual demand is not more than 15 kVA will mean that the power charges payable by the petitioner in the absence of the Commission determining the charges applicable for start-up / standby power in

respect of solar power plants, will be similar to a regular consumer with a HT–II service connection drawing power for its regular use.

k. Further, the petitioner consumes power at a single point at 11 kV which places it on a similar footing as HT-VI consumers for whom the Commission on taking into account the low load factor had substantially reduced the demand charges.

l. If demand charges are levied for low load factor consumers and distributed on all units the rate per unit component would be very high. Such levy of charges applicable to regular HT consumers causes severe financial burden for the petitioner.

m. It is relevant to note here that the petitioner has paid monthly HT bills for the following months under protest.

Month	Amount Paid
July 2014	Rs. 23,723
August 2014	Rs. 38,722
September 2014	Rs. 41,274
October 2014	Rs. 31,369
November 2014	Rs. 30,757
December 2014	Rs. 30,807

n. The petitioner therefore, by its letter dated 20.12.2013 addressed to the fourth respondent (Chief General Manager/ P&MM&IPC/APSPDCL) pointed out the financial burden on a small scale solar plant, which the stipulation will cause to the petitioner and sought the waiver of such requirement.

o. By letter dated 23.12.2013, the petitioner requested that power imported by the plant be adjusted against power exported and net power exported shall be allowed.

p. In its letter dated 15.01.2014, the fourth respondent (Chief General Manager/ P&MM&IPC/ APSPDCL) reiterated its earlier stand and insisted that HT service connection with contracted minimum demand of 70 kVA is to be obtained and that the tariff applicable for solar generators under third party is HT category-II.

q. Under such circumstances the petitioner made an application to the Public Information Officer of the Commission under RTI Act, regarding input power availed by the solar power generators. The said application was forwarded to the APCPDCL. As per the information received from the Public Information Officer of APCPDCL, start-up power before CoD is billed under tariff category–II and post CoD it is on net-off energy basis while informing that stand by power tariff is not available.

r. As per the response received from the General Manager/IPC/ APSPDCL/Tirupati to the information sought under RTI Act, tariff for start-up power and standby power for solar power plants is yet to be fixed by the Commission.

s. The petitioner understands that existing solar PV plants in the State are being permitted net metering (adjustment of import against export) by the APCPDCL.

t. The petitioner therefore, by letter dated 21.01.2014 once again requested that the petitioner's earlier request not to impose contracted minimum demand of 70 kVA, be considered and instead permit adjustment of the units whenever power is imported by the plant.

u. It is relevant to point out that the Commission has not specified any specific tariff for import power being availed by solar PV power plants.

v. By order dated 06.07.2010 in O.P.10 of 2010, the Commission had, inter-alia, passed orders on fixation of tariff for roof top and small solar power projects of 100 kWh and up to 2 MW capacity to be connected at distribution station at HT level (below 33 kV) under the JNNSM. The Commission was pleased to adopt the levelised tariff for 25 years as determined by the CERC.

w. The petitioner by its letters dated 06.02.2014 and 10.02.2014 addressed to the first respondent (CMD, APSPDCL) under a copy to the fourth respondent (Chief General Manager/ P&MM&IPC/ APSPDCL) reiterated its request and also pointed out that the Commission has

not sanctioned the levy of demand charges for the import power availed by the solar PV power plants. The petitioner's letters were forwarded to the third respondent (Chief Engineer/IPC/APPCC) for necessary action. The third respondent has by letter dated 15.03.2014 addressed to the fourth respondent and copied to the petitioner stated that the petitioner has to take HT service connection as per the DISCOM's norms. However, the details of the purported norms were not furnished to petitioner.

x. Considering the situation and the need to operationalise the plant within a time bound manner to get the benefits under G.O.Ms.No.39, dated 26.09.2012, the petitioner on 24.03.2014 submitted its application for HT service connection with contracted maximum demand of 70 kVA.

y. By letter dated 02.04.2014 addressed to the fourth respondent, (Chief General Manager/P&MM&IPC/APSPDCL), the petitioner stated that the application was submitted without prejudice to its rights and subject to the petitioner's right to seek appropriate orders of the Commission on the aspect of petitioner's entitlement to avail import power without having 70 kVA contract demand.

z. In terms of the Andhra Pradesh Solar Policy 2012 notified vide G.O.Ms.No.39, dated 26.09.2012, the evacuation line from the interconnection point to the grid substation is to be laid by the AP TRANSCO or APDISCOMs at the cost of the project developer. The very fact that the petitioner is paying the cost of evacuation line places it on a different footing from a consumer who utilizes a HT connection. However, if the project developer wishes to lay the evacuation line themselves they can do by paying supervision charges. The petitioner had by its letter dated 09-04-2014 addressed to the fifth respondent (Superintending Engineer, Operation, APSPDCL, Nellore) sought the detailed cost estimation for evacuation.

aa. In response by letter dated 01.05.2014 the fifth respondent (Superintending Engineer, Operation, APSPDCL, Nellore) informed the petitioner about the cost estimation for extension of HT supply for

contracted minimum demand of 70 kVA and called upon the petitioner to pay the relevant amounts in that regard.

bb. The petitioner has by letter dated 05.05.2014 sought clarification as regards the applicability of the cost of extension of HT supply to the laying of evacuation transmission line.

cc. The fifth respondent (Superintending Engineer, Operation, APSPDCL, Nellore) sent his response to the aforesaid letter by way of letter dated 24.05.2014 stating that the estimation is sanctioned for evacuation of power as well as HT supply for a CMD of 70 kVA at 11 kV potential under HT category-II as per APSPDCL norms. The letter also stated that the amounts as demanded previously in its letter dated 01.05.2014 are to be paid and conditions adhered to.

dd. It is relevant to point out that a solar power generator availing import of power from the grid as a stand by arrangement cannot be equated to a normal consumer who is entirely dependent on the licensee for the supply. The petitioner's plant supplies power to the State grid for further use by third party consumers in the State using the transmission network in the State. The very purpose of Andhra Pradesh Solar Policy 2012 notified vide G.O.Ms.No.39 dated 26.09.2012 was to encourage solar power generation and incentivize generators. The Government order lists out several incentives available to the generators. The stand of respondents that the petitioner has to necessarily avail contracted minimum demand of 70 kVA for its solar PV plant is contrary to the purpose and intent of the Government order which is to promote solar projects. The stand of the respondents puts a burden on the petitioner in as much as the petitioner will have to pay demand charges applicable to contracted minimum demand of 70 kVA despite the petitioner not using the said demand. The plant being a 700 kWp capacity one, the maximum import power availed in a month will not be in excess of 15 kVA. Considering such minimal usage, the petitioner should have been permitted availing of import power by net power export arrangement.

ee. The petitioner's plant was commissioned on 30.06.2014 and was synchronized on the same day. The petitioner had thereafter on 03.07.2014 submitted its application for approval for long term open access. However, the approval was granted by the respondents on 07.08.2014 after more than a month since the date of application. It is relevant to note here that AP Solar Policy 2012 clearly states that intra-state open access clearance for whole tenure of the project or 25 years whichever is earlier will be granted within 15 working days of application to both generator and consumer irrespective of voltage level. As such, the petitioner had generated power for the period from 30.06.2014 to 19.08.2014 and for the said period the respondents have not granted the petitioner the benefit of banking of power so supplied. It is submitted that in terms of the Andhra Pradesh Solar Power Policy 2012 the banking of 100% of energy shall be permitted for one year from the date of banking. The respondents have thus not permitted the petitioner to bank the power and are liable to permit banking and subsequent adjustment to the petitioner for the power so injected into grid. The petitioner has injected 1,16,337 units into the grid since 30.06.2014 up to 19.08.2014. The long term open access agreement was entered on 20.08.2014 between the petitioner and the fourth respondent (Chief General Manager/ P&MM&IPC/ APSPDCL). It is submitted that the respondents having utilized the power injected into the grid by the petitioner cannot now seek unjustly enrich themselves at the expense of the petitioner. The fact is further to be considered in light of the delay on the part of the respondents in according approval for the long term open access applied for by the petitioner herein.

ff. In terms of the solar policy, actual wheeling and transmission losses only are to be borne by the generator. However, contrary to this, the respondents have deducted 8.08% of the total generation towards wheeling loses which is on higher side. In fact the meter being at substation end, the petitioner is already bearing actual transmission losses. The supply point and drawl point in respect of petitioner's plant vis-à-vis its sole consumer is 11 kV. Applying wheeling loss

percentage of 8.08% as against the actual prescribed in the policy is without basis. The respondent cannot apply the loss percentage applicable in respect of other power plants for solar plants setup under solar policy. It is relevant to note here that wheeling losses for the year 2013-14 were 4.24%. The petitioner by letter dated 11.10.2014, informed the seventh respondent (the CMD, APTRANSCO) about the aforesaid discrepancy. However, the petitioner has not had any positive response from the respondents. It is pertinent to state here that the petitioner and an open access consumer are sharing the same substation at 11 kV (33/11 kV B.V.Palem Substation, Tada) besides using dedicated feeders to ensure that actual wheeling losses are next to negligible. It is also relevant to state here that applying wheeling losses at 8.08% to the petitioner's generation when the CUF of the petitioner's plant is around 16% would be financially burdensome. It is further relevant to state that in the event that the respondent continued to apply wheeling losses at 8.08%, the petitioner would be put to undue hardship if the Commission were to order the petition in its favour.

4. On 17th October, 2014, the respondents filed their counter, essentially pleading to dismiss the petition with costs. The important averments addressing the surviving prayers of the petitioner are as hereunder:

a. In order to promote generation of Solar Power, the State Government issued AP Solar Policy 2012 which is operative from the date of issue and shall remain applicable till 2017.

b. The petitioner's solar plant is connected to the grid at 11 kV level at interface point. Further, the same line is also being used by the petitioner to evacuate the power generated from its solar project, during day time, and to draw power from grid during night times (i.e. during non-generation) to meet its auxiliary load as consumer. As such, the service connection point to the petitioner should be only at interface point, and not at another point. Hence, the request of the consumer to give supply at LT voltage level was not possible and thus could not be considered. Since minimum contracted demand is 70 kVA for HT services (11 kV and above) the demand of the consumer is

considered as 70 kVA. The billing is being done accordingly under the HT category as per the tariff order approved by the Commission from time to time.

c. Billing is being done as per the tariff approved by the Commission from time to time. As such the request of the petitioner for waiver of such requirement (minimum demand charges) would result in same type of HT category–II consumers being treated with discrimination. Further, in the LTOA agreement entered with the DISCOM, there is no such provision for netting of energy i.e. adjustment of imported power against the exported power. Also there is no separate approved tariff for solar generators in the tariff order.

d. The terms and conditions of the PPA and LTOA vary according to the type of agreement and differ in nature. In some power purchase agreements, the delivered energy is defined as energy excluding all energy consumed in that project, by the main plant and equipment, lighting and other loads of the project from the energy generated. For such type of PPAs netting of energy is allowed. Here the petitioner is selling power to third party under LTOA and is naturally bound by its terms and conditions. In the LTOA no provision for netting of energy is stipulated. Hence, the petitioner cannot claim the benefits similar to the generators / developers supplying power under PPA as those are a different category.

e. Since there is no separate tariff for import of energy by generators, the energy drawn by the petitioner is treated on par with other HT Category-II consumers. The petitioner's solar plant is connected to the grid at 11 kV at interface point. The service connection to the consumer cannot be given at LT voltage, as there cannot be multiple interface points. As such the service connection point to the petitioner is to be only at interface point. The minimum contracted demand of 70 kVA is required for HT service. Therefore, for this HT consumer, the billing is being done accordingly under HT as per the tariff order approved by the Commission from time to time.

f. There is no possibility to import power without having a HT service in G.O.Ms.No.39 dated 26.09.2012.

g. There is no such provision under law to permit the petitioner to import power without having a HT service at a minimum of 70 kVA contracted demand as per G.O.Ms.No.39 dated 26.09.2012. As the petitioner's solar plant is connected to the grid at 11 kV at interface point, the service connection to the consumers cannot be given at LT voltage, and it has to be given only under HT category with minimum load of 70 kVA. Thus billing is being done accordingly, under HT, as per the tariff order approved by APERC from time to time.

h. As per the Interim Balancing and Settlement Code for open access transactions, Regulation No.2 of 2006 and its amendments on banking of energy, that were in force, the banking of energy will be applicable from the date of entering into LTOA. The petitioner has applied for LTOA agreement on 03.07.2014 and Executive Director, HRD and Planning, APTRANSCO has approved vide letter No. ED / HRD /Plng./DE-Comml./ADE-1/F. Indira Power / D.No. 234 /14, dated 07.08.2014, after due compliance of the conditions of the grid code and metering regulation, duly following the departmental rules in vogue. Then, the petitioner had entered into LTOA agreement on 20.08.2014. As such, the energy pumped into the grid during the period 30.06.2014 (date of synchronization) to 19.08.2014 was considered as inadvertent power, for which no tariff will be paid as per Regulation No.2 of 2006. Hence, the petitioner cannot claim compensation for such inadvertent power in any manner. There was no authorization to the petitioner to pump its power to grid. Such unauthorized pumping of power will not be accounted.

i. As per the APERC approved wheeling tariff for distribution business for the FY 2014-15 to 2018-19 dated 09.05.2014 for APSPDCL, the losses are deducted at 8.08% and accordingly the settlement was done.

5. The petitioner filed a rejoinder praying to grant reliefs prayed for in the petition with costs. The important averments in respect of the surviving prayers are hereunder:

a. The contention of the respondents that export of power requires a HT connection and as such a separate connection for auxiliary

consumption cannot be given is entirely misconceived. The petitioner's plant would not require more than 15 kVA demand and as such the arbitrary imposition of a HT connection when the same is not required is entirely erroneous and unsustainable. The respondent cannot assume the demand to be 70 kVA without any basis whatsoever.

b. The billing is being done on the basis of assumption that the petitioner requires a 70 kVA demand. It is reiterated that the petitioner is not a HT consumer and as such the question of discrimination as contended would not arise.

c. The classification attempted by the respondents has no basis in fact or law. Based on its RTI request, the APCPDCL clearly stated that the start up power is billed on net-off energy basis post CoD. As such, it is not open to the respondents to arbitrarily introduce a categorization of generating plants without any substantive basis. It is submitted that request for waiver submitted by the petitioner would not in any manner result in discrimination as alleged by the respondents. It is reiterated that the existing solar PV plants in the State are being permitted net metering. The respondents relying on the alleged stipulation in the PPAs to claim and that those plants are a different category that permit net metering, is without any substantiation. In such circumstances the contention of the respondents finds no basis in either fact or law.

d. The petitioner herein is not a HT category consumer and as such the imposition of HT category on the petitioner is entirely without basis. The contentions of the respondent rest on the premise that a separate connection cannot be given to the petitioner. But such denial of a separate connection in itself is baseless and entirely unsubstantiated. The respondents are evidently seeking to subvert the provisions of the solar policy.

e. The averment that there is no provision of law to permit import of power without a HT connection is flawed. There is no bar on the import of power without a HT connection for a solar PV plant. The respondent has merely reiterated its earlier averments that the

service connection to the petitioner cannot be given at LT voltage without any substantiation whatsoever.

f. The entire delay in the signing of LTOA was on account of the respondents who took more than a month to approve the petitioner's application for LTOA. Such delay is entirely unexplained and the only reason given is that the departmental rules were followed. Such blatant subversion of the purport of the solar policy is evidently with a view to deny the power generators their rightful dues. Banking of the 1,16,337 units supplied by the petitioner to the grid since synchronization ought to have been permitted. In this regard it is pertinent to mention that in terms of the Andhra Pradesh Solar Policy, 2015 energy injected into the grid from date of synchronization / Commercial Operation Date (COD) is to be considered as deemed energy banking. The question of inadvertent power would only arise in the event that the delay in approval of the LTOA was not on account of the respondents. The respondent cannot benefit from their own failing and cannot seek to keep the units generated citing inadvertent power and deny banking to the petitioner on such grounds. The delay in granting authorization by the respondents cannot be the basis for it to take the petitioner's power at no cost.

g. The deduction of wheeling losses based on the total generation cannot be applied to the petitioner in the light of the solar policy which stipulates that the wheeling and transmission losses are to be deducted on actuals.

h. The respondents have taken vague and obtuse stands in their counter with the intention to subvert the object of the Andhra Pradesh Solar Policy as is evident in so far as the blatant violation of the policy by the respondents is sought to be continued citing norms, regulations and rules that do not apply to the instant petitioner plant.

6. Having regard to the rival contentions of the parties as narrated supra, the issues on which the commission has to take a decision are:

(1) Whether to declare that the petitioner's solar power plant is entitled to avail import of power from the grid without having to obtain a HT Service and CMD of 70 kVA and consequently entitled for netting-off arrangement in respect of the power imported from the grid and also to direct the respondents to refund the sums collected towards security deposit, development charges as well as the monthly HT bills along with interest at 12% p.a.?

(2) Whether to direct the respondents to permit banking of 1,16,332 units that were injected into the grid by the petitioner from 30.06.2014 to 19.08.2014 and subsequent adjustment of the same?

(3) Whether to declare the deduction of wheeling and transmission losses at 8.08% in respect of the power generated at the petitioner's plant as illegal?

7. Issue No. (1):

The fact that the tariff orders do not cover tariff in relation to start up power as a separate category is not in dispute.

In the circumstances the respondents as a norm for all similarly placed plants have been applying a tariff that is more relevant to the given situation keeping in view the voltage level i.e. 11 kV with contracted minimum demand of 70 kVA falling under HT Category-II as in the Tariff Orders.

On the other hand the petitioner mentioned certain grounds as cited hereinafter viz., (i) The quantum of electricity required to re-start a solar PV power plant is very minimal unlike thermal power plants and the primary requirement of solar PV stations for power from external sources is for use for basic lighting etc. during the night hours when there is no generation in a solar plant and as such the demand requirement for such a stand by power for the instant plant will be approximately 15 kVA. Against that back ground insisting for having HT-II supply with a minimum demand of 70 kVA would be onerous; (ii) The petitioner consumes power at a single point at 11 kV which places it on a similar footing as HT-VI consumers for whom the Commission on taking into account the low load factor had substantially reduced the demand charges and if the demand charges are levied for low load factor

consumers and distributed on all units the rate per unit component would be very high. Such levy of charges applicable to regular HT consumers causes severe financial burden for the petitioner; (iii) As per the information received from the public information officer of erstwhile APCPDCL under RTI, start up power before CoD is billed under tariff category-II and post CoD, it is on net-off energy basis while the stand by power tariff is not available; (iv) Existing solar PV plants in the State are being permitted net metering (adjustment of import against export) by the erstwhile APCPDCL; (v)The very fact that the petitioner is paying the cost of evacuation line in terms of Andhra Pradesh Solar Power Policy 2012 notified vide G.O. Ms. No. 39 dated 26.09.2012, places it on a different footing from a consumer who utilizes a HT connection. It has finally requested for entitlement to net power export arrangement. The issue of allowing LT connection for its captive / stand by use was also raised.

A careful examination of the above would reveal that majority of the grounds pointed out by the petitioner as mentioned supra are points to be taken into account when the Commission initiates action for determination of tariff in relation to start up / auxiliary power as a separate category. Coming to the contention of the petitioner that existing solar PV plants in the State are being permitted net metering (adjustment of import against export) by the erstwhile APCPDCL, the respondents have clarified that the same is applicable only in respect of plants having power purchase agreements with them and the same is not applicable to plants that are selling power to third parties in as much as the terms and conditions of the PPA and LTOA vary according to the type of agreement and differ in nature and further there is no such provision for netting-off energy in LTOA. The Power Purchase Agreements and Long Term Open Access Agreements can be justifiably treated differently in as much as there is exclusivity of agreed relationship in respect of the DISCOMs and the generator when the DISCOMs are receiving power from the generator and in the event of they requiring start up power the same can be allowed to be on net-off basis. Whereas in the instant case where the Solar power generator is selling power to third parties of his choice and in order to facilitate such transaction is using the lines of the DISCOMs / AP Transco, as the case may be, by taking open

access at a rate mutually agreed between the generator and the purchaser and in such process if it wants to avail power supply towards the start up operations etc., the same logic of applying netting off power does not appear to be relevant as there is no privity of contract or relationship between the generator and the DISCOMs. On the issue of allowing LT connection for its captive / stand by use, the respondents had rightly stated that there cannot be multiple interface points.

In the given circumstances the options available to the respondents appear to be applying a tariff that is more suitable to the instant project within the frame work of the tariff order in vogue. In this case, since the voltage of the interface point is 11 kV, the AP DISCOMs have followed the relevant condition of imposing a minimum demand of 70 kVA and it is also brought to our notice that the same is the norm which is uniformly followed in all similar cases. In the background of there being no separate and specific tariff for start up power, the decision of the respondents cannot be found fault with. It is not the case of the petitioner that this kind of treatment is being meted out only to this particular developer and a more concessional or liberal dispensation has been granted to other similarly placed generators. As such, for the present, the matter has to be regulated keeping in view supply of power at 11 kV with 70 kVA minimum load. Read together with findings against the proposal for netting off energy and also availing LT supply, the question of allowing any refund or any consequential interest cannot be contemplated.

Learned counsel for the petitioner referred to two decisions of the Appellate Tribunal for Electricity in this regard. In Chattisgarh State Power Transmission Co. Ltd., Chattisgarh Vs. M/s R.R. Energy Ltd., and another **2011 ELR (APTEL) 0898**, while holding that a generator drawing start-up power from the grid occasionally cannot be considered as a generator-cum-consumer, the Appellate Tribunal pointed out that one has to be either a generator or a consumer. In Chattisgarh State Power Distribution Co. Ltd. Vs. ISA Power Pvt. Ltd., & another **[2012] APTEL 78**, the Chattisgarh State Electricity Regulatory Commission, in the relevant Tariff Order, created a separate tariff category for start-up power. When the generator was attempted to be billed under general purpose non-industrial category, the

dispute went before the State Commission and then before the Appellate Tribunal. The Appellate Tribunal which concluded that there is no need for the generator to take up a separate connection for start-up power as the same could be drawn from the interconnecting lines on which power is evacuated from the power plant, held that such a start-up power drawn by the Non-Conventional Energy plants is governed by the relevant tariff applicable to other HT industries for temporary supply as determined by the State Commission in its tariff order and also in the order on the dispute under appeal. When the question of limitation for recovery of such tariff payable was also raised with reference to Section 56(2) of the Electricity Act, 2003, the Appellate Tribunal differed with the State Commission and concluded that such generator is not a consumer within the meaning of Section 2 (15) of the Act. In fact, these two decisions rather show that the cost of the start-up power supplied by the Transmission Company to the generator for start-up purposes is not supplied gratis, but has to be paid in accordance with the relevant guidance from the Tariff Orders of the concerned State Commissions. As in the present case, there is no such tariff indicated for start-up power by the State Commission in any Tariff Order or otherwise, the distribution company proposed to charge the generator for the start-up power with a tariff which is reasonably comparable and applicable. These two decisions thus do not appear to be of any help to the petitioner in negativing its liability towards any sums collected towards security deposit or development charges and the monthly HT bills with consequential interest in case of default.

The process of initiating determination of a separate tariff by this Commission covering such situations is on the anvil. That being the case, the Commission is of the view that till such time a separate tariff is determined pursuant to initiation of the due process towards that end, the tariff applicable to HT-II category with its associated terms and conditions being adopted by the Distribution Company is reasonable, justifiable and lawful.

8. Issue No. (2):

On this issue the petitioner stated that their plant was commissioned on 30.06.2014 and was synchronized on the same day and thereafter on 03.07.2014 submitted its application for approval of Long Term Open

Access. However, the approval was granted by the respondents on 07.08.2014 after more than a month while the AP Solar Power Policy 2012 clearly states that intra-state open access clearance will be granted within 15 working days of application. As such, the petitioner requested that the power generated from 30.06.2014 to 19.08.2014 to the extent of 1,16,337 units may be permitted to be banked and subsequently adjusted specially in the light of the alleged delay on part of the respondents in according approval in as much as the respondents have not permitted banking.

On the other hand the respondents stated that, as per the Interim Balancing and Settlement Code for open access transactions, Regulation No.2 of 2006 and its amendments that were in force, the banking of energy will be applicable from the date of entering into LTOA. The petitioner has applied for LTOA on 03.07.2014 and the same was approved on 07.08.2014 after due compliance with the conditions of the grid code and metering regulation, duly following the departmental rules in vogue. Then, the petitioner had entered into LTOA agreement on 20.08.2014. As such, the energy pumped into the grid during the period 30.06.2014 (date of synchronization) to 19.08.2014 was considered as inadvertent. There was no authorization to the petitioner to pump its power to grid. Such unauthorized pumping of power will not be accounted. Hence, the petitioner cannot claim compensation for such inadvertent power in any manner.

Government of Andhra Pradesh has announced Solar Power Policy on 26.09.2012 as subsequently amended on 16.11.2012, to encourage generation of solar power. One of the provisions under the said policy is that intra state open access clearances will be granted within 15 working days of application to both the generator and consumer irrespective of voltage level. Against the above provision, the petitioner had brought to our notice that in their case more than a month's time is taken i.e. when the application was made on 03.07.2014, the approval was granted only on 07.08.2014. While there appears to be no reasonable or satisfactory ground for such delay, admittedly the petitioner pumped power into the grid from the date of synchronization / COD i.e., 30.06.2014 till 19.08.2014 even before Long Term Open Access Agreement dated 20.08.2014. In the absence of anything else, the principle of Section 70 of the Indian Contract

Act probably could have been availed by the petitioner for claiming the value of the energy supplied into the grid since the date of expiry of 15 days from its application for Long Term Open Access till the entering into the Long Term Open Access Agreement i.e., from 18-07-2014 to 19-08-2014.

However, the petitioner itself refers in the petition to a Letter of Undertaking on 21.06.2014 much before the date of synchronization / commencement stating that the petitioner will not claim any charges from the respondent for the energy pumped into the grid till Long Term Open Access Agreement is granted. List of dates and events filed by the petitioner also specifically refers to such an undertaking. The list of typed set of documents of course did not contain any reference to this document, while referring to all other documents referred to in this petition. The claim of the petitioner that the Letter of Undertaking dated 21.06.2014 was either on the insistence of the respondent or due to petitioner being forced to provide such a letter as permission to synchronization/ commission of the solar PV power plant with the grid was not given until the petitioner gave the Letter of Undertaking is not corroborated by any documentary evidence placed on record or otherwise. Any protest appears to have been first voiced only in the letter dated 12.08.2014 addressed "without prejudice" to the Southern Power Distribution Company of Andhra Pradesh Limited wherein payments were stated to have been made and readiness to execute an agreement was stated to have been expressed under protest. But, they are with reference to the Long Term Open Access Agreement. The earlier letter dated 02.04.2014 was also titled as "without prejudice" relating to HT service connection. The contents of the letter only refer to seeking a clarification from this Commission and not to any protest, and the specific request was to process the service connection as per the norms of the distributor. In any view, such a protest did not relate to charges for the energy pumped into the grid till entering into the Long Term Open Access Agreement. Any coercion or undue influence or any other vitiating factor invalidating the Letter of Undertaking dated 21.06.2014 cannot be matters of presumption but can be only matters of proof of broad human probabilities arising out of evidence on record. In the absence of such

evidence, the Letter of Undertaking dated 21.06.2014 has to be considered as voluntary and the petitioner is estopped by conduct in law from claiming such charges, at this stage. The request for banking of 1,16,337 units allegedly injected into the grid for synchronization, which is in effect and substance, the claim for the value of power so supplied cannot therefore be sustained.

The letter of undertaking dated 21.06.2014 was unfortunately not placed before the Commission originally by either party. In fact, an adverse presumption could have been drawn against the petitioner concerning the non-production of such letter, withholding of which is beneficial to it and the production of which will be prejudicial to it. Anyhow, on the directions of the Commission on 30.07.2016, an authenticated copy of the document is placed before the Commission which in effect and substance destroys the credibility and acceptability of the petitioner's claim in this petition. In the Letter of Undertaking, the petitioner has specifically agreed to pay for the power drawn by the generator for synchronization at corresponding HT-II tariff, contrary to its claims on issue No.1 herein. It has also specifically agreed that any inadvertent power pumped into the grid during the period of synchronization will be free of cost to Southern Power Distribution Company of Andhra Pradesh Limited and they will not claim for it and the petitioner has also further undertaken that they will not claim any charges from the Southern Power Distribution Company of Andhra Pradesh Limited for the energy pumped into the grid till it enters into LTOA / STOA with concerned authority. These positive undertakings negative the claims of the petitioner which has to therefore fail on both the issues 1 and 2.

9. Issue No. (3):

On this issue the petitioner stated that in terms of the solar policy, actual wheeling and transmission losses are to be borne by the generator. However, contrary to this, the respondents have deducted a pre-determined 8.08% of the total generation towards wheeling losses which is on higher side. In fact the meter being at substation end, the petitioner is already bearing actual transmission losses. The supply point and drawl point in respect of petitioner's plant vis-à-vis its sole consumer is 11 kV. Applying wheeling loss percentage of 8.08% as against the actual prescribed in the

policy is without basis. The respondent cannot apply the loss percentage applicable in respect of other power plants for solar plants setup under solar policy. It is relevant to note here that wheeling losses for the year 2013-14 was 4.24%. The petitioner by letter dated 11.10.2014, informed the seventh respondent (the CMD, APTRANSCO) about the aforesaid discrepancy. However, the petitioner has not had any positive response from the respondents. It is pertinent to state here that the petitioner and open access consumer are sharing the same substation at 11 kV (33/11 kV B.V.Palem Substation,Tada) besides using dedicated feeders to ensure that actual wheeling losses are next to negligible. It is also relevant to state here that applying wheeling losses at 8.08% to the petitioner's generation when the CUF of the petitioner's plant is around 16% would be financially burdensome. It is further relevant to state that in the event that the respondent continued to apply wheeling losses at 8.08%, the petitioner would be put to undue hardship if the Commission were to order the instant petition in respondent's favour.

On the other hand the respondents stated that as per the APERC approved wheeling tariff for distribution business for the FY 2014-15 to 2018-19 dated 09.05.2014 for APSPDCL, the losses are deducted at 8.08% and accordingly the settlement was done.

The bone of contention is whether to take into account the actual losses or the losses determined by the Commission in its tariff orders from time to time. It is to be recognized that there may be numerous patterns of open access users. The differences can be in terms of variations in voltage levels and also in terms of the actual locations of entry and exit points. That being the case allowing actual losses would be a Herculean task more so when the open access transactions multiply in leaps and bounds with associated sprouting of litigations on the authenticated figure of such losses. Against the above back drop, prudence demands that a benchmark loss as determined by the Commission in its tariff orders from time to time be applied, notwithstanding the fact that the loss assessment in the instant case might result in a lower level as projected. The petitioner had tacitly suggested for adoption of a loss level of 4.24%, which value is drawn apparently from the wheeling tariff order for the year 2013-14 issued by the

Commission based on its general estimation, and not from any specific data and calculations applicable to his case or any other case. The general scale of losses determined by the Commission from time to time on a comprehensive view of the generic data available to it is a more safe guide than any hypothetical assumptions in any individual cases without verification of any scientific and verifiable data. That being the case, it is only safe to follow such losses determined by the Commission.

Keeping in view the above situation and in order to reduce the possible litigation, Commission feels that it is prudent to follow the figure given in the tariff order. As such, the Commission is unable to accept the request of the developer.

10. In view of the above discussion and conclusions, the petition has to fail even in respect of surviving prayers. The petition is dismissed accordingly. The parties shall bear their own costs.

This order is corrected and signed on this the 6th day of August, 2016.

Sd/-	Sd/-	Sd/-
P. Rama Mohan	Dr. P. Raghu	Justice G. Bhavani Prasad
Member	Member	Chairman