ANDHRA PRADESH ELECTRICITY REGULATORY COMMISSION
4th Floor, Singareni Bhavan, Red Hills, Hyderabad 500004

WEDNESDAY, THE THIRTEENTH DAY OF DECEMBER
TWO THOUSAND AND TWENTY THREE
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:Present:
Justice C.V. Nagarjuna Reddy, Chairman
Sri Thakur Rama Singh, Member
Sri P.V.R. Reddy, Member

OP Nos. 27 & 28 of 2023

OP Nos. 27 of 2023 :

Between:

M/s. Balaji Energy Pvt. Ltd,
5-9-19, 1st Floor, Laxmi Narsinh Estate,
Secretariat Road, Saifabad, Hyderabad-500068
Rep. by its Authorised signatory Sri G. Sai Krishna Reddy,
S/o. Late G. Adi Sesha Reddy

…Petitioner

And:

1. The Southern Power Distribution Company of A.P Limited (APSPDCL), Kesavayana Gunta, Tiruchanoor Road, Tirupati- 517501, Andhra Pradesh Represented by its Chairman & Managing Director.

2. Transmission Corporation of Andhra Pradesh Limited, (APTRANSCO), Having its office at Vidyut Soudha, Gunadala, Vijayawada-520 004, A.P.

3. Andhra Pradesh Power Coordination Committee, (APPCC), Vidyuth Soudha, Gunadala, Vijayawada-520 004, Represented by its Chief General Manager

… Respondents

OP Nos. 28 of 2023 :

Between:

M/s. Balaji Energy Pvt. Ltd,
5-9-19, 1st Floor, Laxmi Narsinh Estate,
Secretariat Road, Saifabad, Hyderabad-500068
Rep. by its Authorised signatory-Sri G. Sai Krishna Reddy,
S/o. Late G. Adi Sesha Reddy

...Petitioner

And:

1. The Southern Power Distribution Company of A.P Limited (APSPDCL), Kesavayana Gunta, Tiruchanoor Road, Tirupati-517501, Andhra Pradesh, Represented by its Chairman & Managing Director.

2. Transmission Corporation of Andhra Pradesh Limited (APTRANSCO) Having its office at Vidyut Soudha, Gunadala, Vijayawada-520 004, A.P.

3. Andhra Pradesh Power Coordination Committee, (APPCC) Vidyuth Soudha, Gunadala, Vijayawada - 520004 Represented by its Chief General Manager.

… Respondents

These Original Petitions have come up for final hearing before us today in the presence of Sri M. Naga Deepak, learned counsel for the Petitioner and Sri P. Shiva Rao, learned Standing Counsel for the Respondents; that after hearing the learned counsel for both the parties, and on consideration of the material available on record, the Commission passed the following:

COMMON ORDER

Both these petitions have been filed by the same petitioner with the grievance that the respondents have not accounted for the energy supplied by the petitioner's Mini Hydel Generation Units i.e., 2x4 MW and 2x1.5 MW.

The case of the petitioner, in brief, is that it was sanctioned 2x4 MW and 2x1.5 MW Mini Hydel Power Plants at Somasila Reservoir, Nellore District by the Government of Andhra Pradesh; that the said plants commenced their COD in November and December, 2017; that the petitioner opted for selling power through Open Access to M/s.Pushpit Steels Private Limited and to Indian Energy Exchange (IEX); that the petitioner entered into agreements with respondent No.3-AP Power Coordination Committee (APPCC) for selling of the power generated from the aforesaid 4 MW and 1.5 MW plants; that, according to the said agreement, any power generated over and above the 4 MW and 1.5 MW is to be sold to the IEX on day to day basis; and that the account of IEX is being settled on day to day basis, while the account of APPCC is being settled at the end of each month after deducting the units settled by IEX.

It is the case of the petitioner in OP No.27 of 2023 that during the period from October, 2019 to December, 2019 and April, 2020 to June, 2020 it has generated and supplied 1,64,70,400 units of power from its 2x4 MW project to the Grid as recorded from the meter in the presence of the representatives of respondents 1 and 2 (APSPDCL and APTRANSCo); that from out of the aforesaid total units, it has sold 37,55,270 units to IEX and the balance of 1,27,15,130 units are sold to APPCC; that the APSLDC has accounted for only 79,30,602 units by leaving the balance of 47,84,528 units as unaccounted for; that as per the provisions contained in Clauses 4.1, 10.3 and 10.5 of the Interim Balancing and Settlement Code for Open Access Transactions Regulation No.2 of 2006 (Regulation 2 of 2006) the actual generation during the month shall be deemed as Scheduled Energy at the time of settlement of Generator Account with its OA consumer and IEX, but, contrary to the aforesaid provisions, respondent No.2 has not accounted for 47,84,528 units supplied from its 2x4 MW plant; and that, therefore, sought for a direction to the respondents to pay an amount of Rs.2,48,79,546/- to the petitioner along with interest at 12% at quarterly rests for the period from October, 2019 to December, 2019 and April,2020 to June, 2020.

It is the case of the petitioner in OP No.28 of 2023 that during the period November, 2019, December, 2019 and from April, 2020 to June, 2020 it has generated and supplied 37,56,300 units of power from its 2x1.5 MW project to the Grid as recorded from the meter in the presence of the representatives of respondents 1 and 2 (APSPDCL and APTRANSCo); that from out of the aforesaid total units it has sold 4,32,400 units to IEX and the balance of 33,23,900 units are sold to APPCC; that the APSLDC has accounted for only 27,70,786 units by leaving the balance of 5,53,114 units as unaccounted for; that as per the provisions contained in Clauses 4.1, 10.3 and 10.5 of the Interim Balancing and Settlement Code for Open Access Transactions Regulation No.2 of 2006 (Regulation 2 of 2006) the actual generation during the month shall be deemed as Scheduled Energy at the time of settlement of Generator Account with its OA consumer and IEX, but, contrary to the aforesaid provisions, respondent No.2 has not accounted for 5,53,114 units supplied from its 2x1.5 MW plant; and that, therefore, sought for a direction to the respondents to pay an amount of Rs.28,76,193/- to the petitioner along with interest at 12% at quarterly rests for the period November, 2019, December, 2019 and from April, 2020 to June, 2020.

Respondent No.2 filed separate counters in both the OPs. Since the stand taken by respondent No.2 is similar in both the OPs., it would suffice to mention the contents of the counter in OP No.27 of 2023, which are, in brief, as under:

a) It is averred by the respondents that since the issue involved in this case is about the alleged deficiency in settlement of energy pumped by the petitioner under interstate open access, the petitioner has to approach either the Nodal Agency (APSLDC) or the CERC and, hence, this Commission has no jurisdiction; that the petitioner was given approval for intrastate and interstate Open Access for specific Capacities; that the projects of the petitioner have been provided with separate Meter Reading Instruments (MRI), wherein two categories of readings are recorded, viz., (1) total energy dispatched from the units; and (2) the power injected into the Grid in every 15 minutes of time block; that the intrastate Open Access energy has to be computed by adopting the procedure contemplated by the APERC Regulation 2 of 2006, while the Open Access energy supplied through IEX has to be computed as per the

procedure contemplated in CERC Open Access Regulation, 2008; that as per the CERC Regulation 2008, after successful sale bid, the IXE need to issue day-ahead schedule to Generator and APSLDC; that many days in a month the petitioner in this case could not succeed in the IXE bidding, and, consequently, there was no day ahead schedule from IEX; that when the petitioner could not succeed in the IXE bidding, it has to limit its generation only to meet the quantum of energy agreed to supply to intrastate Open Access Consumer and if it generates energy beyond the specific capacity, such energy will not be accounted for; and that as per Clause 6.4.9 of the Indian Electricity Grid Code, the respondent need not consider any energy pumped into the Grid, without receipt of Schedules from IEX, and the petitioner is responsible for such generation/injection into the Grid.

b) It is further averred that the plea of the petitioner for accounting of the balance units, i.e., 47,84,528 and 5,53,114 units respectively in OP Nos.27 and 28 of 2023, for the periods mentioned therein, is incorrect; that the respondent

has been following Clauses 4.1, 10.3 and 10.5 of Regulation 2 of 2006, wherein specific methodology has been provided for settlement of OA energy in respect of intrastate OA Generators in the State of Andhra Pradesh; that the computed total energy for intrastate Open Access has been spread on average basis of each 15 minute time block for the entire month; that the respondent has not deviated any of the Regulations relating to intrastate and interstate Open access; that as per the order passed by the CERC in VRE Vs. ITC Ltd the total generation is to be apportioned on pro-rata basis of their approved capacity for intrastate and interstate Open Access; that in respect of the 2x4 MW plants covered by OP No.27 of 2023, wherein approval for the capacity of 4 MW for intrastate and 4 MW for interstate was obtained, the total generation is to be apportioned in the ratio of OA approved capacity at 50:50; and in respect of 2x1.5 MW plant covered by OP No.28 of 2023, wherein approval for intrastate for 2 MW and interstate for 1 MW was obtained, the total generation is to be apportioned in the ratio of OA approved capacity at 2/3 :1/3; that for recording the

intrastate and interstate generations the petitioner installed single energy meters and suggested separate methodology, which is incorrect and contrary to the Regulations of the APERC and CERC; that as per the prevailing Regulations the petitioner has to approach APSLDC, which is the Nodal Agency, for settlement of the intrastate and interstate Open Access issues and adhere the methodology being adopted by it; and that the deviation in the methodology, as suggested by the petitioner, is not tenable and contrary to the aforesaid Regulations.

c) It is further averred that during the month of November, 2019 the petitioner has injected total energy of 15,25,182 units for intrastate Open Access from the plants covered by OP No.27 of 2023, out of which 14,69,604 units was drawn by its OA consumer-M/s.Pushpit Steels Private Limited and the balance energy of 55,578 units would be treated as banked energy. As regards the plant covered by OP No.28 of 2023 it is stated that during the month of November, 2019 the petitioner injected total energy of 15,32,436 units for intrastate and interstate Open Access, out of which 5,03,112

units was drawn by its Open Access Consumer-M/s.Pushpit Steels Private Limited and the balance energy of 46,028 units would be treated as banked energy.

d) It is also averred that the petitioner has obtained NOC for the remaining months to avail interstate Open Access and the difference in the figures in Column 6 of the Statement furnished by the petitioner in Para-11 of the Petitions emerged only due to non-successful in the IEX bid for certain days in the respective months; that the petitioner ought to have restricted the power generation only to meet the schedules and not allowed to inject more than the schedules, which has bearing on the grid system; and that, therefore, sought for dismissal of the OPs.

The petitioner, while reiterating its stand in the Original Petitions, filed rejoinders in both the OPs, denying the averments in the counters. It is, *inter alia*, stated therein that the issue involved in these petitions is regarding the units generated by the petitioner, pumped into the Grid, supplied to its Open Access consumer located in the State of Andhra Pradesh (M/s.Pushpit Steels) and not accounted for by the respondents as per the Open Access Regulations, but not about the deficiency in

settlement of energy pumped by the petitioner under interstate Open Access approved; that no interstate power issue is involved in these cases, and, hence, this Commission has got jurisdiction to entertain the present Petitions. The petitioner denied the allegation that it could not succeed in IEX bidding and stated that it did not place a bid before the IXE and is supplying its entire generation to its Open Access Consumer; that as the petitioner is generating power over and above the contracted capacity with its Open Access Consumer, it had taken approval for selling certain quantity of power to IEX, but the respondents started to account for the energy generated by the petitioner towards IEX even in the absence of a bid placed by the petitioner for supplying power to IEX; that the ratio of apportionment of energy between the OA consumer and the IEX, as suggested by the respondent No.2, has no basis; and that this action of the respondent is wholly arbitrary and illegal.

As regards the jurisdiction of this Commission, Sri P.Shiva Rao has not pressed the said averment during the hearing. At any rate, as contended by the petitioner, the dispute pertains to settlement of power injected into the Grid and no interstate transmission issues are involved in the present cases.

During the hearing on 13-9-2023 the following order was passed:

"Sri S.Ravi, learned Senior Counsel for the petitioner; and Sri P.Shiva Rao, learned Standing Counsel for the respondents, assisted by Sri M.V.V.N.V.Prasad, DEE of APSLDC; are present at the hearing.

After a prolonged hearing, the two points which are identified for adjudication are:

1) Whether there was over injection of power on any day during the period in dispute? and

2) If so, whether it can be treated as inadvertent power?

As regards the first point, it has been stated by Sri S.Ravi, learned Senior Counsel, that the total capacity of the two units is 8 MW; out of which a PPA with one consumer viz., M/s.Pushpit Steels Private Limited, was entered into for 4 MW. He further submitted that as and when there was generation in excess of 4 MW, the petitioner used to supply the same in India Energy Exchange (IEX) on days when it participated in the bidding. This submission is not disputed by the learned counsel for the respondents. During the hearing it has also come out that the figures relating to the number of units of energy supplied to IEX and Pushpit Steels are also not in dispute. However, it needs to be ascertained whether on any given day there was over injection i.e., where the petitioner has not supplied power to IEX, was there generation and injection in excess of 4 MW. This aspect needs to be ascertained with the aid of reconciliation.

The Commission is, therefore, inclined to permit the two representatives of each side, i.e., the petitioner and the respondents to sit with the Officer of this Commission, viz., Sri P.Murali Krishna, Consultant (Tariff & Engineering) and incharge Secretary, on 21-9-2023 at 11 AM in the office of the Commision and reconcile the dispute. Based on such reconciliation, the Officer of this Commission shall submit a report within a week thereafter.

Both the parties shall produce the respective material relating to

the generation, injection and consumption of the power by the two consumers before the above mentioned Officer.

Call on 18-10-2023".

Accordingly, both the parties have presented themselves before the Consultant, T & E, Secretary I/c. After interacting with the parties and based on the information furnished by them, the Commission's Officer submitted a Report, as per which the total energy injected over and above the Contracted capacities from both the plants is 18,96, 693 units i.e.,18,58,147 units from 2x4 MW plants and 38,546 units from 2x1.5 MW plant. The Director and Manager of the petitioner has signed the reconciliation report without any protest or comments. Similarly, for APSLDC two of its DEs have also signed.

At the hearing, Sri M.Naga Deepak, learned counsel for the petitioner, has submitted that, according to the petitioner, the respondents have to account for the total number of units of 1,27,15,130 as against which only 79,30,602 units were accounted for by APSLDC-respondent No.3 leaving the balance of 47,84,528 units to be accounted for. According to him, on the days when generation was made in excess of 4 MW and below the minimum capacity, the respondents have divided the capacity into two halves instead of making full allocation of 4 MW and 2 MW capacity in favour of M/s.Pushpit Steels Private Limited, which is the consumer of the petitioner for both the units. In other words, according to the petitioner, irrespective of the

capacity at which generation was made, the allocation was divided in equal proportions between M/s.Pushpit Steels Private Limited and the IEX, which is not correct.

Sri P.Shiva Rao, learned Standing Counsel for the respondents submitted that though earlier the method as argued by the Sri M.Naga Deepak, learned counsel for the petitioner, was followed, during reconciliation calculations were made by allocating 4 MW to M/s.Pushpit Steels Private Limited in OP No.27 of 2023 and 2 MW to M/s.Pushpit Steels Private Limited in OP No.28 of 2023 and arrived at the generation over and above 4 MW and 2 MW on days when power was not supplied to IEX. According to the learned Standing Counsel, after following this method, the total number of units not accounted for by the respondents was arrived at i.e.,18,58,147 units in OP No.27 of 2023 and 38,546 units in OP No.28 of 2023.

From a perusal of Annexures-1 and 2 appended to the Report of the Officer of this Commission, it is very clear that the energy was divided into two parts, viz., energy generation/injection upto 4 MW and energy generation over and above 4 MW.

Sri P.Shiva Rao submitted that the respondents have corrected their earlier approach and are prepared to consider the energy

generated upto 4 MW as having been properly supplied by the petitioner to its end consumers and the same will be, accordingly, accounted for.

It could be seen from the Report of the Officer of this Commission that on reconciliation of the figures arrived at both upto 4 MW and over and above 4 MW, the representatives of the petitioner have signed in token of accepting the correctness of the calculations and final figures. Therefore, the petitioner cannot dispute the said Report. From this uncontroverted report, it is clear that in respect of OP No.27 of 2023 the number of units generated over and above 4 MW during the periods October, 2019 to December, 2019 and April, 2020 to June, 2020 is 18,58,147 units, while in OP No.28 of 2023 the number of units over and above 2 MW during the periods November, 2019, December, 2019 and April, 2020 to June, 2020 is 38,546 units.

Sri P.Shiva Rao, learned Standing Counsel for the respondents, submitted that based on the above reconciliation statement prepared by the Officer of this Commission, the respondents will settle the petitioner's account.

The next question that needs to be considered is - whether the petitioner is entitled to be paid for the energy generated and injected in

excess of 4 MW and 2 MW respectively when the same was not received by IEX?

Sri P.Shiva Rao submitted that the respondents are not liable to account and pay for the energy generated and injected in excess of 4 MW and 2 MW capacities by the petitioner. In support of his submission, he has placed reliance on Clauses 10.3 and 10.4 of the Interim Balancing and Settlement Code for Open Access Transactions (Regulation 2 of 2006). These Clauses read as under:

> "10.3. The under drawals 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 underdrawals at Exit point shall be treated as inadvertent energy supplied by the Generator to the DISCOM(s) and shall not be paid for by the DISCQM.
>
> Provided that, such under drawals shall be treated as input into Banking in accordance with Clause 2(e)(2); if such energy is sourced from Wind, Solar and Mini-hydel Generators.
>
> 10.4. Injection of energy by an QA Generator over and above the scheduled capacity at an Entry point shall not be accounted for. In such cases, only the scheduled capacity at exit point shall be accounted for as having been supplied by the Generator to the Scheduled Consumer or the QA Consumer, as the case may be".

From the above Clauses it is clear that for the Generators, other than Wind, Solar and Mini-hydel, under drawals at Exit Point shall be treated as inadvertent energy supplied by them to the DISCOMs and shall not be paid by the DISCOMs. However, in the case of Wind, Solar and Mini-hydel, such under drawal shall be treated as input into Banking.

However, under Clause 10.4 injection of energy by an OA Generator over and above the Scheduled Capacity at an Entry Point shall not be accounted for. In such cases, only the Scheduled Capacity at the Exit Point shall be accounted for as having been supplied by the Generator to the Scheduled Consumer or the OA Consumer, as the case may be.

In our opinion, Clause 10.4 applies to the Generators, irrespective of whether they are conventional or non-conventional Generators. As per this Clause, the energy injected over and above the Scheduled Capacity at an entry point need not be accounted for. It is not in dispute that as per the Open Access Agreement between the petitioner and the respondents, the Scheduled Capacities are 4 MW and 2 MW respectively. Therefore, any energy generated and injected in excess of these capacities is not liable to be accounted for since it is treated as inadvertent power. Therefore, we agree with the submission of the learned Standing Counsel for the respondents that the energy, which was found to have been generated in excess of 4 MW and 2 MW plants respectively, is not liable to be paid for.

In the premises as above, both the OPs are disposed of with the direction that the respondents shall account for the energy, which was injected and supplied by the petitioner from 2x4 MW and 2x1.5 MW

plants upo 4 MW capacities as arrived at by the Officer of this Commission in his report dated 09-10-2023. It is further held that the excess energy over and above 4 MW and 2 MW respectively, as arrived at by the Officer of this Commission, is not liable to be paid for by the respondents to the petitioner.

Order passed on this the 13th day of December, 2023.

Sd/-	Sd/-	Sd/-
Sri P.V.R Reddy,	**Justice C.V. Nagarjuna Reddy**	**Thakur Rama Singh**
Member	**Chairman**	**Member**