



## **ANDHRA PRADESH ELECTRICITY REGULATORY COMMISSION**

4<sup>th</sup>Floor, Singareni Bhavan, Red Hills, Hyderabad 500004

MONDAY, THE TWENTY SIXTH DAY OF JULY  
TWO THOUSAND AND TWENTY ONE

:Present:

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

**O.P.No.73 of 2019**

Between:

Aditya Birla Renewables SPV 1 Ltd.  
Having its regd office at 11<sup>th</sup> Floor,  
Birla Aurora, Dr. Annie Besant Road,  
Worli, Mumbai-400030, represented  
By its Authorised Representative  
Mr. Surajit Chanda

.. Petitioner

And

1. Southern Power Distribution Company of Andhra Pradesh Limited, represented by its Managing Director, having its registered office At 19-13-65/A, Raghavendra Nagar, Kesavayana Gunta, Tiruchanoor Road, Tirupati, A.P. – 517501.
2. Transmission Corporation of Andhra Pradesh Ltd. Represented by its Chairman & Managing Director, Having its regd office at A.P.Transco, Vidyut Soudha Gunadala, Eluru Road, Vijayawada, A.P. 520004. .. Respondents

This Original Petition, having come up for final hearing on 6-4-2021 in the presence of Sri Sakya Singha Chaudhuri, learned

counsel for the petitioners and Sri P. Shiva Rao, learned Standing Counsel for the respondents and upon perusing the material on record and upon hearing the arguments of the learned counsel for the parties, the Commission makes the following :

**ORDER:**

This Original Petition was initially filed seeking a declaration that respondent No.1 is not entitled to recover wheeling charges and losses from the petitioner w.r.t. the connectivity of the petitioner's project with 132/33 kV Sambepalli Sub-Station of respondent No.2 through 33 kV Dedicated Transmission Line (DTL).

The petitioner filed I.A.No.44/2020 seeking amendment of the O.P. on the ground that subsequent to the filing of the O.P. certain developments have taken place and that the same are necessary to be brought on record for ensuring holistic adjudication of the issues. The said I.A. was allowed on 4-11-2020. In the amended O.P. the petitioner prayed for a declaration that condition-II in the revised connectivity approval dated 17-6-2020 issued by respondent No.2 to the petitioner for transfer of ownership of the DTL constructed and owned by the petitioner from the project to the Sambepalli sub-station of respondent N.2 is bad in law and consequently to strike down and/or set aside the said condition and to direct respondent No.2 to grant revised approval

for connectivity to the petitioner's project to the Sambepalli sub-station of respondent No.2 without imposition of condition of transfer of ownership of the DTL constructed by the petitioner-company connecting the project to the sub-station of respondent No.2.

It is pleaded in the amended O.P. that the petitioner is a Special Purpose Vehicle and a company incorporated under the Companies Act 2013 by Aditya Birla Renewables Ltd. and Ultratech Cement Ltd. (UTCL) for setting up of a 20 MW captive solar power project at Kadapa District in compliance with Rule 3 of Electricity Rules 2005; that the said solar project is under construction; that the petitioner plans to avail Open Access to transmit the energy generated from its 20 MW solar project to the two cement plants of UTCL, namely, the Andhra Pradesh Cement Works and the Balaji Cement Works (captive users) located in the State of Andhra Pradesh; that at present the captive users are meeting their power requirements through coal based captive power plants and power from the project will be utilised to meet their RPO obligations; that the project is registered with the State Nodal Agency – New & Renewable Energy Development Corporation of A.P. Ltd. (NREDCAP) under A.P. Solar Power Policy 2015; that the subject solar power project was set up for captive consumption by the A.P. Cement Works and Balaji

Cement Works owned by UTCL; that UTCL is 26% shareholder in the petitioner-company and Aditya Birla Renewables Limited (ABReL) is the shareholder of the remaining 74%; and that the parent company of both UTCL and ABReL is Grasim Industries Ltd. (GIL).

That the petitioner vide letter dated 30-10-2018 made a proposal to the NREDCAP for generation of 20 MW capacity solar power project at Kurnoothala, Lakkireddipalli, Kadapa District, A.P. for captive use under A.P. Solar Power Policy 2015; that vide letter dated 2-11-2018, NREDCAP registered the project for captive use under the A.P. Solar Policy 2015; and that on the request of the petitioner vide letter dated 19-2-2019, NREDCAP vide letter dated 1-3-2019 revised the project location to Dudyala village, Sambepalli Mandal, Kadapa District, A.P. and allowed amendment to the registration certificate. That vide letter dated 13-11-2018, the petitioner initially requested respondent No.2 to accord connectivity approval and grant Long Term Access to 20 MW Solar Power Project at Kadapa District for evacuating power at 33 kV voltage level at 132/33 kV Rayachoti GSS; that thereafter the petitioner, vide letter dated 18-2-2019 applied to respondent No.2 to grant connectivity at the alternate GSS i.e., Sambepalli in the light of the mutual discussions regarding 132/33 kV Rayachoti GSS having been

already connected to a 30 MW Project; that the petitioner after obtaining the fresh registration of the 20 MW project by the NREDCAP again approached respondent No.2 vide application dated 8-3-2019 for grant of connectivity at 132/33 kV Sambepalli Sub-Station of respondent No.2 through 33 kV DTL; that respondent No.2 vide letter dated 20-3-2019 accorded connectivity approval to the petitioner at 33 kV level at 132/33 kV Sambepalli GSS for the proposed evacuation of 20 MW captive power from the project.

The petitioner further pleaded that it is constructing a 33 kV DTL from its solar plant to 132 kV Sambeplly sub-station; that power from the project injected into the Grid through the sub-station of respondent No.2 at Sambepalli will be off-taken to 400/220 kV Gooty Sub-station of respondent No.2 for further transmission to A.P. Cement Plant at 220 kV and also at Chilakkallu 220/132 sub-station of respondent No.2 for further transmission to Balajee Cement Plant at 132 kV; that both the captive users have already been connected to respondent No.2's Grid at 220 kV and 132 kV respectively and no new transmission or distribution line is required to be laid at drawal points and that the metering of the injected power from the project will be done at Sambepalli sub-station of respondent No.2. That accordingly the petitioner vide letter dated

25-3-2019 accorded its consent to respondent No.2 to take up the work of connecting the project at 132/33 kV Sambepalli GSS at 33 kV level for evacuation of proposed capacity of 20 MW from the Project on turnkey basis and accordingly pay supervision, engineering and other charges levied on account of such connectivity. That the petitioner further requested respondent No.2 to provide the estimate of supervision, engineering and other charges which the petitioner is required to pay.

It was further pleaded that in compliance of the connectivity approval, the petitioner and respondent No.2 executed the Memorandum of Understanding (MoU) on 30-5-2019; that as per the connectivity approval and the MoU the petitioner is required to lay 33 kV DTL from the project and connect the same to 132/33 kV Sambepalli sub-station; that the cost of laying the 33 kV DTL is to be borne by the petitioner; that the work at the project site has begun and the petitioner is planning to achieve commercial operation of the project in December 2019; that Long Term Access application will be made after the plant achieves its Commercial Operation Date (CoD) as per the prevailing procedures in A.P. and Open Access permission is expected in six weeks from the CoD; that considering the progress of work at the project site and the supervision, engineering and other charges payable to

respondent No.2 from the date of synchronization/commissioning, the petitioner vide its letters dated 31-5-2019 and 12-7-2019 requested respondent No.2 to provide the estimate of supervision, engineering and other charges; that respondent No.2 informed the petitioner orally that the estimate of the said charges will be provided by respondent No.1 as 33 kV DTL to be developed by the petitioner comes within the purview of respondent No.1.

The petitioner further pleaded that as it is developing 33 kV DTL connecting the project to 132/33 kV Sambepalli sub-station, it is not required to pay supervision, engineering and other charges to respondent No.2; and that the DTL does not in any way come within the purview of respondent No.1. That for the benefit of the project and to resolve the situation, the petitioner held a meeting on 27-9-2019 with the officials of respondent No.1 in order to determine the charges payable for transmission of electricity under the connectivity approval; that in the meeting the petitioner explained to the officials of respondent No.1 the scheme of connectivity of the project and the non-involvement of distribution system of respondent No.1 for the same; that however respondent No.1 intimated that the petitioner is required to pay the wheeling charges and losses to respondent No.1; that the said position

was also confirmed informally by the CGM of respondent No.1, but no written communication to the said effect was given by respondent No.1 to the petitioner. The petitioner further pleaded that wheeling charges are payable only if the generating project is connected to the network of the distribution licensee and is transmitting electricity or utilising the said network; that since the petitioner is directly connected to the sub-station of respondent No.2 through its DTL and is in no way utilizing the distribution network of respondent No.1, the petitioner cannot be made liable to pay charges to respondent No.1 on account of wheeling of electricity; that the petitioner vide letters dated 30-8-2019 and 99-2019 intimated to respondent No.2 about the unreasonable claim of respondent No.1 and requested respondent No.2 to intervene and exempt/clarify that no wheeling charges and losses are payable to respondent No.1 when the petitioner's project is directly connected to the sub-station of respondent No.2 and is not utilizing the distribution network of respondent No.1; that till date respondent No.2 failed to respond to the request made by the petitioner by way of the aforementioned letters; that therefore, the petitioner, on 30-9-2019 again made a representation to respondent No.1 stating that the petitioner is not utilizing the distribution network of respondent No.1 and is injecting

electricity directly to the sub-station of respondent No.2 through its DTL and that therefore no wheeling charges and losses shall be levied on the petitioner. That as there was no response from respondent No.1 till date about the statutory basis for the levy of wheeling charges, the petitioner is faced with a situation where it is unable to move forward with clear understanding of the position regarding its DTL; and that as the project is getting ready for commissioning, if the dispute relating to payment of wheeling charges and losses is not resolved, the same will result in undue and illegal claims against the petitioner.

The petitioner further pleaded that as per the connectivity approval dated 20-3-2019, the petitioner is required to develop a 33 kV transmission line at its own cost and shall connect radially to 132/33 kV Sambepalli sub-station; that as per Clause 14 of APERC Regulation on Power Evacuation from Captive Generation Co-generation and Renewable Energy source Power Plants (Regulation No.3 of 2017), the ownership of 11 kV or 33 kV network along with the pooling sub-station shall remain with the power producer. It was further pleaded that the 33 kV line being developed by the petitioner is a DTL connected to the petitioner's project and the same cannot be considered as a distribution network of respondent No.1 or transmission network of respondent No.2

and that the petitioner vide letter dated 3-10-2019 requested respondent No.1 for an estimate for 33 kV evacuation system under turnkey basis.

That vide G.O.Ms.No.35, dated 18-11-2019, an amendment to Solar Power Policy 2018 was brought about by the Government of Andhra Pradesh whereby the facility of energy banking and drawl was withdrawn for Variable Renewable Energy; that the arrangement for captive consumption was modified so that UTCL's cement plants will off-take only 8.75 MW out of the total 20 MW of power for captive use; that in addition, GIL will off-take the remaining 11.25 MW which will be owned by ABReL; that the capacity of 20 MW is to be split between the petitioner and ABReL in terms of ownership. It was further pleaded that vide letters dated 19-12-2019 and 9-1-2020, the petitioner sought reduction of connectivity to 8.75 MW and the connectivity of 11.25 MW to be transferred to ABReL; that the two projects of capacities 8.75 MW and 11.25 MW are physically and electrically separate and are connected through independent 33 kV single circuit DTLs for each project; that the DTLs are connected to 132/33 kV Sambepallli sub-station through separate bays for each project; that the metering of energy injected into the Grid will be done at the sub-station end for which meters have been installed; that respondent No.2 accorded

revised connectivity approvals separately for 8.75 MW and 11.25 MW vide letters dated 17-6-2020 for evacuation of power for captive use by connecting to 132/33 kV Sambepalli sub-station at 33 kV level through separate DTLs from each of the projects respectively; that respondent No.2 has arbitrarily included a new condition in the approval to the effect that *As per the clause 14 of APERC Regulation No.3 of 2017, M/s. Aditya Birla Renewables Ltd. is willing to take up the work on their own by paying 10% supervision charges to APTRANSCO/DISCOM after completion of the said work, the ownership of 33 kV line from generation site to 33 kV Grid shall be transferred to APSPDCL and APSPDCL will carry out O&M of 33 kV line.* It was further pleaded that the two projects were split up into 8.75 MW and 11.25 MW for the purpose of limited off-take by UTCL and the remaining by GIL; that the DTL was already the subject matter of original connectivity approval dated 20-3-2020; that the DTL remains the same and the capacity also remains the same; that the evacuation and ownership of generation capacity has been divided between the petitioner and ABReL and that there is no change in the aggregate capacity or in the manner of setting up of the DTL. That respondent No.2 has imposed vexatious and illegal condition to justify the claim of wheeling charges by respondent No.1; that in the absence

of utilisation of the distribution system, the claim of wheeling charges against the petitioner by respondent No.1 is an egregious demand and not authorised in law; that respondent No.2 while imposing the additional condition has simply picked a portion of the APERC Regulations; that it is an established principle of interpretation that the Act/Regulation has to be read as a whole; that APERC Regulations/Regulation No.3 of 2017 have established complete scheme for power evacuation from captive generation, co-generation and renewable energy source power plants; that a perusal of Clause 6 would reveal that two categories have been envisaged for power evacuation – first, independent plants which can be directly connected with the Grid sub-station of APTRANSCO/DISCOM; and second, clusters of projects which are connected to a common pooling point and from the common pooling point to Grid sub-station; that the present case is related to independent plants which are connected directly to 132/33 kV sub-station of APTRANSCO through two 33 kV DTLs; that Clause 11(iii) clearly laid down that for individual plants where pooling bus has not been provided, meters are to be provided at the incoming feeders of the Grid sub-station and that sub-station shall be treated as the pooling sub-station; that in the present case, both the plants are without any pooling bus and are

independently connected to Sambepalli 132/33 kV sub-station of respondent No.2 and therefore the said sub-station itself is to be treated as the pooling sub-station in terms of Clause 11(iii) of Regulation 3 of 2017.

That as per Clause 14, TRANSCO/DISCOM are not entitled for any supervision charges for the works upto the pooling sub-station i.e., 132/33 kV Sambepalli sub-station; that the second paragraph of the said Regulation provides that the ownership of 11 kV or 33 kV lines upto the pooling station shall lie with the power producer and it shall be the duty of such power producer to operate and maintain the 11 kV or 33 kV lines upto the pooling point and that therefore in the present case, it is the duty of the petitioner to maintain and operate the lines connecting its plants with 132/33 kV Sambepalli sub-station. That the third paragraph of Clause 14 requires APTRANSCO/DISCOM to construct connecting lines from the pooling sub-station to its Grid sub-station and that the said paragraph is not relevant as the 132/33 kV Sambepalli sub-station of APTRANSCO itself is the pooling station in terms of Clause 6. It was further pleaded that the last paragraph of Clause 14 is an alternative to paragraph-3 and provides that the power producer may itself take up the construction work of the line from the pooling point to the Grid

sub-station on payment of 10% supervision charges and transfer the ownership of the connecting line to APTRANSCO/DISCOM. That the respondents have mischievously relied upon this enabling provision while directing the petitioner to handover the dedicated lines emanating from the generating station to the Grid sub-station completely ignoring the fact that this provision is an alternative to the provision where respondent No.1 or respondent No.2 were required to construct the line connecting the pooling sub-station with their Grid sub-station and that this alternative provision obviously would not be applicable to the present case as there is no such line connecting the pooling station with the Grid sub-station as the Grid sub-station itself is the pooling station.

It was further pleaded that in the present case, no pooling station was established and therefore there is no common metering point for the projects and the projects of the capacities 8.75 MW and 11.25 MW are connected directly to 132/33 kV Sambepalli sub-station via separate and independent DTLs; that the 33 kV DTLs connected to the 8.75 MW and 11.25 MW projects cannot be considered as the distribution network of respondent No.1 or the transmission network of respondent No.2. It was further pleaded that there is no requirement for a power producer to handover the DTL to the APTRANSCO or the concerned DISCOM; that

the additional condition imposed by respondent No.2 is without authority of law and contrary to express provisions of the Act and the same appears to have been incorporated as an afterthought merely to justify the claim of respondent No.1 for wheeling charges. It was further pleaded that Section 10 of the Act casts a duty on a generating company to establish, operate and maintain a DTL; that a DTL is neither a transmission line in terms of Section 2(72) nor is it a distribution system connecting the point of connection to the installation of consumer in terms of Section 2(19) of the Act and that therefore the DTL emanating from the generating station of the petitioner to the Grid sub-station of respondent No.2 cannot be termed as EHT line referred to in paragraph-4 of Clause 14 which is to be handed over to respondent No.1 after completion of the works. It was further pleaded that the additional condition included by respondent No.2, especially after the original connectivity was granted, was only to illegally justify the demand of wheeling charges by respondent No.1 and that the Regulation relied upon by respondent No.2 is inapplicable in the present case. It was also further pleaded that the right of ownership mainly arises either by operation of law or by reason of some event or act and no owner can be

asked to pay fee or hire charges for using its own infrastructure which he has erected or created by his exclusive funds.

Respondent No.2 has not offered any response to any of the pleadings raised by the petitioner or respondent No.1.

Prior to the amendment of the O.P., respondent No.1 filed a counter affidavit wherein it was pleaded that the petitioner is constructing a 20 MW solar generating station at Dudyala village, Sambepalli Mandal; that power from the proposed generating station will be evacuated through APSPDCL & APTRANSCO networks and will be inter-connected to 132/33 kV Sambepalli sub-station by erecting APSPDCL owned one No. Dedicated 33 kV direct line from the generator to 132/33 kV Sambepalli sub-station; that the generator is a captive generator and wants to utilise the power for their captive consumers viz., M/s. A.P. Cement Works (UTCL) and M/s. Balaji Cement Works (UTCL) located at Bogasamudram village, near Tadipatri in Anantapur District and at Bodawada near Jaggaiahpetta in Krishna District, respectively. That initially APSPDCL owned networks i.e., 33 kV feeders are utilized for evacuation of power from the generator and later APTRANSCO networks at 220 kV and 132 kV are utilized for utilization

by captive consumers and therefore transmission and wheeling charges are to be paid by the petitioner. Respondent No.1 denied that the petitioner is not utilizing transmission/distribution network of the respondents. That the petitioner is utilizing 33 kV Distribution Line and 33 kV Grid of the respondents and therefore the levy of wheeling charges is not illegal.

It was further pleaded that the power from the petitioner's project will be evacuated through 33 kV networks of APSPDCL by erecting APSPDCL owned 33 kV dedicated feeder from the generator location upto 33 kV distribution system available at 132/33 kV Sambepalli sub-station; that the power will be utilized by their captive consumers Ultratech cements at 220 kV potential through a 220 kV feeder erected from 400/220 kV Gooty sub-station; that the power generated at 33 kV potential transmitted through 33 kV feeder at Sambepalli will be utilized through APTRANSCO networks at 132 kV, 220 kV and 440 kV potentials and finally the captive consumer M/s. Andhra Pradesh Cement Works (UTCL) located at Bogasamudram village, Tadipatri Mandal of Anantapuram District will utilize the power at 220 kV potential through 220 kV feeder erected from 400/220 kV Gooty sub-station; that another captive consumer M/s. Balaji Cement Plant located at Budawada village

near Jaggaiahpetta of Krishna District will utilize the captive power generated at Sambepalli in Kadapa District at their factory at 132 kV potential; that the power generated at Sambepalli will be evacuated through 33 kV networks of APSPDCL upto 132/33 kV Sambepalli sub-station and will be utilized through APTRANSCO networks at 132 kV, 220 kV and 400 kV potentials and finally the power will be utilized by the said captive consumer at 132 kV potential through 132 kV feeder erected from 220/132 kV Chillakallu sub-station in Krishna District; that in the above said process, the APSPDCL and APTRANSCO networks are utilized by the captive generator and captive consumers and hence transmission and wheeling charges are required to be paid. It is denied that the CGM of the respondent No.1 has orally confirmed that the petitioner is not liable to pay the wheeling charges. It was further pleaded that the petitioner is utilizing 33 kV networks of the APSPDCL and the captive consumers are drawing power at 220 kV and 132 kV potentials of APTRANSCO networks and hence both transmission and wheeling charges are to be paid invariably. It was further pleaded that the petitioner is under misconception of the provisions of law; and that the Hon'ble Supreme Court in **Sesa Sterlite Ltd. Vs. Orissa Electricity**

**Regulatory Commission and others<sup>1</sup>** clearly held that the ownership of the said line vests with the respondents.

It was further pleaded that the line erected from the generating plant upto the point of inter-connection is called as Dedicated Feeder; that in the present case the 33 kV line erected between the generating station and the point of interconnection at 33 kV potential on 33 kV side of 132/33 kV sub-station is a Dedicated Feeder; that the inter-connection line from the pooling sub-station belongs to APSPDCL or APTRANSCO depending upon its voltage levels; that even though the developers pay the service line charges as per the estimation for the inter-connection line, the ownership of the interconnecting lines lies with the APSPDCL or APTRANSCO depending upon its voltage levels; that in the present case the generator generates solar power at 433 V and finally it will be stepped upto the 33 kV potential by providing 433V/33kV transformer; that upto the point of 33 kV side of the 433V/33 kV transformer in the premises of the generator the ownership lies with the generator; that the inter-connecting 33 kV line from the 33 kV side of 433V/33 kV transformer of the generator upto the inter-connection point at 33 kV potential on 33 kV side of 132/33 kV Sambepalli sub-station belongs to

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<sup>1</sup> 2014(8) SCC 444

APSPDCL; and that the generator utilizes the 33 kV dedicated feeder of APSPDCL and 33 kV Distribution Network available at 132/33 kV sub-station of APSPDCL for evacuating the generated power.

After the O.P. was amended, respondent No.1 filed additional reply. It was pleaded that by way of amendment to the O.P., the petitioner is introducing new facts; that the petitioner is put to strict proof of the shareholding pattern in the company as claimed by it; that the claim of the petitioner that the condition incorporated while granting the revised connectivity approval by transferring 11.25 MW capacity from the petitioner to other company is absolutely in accordance with Clause 14 of Regulation No.3 of 2017; that the reply given by the petitioner on 24-6-2020 is contrary to law/regulation and that irrespective of the fact that the aggregate evacuation capacity of the petitioner though not changed, 11.25 MW capacity evacuation stood transferred in favour of another company i.e., ABReL. It was further pleaded that although there is no dispute about the effect of Section 9 r/w. Section 2(16) of the Act, Regulation 3 of 2017 was also issued in consonance with the provisions of the Act; that the petitioner in one blush wants to take the effect of Clauses 6 and 11 and in another blush wants that all the Regulations of Regulation No.3 of 2017 need to be read together; that even after

considering all the provisions of Regulation No.3 of 2017, it is clear that the line between the pooling station of solar cluster plants upto the 132 kV/33 kV sub-station though established with the monies of the solar power developer, the ownership of such line shall stand transferred to the power utility and that the utility shall maintain the said line and therefore the condition incorporated by the respondents in evacuation approvals is absolutely in accordance with the law and that non-inclusion of such a condition offends Clause 14 of Regulation No.3 of 2017. It was further pleaded that the petitioner is trying to create confusion as to the meaning of the provisions of Regulation No.3 of 2017, Sections 2(72), 9 and 10 of the Act together with the Electricity (Removal of Difficulty) Fifth Order 2005. That the petitioner is trying to mix up several aspects of law and to draw an incorrect meaning of Clause 14 of Regulation No.3 of 2017; that all the aforesaid provisions are distinctly different in their operation; that Regulation No.3 of 2017 is a special law in respect of evacuation of power through the lines of power utilities; that in the present case, 20 MW generating stations of the petitioner are directly connected to the designated 132/33 kV Sambepalli sub-station without any pooling sub-station arrangement by erecting 33 kV Double Circuit Line for a length of above 15 K.M; that as per Clause 14 of

Regulation No.3 of 2017, the Double Circuit Line and 33 kV bus bar network arrangements are the properties of respondent No.1 but not of the petitioner; that condition-II of the revised connectivity approval dated 17-6-2020 issued by respondent No.2 is absolutely in accordance with law and that therefore the petitioner is not entitled for any relief in the O.P. including the additional prayers made by way of amendment of the O.P.

The petitioner filed a rejoinder. It has averred that the terms 'Dedicated Feeder' or 'Dedicated Distribution Line' are not defined under the Act but the former is defined under Regulation No.3 of 2017 as being an electric supply line for point to point transmission which is required for the purpose of connecting electric plants of Captive Generation Plant, Co-generation Plant or Renewable Energy Source Power Plant like Solar, Wind, Small Hydro, Bio-mass and Municipal Solid Waste (MSW) to APTRANSCO/DISCOM substations." That the term 'Dedicated Feeder' no where suggests that such line is owned by the State Distribution Licensee or is liable to be transferred to the Distribution Licensee forming part of the distribution system, that the respondents have wrongly termed the 'dedicated feeder' as 'service line' which is defined under Section 2(61) of the Act and Clause 2.2.48 of the General

Terms and Conditions of Supply (GTCS) or 'electricity supply line' through which energy is supplied or is intended to be supplied by the Company from the distributing main to a single or a group of consumers from the same point of the distributing main. The petitioner also relied upon Section 10 of the Act r/w. Electricity (Removal of Difficulties) Fifth Order 2005 to plead that a duty is cast in a generating company to establish a dedicated transmission line. The petitioner also relied upon Section 9 of the Act which allows a captive generator to construct, maintain and operate a dedicated transmission line.

Referring to the averment in respondent No.1's reply affidavit that the 33 kV line is not connected to AP Transco's Grid but is connected to APSPDCL's 33 kV Grid, the petitioner averred that the said statement is devoid of truth and correct facts. The petitioner referred to and relied upon on the annual accounts for FY 2006-07 of the A.P. Transco approved by this Commission which includes approval of investment of Rs.11.81 crores on S.I. scheme for erection of 132/33 kV substation at Sambepalli in Kadapa District. The petitioner further pleaded that as per the above material, the 132/33 kV Sambepalli substation belongs to A.P. Transco and not to respondent No.1 as claimed by it. The petitioner also specifically averred that respondent No.1 has not placed anything on

record to substantiate its claim that the petitioner's generating station is connected to respondent No.1's network. The petitioner also relied upon the Multi-Year ARR and tariff framework filed before the Commission by the A.P. Transco for the 2<sup>nd</sup> Control Period i.e., FY 2009-10 to 2013-14 which reveals that the A.P. Transco sought approval for capital expenditure plan for 14 substations of 132/33 kV within FY 2009-10 and that out of the 14 substations, the substation at Sambepalli was listed at Sl.No.18. That Sambepalli substation was successfully commissioned on 4-6-2010 by A.P. Transco as per the capex plan proposed in MYT petition for FY 2009-10; that the website of respondent No.1 provided the data related to outage management system wherein the 'feeder master data' suggests that the feeders owned by respondent No.1 are only 11 kV feeders, namely, Gunnikunta, Motakatla, Palemgdda, Routhukunta and 11 kV Town Industrial feeder emanating from 132/33 kV substation of A.P. Transco. The petitioner further averred as under :

"20. That APSPDCL's contention that generator's evacuation arrangement is connected to the 33 kV distribution system of APSPDCL at 132/33 kV Sambepalli substation is absolutely misconceived. It is incorrect that the line connecting petitioner's generating station to the Sambepalli substation forms part of the distribution system.

21. That on perusal of the definition of 'distribution system' s provided in the Act, anything forming part of the distribution system connects the delivery points on the transmission lines or the generating station to the point of connection of the consumer. It is submitted that in the present case, the DTL connects petitioner's generating station and APTRANSCO's 132/33 kV substation. Petitioner's DTL does not connect to any part of the distribution system under the Act. A diagram demonstrating the correct factual position is annexed as Annexure-6.

22. That it is submitted that the 132/33 kV Sambepalli substation is owned by A.P. Transco and no part of this substation used by the petitioner is owned by APSPDCL. No part of distribution system is involved in evacuation of power from petitioner's captive generating station to petitioner's captive users situated in the State of Andhra Pradesh."

After the case was finally heard and orders reserved, respondent No.1 has filed an application for reopening the case for receiving additional averments raised in the said application. In the said application, respondent No.1 has raised the following additional points :

(i) That Clause 5.3.2.2. of GTCS envisages that notwithstanding that a portion or full cost of service line has been paid for by the consumer, the service line shall be the property of the Company (Discom), which shall maintain it at its own cost. The

company shall also have the right to use the service line for supply of energy to any other person. It was further averred that the said Clause of the GTCS is applicable for generators also as they also draw power from APSPDCL/AP Trnsco Grid for their auxiliary consumption, start up power etc., at the tariff rates of HT category 2B as a HT consumer and that accordingly the generators are also HT consumers of the Discoms.

- (ii) That the generator at 33 kV potential without utilizing 33 kV Grid (bus bar/network) of APSPDCL cannot transmit power to their Open Access consumers.
- (iii) That Clause 14 of Regulation 3 of 2017 of the Commission mandates that 11 kV or 33 kV or EHT lines from common metering point of pooling bus to AP Transco and AP Discom Grid shall be transferred to A.P. Transco/A.P. Discom. Respondent No.1 further added that in the instant case although there is no pooling station, since evacuation line is connected to the bay situated on the 33 kV side of 132/33 substation, the ownership of the line vests with APSPDCL/AP Transco depending upon its voltage level.
- (iv) That under Section 68 of the Act for laying any overhead lines other than the line which has a nominal voltage exceeding 11 kV

and is used or intended to be used for supplying to single consumer or so much of electric line as is or will be within the premises in occupation or control of the person responsible for its installation or in such other cases as may be prescribed, approval of the appropriate Government is necessary. That the Chief Electrical Inspector General's (CEIG) approval is also required to commission the line and that the same has to be furnished by the Developer. That as the Developer has erected the overhead line of 33 kV on turnkey basis outside its premises under the supervision of the Discom, the said line belongs to the Discom and connected to the 33 kV bus bar of the Discom which exists in the A.P. Transco owned EHT substation. Hence, the petitioner must invariably pay wheeling charges at the rates determined by this Commission from time to time.

(v) That as per the Solar Power Policy 2018, transmission and distribution charges will be exempted only if connectivity to the nearest CTU via STU network for inter-state wheeling of power and via STU for intra-state wheeling of power exists.

(vi) That the GoAP issued G.O.Ms.No.35 dated 18-11-2019 which inter alia says : *Transmission and distribution charges shall be as determined by the APERC for connectivity to the nearest Central Transmission Utility*

(CTU) via State Transmission Utility (STU) network for inter-state wheeling of power and via STU for intra-state wheeling of power.

(vii) That the as per G.O.Ms.No.1 dated 1-3-2021, G.O.Ms.No.35 dated 18-11-2019 will have prospective effect only and applicable to RE power projects that are commissioned after 18-11-2019.

On the above noted lines the respondents also filed even their written submissions.

The Commission on considering the said application felt that without standing on technicalities, an opportunity should be given to the respondents to raise additional Grounds. Accordingly, it has taken on record the said application and given opportunity to the petitioner to file its response. Accordingly, the petitioner filed its reply through their Advocate Mr. Avinash Desai. In the reply, the petitioner has strongly opposed the application for permission to raise additional pleas by respondent No.1. Without prejudice, the petitioner also traversed the additional pleas raised by respondent No.1. In para-16, the petitioner specifically denied the averment that the DTL is connected to the bay of respondent No.1. The petitioner further reiterated that the 132/33 kV Sambepalli substation is owned by A.P. Transco; that no part of the

substation used by the petitioner is owned by respondent No.1; that no part of the distribution system is involved in evacuation of power from the petitioner's captive generating station to its captive users situated in the State of Andhra Pradesh and that the petitioner has established/constructed its own transmission lines. In response to the plea that since the petitioner is drawing start-up power, it is a consumer and that consequently the line laid by it is to be treated as a 'service line', the petitioner while refuting the said plea relied on Judgment dated 24-5-2011 in **Chattisgarh State Power Transmission Co. Ltd. Vs. R.R. Energy Ltd. and another<sup>2</sup>** and Judgment dated 1-3-2017 in **Atria Brindavan Power Pvt. Ltd. Vs. Karnataka Electricity Regulatory Commission and others<sup>3</sup>** of the Hon'ble APTEL in support of its contention that the generator, notwithstanding its drawal of power from the Discoms for being used as start-up energy is not a 'consumer'.

Having regard to the respective pleadings of the parties, the following Points emerge for consideration :

1. Whether the ownership of the DTL from the 20 MW Solar Power Project of the petitioner at Dudyala village, Sambepalli Mandal, YSR

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<sup>2</sup> **Appeal No.166/2010**

<sup>3</sup> **Appeal No.133/2015**

Kadapa District for off-take of its power lies with the petitioner or respondent No.1 ?

2. Whether the DTL has been directly connected to the 132/33 kV sub-station belonging to respondent No.2 or via the 33 kV distribution network of respondent No.1 ?
3. What is the true purport of Clause 14 of Regulation No.3 of 2017 framed by the APERC ?
4. Whether Condition-V of letter dated 17-6-2020 of the Chief Engineer, Planning, Power Systems & Commercial of respondent No.2 is legal and valid ?
5. Whether the petitioner is liable to pay to respondent No.1 wheeling charges and other charges on the 33 kV DTL with reference to the connectivity of the petitioner's project with 132/33 kV Sambepalli sub-station of respondent No.2 ?

We have heard Sri Sakya Singha Chaudhuri, learned Counsel for the petitioner and Sri P. Shiva Rao, learned Standing Counsel for the respondents and perused the record.

The learned Counsel for the petitioner submitted that the DTL was laid exclusively at the cost of the petitioner as per the MoU dated 30-5-2019 entered between the petitioner and respondent No.2 and that the said line was directly connected to 132/33 kV Sambepalli

sub-station. The learned Counsel further submitted that the said line does not in any way come within the purview of respondent No.1; that the petitioner has laid the line for off-take of the power produced from its captive power plant; that respondent No.1 can neither claim to be the owner of the said line nor is it entitled to collect wheeling charges and transmission losses and also supervision, engineering and other charges in connection with that line from the petitioner. The learned Counsel further submitted that the respondents have misunderstood Clause 14 of Regulation No.3 of 2017; that in the absence of any pooling station, the Grid sub-station itself which is 132/33 KV Sambepalli sub-station in the present case, shall be treated as the pooling station and that under the said Clause, the ownership of the DTL upto the Grid station/pooling station shall continue with the developer and the ownership of the same is not liable for transfer. The learned Counsel has taken us through Clause 14 in order to substantiate his submission.

Opposing the above submissions, Sri P. Shiva Rao, the learned Standing Counsel for the respondents submitted that as per Clause 14 of Regulation No.3 of 2017, the ownership of the electrical line after its erection shall be transferred to respondent No.1 and that irrespective of whether the petitioner has borne the cost of laying the said line, it is

liable to pay wheeling charges and line losses to respondent No.1 as the latter has become the owner of the line. He has also placed heavy reliance on Clause 14 to buttress his contention. He has also relied upon the Judgment of the Hon'ble Apex Court in **Sesa Sterlite Ltd.** (1-supra) in support of his submissions.

We have carefully considered the submissions of the learned Counsel for both parties with reference to the material on record.

**Re Point Nos.1 to 4:** As these points are interrelated, they are proposed to be dealt with together. In its original counter, respondent No.1 inter alia pleaded at paras-10 and 19, as under :

“10. As stated above, the captive generator of 20 MW capacity being established at Dudyala (v) in Sambepalli (M) of Kadapa District. The power from the generator will be evacuated thro' 33 kV networks of APSPDCL by erecting APSPDCL owned 33 kV dedicated feeder from the generator location upto 33 kV distribution system available at 132/33 kV Sambepalli SS. The power will be utilised by their captive consumers Ultratech cements at 220 kV potential thro' 220 kV feeder erected from 400/220 kV Gooty SS. The power generated at 33 kV potential transmitted thro' 33 kV feeder at Sambepalli will be utilised thro' APTRANSCO networks at 132 kV, 220 kV and 400 kV potentials and finally the captive consumer M/s. Andhra Pradesh Cement Works (UTCL) located at Bogasamudram (v), Tadipatri Mandal of Ananthapuram District will utilize the power at 220 kV potential thro' 220 kV feeder erected from 400/220 kV Gooty SS. Another captive consumer M/s. Balaji Cement Plant located at Budawada (V) near Jaggaiahpetta of Krishna District will utilize the captive power generated at Sambepalli in Kadapa District in their factory at 132 kV potential. The power generated at Sambepalli will be evacuated thro'

APSPDCL 33 kV networks upto 132/33 kV Sambepalli SS and will be utilised thro' APTRANSCO networks at 132 kV, 220 kV, 400 kV potentials and finally the power will be utilized by the said captive consumer at 132 kV potential thro' 132 kV feeder erected from 220/132 kV Chillakallu SS in Krishna District. In the above said process, the APSPDCL and APTRANSCO networks are utilized by the captive generator and captive consumers. Hence transmission and wheeling charges are required to be paid.

.....

.....

19. The line erected from the generating plant upto the point of inter-connectivity is called as Dedicated Feeder. In the present case the 33 kV line erected between generating station and the point of inter-connectivity at 33 kV potential on 33 kV side of 132/33 kV Sambepalli SS is a Dedicated Feeder. The inter-connecting line from the pooling sub-station belongs to APSPDCL or APTRANSCO depending upto on its voltage levels. Even though the developers pay the service line charges as per the estimation for the inter-connecting line, the ownership of the interconnecting line lies with the APSPDCL or APTRANSCO depending upon its voltage levels. In the present case, the generator generates the solar power at 433V and finally it will be stepped upto 33kV potential by providing 433V/33kV transformer. Upto the point of 33 kV side of the 433V/33kV transformer in the premises of the generator the ownership lies with the generator. The inter-connecting 33 kV line from the 33 kV side of 433V/33kV transformer of the generator upto the inter-connecting point at 33 kV potential on 33 kV side of the 132/33 kV Sambepalli sub-station belongs to APSPDCL. The Generator utilizes the 33 kV dedicated feeder of APSPDCL and 33 kV distribution Network available at 132/33 kV SS of APSPDCL for evacuating the generated power.” (Emphasis added)

As per the averments in para-10 of the counter as extracted above, power is generated at Dudyala and that it is evacuated through the APSPDCL and APTRANSCO networks into 132/33 kV sub-station at

Sambepally. However, in para-19, contradictory averments have been made by respondent No.1. In one breath it is averred that the 33 kV line between the generating station and the point of inter-connectivity at 33 kV potential on 33 kV side of 132/33 kV Sambepalli SS is a dedicated feeder and in another breath respondent No.1 has assumed existence of a pooling station and claimed ownership of the so-called inter connecting line between the Pooling sub-station and the 132/33 kV substation. Respondent No.1 asserted that the petitioner is utilizing the dedicated feeder belonging to it and the 33 kV distribution network available at 132/33 kV sub-station.

These averments in the counter have been unequivocally disputed in the rejoinder wherein the petitioner has stated that the claim of respondent No.1 that the 33 kV line belongs to respondent No.1 and that it is connected to 33 kV distribution network of APSPDCL, is false.

Contradicting the averments of their own counter, in para-7 of the additional reply to the amendment petition, respondent No.1 pleaded as under :

"The respondents further submits that in the present case the 20 MW generating station of the petitioner are (is) directly connected to the designated 132/33 kV Sambepalli SS without any Pooling sub-station arrangement, by erecting 33 kV Double Circuit Line for a length of above 15 K.M. As per Clause 14 of Regulation 3 of 2017 of APERC the above

said 33 kV Double Circuit line, 33 kV bus bar network arrangements are the properties of APSPDCL but not of the Developer."

As seen from the above extract, respondent No.1 admitted that the 20 MW generating station of the petitioner has been directly connected to the designated 132/33 kV Sambepalli sub-station without any pooling station. It however claimed the DTL and the 33 kV bus bar network arrangements as its properties as per Clause 14 of Regulation 3 of 2017. The petitioner seriously objected to respondent No.1 treating the DTL as service line and submitted that the 'service line' defined under Section 2(61) of the Act is distinct and different from a 'dedicated transmission line' (DTL) as defined under Section 2(16) of the Act. The petitioner reiterated its averment that while it has erected the DTL with its own funds, the same is connected to APTRNSCO's 132/33 kV Sambepalli sub-station without being connected to any part of the distribution system belonging to respondent 1 or to any pooling station.

During hearing, Sri P. Shiva Rao, in line with the averments in the additional reply to the amended petition, has not disputed the fact that the 33 kV DTL emanates from the petitioner's generating station at Dudyala (and not at Sambepally as initially pleaded by the respondents) and is directly connected to 132/33 kV sub-station at

Sambepalli of respondent No.2. He has not argued that any part of the distribution network of respondent No.1 has been involved for evacuation of the power generated in the petitioner's project into 132/33 kV Sambepalli sub-station through the petitioner's 33 kV DTL. He has however placed heavy reliance on Clause 14 of Regulation No.3 of 2017 to support the claim of ownership of the DTL by respondent No.1 and thereby submitted that as the ownership of the DTL stood vested in respondent No.1, the petitioner is liable to pay wheeling charges to respondent No.1 and bear transmission losses on the line. As noted above, respondent No.1 has raised additional points after the hearing was concluded.

We shall first consider and analyse Clause 14 on which both parties placed heavy reliance. This clause, to the extent it relates to the solar and wind projects reads as under :

#### **Solar/Wind Projects (for both individual and cluster Scheme projects)**

APTRANSCO/DISCOM is not entitled to levy supervision charges on their internal works within the Solar/wind farm site and upto pooling sub-station.

The ownership of 11 kV or 33 kV network along with Pooling SS (33 kV or EHT) will be with the Power Producers. It shall be the duty of the Power Producers, being the owners of the generating companies to operate and maintain the 11 kV or 33 kV network and Pooling SS (33 kV or EHT) as per the rules and regulations made for the purpose.

APTRANSCO/DISCOM will take up the erection of EHT or 33 kV line work from Pooling SS to grid sub-station on payment of total estimated cost by the Project Developer or Power Producers.

Alternatively, the Project Developer or Power Producer can take up the work on their own by paying 10% supervision charges to APTRANSCO/DISCOM. After completion of work, the ownership of 11 kV or 33 kV or EHT Line from common metering point of Pooling SS/Pooling bus to APTRANSCO/DISCOM grid shall be transferred to APTRANSCO/DISCOM and APTRANSCO/DISCOM shall carryout O&M of EHT/33 kV line whichever is applicable.

The scheme underlying Clause 14 is briefly explained hereunder. It is the obligation of the developer to execute the power evacuation work. It shall abide by the orders, rules and regulations and terms and conditions as approved by this Commission from time to time with regard to power evacuation, transmission and wheeling of energy and operation of Captive Generation/Cogeneration/Solar/Wind/Small Hydro/MSW power plants. In respect of solar/wind projects, both for individual and cluster scheme projects, APTRANSCO/DISCOMs are barred from levying supervision charges on the works upto Pooling substation. The Clause specifically laid down that in case of solar and wind projects, the ownership of 11 kV or 33 kV network along with Pooling substation (33 kV or EHT) will be with the Power Producers. It shall be the duty of the Power Producers to operate and maintain the 11 kV or 33 kV network

and the Pooling substation as per the rules and regulations made for the purpose. The Clause also authorised APTANSO/DISCOMs to take up the erection of EHT or 33 kV line from the Pooling substation to Grid substation on payment of total estimated cost by the Project Developers or the Power Producers. An option is however provided to the Project Developers or the Power Producers to take up the work on their own by paying 10% supervision charges to the APTRANSO/DISCOM and after completion of the said work, the ownership of 11 kV or 33 kV or EHT line from common metering point of Pooling substation/Pooling bus to APTRANSO/DISCOM Grid shall be transferred to APTRANSO/DISCOM and APTRANSO/DISCOM shall carryout O&M of such EHT or 33 kV Line whichever is applicable.

As could be seen from the above, Clause 14, dealing with solar/wind projects, contains two distinct parts – the first part relates to erection, ownership and maintenance of 11 kV or 33 kV network along with Pooling substation; and the second part pertains to erection, ownership and maintenance of EHT or 33 kV Line work from Pooling substation to Grid substation. In respect of the works falling under the first part, it is the Power Producers who are charged with the obligation to erect, own and maintain the network. In the case of works falling

under the second part, while discretion is vested in the Power Producers to either entrust erection of lines to APTRANSCO/DISCOM or to execute the work on their own by paying 10% supervision charges to APTRANSCO/DISCOM. Once the work is completed, the ownership of the line shall be transferred by the Developer or Power Producer to APTRANSCO/DISCOM as the case may be.

It is abundantly clear from Clause 14 as discussed above, that ownership of the entire network upto and including the Pooling substation shall be with the Power Producers who are also responsible to maintain the same. It is only the network between the Pooling substation and the Grid substation which is liable to be transferred to the respondents depending upon the voltage.

The expression “pooling station” is not defined under the Regulation. However, in this context, it is apposite to refer to Clause 6 of the Regulation which reads as under :

#### **6. Power evacuation:**

- (1) Independent projects at a particular location shall normally be connected to the nearest grid sub-station of APTRANSCO/DISCOM as the case may be.
- (2) The Solar and Wind power projects developed in cluster will be connected from the pooling bus/sub-station of the Solar/Wind farm by erection of 11 kV line or 33 kV line or EHT line for connecting to the

existing nearest grid sub-station of AP TRANSCO/DISCOM as the case may be.

It is clearly discernible from the above Clause that the concept of pooling station would come in, in case solar and wind power projects are developed in clusters. If we read sub-clause (2) of Clause 14, it would be clear that in the case of cluster projects, the DTLs emanating from individual generating stations are connected to the Pooling substation and a separate line either of 11 kV or 33 kV or EHT as the case may be will be erected for connecting the Pooling substation to the Grid substation of APTRANSCO/DISCOM as the case may be. In the instant case, as narrated above, in spite of varied stands taken initially, respondent No.1 has categorically admitted in its additional reply to the amendment petition the fact that the 20 MW generating station of the petitioner is directly connected to the designated 132/33 kV Sambepalli sub-station without any pooling station through a 33 kV double circuit line for a length of 15 KM. While admitting that it is a dedicated feeder, respondent No.1 however claimed its ownership as per Clause 14 of Regulation No.3 of 2017.

From the facts discussed above, there can be no dispute that the petitioner falls under Clause 6(1) i.e., independent project connected to

the nearest Grid sub-station of APTRANSCO. This being so, it falls under the first part of Clause 14. There is another Clause which is relevant in this context i.e., Clause 11(a)(iii), which deals with Metering arrangement and energy accounting. It envisages that for a single owner solar/wind projects that are connected to DISCOM/APTRANSCO sub-station through a 33 kV (11kV) line with a pooling bus of 33 kV (11 kV) at the project, metering for energy accounting shall be provided at the outgoing feeder of pooling bus; and if the pooling bus is not made available by the project developer, the metering for energy accounting shall be provided at incoming feeder of the 33 kV or 11 kV bus bar side of the grid sub-station and this sub-station shall be treated as pooling sub-station. It is not the case of Respondent no.1 that either pooling station or pooling bus at the project is erected in this case. On the contrary, as noted, it has admitted that the DTL is directly connected to the Sambepalli 132/33 SS. Thus, in the case of an individual generator like the petitioner, which is not connected to the pooling station and where the pooling bus is not provided at the project, the 132/33 kV grid sub-station at Sambepalli itself shall be treated as the pooling substation. From the above discussion, the following position emerges :

(i) The ownership of the entire network within and outside the generating premises upto and including the Pooling substation (in case of projects

developed in cluster) shall be with the project developers/power producers and its maintenance shall be the obligation of the developer.

(ii) It is only the ownership of the network which is erected from the Pooling station upto the Grid sub-station that shall be transferred to APTRANSCO/DISCOM and only in those cases 10% supervision charges are payable to the APTRANSCO/DISCOM.

(iii) In case of an individual developer, where its network is not connected to the Pooling station/Pooling bus and directly connected to the grid sub-station, the grid sub-station itself shall be treated as the Pooling substation for metering purpose.

iv) There is no iota of doubt that the petitioner erected the DTL in question at its cost and is directly connected the same to the 132/33 kV Sambepalli sub-station of respondent No.2 without there being any pooling station or a pooling bus and a line laid from the pooling station to be connected to the grid sub-station and hence the DTL laid by the petitioner clearly falls under the first part of Clause 14. Consequently, ownership of the said line remains with the petitioner.

We shall now deal with the additional points raised by respondent No.1 in its application dated 26-04-2021.

(i) Clause 5.3.2.2 of GTCS : Respondent No.1 relied upon this Clause to claim ownership of DTL by treating the same as 'service line'. Section 2(61) of the Act defines 'service line' as the one through which energy is supplied or intended to be supplied by a distribution company to a single or a group of consumers. In order to attract the definition of 'service line'

to the instant case, the petitioner must be a ‘consumer’ within the definition of Section 2(15) of the Act. The stand of respondent No.1, as noted above, is that as the petitioner is drawing power of respondent No.1 from the same DTL for the purpose of start-up operations, it is a consumer. This question has directly fallen for consideration in two Judgments of the Hon’ble APTEL which have been referred to and relied upon by the petitioner in its reply to the application of respondent No.1 dated 26-04-2021. In **Chattisgarh State Power Transmission Co. Ltd. Vs. R.R. Energy Ltd. (2-supra)**, the Hon’ble APTEL in unequivocal terms held that a generator taking start-up power from a distribution licensee and supply power to the same licensee on start-up cannot be termed as a consumer. The relevant portion of the said Judgment reads as under :

“30. Next question for our consideration is whether a generating company can also be termed as a consumer merely because he would be drawing ‘startup power’ from grid occasionally :

....

43. Before proceeding further, let us understand what startup power is and for what purpose it is required.

44. Startup Power has not been defined in the Electricity Act 2003 or in the Rules and Regulations framed thereunder. It has also not been

defined in the repealed Acts viz., Indian Electricity Act 1910, Electricity (Supply) Act 1948 and Electricity Regulatory Commissions Act 1998. Thus we have to go by its general meaning. In general parlance, word 'Startup' means to start any machine or motor. In terms of electricity, Startup Power is power required to start any machine. Thus Startup Power is required to start a generator. Next question is why it is required. Thermal generating units (to some extent large hydro generating units also) have many auxiliaries, such as water feed pump, coal milling units, draft pumps etc. These auxiliaries operate on electrical power and are essentially required to run before generating unit starts producing power of its own. These auxiliaries would draw power from grid till unit starts producing power and is synchronized with the grid. Once unit is synchronized, requirement of 'startup power' vanishes. Thus 'startup power' is required only when all the generating units in a generation station are under shutdown and first unit is required to startup. Once any one unit in a generating station is synchronized, power generated by the running unit is used to startup other units. Period of requirement of startup would vary from few minutes to few hours depending upon the size of unit.

45. Above discussion shows that requirement of startup power is essential for every generating station and is very limited both in quantum (MW) and duration terms.

....

48. Further, consumer as defined in the Act is a person who is supplied with electricity for his own use. Here startup power is supplied

to Respondent-1 to startup its generating unit. Once generating unit is synchronized with the grid, the power so generated is supplied to Appellant. Without startup power, generators cannot start and produce power. Thus, in a way, startup power is supplied for the benefit of Appellant only. From this point of view, a generator taking startup power from distribution licensee and supply power to same licensee on startup, cannot be termed as a consumer.

49. In the light of above discussions, a generator requiring ‘startup power’ from the grid cannot be termed as a consumer.”

This view was reiterated by the Hon’ble APTEL in **Atria Brindavan Power Pvt. Ltd. (3-supra)**. In the face of the above two Judgments which settled the controversy beyond any pale of doubt, it is idle for respondent No.1 to treat the petitioner as its consumer in order to claim ownership of DTL by terming the same as a ‘service line’.

As rightly pleaded by the petitioner, a ‘dedicated feeder’ is the one through which point to point transmission from generating station to grid station or pooling station, as the case may be, is laid, as defined under Clause 4(9) of Regulation 3 of 2017, while ‘service line’ is intended only for supply of power to a consumer. As the petitioner falls outside the definition of ‘consumer’ even if the some electricity is drawn from the

DTL, the same cannot be treated as a ‘service line’ and consequently Clause 5.3.2.2 of GTCS does not come to the aid of respondent No.1 to claim ownership of the DTL.

(ii) Alleged utilization of 33 kV Grid (bus bar/network) of respondent No.1:

Respondent No.1 claims that the “33 kV bus bar/network arrangements” are its properties but not of the developer. The petitioner seriously contested this claim. As noted in its detailed rejoinder, the petitioner has relied upon the approval of Investment/Annual Accounts accorded by this Commission to respondent No.2 for erecting various sub-stations including the Sambepalli 132/33 kV sub-station. Copies of the same have also been filed. It has also filed status report dated 7-2-2011 to show that the Sambepalli sub-station is owned by A.P. Transco. Further, the petitioner has relied upon the website of respondent No.1 containing “Feeder Master Data” in respect of the Feeders owned by it and connected to 132/33 kV Sambepalli sub-station. In paras 20, 21 and 22, as extracted above, the petitioner categorically denied that its evacuation arrangement is connected to 33 kV distribution system of respondent No.1 at 132/33 kV Sambepalli

sub-station as absolutely misconceived. In this regard, Section 2(19) of the Electricity Act 2003 (for short “the Act”) which defines distribution system and Clause 3.2.6.2 of the A.P. Code of Technical Interface Connection Code are relevant. They are extracted hereunder:

Section 2(19) – ‘Distribution system’ means the system of wires and associated facilities between the delivery points on the transmission lines or the generating station connection and the point of connection to the installation of the consumers.

Clause 3.2.6.2 of A.P. Code of Technical Interface Connection Code:

Voltage may be 33/11 kV or as agreed with the A.P. Transco. All 33 kV lines and below shall be under the jurisdiction of the Discoms. All lines and networks above 33 kV shall be under the jurisdiction of A.P. Transco. The Connection Point shall be the first take off pole of the 33 or 11 kV feeder which is the boundary between A.P. Transco and Discoms. Alternatively the outgoing terminals of the Line Isolator of the 33 kV or 11 kV Feeder. The Tariff Metering Point shall be between the LV Breaker of the Power Transformer and the LV bus isolator. All equipment, including metering, protection and communication on the transformer side of the boundary shall be maintained by A.P. Transco and all equipment beyond the boundary shall be maintained by Discoms. All HT services including EHT services such as 132 kV and 220 kV shall be with Discoms as per geographical jurisdiction.

As could be seen from the definition of 'distribution system' under the Act, it lies between either points on the transmission lines or the generating station connection and the point of connection to the installation of the consumers. As per Clause 3.2.6.2 of the A.P. Code of Technical Interface Connection Code, the connection point shall be the first take off pole of the 33 kV or 11 kV feeder which is the boundary between the A.P. Transco and the Discoms. Alternatively, the outgoing terminals of the Line Isolator of 33 kV or 11 kV feeder.

In order to verify the claim of respondent No.1 regarding the alleged utilization of its 33 kV network, the office was directed to obtain the relevant diagram of the 132 kV Sambepalli sub-station. The Deputy Executive Engineer/Maintenance/C.K. Palli through e-mail dated 9-7-2021 sent the Single Line diagram of the 132 kV Sambepalli sub-station. This diagram and the e-mail are enclosed to this order as the Annexure. It could be seen from this diagram that four 33 kV Feeders and one Capacitor bank have been connected to the 33 kV bus of the sub-station. On the top portion of the diagram, 33 kV Feeders I and II of the petitioner have been connected. With regard to Feeder-II, it is stated that the work is under progress. This diagram clearly supports

the case of the petitioner that their two Feeders emanating from its DTL are directly connected to 33 kV bus which is a part of Sambepalli sub-station belonging to respondent No.2. As per Clause 3.2.6.2 of the A.P. Code of Technical Interface Connection Code referred to above, the distribution network of respondent No.1 commences from the connection point only from which its four 33 kV Feeders have emanated. Thus, when the Discom's boundary starting point/connection point starts from the first take off pole connected to the 132/33 kV substation of respondent No.2, it is not possible to accept respondent No.1's contention that the petitioner's DTL is connected to its 33 kV distribution system at 132/33 kV Sambepalli sub-station. Indeed, the petitioner has asserted in its reply to the application of respondent No.1 that it has in fact erected the required bays connected to respondent No.2's bus in 132/33 kV sub-station. Respondent No.1 has not disputed this averment. Moreover, except making a bald claim that the DTL is connected to its 33 kV distribution system at 132/33 kV Sambepalli sub-station, no iota of evidence is produced to prove the said vague averment. Interestingly, respondent No.2 is tight lipped without filing any response. It is significant to note that the Standing Counsel for respondent No.1 is also the Standing Counsel for respondent No.2, but

respondent No.2 has not joined respondent No.1 in filing its counter and subsequent pleadings. Thus, the unsubstantiated averment relating to ownership of 33 kV bus in 132/33 kV sub-station of respondent No.1 remained unsupported by the latter. When the entire sub-station belongs to respondent No.2, it is not possible to accept the claim of respondent No.1 that the bus bar arrangements which undisputedly formed part of the sub-station belong to respondent No.1. As noted above, no material is placed before the Commission to prove the claim of ownership of the bus bar of respondent No.1. From the above discussion, the Commission has no hesitation to hold that the petitioner's DTL is not connected to the distribution network of respondent No.1.

In this connection, the relevant provisions relating to "wheeling" need to be noted. Section 2(76) of the Act defines "wheeling" as follows:

"Wheeling means the operation whereby the distribution system and associated facilities of a transmission licensee or distribution licensee, as the case may be, are used by another person for the conveyance of electricity on payment of charges to be determined under Section 62."

Clause 17 of the A.P. Electricity Regulatory Commission (Terms and Conditions of Open Access) Regulation 2005 reads as under :

17.1 The charges for the use of the transmission and/or distribution system by an open access user shall be regulated as under :

(i) Open Access users connected to the transmission/distribution system shall pay the transmission charges and/or wheeling charges and any other applicable charges as determined by the Commission from time to time and notified in the relevant Tariff Order or otherwise, and as per the conditions stipulated therein:

Provided that the wheeling charges so payable shall be subject to a minimum level, as fixed by the Commission in the relevant Tariff Order or otherwise.

(ii) In case of utilization of inter-State transmission system in addition to the intra-State transmission system and/or distribution system by an open access user, the transmission charges and/or wheeling charges shall be payable for the use of intra-State system in addition to the charges for utilization of the inter-State transmission system.

From the above provisions it is clear that wheeling charges are liable to be paid only if the transmission/distribution system and associated facilities are used by the Open Access users. Claiming wheeling

charges and line losses without lending its system by respondent No.1 constitutes expropriation which is not permissible in law.

The Judgment in **Sesa Sterlite Ltd. Vs. Orissa Electricity Regulatory Commission and others (supra)** relied upon by the learned Counsel for the respondents mainly decided the issue whether the SEZ which was also a deemed licensee was liable to pay cross subsidy surcharge to the licensee operating in that area. Incidentally, the issue of ownership of the service line was also discussed. Based on a clause in the OERC (Conditions of Supply) Code 2004, the Supreme Court held that the service line, notwithstanding that whole or a portion thereof was paid for by the consumer, shall be the property of the licensee. The case on hand is different where the petitioner established its own captive plant and laid its own DTL for evacuation of its power without using any part of respondent No.1's network. This situation is specifically covered by Clause 14 of Regulation No.3 of 2017. Therefore, relying upon the Judgment of the Hon'ble Apex Court in **Sesa Sterlite Ltd. (1-supra)** by respondent No.1 is wholly misplaced and misconceived.

These Points are accordingly answered in favour of the petitioner.

**Point No.5:** It ultimately emerges from the stand of the respondent No.1 that it is claiming ownership of DTL on a misreading of Clause 14 and a misconception of facts and stipulated condition-V in letter dt 17-06-2020. In the light of the findings rendered on Point Nos.1 to 4, condition-V in letter dated 17-6-2020 is illegal and improper and it flies in the face of Clause 14 of Regulation No.3 of 2017. As the petitioner is the owner of the DTL and no part of the distribution network of respondent No.1 is involved in the petitioner evacuating power from its generating station to 132/33 kV Sambepalli sub-station belonging to respondent No.2, respondent No.1 is not entitled to collect wheeling or any other charges from the petitioner. It is only respondent No.2 which is entitled to collect wheeling and other charges permissible in law. This issue is accordingly decided in favour of the petitioner.

In the result, the O.P. is allowed as prayed for.

Sd/-

**Thakur Rama Singh**  
Member

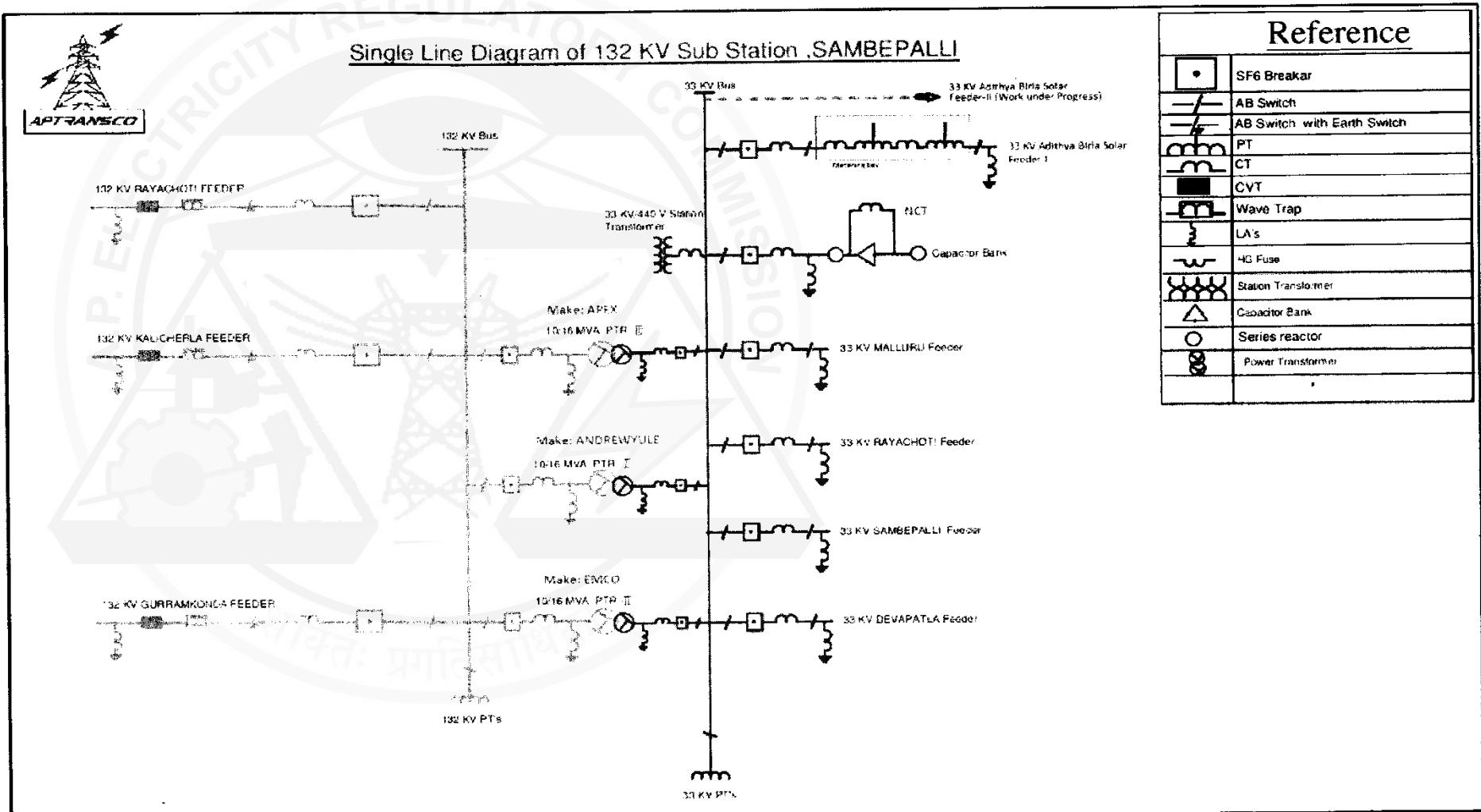
Sd/-

**Justice C.V. Nagarjuna Reddy**  
Chairman

Sd/-

**P. Rajagopal Reddy**  
Member

## Annexure in Op.No. 73 of 2019



Request of Dy Director x Tariff - Google Drive x +

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Based on the request of Dy Director/APERC,The Single line diagram of 132 kvss Sambepalli is here with enclosed. -By Executive Engineer/Maintenance/C.kPalli.

External Inbox x

15.28 (3 minutes ago) ↗

Sreenathudu podamala <sreenathade@gmail.com>  
to me ↗

45

----- Forwarded message -----  
From Sreenathudu podamala <sreenathade@gmail.com>  
Date Fri, Jul 9, 2021, 15:14  
Subject Single line diagram of 132 kvss Sambepalli.  
To [dd.tengg@aperc.in](mailto:dd.tengg@aperc.in) <dd.tengg@aperc.in>

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Member

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Justice C.V. Nagarjuna Reddy  
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Member