



## **ANDHRA PRADESH ELECTRICITY REGULATORY COMMISSION**

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

WEDNESDAY, THE FIFTH DAY OF JANUARY  
TWO THOUSAND AND TWENTY TWO

:Present:

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

O.P.No.77 of 2021

Between:

ITC Ltd.,  
106, S.P. Road, Secunderabad-500003  
Southern Power Distribution Company of  
Andhra Pradesh Limited  
represented by its Divisional  
Chief Executive Mr. Vadiraj Kulkarni,  
s/o. Dhruvaraj Kulkarni, aged about 46 years,  
R/o. Hyderabad-500073.

.. Petitioner

And

1. Andhra Pradesh State Load Despatch Centre,  
Vidyut Soudha, NH 16, Eluru Road, Gunadala,  
Vijayawada-520004.
2. Southern Power Distribution company of  
Andhra Pradesh Ltd., # 19-13-65/A, Srinivasapuram,  
Tiruchanoor Road, Tirupati 517503, represented by  
its Managing Director.

.. Respondents

This Original Petition having come up for hearing today in the presence  
of Sri K. Gopal Chowdary, learned Counsel for the petitioner and Sri Sri P.

Shiva Rao, learned Standing Counsel for the respondents and upon hearing both the Counsel, the Commission passed the following :

**ORDER:**

This Original Petition is filed for the following substantive reliefs :

- (a) To set aside the demand notice issued by respondent No.2 for Deviation Charges by Lr.No.SE/O/ATP/SAO/JAO/HT/D.No.728/2021, dated 23-03-2021 as being void and non est in law being without jurisdiction and lawful authority;
- (b) to direct respondent No.2 to cease and desist from issuing demands for deviation charges and/or collect the same to its own account or otherwise;
- (c) to declare that respondent No.1 alone is competent and authorised in terms of the APERC DSM Regulations 2017, being Regulation No.4 of 2017, to settle deviation charges, and/or issue any demands for deviation charges and/or admit and pay deviation charges payable to the generator and that all payments on account of deviation charges are to be transacted only through the State Pool Account maintained by the APSLDC and to direct respondent No.1 to perform its obligations and duties with regard to deviation charges in accordance with the Regulations;
- (d) to declare that respondent No.1 was not correct or justified in denying Intra State Open Access to the petitioner for the month of July 2021 and to direct respondent No.1 to allow Intra State Open Access to the petitioner for the month of July 2021 and subsequent months without reference to any alleged dues for deviation charges as issued by respondent No.2 or otherwise;
- (e) to declare that respondent No.1 was not correct or justified in denying Inter State Open Access to the petitioner for the month of August 2021 and to direct respondent No.1 to allow Inter State Open Access to the

petitioner for the month of August 2021 and subsequent months without reference to any alleged dues for deviation charges as issued by respondent No.2 or otherwise;

- (f) to declare that Clause 20(5) of the CERC OA Regulations 2008 is not applicable over and above the deviation charges for Wind and Solar generators as per the CERC DSM Regulations 2014 and the APERC DSM Regulations 2017;
- (g) to direct respondent No.1 to revise the computation of deviation charges for the period from 01-09-2016 onwards in each of respondent No.2's demand letters dated 28-11-2019 and 23-03-2021 without applying Clause 20(5) of the CERC OA Regulations 2008 over and above the CERC DSM Regulations 2008 and APERC DSM Regulations 2017 and duly correcting the available capacity for January 2020 to 45 MW;
- (h) to direct the respondents to refund the excess amount collected together with interest at the bank rate from the date of payment by the petitioner to the date of refund to the petitioner; and
- (i) to direct respondent No.1 to itself undertake settlement of deviations, levy and collection of deviation charges and to arrange for receipts and payment of deviation charges through only the State Pool Account maintained by respondent No.1.

On 22-12-2021, Sri K. Gopal Chowdary, the learned Counsel for the petitioner elaborately argued the case. Today, Sri P. Shiva Rao, learned Standing Counsel for the respondents, at the outset, while fairly conceding that under the extant Regulations it is only respondent No.1 that has the jurisdiction to maintain Inter-state and Intra-state accounts and also issue

demands towards deviation settlements, he has however sought to justify the demands issued by respondent No.2.

We are not inclined to adjudicate the O.P. on merits when concededly the impugned demands issued by respondent No.2 are without jurisdiction. Accordingly, on the short ground of lack of jurisdiction, both the impugned demands issued by respondent No.2 dated 28-11-2019 and 23-03-2021 are set aside as without jurisdiction.

Admittedly, respondent No.2 has collected the amounts under the two demand notices. As a result of the said demand notices being set-aside, the amounts collected thereunder are liable to be refunded to the petitioner. However, as the petitioner itself admitted its liability in part, we permit respondent No.1 to exercise its powers under the APERC Forecasting, Scheduling and Deviation Settlement of Solar and Wind Generation Regulation 2017 (Regulation No.4 of 2017) and determine the liability of the petitioner in respect of the deviation charges for Inter-state Open Access. Since respondent No.1 has taken a specific stand in its counter, we feel it appropriate to observe that respondent No.1 shall proceed to determine the petitioner's liability with open mind and in an objective manner and without being influenced by its stand taken in the counter. Respondent No.1 shall complete this exercise within six weeks. Consequent on such determination, if the petitioner is found to have paid the money in excess of its liability as may

be determined by respondent No.1, respondent No.2 shall refund the same within two weeks after such determination. Needless to observe that respondent No.1 shall serve a copy of its order that may be passed as per the above direction along with the supporting material and calculations upon which it may rely to the petitioner. The respondents shall continue the Open Access facility to the petitioner until two weeks after such determination.

The O.P. is accordingly allowed to the extent indicated above.

Sd/-  
**Thakur Rama Singh**  
Member

Sd/-  
**Justice C.V. Nagarjuna Reddy**  
Chairman

Sd/-  
**P. Rajagopal Reddy**  
Member

