VIDYUT OMBUDSMAN FOR THE STATE OF TELANGANA
First Floor 33/11 kV substation, Hyderabad Boats Club Lane
Lumbini Park, Hyderabad - 500 063

:: Present:: **R. DAMODAR**

Tuesday the Twenty Seventh Day of February 2018

Appeal No. 30 of 2017

Preferred against Order Dt.31.05.2017 of CGRF in

C.G.No.519/2016-17/Nalgonda Circle

Between

Dr. Reddy's Laboratories Ltd., represented by Sri.G. Gopala Krishna,
D.No.8-2-337, Road No.3, Banjara Hills, Hyderabad - 500 034.
Cell: 9959552017.

... Appellant

AND

1. The SAO/OP/Nalgonda/TSSPDCL/Nalgonda Dist.
2. The DE/OP/Miryalaguda/TSSPDCL/Nalgonda Dist.
3. The SE/OP/Nalgonda Circle/TSSPDCL/Nalgonda.

... Respondents

The above appeal filed on 11.09.2017, coming up for final hearing before the Vidyut Ombudsman, Telangana State on 14.12.2017 at Hyderabad in the presence of Sri. S.M. Rafee - on behalf of the Appellant company and Sri. K. Hanuma - SAO/OP/Nalgonda for the Respondents and having considered the record and submissions of both the parties, the Vidyut Ombudsman passed the following;

AWARD

The Appellant is a consumer with HT SC No. NLG-225 having manufacturing facilities in the state in the pharma sector. Apart from having supply agreement with the DISCOM, the Appellant has supply agreement in the form of power purchase agreement dt.29.04.2013 with M/s. SEI Sriram Power Pvt. Ltd. (hereinafter referred to as the Solar Open Access generator)which is a Solar power Generator, which has Open Access approval from the authorities. The supply of power to the Appellant from both the suppliers is governed by the provisions of the Electricity Act,2003, the Regulations made thereunder, by the Electricity Regulatory Commission (Terms and Conditions of Open Access) Regulation 2005, APERC(Interim Balancing and Settlement Code of Open Access Transactions)Regulation 2006. The Appellant has been consuming power from

both the suppliers. The Appellant claimed that the DISCOM is required to revise the HT bills for the power consumed by the Appellant, after settlement meetings are concluded as per the provisions of Clauses 8.3 read with 10.5 of the AP Regulatory Commission Interim Balancing and Settlement Code for Open Access transactions (Regulation No. 2 of 2006) and amendments thereon. The Appellant pleaded that on a reading of both the Clauses 8.3 and 10.5 make it very clear that from the Recorded energy, the DISCOMs are statutorily bound to deduct the Scheduled energy of a scheduled consumer from an OA generator and the actual generation during the month will be apportioned for each time block of the month and deviations reckoned accordingly.

2. The Appellant pleaded that the DISCOM is not following the statutory instructions and it is levying the Time of Day charge for the units supplied from 06.00 AM to 10.00 AM and 06.00 PM to 10.00 PM (+1 Rs./Unit) by the solar OA generator. In view of the statutory terms, after deducting all the units supplied by the Solar and Other Open Access sources, the remaining units are deemed to have been supplied by the DISCOM and the DISCOM is eligible to bill only on the units supplied by it and not on the units supplied by the Solar OA generator, which would be in violation of Clauses 8.3 and 10.5 of the Regulation 2 of 2006 and amendments there on. The action of the DISCOM is contrary to the extant Regulations and the Balancing Code, but also the provisions of the Electricity Act,2003. The Appellant is suffering huge losses being additionally charged at Rs 1/- per unit. The Appellant sought a direction to the DISCOM not to levy TOD units supplied by the Solar OA generator, rectify the faulty billing methodology by following Clauses 8.3 and 10.5 of APERC(Terms and Conditions of Open Access) Regulation 2005, APERC (Interim Balancing and Settlement Code of Open Access Transactions) Regulation 2006 as amended and direct the DISCOM to refund the entire excess billed amount as per the Regulation 2 of 2006 as amended.

3. The 3rd Respondent SE/OP/Nalgonda Circle submitted a reply dt.15.04.2017 stating that :

1. The TOD tariff is payable for the energy consumed during the peak hours by the consumers towards cost of expensive power purchased by the DISCOM during the peak hours.
2. The TOD tariff adjustment is being allowed to consumers only to the extent of the actual power generated by the Generators during the peak hours.

3. In case of solar power generators, there is no possibility of generation during the peak hours i.e from 06.00 AM to 10.00 AM and 06.00 PM to 10.00 PM.
4. The Appellant is purchasing power from the Solar energy generator i.e. M/s. SEI Sriram Power Pvt. Ltd.

4. The Appellant filed written submission stating that as per the Balancing and Settlement Code (Regulation 8.3 read with 10.5) in case of a scheduled consumer of a Solar OA Generator, the actual generation of energy during a months shall be deemed as the scheduled energy and such deemed scheduled energy generated in a month will be apportioned for each time block of 15 minutes each in a day of 24 hours. Accordingly, the apportioned deemed scheduled energy shall be deducted from the recorded energy and the balance energy shall be deemed to have been supplied by the DISCOM. A consumer is liable to pay the DISCOM only for the balance energy and is not liable to pay any amount in respect of the deemed scheduled energy (actual energy) availed by it from the Solar OA generator or other OA generators as the case may be. The DISCOM is supposed to implement Clause 8.3 read with 10.5 of the Settlement and Balancing Code in a fair and non discriminatory manner.

5. The Appellant further claimed that the DISCOM has not adhered to the principles laid down in the settlement and balancing code and it is willfully and deliberately violating the statutory Regulations as laid down in the settlement and balancing code. The Appellant gave an example of a bill dt.26.12.2016 raised by the DISCOM for the month of Nov,2016 for the period from 20.11.2016 to 19.12.2016 as follows:

Total Consumption	3359880 KVAH
Intrastate Open Access	2610963 KWH
Intrastate Open Access SEI Sriram	631595 KWH
TOD charges @ Rs 1/- unit (INR)	200300

The Appellant claimed that from the above illustration, TOD charges of Rs 2,00,300/- have been levied and the Appellant paid on all the units supplied to the consumer from various sources including solar OA generator, other Open Access sources and from the DISCOM and whereas, the DISCOM is entitled to levy TOD charges only on the units supplied by it during the peak hours. During this peak hour, the Solar OA generator

supplied 631595 units out of which peak hours supply was 200300 units to the Appellant. The DISCOM included the power supplied by the solar generator and raised TOD charges of Rs 200300/- to which it is not legally entitled. As per the terms of Retail Tariff Orders passed from time to time, the DISCOM is entitled to receive the energy charges, TOD and other charges only in respect of the supply it made and not in respect of the energy supplied by the solar OA generator. In Spite of this position, the DISCOM has been raising bills in this fashion from July,2015 onwards. The DISCOM, during the period from July,2015 to March,2017 has billed for Rs 58,96,380/- against the Service Connections NLG 225 and MDK-123 of the Appellant towards TOD charges, without being entitled to.

6. The Appellant questioned the contents of the statement dt.15.04.2017 filed on behalf of the DISCOM stating that the contents of Para 3 supra have no support from the Regulations on the claims of the DISCOM.

7. Under Clause 10.5 “in case of Wind and Mini-Hydel and Solar OA generators, the actual generation during the month shall be deemed as the scheduled energy. For the purpose of settlement in respect of the scheduled/OA consumer availing supply from these OA generators, the actual generation during the month will be apportioned for each time block of the month and deviations reckoned accordingly”. The Interim Balancing and Settlement Code(Regulation No. 2 of 2006 as amended) does not discriminate between the Wind, Mini-Hydel and Solar OA generators.

8. The Appellant claimed that the DISCOM further relied on an Order dt.18.3.2017 passed in Appeal No. 71 of 2016 by the Vidyut Ombudsman in the matter of Dr. Reddy Laboratories Ltd, Vs TSSPDCL and two others, wherein reliance was placed on Clause 10.4 of TSERC Regulation 6 of 2016 which deal with sale of electricity from rooftop Solar photovoltaic systems and whereas, these Regulations have no application whatsoever regarding the Appellant purchasing the power from a utility scale Solar OA generator and not from the Solar rooftop electricity generator. Therefore, the Appellant is excluded from the definition of an eligible consumer in the Regulations as such, the Order in Appeal No. 71 of 2016 is not applicable to the present case.

9. The DISCOM has to provide a non discriminatory Open Access with its statutory duty under Section 42 (2) and (3) of the Electricity Act,2003. The DISCOM has

been raising the bills claiming TOD charges on the units of energy supplied by the solar OA generator which is not legal.

10. On behalf of the DISCOM, the CGM(Finance) Corporate Office through his letter dt.29.5.2017 submitted remarks reiterating what has been stated by the 3rd Respondent/SE/OP/Nalgonda in para 3 supra. He further stated that the adjustment of TOD tariff under the Open Access(Solar Power) facility is not allowed on solar generation, as the solar generation would be only during the day time(due to availability of sunlight). He stated that to facilitate the generators to allocate the energy in all the time blocks during the day (24 hrs) to the consumers to encourage the solar power generation, the units were adjusted on apportionment basis against the energy consumed during the peak hours except TOD tariff as per Regulation 1 of 2013. Aggrieved on the stand taken by the Order of the CGRF upholding the claim of the DISCOM, the consumer preferred No. 71 of 2016 wherein orders to the following effect were passed:

> "From the aforementioned reasons it is apparent that TOD tariff is imposed only to recover expensive power purchased by the DISCOMs which is an exclusive privilege and also to give incentives to the consumers to shift the usage to other time blocks and not for any other purpose. The plea of the Appellant that it is entitled to claim crediting of TOD units on account of Solar Power is not tenable, valid and sustainable.
>
> As far as the claim of the DISCOM that TOD units were wrongly credited to the account of the Appellant for the months of March,2014 to August,2014 is concerned, the contention of the Appellant that no prior notice was given and abruptly, the amount was sought to be recovered through a revised bill for May,2015 is accepted as tenable. Keeping in view, the nature of the claim and the controversy involved and facts, the claim of the DISCOM for recovery of the benefit of the TOD charges for the months of March,2014 to August,2014 is rejected. The issues are answered accordingly.
>
> In the result, the Appeal is allowed partly holding that:
>
> a. The Appellant is found not entitled to the benefit of TOD/Peak Hour units(except normal tariff).

b. The demand of the DISCOM for recovery of TOD/Peak hour charges credited to the Appellant from March,2014 to August,2014 through a revised CC bill for May,2014 is set aside as not legal.
c. The impugned orders are partly set aside to the extent indicated.

The DISCOM sought disposal of the present case too in view of the orders in Appeal No. 71 of 2016.

11. The Chief General Manager/Finance reproduced Clause 8.3 of Regulation 2 of 2006 and so also Clause 10.5 of Regulation 2 of 2006 in support of his stand in this case and at the same time, referring to Appendix-3 relating to Terms and Conditions for Banking facility allowed to Wind power and Mini-Hydel power generators.

12. After going through the material on record and the respective contentions of the parties, the CGRF rejected the request of the Appellant for adjustment of the units purchased under the Open Access from the Solar Power generator as per Clause 10.5 of Regulation 2 of 2006 shall be treated as scheduled energy and therefore, levy of TOD charges during the peak hours is not correct. The CGRF accepted the claim of the Respondents that the actual generation during the month will be apportioned for each 15 minute time block in 24 hours and in the present case, there is no generation of power during the peak hours from the solar generator from whom the Appellant had OA agreement for supply of energy and upheld the action of the Respondents in levying the TOD charges for the energy supplied during the peak hours and directed the DISCOM to collect TOD charges on the energy availed by the Appellant during the peak hours from 06.00 AM to 10.00 AM and 06.00 PM to 10.00 PM through the impugned orders, with a Member(Consumer Affairs) opining that the DISCOM has to allow TOD units on solar energy also.

13. Aggrieved and not satisfied with the impugned orders, the Appellant preferred the present Appeal claiming that neither in the Open Access Regulations nor in the Interim Balancing Code, it is provided that TOD charges can be levied on the Solar Power or on any other power other than the power supplied by the DISCOM, the DISCOMs decision not to consider TOD tariff adjustments in respect of the consumers who are purchasing solar power, as the solar power generation is not possible during the peak hours from 06.00 AM to 10.00 AM and 06.00 PM to 10.00 PM is not correct, the CGRF has completely misunderstood and misinterpreted Regulation 8.3 and 10.5 of the

IBC Code as amended, make it clear that in case of a consumer purchasing power from more than one generator, the scheduled energy of a scheduled consumer from an OA generator shall have to be adjusted as the first charge from the total recorded energy, which is a cardinal principle of settlement and balancing code and that as per Clause 4 of the Open Access Regulations,2006 (as amended) the solar based generators along with wind and mIni hydel generators are not required to provide a day-ahead wheeling scheduled and the actual electricity injected by them shall be deemed to be scheduled energy.

14. The Appellant further claimed that Clause 10.5 of the Interim Balancing and Settlement Code clearly states that for the Wind and Mini-Hydel generators, the actual generation during the month shall be deemed as the scheduled energy. Therefore, there is no scope for any deviations defined in section 2(h) of CERC DSM mechanism. The Appellant claimed that TOD charges levied on the Appellant for the month of Jan,2017 include TOD charges on the solar power purchased by the Appellant from an OA generator. The Appellant claimed that as per Clause 8.3 of the IBC code, the DISCOM ought to have deducted from the recorded energy, the power purchased from the OA generator and calculated TOD charges. Had the DISCOM followed the IBC code and prepared the bill accordingly, the TOD charges would have been Rs 75,926/- as against Rs 3,05,882/- charged by the DISCOM.

15. The 1st Respondent/SAO/OP/Nalgonda filed written submission dt.06.10.2017 reiterating what the 3rd Respondent/SE/O/Nalgonda through his letter dt.15.04.2017 contended.

16. On behalf of the Appellant, a rejoinder has been filed asserting that the DISCOMs cannot levy Time of Day charges in respect of the solar power purchased by the Appellant through the Open Access from Open Access generator and the DISCOM is blatantly violating the terms of the Interim Balancing and Settlement code for Open access transactions and thus, the DISCOM has no power to collect TOD charges on the power purchased by the Appellant from the solar power generator.

17. The Appellant further contended that the claim of the DISCOM that TOD tariff is payable for the energy consumed during the peak hours by the consumers towards the cost of expensive power purchased by the DISCOM during the peak hours, is completely a fallacious arguments both on facts and law. The concept of TOD arises

from the retail Tariff Order passed by TSERC in respect of power the DISCOM sells to their retail consumers. The retail Tariff Order passed by TSERC as per Section 62 of the Electricity Act exercising its power under Section 86 of electricity act is not applicable in respect of the power purchased by a consumer from OA generator. The time of day is clearly mentioned in the retail Tariff Order passed by TSERC on ARR's submitted by the DISCOMs. The DISCOM referred to Section 86(1)(a) of the Electricity Act,2003 as follows to note the intent and purpose:

> "86. Functions of State Commission:-(1) The State Commission shall discharge the following functions, namely:-
>
> (a) determine the tariff for generation, supply, transmission and wheeling of electricity, wholesale, bulk or retail as the case may be within the state.
>
> Provided that where Open Access has been permitted to a category of consumers under Section 42, the State Commission shall determine only the wheeling charges and surcharge thereon, if any, for the said category of consumers."

18. The Appellant on the basis of the above provision, claimed that the State Commission has no power to determine any Tariff in respect of such category of consumers who had availed Open Access. In the present case, the Appellant is an Open Access consumer and therefore, the State Commission has no power to determine the tariff under section 86(1)(a) except wheeling charges and surcharge. The TOD tariffs that were decided/determined as a part of the retail Tariff Order has no application in respect of the Appellant and therefore, the claim of the DISCOM that it has power to levy TOD tariff on the Appellant in respect of the power purchased from an Open Access generator is untenable and not legal. The Appellant further claimed that the Decision in the Appeal No. 71 of 2016 of Vidyut Ombudsman is not applicable to the present case, because the said case was decided regarding rooftop solar power project and whereas, in the present case the Open Access generator is not a rooftop solar power generator and those regulations are totally inapplicable to the present case.

19. The 1st Respondent/SAO filed a written submission to the rejoinder filed by the Appellant stating that the state commission has absolute power to interfere/determine any tariff in respect of any category of consumers including the Open Access consumers. The power purchased by the consumer from the OA generator

who is an outsider is not billed by the DISCOMS.The CC bills are being issued after verification of the power purchased from the outsider during the peak hours. The claim of the Appellant that rooftop solar power project is different from the OA generator for the purpose of TOD charges is not correct.

20. On behalf of the Appellant, written submissions have been filed.

Heard both sides.

21. The efforts at mediation have not been successful and therefore, the matter is being disposed of on merits. Based on the material on record and rival contentions, the following issues arise for determination:

1. Whether the power purchased under the Open Access from the Solar Power Generator as per Clause 10.5 of Regulation 2 of 2006 shall be treated as the Scheduled energy and therefore, levy of TOD charges during the peak hours relating to consumption of solar power is not correct?
2. Whether the claim of the Respondents that there is no generation of solar power during the peak hours and therefore, levying TOD charges for the energy supplied during the peak hours claimed by the DISCOM is valid and acceptable?
3. Whether the impugned orders are liable to be set aside?

Issues 1 to 3

22. The grievance of the Appellant is that the DISCOM has been charging extra Rs 1/- per KVAH Time of Day charges over the consumption recorded during TOD peak hours over the solar power too, purchased from the OA generator. The Appellant asserted that the Respondent is not following APERC interim Balancing and Settlement Code for Open Access Transactions (Regulation 2 of 2006) and as a result, the Distribution Licensee has been levying TOD charges on the Appellant @ Rs 1/- per unit, which otherwise, the Respondent DISCOM has no power whatsoever to levy and collect on the power purchased from other sources.

23. In reply, the Respondent No.3/SE/OP/Nalgonda has stated that they have not considered the peak TOD Tariff adjustment to the extent of TOD units on the following grounds, in respect of the consumers availing the solar power.

a. The TOD tariff is payable for the energy units consumed during the peak hours by the consumers towards cost of expensive power purchased by the DISCOM during peak hours.

b. The TOD tariff adjustment has been allowed to the consumers only to the extent of the actual power generated by the generators during the peak hours.

c. In case of solar power generators, there is no possibility of generation during the peak hours.

d. The HT consumer has purchased power from the solar generator M/s. SEI Sriram Solar Power.

24. The SE/OP/Nalgonda stated that the order passed by the Vidyut Ombudsman in Appeal No. 71 of 2016 is applicable to the present case also. The purchase of power by the consumer either from outsider, may be a Rooftop Solar Power project or an Open Access Generator, is no different from the Open Access Generator for the purpose of TOD charges.

25. The Respondents relied on the Clause 10.5 of Regulation 2 of 2006 which reads as follows:

> *"In case of Wind and mini-hydel OA generators, the actual generation during the month shall be deemed as scheduled energy. For the purpose of settlement in respect of Scheduled/OA consumer availing supply from these OA generators, the actual generation during the month will be apportioned for each time block of the month and deviations reckoned accordingly" and the word solar is included in Clause 4 Reg. 1 of 2013 by amending Regulation 2 of 2006.*

For best example Reg. 2 of 2006 in appendix-3 states that there are few conditions for allowing banking during peak hours and similarly the same applies for peak hour charges in (TOD) on Solar Energy, the relevant portion of Appendix-3 is as follows:-

> *"Terms and Conditions for banking facility allowed to Wind power and Mini-hydel Power Generators*
>
> *d) Drawal of banked energy during peak hours i.e. 06.00 to 09.00 hrs and 18.00 hrs to 21.00 hrs shall not be permitted."*

Further relied on the orders of the Vidyut Ombudsman in Appeal No. 71 of 2016 (para No.33) as stated below:

> *"From the aforementioned reasons, it is apparent that TOD tariff is imposed only to cover the expensive power purchase by the DISCOMs which is an exclusive privilege and also to give incentives to the consumers to shift the usage to other time blocks and not for any other purpose. The plea of the Appellant that it is entitled to claim crediting of TOD units on account of Solar Power is not tenable, valid and sustainable."*

26. The Appellant relied on the clause 8.3 r/w 10.5 of regulation 2 of 2006, which mandates that the scheduled energy from the OA generator during the month has to be apportioned for each time block and shall be deducted from the recorded energy. The balance energy shall be deemed to have been supplied by the DISCOM and has to be paid as per the terms of the supply agreement with the DISCOM. In this way, the Appellant asserted that the balance energy has to be reckoned for calculating TOD charges. This has been explained by the Appellant illustrating the HT bill (for December 2016) raised by the DISCOM against the service connection No. NLG-225 of the Appellant.

Period	20.11.2016 to 19.12.2016
Total Consumption	3359880 KVAH
Energy supplied by the DISCOM	117323 KVAH
Intra State Open Access SEI Sriram	631595 KVAH
TOD Charges @ Rs1/- per unit in (INR)	200300

It has been claimed by the Appellant that the above 2,00,300 units relating to the peak hours are all the units supplied to the HT consumer from various sources i.e. from Solar Open Access Generator, other Open Access Sources and from TSSPDCL and whereas, the DISCOM is entitled to levy TOD charges only on the units supplied by it to the HT consumer during the peak hours.

Further Clause 8.3 which is not amended relates to Open Access generators other than Solar, Wind and Mini Hydel power generators for deduction from the recorded

energy as a first charge, which is obviously nothing to do with the present Solar OA Generator.

27. The Appellant claimed that during the above said month, out of 631595 units, the units supplied by the Solar Open Access Generator is 2,00,300 units, pertaining to the peak hours. The DISCOM, while calculating TOD charges for the months, had taken into account the units supplied by the Solar Open Access Generator including 200300 units. The DISCOM has no right to include these units i.e.200300 and levy TOD charges on them. In terms of the retail Tariff orders passed by ERC, the DISCOM is only entitled to receive the energy charges, TOD and other charges, in respect of the electricity supplied by it to the HT consumers and not in respect of the electricity supplied by the solar Open Access Generator.

28. There is a contradiction on the claim of the Appellant when he stated at one time that 2,00,300 units relating to all the units supplied during the peak hours TOD period to the HT consumer was from various sources i.e. from Solar Open Access Generator, other Open Access sources and from TSSPDCL. Next when the Appellant claimed that these 2,00,300 units were supplied by the Solar OA generator only and sought withdrawal of TOD charges on these units.

29. The Appellant asserted that there will be solar power generation during the morning peak hours i.e. 06.00 AM to 10.00 Hrs also and the solar power gets started from the morning at 5.45 AM onwards and that the curve of generation would attain peak at a later point of time. The Appellant reiterated that these units specifically pertain to the solar power generation so availed and these units shall not be levied with TOD charges.

30. It is relevant here to note the applicable Regulations governing the Open Access Generator for proper appreciation of the facts.

Clause 4 of Regulation 2 of 2006 provides for governing the Open Access Generator, scheduled consumer and Open Access consumer as follows:

> **"Each Open Access Generator, Scheduled Consumer and OA consumer shall provide a Wheeling Schedule in the format as at Appendix - 1(a), to the SLDC/DISCOM for each fifteen(15) minute time block for a day, on a day-ahead basis by 10.00 AM.,on the day preceding the commencement of the first time block for which the**

wheeling of energy is scheduled, with a copy each to the State Transmission Utility (APTRANSCO) and the concerned DISCOM.

Provided that an Open Access Generator, Scheduled Consumer and OA consumer requiring to wheel electricity from more than one generating station with the interface points located at different locations (with separate metering at each entry point) shall provide separate wheeling schedule for the entry point(s) of each generating station.

Amendment of Clause 4 of principal Regulation 2 of 2006 by Regulation No.1/2013 to second proviso to Clause 4.1 is substituted to explain what is Scheduled energy vis-a-vis Solar Energy in the following words:

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

By way of Amendment to Clause 10 of principal Regulation 2 of 2006 by Regulation No.1/2013 Sub Clause 5 is substituted as under:

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

31. The Sub Clause 4.1 was amended by Regulation 1 of 2013 to include solar based open access generators, who are not required to provide a day ahead wheeling schedule, since the generators from these sources depend upon the prevailing conditions of nature, which vary from time to time. **Hence the actual electricity injected by them has to be treated as the deemed schedule energy**.

32. It is clear that the billing settlement is based on the above stated Regulations guided by the TSERC. During the period of 24 hrs in a day, the solar generation is not constant and depends on the solar energy available during the day.

Therefore, for the purpose of settlement of energy, the Clause 10.5 of **Regulation 2 of 2006 (Interim Balancing Settlement Code For Open Access Transaction)** would come into picture. It is mandated to apportion solar energy for 24 hours into 15 minutes time blocks and **deviations** have to be reckoned for under drawal/over drawal on monthly basis. The Appellant asserted that as per the real time solar power generation, there would be production of solar power energy during the morning peak hours and that 200300 solar power units were generated during the month pertaining to peak hours, but has not given any data for ascertaining these units.

The DISCOM contended that there will be no solar power generation during peak hours (TOD) and therefore, crediting of TOD units towards the solar energy does not arise, which is not tenable and legal, since the Regulations for Interim Balancing and Settlement Code does not take into account the real time production of Solar Power generation.

33. The Tariff Order FY 2016-17 (HT-IA: Industry General) emphasises the time of day tariff @ Rs 1/- KVAH on the energy consumption during the hours of 06.00 AM to 10.00 AM and 06.00 PM to 10.00 PM. Similarly, as per the Tariff Orders, a reduction in tariff (incentive) of INR.1.00 per kVAH to the normal energy charges at respective voltages is applicable during the night time i.e. 10:00 PM to 06:00 AM too. The normal energy charges for the respective voltages are applicable during 10:00 AM to 06:00 PM.

34. As per the Tariff Orders FY 2016-17, the basic price rate for KVAH units chargeable to the HT Consumer is as follows:

Category	**Demand Charge * (INR/ month)**		**Energy Charge (INR./ kVAh)**
	Unit	**Rate**	
HT I(A): Industry General			
11 kV	kVA	390	6.65
33 kV	kVA	390	6.15
132 kV and above	kVA	390	5.65
* Demand charge is calculated at INR/kVA/month of the Billing Demand			

The Appellant has availed 117323 units (as per the HT bill 232832 units were billed as the minimum consumption) for the month of December,2016 from the DISCOM. By deducting the total solar energy units of 631594 and also 2610963 units of other Open Access from the total recorded consumption during the month i.e. 3359880 KVAH, the applicable Tariff for 33 kV level of supply @ Rs 6.15 per unit (base tariff) was charged. In this way, the solar energy consumed units have been withdrawn, deducting the corresponding amount at the base price i.e @ Rs.6.15 per unit and the balance energy is taken as deemed to have been drawn from the DISCOM, which shall be billed at the appropriate Tariff as per the Tariff Order 2016-17.

As per the amended Clause 10 of principle Regulation 2 of 2006 by Regulation 1 of 2013 Sub Clause 10.5, the main purpose of apportioning the scheduled energy (actual energy) during the month into 15 minutes time block is only to reckon the **deviations and for no other purpose.**

What is a deviation is clearly explained in the CERC Regulation - The Deviation Settlement Mechanism and Related matters - 2014.

In Section 2 Clause (h) - The word deviation is defined as :

> **"Deviation" in a time-block for a seller means its total actual injection minus its total generation and for a buyer means its total actual drawal minus its total scheduled drawal."**

The Appellant wrongly alleged that there will be no deviations, relying on the Clause 4.1 of Regulation 1 of 2013 wherein it is mentioned that the actual energy injected shall be deemed to be the scheduled energy. Therefore, it is contended that there shall be no deviation. Now as per the above definition of the term 'Deviation', it is the total actual drawal, minus its total scheduled drawal. The difference between the actual drawal and the scheduled drawal shall lead to correct accounting of the energy. The excess actual drawal over the scheduled drawal will become balance energy deemed to have been drawn from the DISCOM and the under drawal over the scheduled drawal shall be settled through Banking (as explained in APPENDIX-3, Regulation 2 of 2006 and its amendments from time to time). It has to be noted that the Second Proviso to Clause 4.1 to Regulation of 2013 by way of amendment of Clause 4 to Regulation 2 of 2006 applies to the Solar Power Generator, who is the seller of the

energy and not to the Appellant/Consumer who is the buyer. Thus the contention of the Appellant on this aspect is untenable.

The basic purpose of the Clause 10.5 is to note deviations. Only then one can comprehend how the deviation has to be reckoned. This is for the purpose of carrying out the energy allocation i.e. Balancing and Settlement of Energy at all entry and exit point relating to the Open Access. As per the Clause 10.5, **the solar Open Access generator,** the actual energy generation during the month shall be deemed as the scheduled energy. Then the question arises as to how the settlement has to be carried out. To make the settlement, the said clause emphasises apportionment of the actual solar generation during the month in 15 Minutes time block i.e 96 time blocks in a day. It is clear that the apportionment of the consumption into 96 time blocks is to settle the deviations and if there is any excess/under drawal of energy by the consumer, to charge for the energy consumed accordingly as per Regulation 2 of 2006 (Interim Balancing Settlement Code For Open Access Transaction) or for the purpose of banking and not for any other purpose. The claim of the Appellant that the units relating to peak hours consequent to apportionment have to be deducted from the total consumption recorded during the peak hours, is not tenable.

35. There is no doubt that the Clause 10.4 of Regulation 6 of 2016 pertains to the connectivity with Grid and sale of Electricity from the rooftop solar photovoltaic system as claimed by the Appellant. The relevant Clause is reproduced here under for clarity:

> **" Where an Eligible Consumer is within the ambit of Time of Day(TOD) tariff, the electricity consumption in any time block, i.e. peak hours, off-peak hours etc. shall be first compensated with the quantum of electricity injected in the same time block. Any excess injection over and above the consumption in any other time block in a billing cycle shall be accounted as if the excess injected had occurred during off peak hours."**

36. The crux of the Clause is that the benefit of the excess energy injected by the eligible consumer, who is within the ambit of Time Of Day(TOD) Tariff shall be accounted as if the excess injected energy had occured during off peak hours. It is

thus clear from this Clause that the solar power generated cannot be credited towards TOD period.

37. Clause 10.4 of Regulation 6 of 2016 (Regulation of connectivity which deal with sale of electricity from the rooftop solar photovoltaic system) and Appendix-3 of the regulation of 2 of 2006 as amended by regulation no 2 of 2014 (related to banking) respectively give an indication, though not directly and refers to settlement of energy for these consumers, who avail supply under the ambit of time of day shall not be entitled to redeem the excess energy during the peak hours (time of day period).

38. The plea of the Appellant is that the Order passed in Appeal No. 71 of 2016 by the Vidyut Ombudsman relied only on the Clause 10.4 of Regulation 6 of 2016 and hence the decision is not applicable to the present case, since Appeal No. 71/2016 involved rooftop solar power project and whereas, in the present case, it is not so. The Appellant further contended that the present case involved Solar pv power producer and different regulations apply to such OA generator, which is not tenable. The Order passed in Appeal No. 71 of 2016 had taken into account all the facts of the said case apart from **Clause 10.4 of Regulation 6 of 2016 including Regulation 2 of 2006 (Interim Balancing Settlement Code For Open Access Transaction) and its amendments.**

39. In the Appeal No. 71 of 2016, the Appellant M/s. Dr. Reddy Labs.Ltd. has pleaded for crediting of the TOD units on account of the solar power apportionment during the peak hours (TOD Period) 06.00 PM to 10.00 PM. The plea of the Appellant therein for entitlement of crediting TOD units was disallowed as not tenable, valid and sustainable based on the Regulations guided by the TSERC.

40. In order to understand the TOD Tariff, the basis of levying TOD Tariff has to be understood. The Electricity Regulatory Commission by Tariff Order 2012-13 has explained the concept of Time of Day Tariff (TOD). It is emphasised that there is a need for energy management during the peak hours and the need for encouraging extensive energy conservation measures including planning of loads by consumers during the peak hours. The Commission considered levy of TOD charges as appropriate measure during peak hours, given the wide diversity of loads. It is expected that these measures shall lead to shift at least a part of the consumer loads to off peak and thus avoid the TOD Charges for such quantums of energy and also encourage the consumers

increasingly to resort to use of energy conservation methods, which is one of the important objectives of the National Electricity Policy.

41. TOD tariff is imposed only to cover the expensive power purchased by the DISCOMs, which is its exclusive privilege and also to give incentives to the consumers to shift the usage to other time blocks and not for any other purpose. The plea of the Appellant that the DISCOM has illegally charged extra Rs 1/- per KVAH Time of Day charges is not tenable, valid and sustainable.

42. The important aspect ignored by the Appellant in this case is billing pattern of the consumption availed from the Solar Power Open Access Generators. The energy units recorded during the peak hours will be billed twice, firstly with normal energy charges as applicable as per the Tariff Order in this case @ Rs 6.15/KVAH and secondly, in addition to these charges, TOD charges @ Rs1/KVAH.

43. The various contentions raised by the Appellant demanding peak hours consumption tariff (TOD Units extra charge) for the solar power generators based on time blocks consumption is untenable, since the time blocks are formed to decide deviations only and not to give incentive, more particularly when TOD charges are meant to offset the expensive power purchased by the DISCOM (Whether they have purchased actually or not) and not to any other entity.

44. Relying on a decision rendered by the Hon'ble Supreme Court in Sesa Sterlite Ltd. Vs. Orissa Electricity Regulatory Commission (AIR 2014 SC 2037) on behalf of the Appellant, it is contended that the freedom to procure power also implies that such procured power from the Open Access also gets the benefit of TOD charges without discrimination. In the cited decision the Hon'ble Supreme Court observed in para 22 to the effect that " Open Access implies freedom to procure power from any source. The expression "Open Access" has been defined in the Act to mean "the non-discriminatory provision for the use of transmission lines or distribution system or associated facilities with such lines or system by any licensee or consumer or a person engaged in generation in accordance with the regulations specified by the appropriate Commission". The Act mandates that it shall be duty of the transmission utility/licensee to provide non discriminatory Open Access to its transmission system to every Licensee and generating Company. Open Access in transmission thus enables the Licensees (distribution Licensees and Traders) and generating companies the right

to use the transmission systems without any discrimination. This would facilitate sale of electricity directly to the distribution companies. This would generate competition amongst the sellers and help reduce, gradually, the cost of generation/procurement." This definition is not applicable to the present case relating to TOD Tariff benefit being claimed by the Appellant.

45. On behalf of the Appellant, the decision of the Hon'ble Supreme Court rendered in Chandra Kishore Jha Vs. Mahavir Prasad & Others (AIR 1999 SC 3558) is relied on to restate the principle that "if a statute provides for a thing to be done in a particular manner, then it has to be done in that manner and in no other manner"to contend that the Appellant is entitled to the benefit of TOD charges on the Open Access power procured, which is untenable in the absence of any specific regulation relating to the Solar Power energy.

46. It is pertinent to narrate the details of December,2016 CC bill which discloses the discrimination indulged in by the DISCOM when the time for giving incentives to the consumer arises.

A thorough examination of HT bill of SC No. NLG.225 issued for the month of December,2016 reveals the following details, which require correction by the DISCOM:

A. Consumption for the peak hours TOD period shown in HT bill for December,2016.

	TOTAL TOD units (A)	OTHER OPEN ACCESS TOD UNITS (B)	DISCOM (A)-(B)
TOD 1 (06.00 AM to 10.00 AM) Consumption	546500	460786	87514
TOD 2 (06.00 PM to 10.00 PM) Consumption	573340	458754	114586
Total consumption of Peak Hours TOD Period (Excluding other Open Access)			200300
TOD extra charges levied @ Rs 1/KVAH			200300/-

Note: The total units recorded during the peak hours (TOD) period are 2,00,300 units which were billed. No TOD units corresponding to Solar power energy consumption were credited. This is in line with the Regulations guided by the TSERC for Interim Balancing and Settlement Code for Open Access transactions.

B. Consumption for the incentive hours TOD period based on HT bill for December,2016.

Total consumption recorded during the incentive (TOD) period i.e. from 10.00 PM to 06.00 AM - 11,17,310 Units including the Open Access.

Reduction in tariff was awarded for (incentive) TOD period consumption - NIL Units noted and no TOD incentive was redeemed.

The total TOD incentive period 10.00 PM to 06.00 AM consumption was recorded as 11,17,310. From these units a total of 11,28,736 units was evaluated for withdrawal pertaining to the other Open Access and SEI Sriram Solar Power energy, resulting in NIL units for redemption.

The breakup of 11,28,736 units as follows:-

Other Open Access Recorded	-	9,07,634 Units
		+
SEI Sriram Solar Power energy	-	2,21,102 Units
	=	1128736 Units (which is more units than the recorded 11,17,310 units)

- Instead of giving incentive for the total incentive period TOD units 11,17,310 - 907634 Units (Other Open Access) = 2,09,676 units(drawal from the DISCOM), the DISCOM has not given any incentive, depriving the consumer of the incentive amount of Rs 2,09,676/- @ Rs 1/- per KVAH.
- The billing method adopted for the month of December,2016 shows a pattern of discrimination indulged in by the officials of the DISCOM depriving the incentive to the consumer to which it is entitled to, as per the Regulations and the Tariff Orders.

47. In view of the foregoing reasons, the contention of the Appellant that the Solar Power Generator is seperate from the rooftop solar power as found in Appeal No. 71/2016 on the file of Vidyut Ombudsman and therefore, the decision therein is not

applicable to the present case is found to be untenable. All the issues are answered accordingly.

48. The Appeal is disposed of as follows:-

1. The claim of the Appellant that on the power purchased under the Open Access from the Solar Power Generator as per Clause 10.5 of Regulation No.2 of 2006 shall be treated as the schedule power and therefore, levy of TOD charges during the peak hours relating to the apportioned units of solar power is not correct is untenable.
2. The DISCOM has to pay the incentive for the energy consumed by the Appellant during non peak hours 10.00 PM to 06.00 AM based on the Tariff Order 2016-17 Part B-HT Tariffs-HT-I(A) without deducting the apportioned Solar Power units for such period, because the blocks were divided into a 24 hours period to reckon the deviations only. The DISCOM shall revise the bills as per the Tariff Order 2016-17 and 2017-18 w.e.f. 01.07.2016.
3. The impugned orders, to the extent indicated, are set aside.

49. The licensee shall comply with and implement this order within 15 days from the date of receipt of this order under clause 3.38 of the Regulation 3 of 2015 of TSERC.

TYPED BY Clerk Computer Operator, Corrected, Signed and Pronounced by me on this the 27th day of February, 2018.

Sd/-

Vidyut Ombudsman

1. Dr. Reddy's Laboratories Ltd., represented by Sri.G. Gopala Krishna,
   D.No.8-2-337, Road No.3, Banjara Hills, Hyderabad - 500 034.
   Cell: 9959552017

2. The SAO/OP/Nalgonda/TSSPDCL/Nalgonda Dist.
3. The DE/OP/Miryalaguda/TSSPDCL/Nalgonda Dist.
4. The SE/OP/Nalgonda Circle/TSSPDCL/Nalgonda.

Copy to :

5. The Chairperson, Consumer Grievance Redressal Forum -1, TSSPDCL, Vengal Rao Nagar, Erragadda, Hyderabad – 500 045.
6. The Secretary, TSERC, 5th Floor Singareni Bhavan, Red Hills, Lakdikapul,Hyd.