



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

:: Present:: R. DAMODAR

Wednesday the Twenty First Day of February 2018

Appeal No. 31 of 2017

Preferred against Order Dt.31.05.2017 of CGRF in

C.G.No.520/2016-17/MEDAK Circle

Between

M/s. Toshiba Transmission and Distribution Systems (India) Pvt., Ltd.
represented by Sri. P. Suresh Babu, Rudraram Village, Patancheru Mandal,
Medak Dist. 502 329. Cell : 9959552017.

... Appellant

AND

1. The SAO/OP/Medak/TSSPDCL/Medak Dist.
2. The DE/OP/Sangareddy/TSSPDCL/Medak Dist.
3. The SE/OP/Medak Circle/TSSPDCL/Medak.

... Respondents

The above appeal filed on 12.09.2017, coming up for final hearing before the Viduyut 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. A. Chandra Shekar - AAO(HT) on behalf of SAO/OP/Sangareddy for the Respondents and having considered the record and submissions of both the parties, the Viduyut Ombudsman passed the following;

AWARD

The Appellant is a HT consumer with SC Nos. MDK 230 and 934 with 33 KV and it is also availing Open Access facility with the supplier M/s. SEI Sriram Solar Power Generator vide power purchase agreement dt.23.07.2015.

The Appellant pleaded as follows:

The Appellant is a manufacturer of electrical equipment for transmission and distribution of power in the state of Telangana. It is a HT-IA consumer having supply agreement with the DISCOM. It is also having power purchase agreement

dt.23.7.2015 with M/s. SEI SRIRAM POWER PVT.LTD., a solar power generator with its plant in the state with Open Access approvals from the authorities.

The supply of power to the Appellant by the DISCOM as well as the Solar Open Access Generator are governed by the provisions of the Electricity Act, 2003 and Regulations made there under particularly by APERC(Terms and conditions of Open Access) Regulation 2005, APERC(Interim Balancing and Settlement Code of Open Access Transactions) Regulation 2006. In terms of the Power Purchase Agreements, the Solar Open Access Generator has been supplying power to the Appellant. The Appellant is also consuming power from the DISCOM according to its requirement. The DISCOM is also required to provide revised HT bills to the Appellant for the power consumed after settlement meetings are concluded, as per the provisions of Clauses 8.3 read with Clause 10.5 of the Andhra Pradesh Regulatory Commission Interim Balancing and Settlement code for Open Access Transactions (Regulation No.2 of 2006) and amendments thereof.

The Appellant specified the relevant portions of the code for ready reference:

Clause 8.3: The Scheduled energy of a Scheduled Consumer from a OA Generator for each time block shall be deducted from the recorded energy (in the inter-se order of such Generators, as and if intimated by the consumer, in case the consumer is availing energy from more than one Generator) as first charge. The balance energy shall be deemed to have been supplied by the DISCOM and shall have to be paid for as per the terms of the supply agreement with the DISCOM.

Clause 10.5: In case of wind and 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.

2. The Appellant pleaded that 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 for each time block as a first charge. Further in case of solar OA generator, the actual generation during the month will be apportioned for each time block of the month and deviations reckoned accordingly.

3. The Appellant asserted that in spite of the clear cut Regulations:-

a) the DISCOM is not following the above clauses and it is levying the TOD charges for the units supplied to the Appellant during 06.00 AM to 10.00 AM and 06.00 PM to 10.00 PM (+1 Rs./Unit) by solar OA generator. In terms of the agreement, after deducting all the units supplied by solar and other OA sources, the remaining units are deemed to have been supplied by the DISCOM which is entitled to bill only the units supplied by it and not the units supplied by the solar OA generator, which would be in gross violation of clauses 8.3 and 10.5 of Regulation 2 of 2006 and amendments thereof.

b) the DISCOM as a Distribution and Retail supply licensee under the Electricity Act,2003 is obliged under the law to conduct itself and implement all the directions, regulations and orders issued by the commission under the relevant provisions of the Electricity Act,2003. The action of the DISCOM is contrary to the existing Regulations and Balancing Code but also contrary to the provisions of the Electricity Act,2003 which is evident from the bills raised by it. As a result of this action of the DISCOM, the petitioner is suffering huge losses at Rs.1 per unit.

c) the Appellant is seeking a direction to the DISCOM:

1. Not to levy Time of Day charge for the units supplied by Solar OA Generator to the Appellant.
2. To rectify the faulty billing methodology by strictly following Clauses 8.3 and 10.5 of APERC (Terms and Conditions of Open Access) Regulation 2005, APERC (Interim Balancing & Settlement Code of Open Access Transaction) Regulation 2006 as amended and
3. To refund the entire excess billed amount as per the terms of Regulation 2 of 2006 as amended.

4. The 3rd Respondent SE/OP/Medak Circle filed a reply through letter dt.19.4.2017 and stated as follows:

- a. Based on the allocation furnished by M/s. SEI Sriram Solar Power Generators, revised bills were issued to the appellant after deducting the allotted solar energy units from the recorded units and accordingly, Journal Entry (JE) was also passed for adjustments in the month of Nov,2016. TOD tariff charges were levied as per the Regulations issued by the ERC (there is no Regulation but the TOD charges are being levied as per Tariff Orders). Normally TOD units adjustments is also allowed under Open Access facility on par with generators, who are

generating power during the peak hours based on MRI dumps with 15 minutes time block, except the solar power open access consumers, since the solar power is generated during the day time only.

- b. Later TSSPDCL has decided not to consider the TOD tariff adjustment to the extent of TOD tariff per unit in respect of consumers who are purchasing solar power on the following grounds:
 1. The TOD Tariff is payable for energy consumed during peak hours by the consumers towards cost of expensive power purchased by the DISOCM during the peak hours.
 2. The TOD tariff adjustments are being allowed to the consumers only to the extent of the actual power generated by the generators during peak hours i.e., 06.00 AM to 10.00 AM and 06.00 PM to 10.00PM.
 3. In case of solar power generators, there is no power generation during TOD peak hours of 06.00 AM to 10.00 AM and 06.00 PM to 10.00 PM in the absence of sunlight.
 4. The Appellant has been purchasing solar energy power from M/s. SEI Sriram Power Private Ltd. which generates power only during day time and not during peak hours.

In para 11(e) of Telangana Solar Power Policy 2015, the power scheduling and energy banking is explained as follows:

“The banking year shall be from April to March. Banked units cannot be consumed/redeemed in the peak months (Feb to June) and in the Peak Hours (6.00 PM to 10.00 PM). The provision on banking pertaining to drawal restrictions shall be reviewed based on the power supply position of the state.”

From the above para, it is clear that the energy cannot be consumed or redeemed in the peak hours. Hence, the Appellant's request cannot be considered based on the Telangana Solar Power policy-2015.

5. Before the CGRF, the Appellant's representative and so also the 1st Respondent/SAO/OP/Medak represented their respective stands on the issues involved
7. On behalf of the Appellant, written submissions were filed on 26.5.2017 before the CGRF stating :

- a. It shall be the duty of the licensee to provide non discriminatory open access to all entities with Open Access which have entered into LT OA Agreement/Such other prescribed arrangements for LTOA/HTOA as the case may be.
- b. The Electricity Act,2003 did not provide for any other charges other than wheeling charges/surcharge for Open Access.
- c. The DISCOM as per Open Access Regulations (Regulation 19.4) is required to carry out energy accounting i.e. balancing and settlement of energy at all entry and exit points relating to Open Access Settlements as per Regulation 2 of 2006.
- d. As per the Balancing and Settlement Code (Regulation 8.3 read with 10.5), in case of Scheduled Consumer of a Solar OA generator, actual generation of energy during a month should be deemed as Scheduled Energy and such deemed Scheduled Energy Generated in a month will be apportioned for each time block of 15 Minutes in a day of 24 Hours and this apportioned scheduled energy shall be deducted from the recorded energy, the balance shall be deemed to have been supplied by the DISCOM which the consumer should pay. The consumer is not liable to pay any amount to the DISCOM in respect of the deemed scheduled energy (actual energy) availed by it from Solar OA Generator as per the principles laid down in the Regulations 8.3 read with 10.5 of Settlement and Balancing Code which shall be implemented by the DISCOM in a fair and non discriminating manner as per the relevant open access regulations and balancing and settlement code. These regulations are statutory in nature which are not appealable and can be only challenged under Article 226 of the Constitution of India.
- e. The DISCOM has no right to demand any charges from the consumer on the energy that was supplied to HT consumer from OA generator and this statutory regulations laid down in the settlement and balancing code is deliberately and willfully violated by the DISCOM, since it is levying TOD (Time of the Day) charges during the peak hours.
- f. As an illustration, in one of the bills raised on the Appellant by the DISCOM relating to their HT service connection MDK 230 dt.22.12.2016 for the month of Dec,2016 w.e.f. 20.10.2016 to 20.11.2016, the following is noticed:

Total consumption	: 1588410 KVAH
Intrastate Open Access SEI Sriram	: 679886 KWH
TOD Charges at Rs 1 per unit (INR)	: 530920

g. From the above details in the bill, the TOD charges of Rs 5,30,920/- are levied and paid by the HT consumer on all units supplied by the HT consumer from various sources i.e. from Solar OA Generator, 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. The DISCOM, while calculating TOD charges for the month, added the units supplied by solar OA also, which is not permissible. Several times this abnormality in the bills has been brought to the notice of the DISCOM without any result. The DISCOM, during the period from June,2016 to March,2017 has billed an amount of Rs 33,91,450/- against the SC No.s MDK 230 and MDK 934 on the Appellant towards alleged TOD charges, which are not payable.

7. On behalf of the DISCOM, a written statement dt.13.4.2017 has been filed admitting that the Appellant has been availing OA facility with the solar power generator since June,2016 and asserting that TOD tariff adjustment on the solar power cannot be considered, for the following reasons:

- a. The TOD tariff is payable for energy consumed during the peak hours towards the cost of expensive power purchased by the DISCOM during the peak hours.
- b. The TOD tariff adjustment is being allowed to consumers only to the extent of the power generated by the generators during the peak hours.
- c. In case of solar power generators, there is no generation during the peak hours 06.00 AM to 10.00 AM and 06.00 PM to 10.00 PM.
- d. The Appellant is purchasing the power from solar energy generator i.e. M/s. SEI Sriram Power Pvt. Ltd.

8. The Appellant pleaded that none of the grounds a to d have any statutory basis. None of the regulations provide for discriminating the solar power generators. Under Clause 10.5 in the case of wind and mini hydel and solar OA generators, the actual generation during the month shall be deemed as scheduled energy which shall be apportioned for each time block of the month and deviations reckoned accordingly. The grounds mentioned by the DISCOM are absurdity and are liable to be rejected. The DISCOM acted unilaterally and arbitrarily.

The claim of the DISCOM that there would be no solar power generation from 06.00 AM to 10.00 AM is not correct and in fact, the power gets generated from 5.45 AM onwards and the curve of generation would attain peaks at a later point of time. The DISCOM failed to see the charges for Open Access are well defined and outlined in Section 42 of the Electricity act,2003 and the same cannot be explained by ingenious interpretation. The

Alleged TOD charges raised by the DISCOM from June,2016 to March,2017 for Rs 33,91,450/- on the Appellant is illegal and not maintainable. Since the DISCOM threatens disconnection of the HT service, the Appellant paid this amount under coercion and is entitled to refund/ adjustment in the future bills.

9. The order dt.18.3.2017 of the Vidyut Ombudsman in Appeal No. 71 of 2016 between Dr. Reddy Labs Ltd Vs TSSPDCL and 2 others relates to the sale of electricity from rooftop solar power generators and whereas, the Appellant is purchasing power from a utility scale solar Open Access generator and not from the solar rooftop electricity generator and the Clause 9.4 of Regulation 6 of 2016 expressly defines who is an eligible consumer and in that, the Appellant is excluded from the said definition.

10. The CGRF has extracted the orders in Appeal No. 71 of 2016 of the Vidyut Ombudsman as follows:

- a. From the aforementioned reasons it is apparent that TOD tariff is imposed only to recover the expensive power purchased by the DISCOMs and also to give incentives to the consumers to shift the usage to other time blocks and not for any other purposes. 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.
- b. The claim of the DISCOM that the 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 benefit of TOD charges for the months of March,2014 to August,2014 is rejected and
 1. The Appellant is found not entitled to the benefit of TOD (Peak hours units) except normal tariff.
 2. The demand of the DISOCM for recovery of the TOD charges/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.
 3. The impugned orders are partly set aside to the extent indicated.

11. To answer the contention of the Appellant on Banking of energy, the DISCOM referred to Appendix 3 Terms and Conditions for banking facility allowed to wind power and Mini-hydel Power Generators which are as follows:

1. Banking allowed during all the 12 months,
2. Drawals are subject to the following:
 - a. The banking year shall be from January to December.
 - b. The banking charges shall be in kind @ 2% of the energy delivered at the point of injection.
 - c. Drawals shall be permitted during the 6 month period, from July to December. The banked energy remaining unutilised as on 31st December shall be treated as lapsed.
 - d. Drawal of banked energy during the peak hours i.e., 06.00 to 09.00 hrs and 18.00 hrs. to 21.00 hrs shall not be permitted.

12. On the basis of the material on record and rival contentions, the CGRF found that the levy of TOD charges during the peak hours is correct, since there would be no generation of power during the peak hours by the solar generators from whom the Appellant has been purchasing the power and hence, levy of TOD charges for the energy supplied during the peak hours is acceptable and directed the Respondents to collect TOD charges on the energy availed during the peak hours i.e., from 06.00 AM to 10.00 AM and again from 06.00 PM to 10.00 PM and regulate the bills accordingly, through the impugned orders.

13. Aggrieved and not satisfied with the impugned orders, the Appellant preferred the present Appeal on the following grounds:

- a. There is arbitrary levy of Time of Day (TOD) tariff by the Licensee in respect of the Solar Power purchased by the Appellant through a third party SEI Sriram Power Pvt. Ltd.
- b. The DISCOM is not following APERC Interim Balancing and Settlement Code for Open Access Transactions (Regulation 2 of 2006) as amended.
- c. The Distribution licensee, without having any power, has been levying TOD charges on the Appellant at Rs 1/- per unit .
- d. Except the consumer affairs member, the other members of the CGRF have failed to appreciate the factual and legal position and gave an erroneous order.

- e. Nowhere either in the Open Access Regulations or in the Interim Balancing Code, it is provided that TOD charges can be levied on the solar power or any power purchased from any other sources than the DISCOM.
- f. The Forum erred in assuming that the DISCOMs decision not to consider TOD tariff adjustment on the consumer's purchasing solar power, as generation is not possible during the peak hours 06.00 AM to 10.00 AM and 06.00 PM to 10.00 PM. The forum has completely misunderstood Clauses 8.3 and 10.5 as amended, as they provide for 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 a first charge from the total recorded energy, which is a cardinal principle of Settlement and Balancing Code.
- g. 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 schedule and the actual electricity injected shall be deemed to be the Scheduled energy.
- h. The TOD charges levied on the Appellant for the month of Jan,2017 include TOD charges on the solar power purchased by the Appellant from OA generator.
- i. Based on the Clause 8.3 of the IBC code, the DISCOM ought to have deducted from the recorded energy, the power charges from the OA generator and calculated TOD charges on it. Had it done so, the TOD charges would have been Rs 2,75,707/- as against Rs 4,97,970/- charged by the DISCOM as an illustration. The Impugned orders are arbitrary and illegal.

14. The 3rd Respondent/SE/OP/Medak Circle filed his reply dt.9.10.2017 stating that the peak hours TOD tariff charges were levied as per the Regulations issued by the ERC. Normally TOD units adjustment was also allowed under OA facility and it would be adjusted against the TOD tariff to the extent of units supplied by the generators generating power during the peak hours based on the MRI dumps with 15 minutes time block, except the solar power generators, as the solar power generation is possible during the day time only. The Appellant purchased power from the solar power generator M/s. SEI Sriram Solar Power and the power is generated during the day time only and not during the peak time. In para 11(e) of Telangana Solar Power Policy 2015, the Power Scheduling and Energy Banking is defined as follows:

“The banking year shall be from April to March. Banked units cannot be consumed/redeemed in the peak months (Feb to June) and in the peak hours (6.00 PM to 10.00 PM). The provision on banking pertaining to

drawal Restrictions shall be reviewed based on the power supply position of the state. “

In the aforementioned Clause, it is clear that the energy cannot be consumed or redeemed in the Peak Hours. Therefore, the Appellant's request cannot be considered based on the Telangana Solar Power Policy-2015.

15. The Appellant filed a rejoinder to the reply of the 3rd Respondent dt.9.10.2017 stating as follows:

- a. The DISCOM is levying TOD charges in respect of solar power purchased by the Appellant through Open Access from Open Access Generator, which is illegal and not permissible.
- b. The DISCOM is blatantly violating APERC Interim Balancing and Settlement Code for Open Access Transactions and have no power to collect TOD charges on the power purchased by the consumers from other sources like solar power. The contents of the reply are incorrect and misleading. The retail tariff order passed by TSERC as per Section 62 of the Electricity Act while exercising its power under Section 86 is not applicable in respect of the power purchased by a consumer from Open Access Generator. The Time of Day tariff is clearly mentioned in the Retail Tariff Order passed by TSERC on the ARR's submitted by the DISCOMs. The intent and purpose of Section 86 (1)(a) of the Electricity Act,2003 is as follows:

“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.”

From the above, it is clear 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 tariffs under Section 86(1)(a) except for wheeling charge and surcharge. The TOD charges decided/determined as part of the retail Tariff Order have no application whatsoever in respect of the Appellant.

The Order passed in Appeal No. 71 of 2016 by the Vidyut Ombudsman is not applicable to the present case, since that case involved rooftop solar power project and whereas, in the present case it is not so and it is a solar pv power producer and different regulations apply to such OA generator.

16. The 3rd Respondent submitted a further reply dt.11.12.2017 extracting 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 was included in Clause 4, Regulation 1 of 2013 by amending Regulation 2 of 2006. For best example Regulation 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.

Appendix - 3 : Terms and conditions for banking facility allowed to Wind power and Mini-Hydel power Generators

d) drawal of banked energy during the peak hours i.e., 06.00 to 09.00 hrs and 18.00 hrs to 21.00hrs shall not be permitted.

The 3rd Respondent further extracted the operative portion in the Award in Appeal No. 71 of 2016 (para 33) of the Vidyut Ombudsman below:

“From the aforementioned reasons, it is apparent that TOD tariff is imposed only to cover the 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”.

In view of the above passage extracted from Para 33 of the Award in Appeal No. 71 of 2016, the 3rd Respondent asserted that the Appellants claim is not valid.

17. On behalf of the Appellant, a reply dt.19.12.2017 is filed stating that while applying TOD charges, the Respondents are not recognising the OA energy consumption, which have to be apportioned as per the Interim Settlement and Balancing Code and thereby, the Respondents are blatantly violating the Interim Balancing and Settlement Code for Open Access Consumers as applicable and adopted by TSERC. The Appellant had never scheduled banked energy during the peak hours. A copy of the energy settlement is enclosed as Annexure A showing details of the energy to bank are furnished as far as the solar power generator is concerned. According to the Appellant, this Annexure shows that the banked energy was never drawn during the peak hours. Therefore, reference to Appendix 3 of Regulation 2 of 2006 by the DISCOM is wholly irrelevant, misleading and untenable.

18. 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 peak hours claimed by the DISCOM is valid and acceptable?
3. Whether the impugned orders are liable to be set aside?

Arguments on both sides have been heard. Additionally, on behalf of the Appellant, written submissions have been filed.

Issues 1 to 3

19. The grievance of the Appellant is that the DISCOM is charging extra Rs 1/- KVAH Time of Day charges over the consumption recorded during TOD peak hours over the solar power purchased from the generator. The Appellant asserted that the Respondents are 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, the DISCOM has no power whatsoever to levy and collect TOD charges on the power purchased from other sources.

20. In reply, the 3rd Respondent SE/OP/Sangareddy 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 consumers who are availing the solar power.

- a. The TOD tariff is payable for the energy units consumed during 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 the power from solar generator M/s. SEI Sriram Solar Power. The solar power is generated during the day time only and not in the peak hours.

The 3rd Respondent relied on para No.11(e) of Telangana Solar Power Policy-2015, explaining the power scheduling and energy Banking as follows:

“ The Banking year shall be from April to March. Banked units cannot be consumed/redeemed in the peak months (Feb to June) and in the peak hours (6.00 PM to 10.00 PM). The provision on banking pertaining to drawal restrictions shall be reviewed based on the power supply position of the state.” In the said clause, it is clearly mentioned that the energy cannot be consumed or redeemed in the Peak Hours. Therefore, the consumer’s request cannot be considered in view of the Telangana Solar Power Policy-2015.

21. The Respondent No.3 further stated that based on the allocation furnished by M/s. SEI Sriram Solar Power Generators, the revised cc bills were also issued to M/s. Toshiba Transmission and Distribution systems after deducting the allotted solar energy units from the recorded units. Accordingly, an amount of Rs 46,18,714/- and Rs 55,85,797/- were adjusted against the CC bill for the month of November,2016 towards the solar power adjustment.

22. The Appellant relied on the clause 8.3 r/w 10.5 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 November 2016) raised by the DISCOM against the service connection No. MDK-230 of the Appellant below:

Period	20.10.2016 to 20.11.2016
Total Consumption	1588410 KVAH
Energy supplied by the DISCOM	908524 KVAH
Intra State Open Access SEI Sriram	679886 KVAH
TOD Charges @ Rs1/- per unit in (INR)	530920

The Appellant claimed that the above 530920 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.

23. The Appellant claimed that during the above said month, out of 679886 units supplied by the Solar Open Access Generator, 234061 units pertain 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 234061 units and billed for total of 530920 peak hour units. The DISCOM has no right to include these units i.e.234061 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 only 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.

24. 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 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 pertaining to the solar power generation so availed shall not be charged with TOD charges.

25. The Regulations governing the Open Access Generator are reproduced here under:

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 provision to Clause 4.1 explains what is Scheduled energy vis-a-vis Solar Energy as follows:

“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 10.5 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.”

26. 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.

27. 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 234061 solar power units were generated during the month pertaining to peak hours, but has not given any data for ascertaining these units.

The following would illustrate how these 234061 units of peak solar units were arrived at:

Total intra state Open Access SEI Sriram Units	=	679886 KVAH Units
The Apportioned blocks applicable for 679886 Units	=	96 Blocks (15 mins blocks during 24 hours)
No.of Units per block during the month	=	$\frac{679886}{96 \times 31}$ KWH
	=	228.456 units per block
Total blocks pertaining to peak hours during the day	=	32 Blocks
		i.e. 06.00 AM to 10.00 AM -16 Blocks
		06.00 PM to 10.00 PM - 16 Blocks
		= Total 32 Blocks
Peak Hour Units per month	=	$228.456 \times 32 \times 31 = 226628$ Units
Nearly	=	2,34,061 as assumed by the Appellant

The DISCOM contended that there will be no solar power generation during peak hours (TOD) and therefore, the crediting of TOD units towards 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.

28. 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, 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.

29. 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 DISCOM has billed 908524 units for the month of November,2016 owing to supply availed by the Appellant from the DISCOM, by deducting the total solar energy units of 679886 from the total recorded consumption during the month i.e. 1588410 KVAH, as per the applicable Tariff for 33 kV level of supply @ Rs 6.15 per unit (base tariff). 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 be 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/ buyer has misled to state 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 be 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 month. 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 belonging to peak hours consequent to apportionment have to be deducted from the total consumption recorded during peak hours, is not tenable.

30. 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 Clause 10.4 is reproduced here under:

“ 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.”

31. 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 occurred during off peak hours. It is clearly explained that the solar power generation cannot be credited towards TOD period.

32. The Clause 10.4 of Regulation 6 of 2016 (Regulation for 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 excess energy during the peak hours (time of day period).

33. 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 is not applicable to the present case and since Appeal No. 71/2016 involved rooftop solar power project and whereas, in the present case, it is not so. The Appellant 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**

34. 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.

35. 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 during peak hours, given the wide diversity of loads. It is expected that these measures shall lead to shift of at least a part of the consumer loads to off peak and thus avoid the TOD Charges for such quantum 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.

36. TOD tariff is imposed only to cover the expensive power purchase 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.

37. 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.

38. 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.

39. Relying on a decision rendered 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.

40. 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".

41. It is pertinent to narrate the details of November,2016 bill which discloses the discrimination indulged in by the officials of the DISCOM when the time for giving incentives to the consumers arrives.

A thorough examination of HT bill of SC No. MDK 230 issued for the month of November,2016 reveals the following details which require correction by the DISCOM:

A. Consumption for the peak hours TOD period

TOD 1 (06.00 AM to 10.00 AM) Consumption	-	248960
TOD 2 (06.00 PM to 10.00 PM) Consumption	-	281960
Total consumption of Peak Hours TOD Period	-	530920

TOD extra charges levied @ Rs 1/KVAH = Rs 1 X 530920 Units = Rs 530920/-

Note: The total units recorded during the peak hours (TOD) period are 530920 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

Total consumption during the incentive (TOD) period i.e. from 10.00 PM to 06.00 AM - 536730 Units.

Reduction in tariff was awarded for (incentive) TOD period consumption - 302453 Units
TOD incentive redeemed @ Rs 1/KVAH = Rs 1 x 302543 = Rs 302543/-.

- Instead of giving incentive for the total incentive period TOD units 536730, the DISCOM deducted 234277 units pertaining to Solar Power energy consumption during incentive TOD period and gave incentive to only 302453 Units depriving the consumer the incentive on Solar Power consumption units (notionally apportioned into 15 minutes time blocks).
- The billing method adopted for the month of November,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 Tariff Orders.

42. In view of the foregoing reasons, the contention of the Appellant that the Solar Power Generator is separate 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 is found to be untenable. All the issues are answered accordingly.

43. 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. (Suo motu corrected on 27.02.2018).
2. The DISCOM has to pay 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 accordingly 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.

44. 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 21st day of February, 2018.

Sd/-

Vidyut Ombudsman

1. M/s. Toshiba Transmission and Distribution Systems (India) Pvt., Ltd.
represented by Sri. P. Suresh Babu, Rudraram Village, Patancheru Mandal,
Medak Dist. 502 329. Cell : 9959552017.

2. The SAO/OP/Medak/TSSPDCL/Medak Dist.
3. The DE/OP/Sangareddy/TSSPDCL/Medak Dist.
4. The SE/OP/Medak Circle/TSSPDCL/Medak.

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.