



**TELANGANA STATE ELECTRICITY REGULATORY COMMISSION**  
**5<sup>th</sup> Floor, Singareni Bhavan, Red Hills, Hyderabad-500 004**

R. P. No. 2 of 2016  
&  
I. A. Nos. 10 & 11 of 2016  
in  
O. P. No. 76 & 77 of 2015

Dated 25.07.2016

**Present**

Sri. Ismail Ali Khan, Chairman  
Sri. H. Srinivasulu, Member  
Sri. L. Manohar Reddy, Member

Between

Sugna Metals Limited  
# 1-8-673, Azamabad,  
Hyderabad – 500 020.

...Review Petitioner.

AND

1. Northern Power Distribution  
Company of TG Limited,  
Corporate Office, Nakkalagutta,  
Hanamkunda, Warangal – 506 001

2. Southern Power Distribution  
Company of TG Limited,  
6-1-50, Corporate Office,  
Mint Compound, Hyderabad – 500 063.

...Respondents / Original Petitioners.

This petition came up for hearing on 04.11.2015, 07.12.2015, 23.12.2015, 13.06.2016 and 22.06.2016. Sri. G. Pavan Kumar, Advocate on behalf of Sri. N. Vinesh Raj, counsel for the petitioner appeared on 04.11.2015 and 07.12.2015. Sri. Ravindra Srivatsava representing Sri. N. Vinesh Raj counsel for the petitioner appeared on 23.12.2015 and 13.06.2016. Sri. N. Vinesh Raj counsel for the petitioner appeared on 22.06.2016. Sri. Y. Rama Rao, Counsel for the Respondents is present

on 04.11.2015. Sri. Y. Rama Rao, Counsel for the Respondents along with Sri. P. Venkatesh, Advocate is present on 07.12.2015 and 23.12.2015. Sri. Y. Rama Rao, Counsel for the Respondents along with Smt. Priya Iyengar, Advocate is present on 13.06.2016 and 22.06.2016. The petition having stood for consideration to this date, the Commission passed the following:

### **ORDER**

This Review Petition along with condone delay petition and interim application have been filed Under Section 94 of the Electricity Act, 2003 read with Clause 32 of the Conduct of Business Regulation of 2015 seeking review of the order dated 27.03.2015 in O. P. Nos. 76 and 77 of 2015 determining the retail supply of tariff for the year 2015 – 16, condone the delay in filing the review petition and for interim orders.

2. The review petitioner stated that it is a H.T. consumer with Southern Power Distribution Company of TG Limited, the Respondent No. 2 (licensee) with H.T. No. RRS 1247 with a contracted maximum demand (CMD) of 9999 KVA, 33 KV transformer with dedicated feeder in operation circle Ranga Reddy South at Vikarabad, R.R. District and it also consume energy and demand from other sources that is open access.

3. The review petitioner stated that as per tariff order of 2013-14 which is continued for the year 2014-15, the petitioner is eligible to consume CMD or RMD up to 10000 KVA in 33 KV transformer as it is having dedicated feeder as per Clause 6 Sub Clause (4) of voltage surcharge of said tariff order. In case it exceeds CMD or RMD in any billing month whichever is higher with the licensee and other source the respondents are entitled to charge voltage surcharge rate in that billing month as per said clause. The licensee is entitled to charge voltage surcharge rates only when the excess power is consumed by the supply made by the licensee and not for consumption of open access. However, as per note given below to the said clause the petitioners are not entitled to be charged voltage surcharge in the said event. The said clause is reproduced hereunder for ready reference.

***Tariff order 2013 – 2014 passed by erstwhile APERC and made applicable for 2014 – 2015 also as no separate order is passed for that year due varied reasons including formation of the State of Telangana.***

“(4). Voltage Surcharge

H.T. consumers who are now getting supply at voltage different from the declared voltages and who want to continue taking supply at the same voltage will be charged as per the rates indicated below:

| Sl.No.   | Contracted Demand with Licensee and other sources (in kVA) | Voltage at which supply should be availed (in KV) | Voltage at which consumer is availing supply ( in KV) | Rates % extra over the normal rates |                |
|--|--|---|---|-------------------------------------|----------------|
|  |  |   |   | Demand Charges                      | Energy Charges |
| (A) For HT consumers availing supply through common feeders      |  |   |   |                                     |                |
| 1  | 1501 to 5000   | 33  | 11  | 12%                                 | 10%            |
| 2  | Above 5000   | 132 or 220  | 66 or Below   | 12%                                 | 10%            |
| (B) For HT consumers availing supply through Independent feeders |  |   |   |                                     |                |
| 1  | 2501 to 10000 kVA  | 33  | 11  | 12%                                 | 10%            |
| 2  | Above 10000 kVA  | 132 or 220  | 66 or Below   | 12%                                 | 10%            |

NOTE:

In case of consumers who are having supply arrangements from more than one source, the RMD or CMD only with the Licensee, whichever is higher shall be the basis for levying voltage surcharge.”

4. The review petitioner stated that it is entitled and enabled to consume the energy and demand in open access facility as per availability of energy and demand without applicability of voltage surcharge rates with the licensee. It is stated that the licensee in its annual revenue requirement (ARR) dated 07.02.2015 filed before the Commission for the financial year 2015-16 regarding note in voltage surcharge clause stated their proposal at page No. 74 which is extracted below.

“Unless otherwise mentioned the definition of category or sub-category remain unchanged. In case of any merging of sub-categories/ category the definitions should be clubbed together. Other than the changes / modifications in tariff for the consumer categories mentioned above, the other aspects of tariff / charges such as customer charges (if any), power factor surcharge (if any), load factor incentives (if any), voltage surcharge (if any), minimum charges (if any), to be

levied from all consumers are proposed to remain the same as mentioned in tariff order for FY 2013-14.”

5. The review petitioner stated that the Commission after due process issued the tariff order for the financial year 2015-16 on 27.03.2015 with the Sub Clause (4) of Voltage Surcharge as extracted in the petition. It is stated that the highlighted words that is “and other source” included in the note of Sub Clause (4) of clause 6 H.T. supply general conditions at page No. 216 in the tariff order of financial year 2015-16 which is not proposal in ARR by licensee.

6. The review petitioner stated that due to the said amendment the licensee are entitled to charge voltage surcharge rate on the consumption of energy and demand supplied by the licensees and also from open access cumulatively with effect from 01.04.2015. It is stated that due to the said amendment the petitioner is restricted to consume energy and demand from open access facility, against the provisions of the Electricity Act, 2003 and against to principals of the said Act. It is stated that due to the said amendment the licensee are entitled to charge voltage surcharge for the energy and demand not supplied by the licensee which would result in excess billing and spirit of the Electricity Act, 2003.

7. The review petitioner stated that the above said amendment is not made in tariff order of financial year 2015-16 dated 23.03.2015 in sub clause No. (3) of Clause 6 H.T. supply general condition at page No. 177 issued by Andhra Pradesh Electricity Regulatory Commission.

8. The review petitioner sought the following prayers

“Hence, this petitioner prays that the Hon’ble Commission may be pleased to grant interim suspension of the words “and other source” in the note of Sub Clause (4) of Clause 6 H.T. Supply General Conditions at page No. 216 of the tariff order of Financial Year 2015-16 dated 27.03.2015, pending the present application and pass such other order or orders as deed fit by this Hon’ble Commission under the circumstances of the case.

Hence, the petitioner prays that the Hon’ble Commission may be pleased to set aside the words “and other source” in the note of Sub Clause (4) of Clause 6 H.T. Supply General Conditions at page No. 216 of the tariff order of Financial

Year 2015-16 dated 27.03.2015, and pass such other order or orders as deemed fit by this Hon'ble Commission under the circumstances of the case.”

9. Having noticed certain defects in the filing of the petition, the office of the Commission pointed out the defects which read as follows.

- a) “Review petition have to be filed within 75 days from the date of passing of the order by the Commission as per Clause 32 sub clause 1 of Chapter 5 of the Conduct of Business Regulation being Regulation No. 2 of 2015. In the present case you have filed the review petition beyond the time stipulated in the Regulation. The review petition ought to have been filed by 09.06.2015. However, the petition is filed on 13.07.2015. There is a delay of one month four days.
- b) You are required to file a petition for condoning the delay stated above in the same format as the review petition is filed with same number of copies and a fee of Rs.10,000/-.
- c) Interim Relief is sought in the petition. The interim prayer cannot be made in the main petition. Therefore, separate petition is required to be filed seeking interim orders separately in the same format as the review petition is filed with same number of copies and a fee of Rs.10,000/-.
- d) How a review petition is maintainable on the basis of a decision taken by another Commission which is not binding on this Commission.
- e) The Vakalath filed by the counsel contains insufficient stamps. Though the welfare fund stamp is affixed, the court fee stamp of Rs.5/- is not affixed, which has to be complied with.”

10. In reply the review petitioner has filed the necessary petitions.

*Interlocutory petition for interim order*

11. The review petitioner stated that it is a H.T. consumer with Southern Power Distribution Company of TG Limited, the Respondent No. 2 with H.T. No. RRS 1247 with a contracted maximum demand (CMD) of 9999 KVA, 33 KV transformer with dedicated feeder in operation circle Ranga Reddy South at Vikarabad, RR District and it also consumes energy and demand from other sources that is open access.

12. The review petitioner stated that as per tariff order of 2013-14 which is continued for the year 2014-15, it is eligible to consume CMD or RMD up to 10000 KVA in 33 KV transformer as the petitioner is having dedicated feeder as per Clause 6 Sub Clause (4) of voltage surcharge of said tariff order. In case the petitioner in any billing month exceed CMD or RMD whichever is higher with the respondents and other source the respondents are entitled to charge voltage surcharge rate in that billing month as per said clause. The respondents are entitled to charge voltage surcharge rates only when the excess power is consumed by the supply made by the respondents and not for consumption of open access. However, as per note given below to the said clause the petitioners are not entitled to be charged voltage surcharge in the said event. The said clause is reproduced supra at paragraph 3.

13. The review petitioner stated that it is entitled and enable to consume the energy and demand in open access facility as per availability of energy and demand without applicability of voltage surcharge rates with the licensee. It is stated that the respondents in their annual revenue requirement (ARR) dated 07.02.2015 filed before the Commission for the financial year 2015 – 16 regarding note in voltage surcharge clause submitted their proposal at page no. 74 which is extracted supra at paragraph 4.

14. The review petitioner stated that the Commission after due process issued the tariff order for the financial year 2015-16 on 27.03.2015 with the Sub Clause (4) of Voltage Surcharge which is extracted in the application. It is further stated that the above highlighted words that is “and other source” included in the note of sub clause (4) of clause 6 H.T. supply general conditions at page No. 216 in the tariff order of financial year 2015-16 which is not proposal in ARR by licensee.

15. The review petitioner stated that due to the said amendment the licensee is entitled to charge voltage surcharge rate on the consumption of energy and demand supplied by the licensee and also from open access cumulatively with effect from 01.04.2015. It is further stated that due to the said amendment the petitioner is restricted to consume energy and demand from open access facility, against the provisions of the Electricity Act, 2003 and against to principals of the said Act.

16. The review petitioner stated that due to the said amendment the licensee are entitled to charge voltage surcharge for the energy and demand not supplied by the licensee which would result in excess billing and spirit of the Act, 2003. It is further stated that the above said amendment is not made in tariff order of financial year 2015-16 dated 23.03.2015 in sub clause No. (3) of Clause 6 H.T. Supply General Condition at page No. 177 issued by Andhra Pradesh Electricity Regulatory Commission.

17. The review petitioner has therefore sought the following prayer in the interlocutory application.

“Hence, the petitioner prays that the Commission may be pleased to grant Interim suspension of the words “and other source” in the note of sub clause (4) of clause 6 H.T. Supply General Conditions at page No. 216 of the tariff order of financial year 2015-16 dated 27.03.2015, pending the present application and pass such other order or orders as deed fit by this Hon’ble Commission under the circumstances of the case.”

*Condone delay Petition*

18. The review petitioner stated that it is a H.T. consumer with Southern Power Distribution Company of TG Limited, the licensee with H.T. No. RRS 1247 with a contracted maximum demand (CMD) of 9999 KVA, 33 KV Transformer with dedicated feeder in Operation circle Ranga Reddy South at Vikarabad, R R District and petitioner also consume energy and demand from other sources that is open access.

19. The review petitioner stated that it has filed review petition under Sub Clause 32 (1) of Regulation No. 2 of 2015 dated 02.05.2015 on 13.07.2015 (Old Clause 6 (4) of Regulation No. 2 of 1999 dated 22.07.1999). There is a delay of 34 days. It is also submitted that the delay in filing of said review petition is as the most of the time the representative was out of station and out of country. When he came back to India in 2<sup>nd</sup> week of July’2015 he came to know about the fact and immediately filed the review petition on 13.07.2015.

20. The review petitioner stated that the said delay is neither wanted or deliberate but due to the reasons stated above. It is stated that the petitioner will be put to serious and irreparable loss in case the delay is not condoned and an opportunity is not

provided to us to contest the case on merits. It is stated that there are good merits in the case.

21. The review petitioner has sought the following prayer in the petition.  
 “Hence, the petitioner prays that the Commission may be pleased to condone the delay of 34 days in filing the Review Petition dated 13.07.2015.”
22. The respondents have filed a counter-affidavit and stated as follows:  
 a) “DISCOMS are levying Voltage Surcharge for the consumers who have crossed the voltage limit as prescribed in the Tariff Order issued by the Commission from time to time as per the following Table.

| Sl.No.   | Contracted Demand with Licensee and other sources (in kVA) | Voltage at which supply should be availed (in KV) | Voltage at which consumer is availing supply ( in KV) | Rates % extra over the normal rates |                |
|--|--|---|---|-------------------------------------|----------------|
|  |  |   |   | Demand Charges                      | Energy Charges |
| (A) For HT consumers availing supply through common feeders      |  |   |   |                                     |                |
| 1  | 1501 to 5000   | 33  | 11  | 12%                                 | 10%            |
| 2  | Above 5000   | 132 or 220  | 66 or Below   | 12%                                 | 10%            |
| (B) For HT consumers availing supply through Independent feeders |  |   |   |                                     |                |
| 1  | 2501 to 10000 kVA  | 33  | 11  | 12%                                 | 10%            |
| 2  | Above 10000 kVA  | 132 or 220  | 66 or Below   | 12%                                 | 10%            |

Note:

“In case of consumers, who are having supply arrangements from more than one source, the RMD or CMD only with the licensee, whichever is higher shall be the basis for levying voltage”.

HT consumers are used to dispute the voltage surcharge stating the above said note is for licensee only not for other sources, but the consumers contention is not correct and the actual meaning of note is the RMD or CMD only with the licensee, whichever is higher should be taken for adding the RMD from other sources to levy the voltage surcharge as stated in the Table. Further the same was clarified in 2015-16 Tariff Order for avoiding the disputes with consumers by altering the note for Voltage Surcharge condition as furnished below:

“In case of consumers who are having supply arrangements from one or more sources, the RMD or CMD with the licensee and other sources, whichever is higher, shall be the basis for levying voltage surcharge.”

b) The TSERC have the right to include and exclude any part or part thereof in Tariff Order if the Commission feels appropriate irrespective of filing of ARR by DISCOMS.

c) The DISCOMS are following all the provisions as per the Electricity Act, 2003 and working as per the Hon'ble Commission Orders.

d) The consumers who are attracted the voltage surcharge are having Contacted Maximum Demand (CMD) with the licensee with just border to reach the next Voltage. (ex: for 11 KV 1499 for 33 KV 4995 etc., if they consume just more than 5 KVA they reach the next Voltage level.). Therefore, the consumers who are attracted the voltage surcharge can avoid the same by converting to next Voltage level and no excess billing will be charged and consumers are intentionally having the loads in border voltage to escape the erection costs for next voltage. Hence the DISCOMs never deviated the spirit of Electricity Act, 2003.

e) The TSERC cannot be compared with other State Commissions as each Commission having its own tariff structures based on local conditions in their jurisdiction.

f) In view of the above, it is to submit that the DISCOMS have to arrange the power to the extent of CMD of all the consumers whether they use or not and the Load from other sources can be considered as extra. Hence the Hon'ble Commission is requested to continue the existing procedure for levying Voltage Surcharge as stated in the Tariff Order 2015-16.”

23. The counsel for the petitioner has filed written submissions on behalf of the petitioner and stated as follows.

“a) It is respectfully submitted that the present petition is filed aggrieved by amendment made in the note of sub clause (4) of clause 6 H.T. Supply General Conditions at Page No.216 of tariff order of financial year 2015-16 dated 27.03.2015 by inserting “and other sources” in tariff order for the financial year 205-16.

b) It is submitted that by virtue of the said amendment the consumers who are availing power from the respondents as well as from open access or other sources will be adversely effected financially and also that the respondent will gain financially without actually supplying the proportionate power.

c) It is submitted that the respondent submitted Annual Revenue Requirement (ARR) for the financial year 2015-16 the amendment in question was not proposed for. It is submitted that as there was no proposal for the said amendment there was no objections from any quarters/ stakeholders / public on the said subject. It is also submitted that as there was no proposal there was no discussion in the public hearing nor there was any finding to that effect. However, to the best of the knowledge of this petitioner the said amendment is made without the aforesaid.

d) It is submitted that the said amendment is in violation of the Act, 2003 as there was no proposal in the ARR, no objections called for, no public hearing done.

e) It is submitted that the said amendment is also contrary to the aims and objects and spirit of the Act. It is submitted that the main object of the Act is for conducive development of electricity, promoting competition, protecting interest of consumer supplying electricity in all areas, rationalization of electricity tariff apart from non-discriminatory supply of power.

f) It is submitted that as per section 23 of the Act the Commission may issue directions to the licensee for maintaining efficient supply, securing equitable distribution, promoting competition, regulating supply, distribution, consumption or use thereof.

g) It is submitted that as per section 40 of the Act it shall be duty of the transmission licensee to build, maintain, operate an efficient, coordinated and economical interstate transmission system or intra state transmission system, comply with direction of the State Load Dispatch Center (SLDC), to provide non-discriminatory open access on payment of transmission charges and surcharge thereof.

h) It is submitted that as per section 42 of the Act it shall be duty of the distribution licensee to maintain an efficient, coordinate, economical distribution system in the area of supply, it is also submitted that the Commission shall introduce open access in phase manner with cross subsidy and other

operational constraints within one year of the appointed date, determining the charges of wheeling, surcharge to be utilized to meet the requirement of current level of cross subsidy, progressively surcharge and cross subsidy shall be reduced. It is also submitted that the Commission shall within five years of the commencement of the Act provide open access to all consumers who requires supply of electricity where the maximum power to be made available at any time exceeds 1 MW. It is also submitted that the distribution licensee shall provide a common carrier providing non-discriminatory open access. It is submitted that such surcharge or wheeling charges should be fixed to meet the cost of such distribution.

i) It is submitted that as per Section 49 of the Act the purchaser of electricity in open access where the Commission allowed for open access may enter into an agreement with the supplier notwithstanding the provision of clause (d) of sub-section (1) of section 62 of the Act.

j) It is submitted that as per section 61 of the Act the Commission shall specify terms and conditions for the determination of tariff and shall be guided by sub-clause (a) to (i) it is pertinent to note that as per sub-clause (c), (d), (e), (g), (h) the Commission is guided by the provisions mentioned therein in fixing the tariff that is to encourage competition, efficiency, economical use of resource, good performance and optimum investments, safe guarding interest of consumer, recovery of cost of electricity is in reasonable manner, rewarding efficiency in performance, progressively replace the cost of electricity, reduce cross subsidy, promotion of co-generation and renewable source of energy.

h) It is submitted that as per the provisions mentioned above and also the other provisions of the Act the insertion of “and other sources” in the note of sub-clause (4) of Clause 6 H.T. Supply General Conditions at Page No. 216 of tariff order of Financial Year 2015-16 dated 27.03.2015 is contrary to the Act apart from its aims and objects.

i) It is also further submitted that the schedule permission is given by the SLDC in case of power supply from the licensee and open access is of different time slots of 15 minutes block for licensee and open access that is to say that in block of given 15 minutes the supply made by the licensee is recorded and in another block of 15 minutes the supply by the open access is recorded and hence, there is no mix-up or overlap of power supply within the supply made by

the licensee and the open access hence, in case of over drawing of voltage as far as open access scheduled block is concern the licensee cannot charge voltage surcharge as it will lead to overcharging the tariff without even supplying the schedule electricity.

j) It is submitted that by insertion of said amendment the licensee is entitled to collect the tariff for the power which is not supplied by the licensee and the same is lead to overcharging of tariff.

k) It is submitted that the petitioner or the purchaser is rendered to pay extra charges that is one to the open access supplier and other to the licensee with extra charge for whole of the month.

24. We have heard the counsel for the petitioner and the counsel for the respondent. The short point that arises for consideration is, whether the review petitioner has made out a case for reviewing the order passed by this Commission determining the retail supply tariff and conditions by order dated 27.03.2015 in O. P. Nos. 76 & 77 of 2015.

25. Before advertng to the contentions in the review petition, it may be appropriate to notice the relevant portion of the tariff order applicable to the issue raised by the review petitioner in this petition.

***Tariff Order for the year 2015 – 2016 passed by the Commission.***

**“(4). Voltage Surcharge**

H.T. consumers who are now getting supply at voltage different from the declared voltages and who want to continue taking supply at the same voltage will be charged as per the rates indicated below:

| Sl.No.   | Contracted Demand with Licensee and other sources (in kVA) | Voltage at which supply should be availed (in KV) | Voltage at which consumer is availing supply ( in KV) | Rates % extra over the normal rates |                |
|--|--|---|---|-------------------------------------|----------------|
|  |  |   |   | Demand Charges                      | Energy Charges |
| <b>(A) For HT consumers availing supply through common feeders</b> |  |   |   |                                     |                |
| 1  | 1501 to 5000   | 33  | 11  | 12%                                 | 10%            |
| 2  | Above 5000   | 132 or 220  | 66 or Below   | 12%                                 | 10%            |

| (B) For HT consumers availing supply through Independent feeders |              |            |             |     |     |
|--|--------------|------------|-------------|-----|-----|
| 1  | 2501 to 5000 | 33         | 11          | 12% | 10% |
| 2  | Above 10000  | 132 or 220 | 66 or Below | 12% | 10% |

**NOTE:**

In case of consumers who are having supply arrangements from one or more than one sources, the RMD or CMD with the Licensee and other sources, whichever is higher, shall be the basis for levying voltage surcharge.”

26. As seen from the table extracted above from the tariff order passed by this Commission for 2015 – 2016, it made provision for clubbing the demand from the licensee as well as the power drawn under open access. Now the review petition seeks review of this provision made in the above order providing for voltage surcharge when a consumer exceeds its CMD over and above the CMD contracted with the licensee while drawing power from third party generators under open access.

27. The tariff order for the year 2013 – 2014 did not make clarity on the clubbing of the power availed from open access and from licensee for the purpose of voltage surcharge. This provision created an anomalous situation as the table provided in the tariff schedule read as the drawal of power from third party generators under open access is liable for surcharge, whereas the note appended to the table thereof did not include the same and limited the surcharge to the power supply drawn from the licensee only. Noticing the difficulty and the anomalous situation created by the table and the note in the tariff schedule, this Commission sought to rectify the position by including levy of voltage surcharge on the power drawn from licensee and third party generators under open access to be measured for levying voltage surcharge.

28. Faced with the situation of burden of levy of voltage surcharge, the review petitioner sought review of the tariff order for the year 2015 -16. The determination made by the Commission is precisely to bring about the discipline in the system regarding voltage and to punish the errant consumers besides taking care of the revenue loss caused due to system failure. In Electrical Network, any line will be built based on Technical Parameter i.e., load in Amps / KVA, which can be allowed in the line. If excess load in Amps / KVA is drawn, the conductor will get heated especially at the cut point and breakdown will occur, which will cause interruption to other

consumers in the same line and some lines of consumers on other lines of same substation. In order to avoid such situation and avoiding damage to electrical system, considering the operation constraints said in the Act and to give a clarity of words in the table and note the Commission has given clarity in tariff order FY 2015 -16.

29. The review petitioner sought review of the tariff order, to obviate the need for paying voltage surcharge in case of drawal of power from open access generators. It is the contention of the review petitioner that open access is a statutory right to which this Commission or licensee cannot and ought not to have put fetters on it, as they are required to ensure non-discriminatory open access for transmission and distribution in terms of regulation made by the Commission. It is also the contention of the review petitioner that DISCOMS did not propose such a levy in the aggregate revenue requirement proposals filed before the Commission. In the absence of the proposals, the determination is vitiated by the maxim of 'audi-alterm-partem'.

30. The counsel for the review petitioner sought to emphasize that the provisions of Act, 2003 have not been followed. The Commission ought to have given opportunity of calling objections / commence on the proposed levy of voltage surcharge where a consumer draws power from the open access generators apart from the licensee's supply. The issue is not merely of the review petitioner, but affects all the consumers, who are availing open access.

31. The counsel for the respondent would urge as that the Commission should decide the maintainability of the review petition filed by the review petitioner. He stated that there is a delay in filing the review petition as well as none of the contentions raised in the review petition satisfy the ingredients of review under the Code of Civil Procedure, 1908. The Commission may decide the issue of delay in filing the review petition and then allow the review petition to make submissions on the merits of the case. It is also the case of the counsel for the respondent that the Commission is competent and authorized under Act, 2003 to add, vary or modify the proposals made by the licensees in the petition for tariff determination while exercising its regulatory power. In these circumstances, the review petitioner seeking review of the order determining the tariff has not placed any material that is worth consideration by this Commission, therefore, the same may be rejected.

32. In reply, the counsel for the review petitioner pleaded for condonation of delay in filing the review petition and its admission and thereafter cause public hearing as the issue is germane to several consumers.

33. We have noticed that there is a delay of 34 days according to the petition filed by the petitioner. The review petition ought to have been filed on or before 10.06.2015. The review petitioner itself stated that it had no knowledge of the conditions of the tariff till second week of July, 2015. Thus, we are convinced that the reasons stated by the review petitioner is good and sufficient cause for condoning the day. Accordingly, we condone the delay of 34 days by allowing I. A. No.

34. We are not convinced with the rival contentions in so far as grounds of review in the review petition. It has to be stated here that the tariff order has been passed on 27.03.2015 and the review

35. With regard to the contention that the issue is germane to all consumers availing open access and that there was no proposal from the licensee, it can be safely construed that the issue would have been agitated by other consumers or appropriate forum as the case may be, which is not the situation obtaining as of today. Even otherwise, the review petitioner failed to put forth any grounds satisfying the ingredients of review. The review petitioner has not pointed out any arithmetical mistake, typographical errors or any material which has come to light after passing of the order by this Commission ever after due diligence, the review petitioner could not have known the same and placed it before the Commission before passing of the order determining the tariff for wheeling.

36. For the reasons and discussion above, the following is to be considered as to whether the review petitioner satisfy the conditions of review. A petition for review of the order of the Commission which is appealable, can be entertained only for the following reasons.

- a. Where there is a typographical mistake that has crept in the order.
- b. When there is an arithmetical mistake that has crept in while effecting calculation or otherwise.
- c. When there is a mistake committed by Commission, which is apparent from the material facts available on record and / or in respect of application of Law.

- d. When the Commission omitted to take into consideration certain material facts on record and 'law on the subject' and that if on taking into consideration those aspects, there is a possibility of Commission coming to a different conclusion contrary to the findings given.
- e. If the aggrieved party produced new material which he could not produce during the enquiry in spite of his best efforts and had that material or evidence been available, the Commission could have come to a different conclusion.

37. Ordinarily there will not be a review of the order at the instance of the parties or effected parties of the order, on the existing facts and contentions that have already been adverted to by the parties, either by way of written objection / suggestion and / or arguments at the time of hearing and when all those aspects have already been considered by the Commission at the time of passing of final order.

38. The review petitioner in his review petition has not shown any of the above grounds as existing / warranting a review by the Commission of the order dated 27.03.2015.

39. We are of the view that seeking review of the order of this Commission without satisfying the conditions for review as well as on factual matrix of filing the review petition as the same cannot be sustained.

40. With these observations, the review petition is rejected. The parties are left to bear their own costs. Pending application for interim directions is closed in view of dismissal of the review petition.

*This order is corrected and signed on this 25<sup>th</sup> day of July, 2016.*

**Sd/-**  
**(L. MANOHAR REDDY)**  
**MEMBER**

**Sd/-**  
**(H. SRINIVASULU)**  
**MEMBER**

**Sd/-**  
**(ISMAIL ALI KHAN)**  
**CHAIRMAN**

**CERTIFIED COPY**