



TELANGANA STATE ELECTRICITY REGULATORY COMMISSION
5th Floor, Singareni Bhavan, Red Hills, Hyderabad-500 004

O. P. No. 14 of 2015

Dated: 26.07.2016

Present

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

Between

M/s. Arhyama Solar Power Private Limited
No. 8 – 3 – 224 / 4 / A / 11 and 12, Yousufguda Main Road,
Madhurnagar, Hyderabad – 500045.

--- Petitioner

AND

1. The State of Telangana
Rep by its Principal Secretary
Department of Energy (RES = A1)
Secretariat Building Hyderabad – 500022
2. The Southern Power Distribution Company of Telangana
6 – 1 – 50, Mint Compound Hyderabad – 500063
3. The Transmission Corporation of Telangana Limited
Vidyuth Soudha, Khairtabad, Hyderabad – 500004
4. The Senior Accounts Officer, O P Circle,
SPDC of TS Limited, Operation Circle Medak, Sangareddy -- Respondents

This petition has come up for hearing on 28.01.2015, 05.02.2015, 23.04.2015, 30.06.2015, 17.07.2015, 04.08.2015, 08.09.2015, 04.11.2015, 23.11.2015, 23.12.2015, 13.06.2016 and 22.06.2016. Smt. P Lakshmi, Counsel for the petitioner appeared on 28.01.2015, 05.02.2015, 23.11.2015, 23.12.2015 and 22.06.2016. Sri G. Ranadheer, Manager of the petitioner appeared on 30.06.2015, 17.07.2015, 04.08.2015, 08.09.2015 and 30.06.2016. Sri S. Vamsi Krishna, Manager (Liaison) for the petitioner appeared on 04.11.2015. Sri. P. Shiva Rao, Advocate for the respondent appeared on 28.01.2015 and 05.02.2015. Sri Y. Rama Rao, Counsel for the

respondent along with Sri J. Ashwini Kumar, Advocate appeared on 23.04.2015, 30.06.2015 and 17.07.2015. Sri Y. Rama Rao, Counsel for the respondent appeared on 04.08.2015, 08.09.2015 and 04.11.2015. Sri Y. Rama Rao, Counsel for the respondent along with Sri P. Venkatesh, Advocate appeared on 23.11.2015 and 23.12.2015. Sri Y. Rama Rao, Counsel for the respondent along with Smt. Priya Iyengar, Advocate appeared on 13.06.2016 and 22.06.2016.

ORDER

The petitioner has filed the petition under sec 86 (1) (f) of the Electricity Act, 2003 (Act, 2003) questioning the action of the licensee in demanding payment of transmission and wheeling charges contrary to the tariff orders dated 09.05.2014 of erstwhile APERC

2. The petitioner stated that it is company established as a private limited company in the year 2012 under the Companies Act. The main object of the company is generation of the solar power. To achieve that object, the petitioner company has initially established a solar generation plant in an extent of Ac. 40-00 at Kolanupaka Village, Aleir Mandal, Nalgonda District. The petitioner further submitted that the Central Power Distribution Company of Andhra Pradesh (now TSSPDCL) has entered into an open access agreement dated 20.02.2014 with it.

3. The petitioner stated that according to the Article 3.1 of the said agreement, it is liable to pay wheeling service charges as specified by the Commission. It stated that the Andhra Pradesh Electricity Regulatory Commission (erstwhile APERC) by its tariff order dated 20.03.2009 fixed the wheeling charges for the year 2013-2014 at a sum of Rs. 33.43 per KVA per month. The petitioner stated that as per Schedule - II of the said agreement, no transmission and wheeling charges will be levied within the erstwhile state of Andhra Pradesh, as per G. O. Ms. No. 39, dated 26.09.2012 published under the A. P. Solar Power Policy 2012 giving certain incentives.

4. The petitioner stated that after issuance of the government policy in G. O. Ms. No. 39, the erstwhile APERC published the tariff order dated 09.05.2014 and fixed the wheeling charges for the year 2014-15 to 2018-19. It is stated that after formation of the state of Telangana, a separate Regulatory Commission was established and the orders including the tariff order date 09.05.2014 issued by the then APERC has been

adopted by the Telangana State Regulatory Commission mutatis mutandis. Hence the above said tariff order is applicable to the state of Telangana. As per the revised order Rs. 7.37 per KVA per month has to be paid as wheeling charges for the year 2014-15. In the very same order the Commission held that in tune with the government policy issued in G. O. Ms. No. 39, there shall be no wheeling charges for non conventional energy generators using wind, solar and mini hydel sources.

5. The petitioner stated that as per the power policy issued in G. O. Ms. No. 39 it need not pay any wheeling charges. In spite of the fact that there are no wheeling charges, the licensee has raised bills and charged an amount as wheeling charges as shown below.

2013-2014	March	-	Rs. 2,00,580/-
2014-2015	April	-	Rs. 2,00,580/-
	May	-	Rs. 2,00,580/-
	June	-	Rs. 2,00,580/-
	July	-	Rs. 2,00,580/-
	August	-	Rs. 2,00,580/-
	September	-	Rs. 2,00,580/-
	October	-	Rs. 2,00,580/-

According to it in fact the wheeling charges for the year 2014-15 were reduced to from Rs. 33.43 to Rs. 7.37 per KVA per month upto May, 2014.

6. The petitioner stated that pursuant to issuance of G. O. Ms. No. 39, dated 26.09.2012 the tariff orders dated 09.05.2014 was issued by the then APERC totally exempting wheeling charges for non conventional energy generators using wind, solar and mini hydel sources. It is stated that it is generating energy by using solar source, hence as per the tariff order dated 09.05.2014 the wheeling charges are not to be collected from the petitioner company from 17.05.2014 onwards. The petitioner has been paying the wheeling charges to the tune of Rs. 2,00,580/- per month to the bill raised by the licensee from month of May, 2014 onwards. It has been submitting the representations to the SPDCL, Telangana state seeking implementation of order dated 09.05.2014 in so far as exemption of collection of wheeling charges in respect of it but no tangible action is taken. It is heavily burdened by the imposition of wheeling charges of more than two lakhs rupees per month and the company being depending upon non conventional source that is solar for which the generation cost is higher, it is facing acute financial burden due to higher tariff.

7. The petitioner stated that a writ petition bearing No. 33602 / 2014 was filed before the Hon'ble High Court of Judicature at Hyderabad by it challenging the collection of wheeling charges, however it withdrew the same by the orders of the Hon'ble High Court dated 01.12.2014. It thus approached the Commission by filing the present petition.

8. The petitioner has sought the following prayer in the petition.

“It is therefore prayed that this Hon'ble Commission may be pleased to declare the action of the respondents 2 to 4 in charging the wheeling charges / transmission charges from the month of May, 2014 onwards and collection of the higher wheeling charges for the month of March and April, 2014 on the petitioner company for transmission of solar energy is bad in law and in violation of tariff order dated 09.05.2014 issued by the then APERC which is adopted by this Hon'ble Commission and consequently direct the respondents 2 to 4 not to collect the wheeling charges / transmission charges from the petitioner company and further direct the respondents 2 to 4 to refund the wheeling charges / transmission charges paid by the petitioner company from the month of May, 2014 to September, 2014 and also the higher wheeling charges paid for the month of March and April, 2014 and pass such other order orders as this Hon'ble Commission may deems fit and proper in the circumstances of the case.”

9. A reply is filed by the respondents stating the following submissions:

- a) The erstwhile state of Andhra Pradesh in the year 2012 had issued G. O. Ms. No. 39, Energy (RES. A1) Department dated 26.08.2012 notifying the solar power policy in exercise of its powers conferred under Section 108 of the Electricity Act, 2003. Subsequently, the erstwhile State of Andhra Pradesh issued another G. O. Ms. No. 44, Energy (RES. A1) Department dated 16.11.2012 whereby G. O. Ms. No. 39 is amended.
- b) As per the said amendment, the solar power plants which wheel and transmit power to grid are exempted from payment of wheeling and transmission charges. The above incentive is applicable for a period of seven years from the date of implementation.

- c) It is stated that the then four APDISCOMs have filed the ARR & Tariff proposals for distribution business for 3rd MYT control period (FY 2014 – 15 to FY 2018 – 19) and retail supply business for FY 2014 – 15 on 04.12.2013 before the then APERC.
- d) In pursuance to the above filings made by the then APDISCOMs, the APERC has directed that the “existing tariffs shall continue from 01.04.2014 until further orders in view of the model code of conduct”.
- e) In this connection, it is stated that APERC, issued tariff order on 09.05.2014 in respect of wheeling tariff of distribution companies. The said tariff order provides that in terms of the government policy, solar power projects are exempted from the payment of wheeling charges.
- f) The then APERC has issued the orders in the matter of determination of wheeling charges for 3rd MYT control period (FY 2014 – 15 to 2018 – 19) and directed to publish a public notice in two English and two telugu daily newspapers on 10.05.2014.
- g) As per Regulation No. 8, dated 28.08.2000 of APERC, clause (10) & (11) in tariff is as follows:
- h) In order to implement the wheeling tariff order, TSSPDCL has requested the Special Chief Secretary, Energy Department vide letters dated 09.05.2014 and 31.05.2014 to issue the necessary instructions for publishing the wheeling tariff in the newspapers. But, no instruction has been received.
- i) Subsequently, the Andhra Pradesh Reorganisation Act, 2014 (Act, 2014) came in to effect from 02.06.2014 and the new states of Andhra Pradesh and Telangana came into existence from that date. As per the schedule XII of Act, 2014, Anantapur and Kurnool Districts which previously fell within the jurisdiction of APCPDCL have been reassigned to APSPDCL. The Government of Andhra Pradesh vide G. O. Ms. No. 24, dated 29.05.2014 has issued necessary guidelines for reassignment of distribution business of above two districts to APSPDCL.
- j) Similarly, as per Sec 3 of the amended Act, 2014, certain areas in the territory of Khammam district in the erstwhile state of Andhra have been retained in the new state of Andhra Pradesh. This necessitates a

corresponding reassignment of distribution business from APNPDCL to APEPDCL.

- k) Thus, as per Act, 2014, the jurisdiction of the DISCOMs have been altered. Correspondingly, the sales quantity, power purchase quantity, power purchase cost and aggregate revenue requirement included in the filings of each DISCOM will undergo corresponding changes, along with the volume of power supplied to subsidizing and subsidized consumers. All these changes will feed into the cost of service for each DISCOM, which will impact the level of subsidy to be provided to each DISCOM.
- l) Further, the respective shares of power allocated between the four DISCOMs originally fixed in G. O. Ms. No. 58, dated 07.06.2005 under the 3rd transfer scheme has been amended in G. O. Ms. No. 20, dated 08.05.2014.
- m) A common merit order dispatch month wise for all DISCOMs i.e., for entire state has been previously considered by the Commission in its earlier examination of the filings. This merit order dispatch is no longer relevant in the light of the creation of the two new states of Andhra Pradesh and Telangana and the respective DISCOMs have to redraw the merit order dispatch for the two states separately.
- n) In the light of the above events, the Commission has returned the filings of retail supply business to TSSPDCL (former APCPDCL) for updating the data and proposals originally submitted as they are no longer relevant after the formation of the states of Andhra Pradesh and Telangana on 02.06.2014.
- o) Some of the factors considered for filing the wheeling tariff order are as following:
 - 1. Investments
 - 2. Return on capital employed (ROCE)
 - 3. Depreciation
 - 4. Operation and maintenance (O & M) Expenses
 - 5. Taxes on income
 - 6. Special appropriation for safety measures
 - 7. Revenue requirement for distribution business etc.

The wheeling tariff order issued by then APERC considering all the above factors consists of the figures before bifurcation of the state that is figures of APCPDCL (including Anantapur and Kurnool) districts.

p) Further, the Commission in the letter dated 02.01.2015 has informed as following.

10. The petitioner filed a reply to the counter affidavit on the following lines.

a) "I humbly submit that petitioner company is established as a private limited company in the year 2012 under the Companies Act. The main objective of the company is the generation and distribution of the solar power. To achieve that objective, the petitioner company has initially established a solar generation plant at Kolanupaka Village, Aleir Mandal, Nalgonda District. I submit that the Central Power Distribution Company, in the erstwhile Andhra Pradesh has entered into an open access agreement dated 20.02.2014 with the petitioner company.

b) I submit that in reply to the respondent's counter that petitioner's company established and entered into an agreement on 20.02.2014, it is true that as per G. O. Ms. No. 44 Energy (RES. A1) Department dated 16.11.2012 the same as amended by the erstwhile Andhra Pradesh as G. O. Ms. No. 39, as per this amendment, as stated in para 2 of the respondent's reply the exemption of wheeling charges is exempted, further it is pertinent to submit that erstwhile APERC, issued tariff order on 09.05.2014 in respect of wheeling tariff of a distribution companies. As admitted by the respondent in para 5 of their counter the said tariff order provides that in term of Government policy solar power projects are exempted from the payment of wheeling charges.

c) The petitioner here filed the present O. P. for exemption of wheeling charges from the date of agreement to till the date, but the respondent adjusted only part of the wheeling charges amounts in bills, I am here with enclosing the adjusted subsequent bills. It is pertinent to mention that the petitioner company has to receive the exempted wheeling charges an amount Rs. 7,99,575.97 up to May 2015 that is till the New Policy of Telangana State Solar Power Policy 2015 came into existence. The inaction of the respondents in not adjusting the Rs. 7,99,575.97 is

contrary to the G. O. Ms. No. 39 and in violation of erstwhile APERC tariff order dated 09.05.2014 is illegal and unjust.

- d) I submit that the petitioner company entered in to an agreement on 20.02.2014 with Central Power Distribution Company in the erstwhile AP Government. As per existing solar power policy as on 20.12.2014, the incentive period is declared by the then Government is 5 years that is till 2017, it is relevant to mention that petitioner is within the incentive period on that ground also respondents have to exempt the wheeling charges. The Act, 2014 is silent with regard to the solar power projects, which are commenced and within the incentive period by the formation of the Telangana state. Hence, the petitioner is entitled for the exemption of wheeling charges, even after the commencement of Telangana Solar Power Policy, 2015.
- e) I submit that other contentions mentioned in the reply are denied by the petitioner, as most of the contentions are not relevant.”

11. We have heard the counsel for the parties on 23.11.2015, 23.12.2015 and 22.06.2016 and also perused the material available on record. The short point that arises for consideration is, whether the transmission and wheeling charges paid by the petitioner have to be refunded from month of May, 2014 to September, 2014. Similarly is the petitioner entitled to claim exemption for transmission and wheeling charges for the months of March and April, 2014.

12. The counsel for petitioner made submissions reiterating the contentions raised in the petition. The counsel for respondents submitted his arguments based on the counter affidavit.

13. It is a fact that the erstwhile Government of Andhra Pradesh issued the G.O. referred by the petitioner. Based on the said G.O. only, the erstwhile APERC granted exemption from payment of wheeling charges while determining the tariff for the control period 2014-2019 by order dated 09.05.2014.

14. In order to appreciate the above fact it may be necessary to state that by the above referred G.O. the erstwhile State of Andhra Pradesh had provided for as follows.

“8.a: Wheeling and Transmission Charges: There will be no wheeling and transmission charges for wheeling of power generated from the Solar Power Projects, to the desired location/s for captive use/third party sale within the state through 33 KV system subject to industries maintaining their demand within its contracted demand. However, wheeling and transmission charges for wheeling of power generated from the Solar Power Projects for sale outside the state will be as per APERC regulations.”

15. Relying on the above said G. O. the erstwhile APERC issued orders exempting payment of wheeling and transmission charges in the tariff determination exercised order passed on 09.05.2014. The said orders to the extent they are relevant are shown below.

Transmission Tariff Order 2014-2019 of erstwhile APERC

“Notes on Transmission Tariff:

1. In line with Government Policy there shall be no Transmission Charges for Non-Conventional Energy generators of using Wind, Solar and Mini hydel.”

Distribution and Wheeling Tariff Order 2014-2019 of erstwhile APERC

“Note on Wheeling Charges:

- iii) In line with Government policy there shall be no wheeling charges for Non-Conventional Energy generators using Wind, Solar and Mini-Hydel sources.”

16. While things stood thus, at the relevant time, the Parliament had enacted the A.P. Reorganization Act, 2014 (Central Act 6 of 2014) providing for bifurcation of the then state of Andhra Pradesh into two states that is state of Telangana and state of Andhra Pradesh. By virtue of the provisions of the said Act 6 of 2014, the utilities in respect of transmission and distribution were separately established. Likewise the Act, 2014 provided for establishment of separate Commissions under Schedule XII Clause C item 3. The then existing APERC started functioning as Joint Regulatory Body for the state of Telangana and the state of Andhra Pradesh from the appointed date notified by the Government of India being 02.06.2014.

17. The Commission has been established by the Government of Telangana State in G. O. Ms. No.3 dated 26.07.2014 and constituted the same with the appointment of members in G. O. Ms. No. 13 dated 22.10.2014 of the Energy Department. The

Commission became functional on 03.11.2014 and adopted all the orders, directions and regulations issued by erstwhile APERC by Regulation No.1 of 2014 dated 10.12.2014. Before its constitution, the transmission licensee filed a petition seeking review of the order dated 09.05.2014 before the Joint Regulatory Body. However, the said petition was kept pending to be taken up by the Commission specifically established for the state of Telangana. Later the said petition was transferred to this Commission for disposal. This Commission took the same in R. P. No. 8 of 2015 and dismissed the same by order dated 20.01.2016. Thus the transmission tariff order continues to apply to Telangana Transmission Corporation Limited in view of the adoption of the same by the Commission.

18. In so far as distribution and wheeling tariff is concerned, the Commission adopted it by the above regulation, but, subsequently the distribution licensee filed separate petition for the remaining part of the third control period between 2015 and 2019. Thus, the distribution and wheeling tariff as determined by erstwhile APERC on 09.05.2014 remained operative for the period 01.04.2014 to 31.03.2015 only.

19. The prayer in the petition has to be considered in the light of the above position. The Commission had asked the parties during the course of hearing to specifically identify the amount paid by the petitioner and levied by the licensee and the amount that is required to be refunded to the petitioner in the event of accepting the contention of the petitioner. In the further hearing the counsel for the respondent has brought to our notice that the licensee has refunded amounts to the extent the petitioner is entitled to in terms of the order of the erstwhile APERC. The counsel for the petitioner took time and came forward with a reply to the submissions of the respondents that the amounts have already been refunded. A statement is filed identifying the amount due and the amount paid / refunded to the petitioner.

20. The period taken into consideration is from March, 2014 to May, 2015. The total amount paid by the petitioner is Rs. 28,58,209.05. The amount refunded by the licensee for the period June, 2014 to March, 2015 is Rs. 20,58,633.08. The difference of amount comes to Rs. 7,99,575.97.

21. The licensee has rightly refunded the amounts due for the period from June, 2014 to March, 2015, since, the order of erstwhile APERC is in force for the period

from May, 2014 to October, 2014 under the combined Commission and from November, 2014 to March, 2015 as adopted by this Commission. The petitioner is entitled to refund only for the period when the order is in subsisting and in operation, but not for the period when the order is not applicable.

22. In this case, as stated supra the claim made by the petitioner for the month of March, 2014 cannot be acceded as the tariff order in respect of transmission and distribution for the second control period does not envisage exemption of the charges for NCE projects. This order has been passed in the year 2009 and the policy based on which the petitioner has claimed relief has come into existence in the year 2012. Neither the Government nor the Licensee have sought amendment of the erstwhile APERC order either on wheeling or transmission tariff orders to extend the benefit under the policy framed by the erstwhile Government of Andhra Pradesh. Likewise, the claim of the petitioner for the months of April and May, 2015 cannot be granted as this Commission has issued fresh tariff order in respect of distribution business for the control period 2015-2019 on 27.03.2015, wherein no exemption in respect of wheeling charges for NCE projects has been considered by the Commission. Furthermore, any policy made subsequent to the tariff order by the Commission cannot ipso facto read into the tariff order, unless such order is amended by the Commission.

23. Owing to these circumstances, the Commission is of the view that the refund made by the licensee is appropriate and substantially satisfies the relief sought by the petitioner. With regard to claims made over and above the period, the Commission views that the said relief cannot be granted to the petitioner in the absence of any amendment made to the respective orders passed by the erstwhile APERC or this Commission.

24. Before concluding we are of the view that the respondents are estopped from not implementing the order passed by the erstwhile APERC granting exemption from wheeling charges for the year 2014-2015 as the then Commission has kept the said order on its website in public domain for further action. The same also applies to transmission charges order.

25. It is appropriate to state here that the Commission is prima – facie is of the view that the petitioner should be given the benefit of exempting levy of wheeling charges.

Therefore, the Commission is inclined to allow the petition to the extent the licensee has refunded the amount towards wheeling charges in respect of the period June, 2014 to March, 2015. The Commission is not inclined to give any directions in respect of the additional period for which claim is made by the petitioner and not refunded by the Licensee in view of the observations made supra.

26. Subject to the observations made above, directions given, the original petition is disposed of. The parties shall bear their own costs.

This order is corrected and signed on this 26th day of July, 2016.

Sd/-
(L MANOHAR REDDY)
MEMBER

Sd/-
(H SRINIVASULU)
MEMBER

Sd/-
(ISMAIL ALI KHAN)
CHAIRMAN

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