



**ANDHRA PRADESH ELECTRICITY REGULATORY COMMISSION**  
**4<sup>th</sup> & 5<sup>th</sup> Floors, Singareni Bhavan, Red Hills, Hyderabad 500 004**

I.A. No. 3 of 2012  
in  
O.P. No. 4 of 2012

Dated 13.02.2013

Sri A.Raghotham Rao, Chairman  
Sri C.R.Sekhar Reddy, Member  
Sri R.Ashoka Chari, Member

Between:

M/s GMR Hyderabad International Airport Ltd.

... Petitioner

AND

Central Power Distribution Company of Andhra Pradesh Limited (APCPDCL)

...Respondent

This petition has come up for hearing on 05.01.2013 in the presence of Sri Ramesh Babu for the petitioner and Sri P.Shiva Rao, Advocate for the respondent, the Commission passed the following:

**ORDER**

The Petition filed by the above said petitioner under Rule 8 of the Business Rules of the Commission (Regulation No. 2, Dated 05.07.1999) seeking (i) extension of time for installation of separate meters at the RGI Airport, Hyderabad for segregation of aviation and non-aviation activities till 3 months after the date of approval by the respondent, (ii) issue a direction to the respondent to approve metering arrangements at the RGI Airport, Hyderabad as per the drawings submitted by the petitioner vide letter dt. 26.05.2012 within a period of 15 days and (iii) continuation of billing procedure in accordance with paragraphs 113 (b) based on the existing methodology as prescribed in the Tariff Order till the expiry of the extended period for installation of separate meters.

2. The facts of the petitioner are briefly shown hereunder.
- a) The petitioner is a company registered under the Companies Act, 1956, having its registered office at GMR Aero Towers, Rajiv Gandhi International Airport, Shamshabad, Hyderabad.
  - b) The petitioner is operating an Airport, being the RGI Airport, Hyderabad and is engaged in carrying on the operations of Aeronautical and Aviation and other operations connected therewith and incidental thereto.
  - c) The petitioner entered into a State Support Agreement with the Government of Andhra Pradesh on 30.09.2004 and a concession agreement with the Ministry of Civil Aviation, Government of India on 20.12.2004 pursuant to which it has undertaken to design finance, build, operate and maintain the Airport as a Greenfield International Airport at Shamshabad on a build, own and operate basis. The agreement signed with Ministry of Civil Aviation, Government of India also warrants maintenance of standards as required for Global Airports and the facilities provided in the Airport are in tune with the same. The petitioner has built a state of art world class International Airport at Shamshabad, Hyderabad, to handle 12 million passengers per annum (MPPA) with an investment of about Rs. 2920 crs by raising huge funds of Rs. 1678 crs by way of loans.
  - d) The petitioner has made available 5 acres of land to the APTRANSCO for construction of sub-station. The State of Andhra Pradesh, one of the shareholders also incurred expenditure for construction of the said sub-station. The Central Power Distribution Company of Andhra Pradesh Ltd., has provided one point power supply source to the Airport at the said 220 / 33 kV Sub-station. All internal power supply networks including construction of sub-station, installation of equipment and cabling were provided by the petitioner herein.
  - e) The petitioner entered into a H.T. Agreement with the Central Power Distribution Company of Andhra Pradesh Ltd., on 30.03.2007 for supply of electricity at a specified voltage of 132 kV for a Contracted Maximum Demand of 13000 kVA with a Connected Load of 10,400 kW.

- f) The petitioner has commenced the operations of Rajiv Gandhi International Airport from 23.03.2008 and achieved only 6.5 Million Passengers Per Annum (MPPA) during its first year of operation against the targeted capacity of 8.0 MPPA as a result of world-wide economic slowdown. For the year 2009-10 also, the passenger traffic stagnated at 6.4 to 6.5 MPPA due to the same reasons. Considering this slow down, Rajiv Gandhi International Airport (RGIA) is expected to reach 12 MPPA only by 2015. The world-wide economic slowdown has severely affected aviation industry.
- g) The RGIA has the most advanced world class facilities of all International Airports in the World with similar capacity.
- h) The RGIA has also received award as the best Airport in the World in 5-15 Million passenger category. It has the longest runway (4.26 km), Code – F A-380 compatible, state of the art Airport Operations and Command Centre (AOCC) for centralized airport management, 146 check-in counters, 46 immigration counters, several spacious lounges to serve the VIPs, VVIPs, and dignitaries of State and Central Government Agencies. These facilities are created to ensure maximum comfort and convenience to the passengers and public. RGIA is also equipped with a 17 Bed Medical Centre for passenger care on round the clock basis. The petitioner has also incurred expenditure for providing street lighting and lighting for public places apart from being burdened with the capital cost of such a provision.
- i) On 27.07.2010, the APERC came out with a press release without any changes to the ARR submitted by the Central Power Distribution Company and completely ignoring the objections submitted by the petitioner showing complete non-application of mind and disturbing the level playing field conditions in the process. The petitioner's categorisation in HT Category – II (others) was continued without any regard to the objections filed by it.
- j) Since no tariff order had been communicated, the petitioner proceeded to file an appeal before the Hon'ble Appellate Tribunal for Electricity on 26.08.2010 challenging the press release.

- k) The petitioner filed a fresh appeal (being, Appeal No. 12 of 2011) against the tariff order issued by the APERC. In the appeal, the petitioner herein specifically disclosed that the ratio of electricity consumption between aeronautical and non-aeronautical activities was to the tune of 82% : 18%.
- l) On 30.10.2010, the respondent prepared an inspection report regarding the split of electricity consumption for aeronautical and non-aeronautical activities at the Airport. As per the respondent's own report, aeronautical consumption constituted 61% of the total electricity consumption while Non-aeronautical consumption constituted 39% of the total electricity consumption.
- m) After extensive hearing, the Tribunal passed an order dt. 22.07.2011 allowed the appeal.

*The State Commission could have differential tariff for the aviation as well as for the purely commercial activities, such as shops, restaurant, etc., at the airport. However, if it is not feasible to have separate metering arrangements for the aviation activities and purely commercial activities, then the State Commission could re-categorize the appellant in a separate category other than HT Commercial II and determine the composite tariff for aviation and the commercial activities of the appellant.*

- n) Based on the order of the Tribunal, the petitioner approached this Commission for re-determination of the tariff for the remanded years.
- o) In the meantime, the respondent approached the Supreme Court against the order passed by the APTEL. No interim orders have been passed by the Supreme Court till date.
- p) Based on the submissions made, the Commission was pleased to pass the tariff order dt. 30.03.2012 for the Financial Year 2012-13, wherein it was held that

**113. The activity at airports consists of "Aviation Activity" as well as non-aviation activity. Aviation activity will naturally fall in the newly created HT-III "Aviation Activity at airports" as indicated above. The non-aviation activity, as per the nomenclature of the categories in HT tariffs, will fall under HT-II – (Others), since HT-II (Others) is applicable as per the tariff order to all consumers other than those covered under HT I category and those covered by HT-III to VIII categories.**

In order to bill the “aviation activity at airports” under the newly created HT-III category and the non-aviation activity under the HT-II category respectively, it will be necessary to segregate the loads at airports into aviation related loads and non-aviation related loads and separately meter the energy consumption in these two usages by installing separate metering.

The Commission is of the opinion that the segregation of loads and separate installation of metering can be done by 31-07-2012. After separate metering is installed for aviation and non-aviation activities, the billing can be done as per HT-III for aviation and HT-II for non-aviation on actual meter readings with effect from the date of commencement of separate metering.

The Commission is of the view that a mechanism has to be built-in to ensure compliance with the time limit for installation of segregated and separate metering by prescribing as follows:

- a. If the Consumer fails to comply with the direction by 31-07-2012, the billing shall be done under HT-II (Others) category with effect from 01-08-2012 till the date of completion of such installation.
- b. In the absence of separate metering, the billing shall be done from 01-04-2012 onwards on the basis of notional percentages indicated in the table below until completion of separate metering or 31-07-2012, whichever is earlier.

**Percentage of Energy to billed under HT-III and HT-II**

<b>Airport</b>	<b>HT-III: Energy Charge</b>	<b>HT-II: Energy Charge</b>
<b>GMR, Hyderabad</b>	<b>61%</b>	<b>39%</b>
<b>Visakhapatnam</b>	<b>80%</b>	<b>20%</b>
<b>Other Airports</b>	<b>85%</b>	<b>15%</b>

- q) In accordance with the order passed by this Commission, the petitioner submitted a letter dt. 24.04.2012 to the respondent regarding the installation of separate meters for aviation and non-aviation activities as per the respondent inspection report dt. 30.10.2010.
- r) The petitioner also met with the officials of the respondent and thereafter submitted letter dt. 26.05.2012 to the respondent with

drawings showing the proposed location of 4 meters at 33 kV feeders and requesting the respondent's approval for the location of the meters.

- s) The petitioner addressed another letter dt. 08.06.2012 to the respondent requesting them to conduct inspection of the site and advise on the location of meters.
- t) The petitioner had applied to the respondent as early as in April 2012 – however, there has been complete inaction on the part of the respondent. Thus, the delay is directly attributable to the respondent and the petitioner cannot be held liable for the same. It may be appreciated that the petitioner has been continuously pursuing with the respondent for taking necessary action but in vain.

3. The grounds of the petitioner are briefly shown hereunder.

- a) In view of the specific direction of this Commission for time bound completion of the installation of separate meters, the petitioner took all possible steps for ensuring timely compliance with the Tariff Order passed by this Commission. Despite the urgent steps taken by the petitioner, the exercise of installing separate meters could not be completed entirely on account of the respondent's inaction – till date, despite repeated requests from the petitioner, the respondent has not approved the locations for the 4 new meters to be installed or provided any alternate location for the same. Therefore, the non-compliance with the Tariff Order passed by this Commission, is attributable solely to the inaction of the respondent.
- b) From the terms of the letters addressed it is amply clear that the petitioner not only completed its own part of the work in terms of the Tariff Order, but also repeatedly called upon the respondent seeking its approval for the location to the 4 new meters. The respondent has consistently avoided its obligation on one pretext or another. The respondent's inaction is the sole reason on account of which the deadline of July 31, 2012 fixed by the respondent in the Tariff Order will not be met.

- c) Extend the time for installation of meters at the RGI Airport, Hyderabad for segregation of aviation and non-aviation activities till 3 months after the date of approval of the locations by the respondent.
- d) Issue a direction to the respondent to approve metering arrangements at the RGI Airport, Hyderabad as per the drawings submitted by the petitioner vide letter dt. 26.05.2012 within a period of 15 days.
- e) continuation of billing procedure in accordance with paragraphs 113 (b) based on the existing methodology as prescribed in the Tariff Order till the expiry of the extended period for installation of separate meters.
- f) It is submitted that the above directions are necessary and essential in view of the respondent's default and dereliction and would be in the interests of substantial justice.

4. The petitioner company therefore prays that this Commission be pleased to:

- a) Extend the time for installation of separate meters at the RGI Airport, Hyderabad for segregation of aviation and non-aviation activities by 3 months from the date of approval of the locations by the respondent.
- b) issue a direction to the respondent to approve metering arrangements at the RGI Airport, Hyderabad as per the drawings submitted by the petitioner vide letter dt. 26.05.2012 within a period of 15 days.
- c) direct the respondent to continue to bill in accordance with the paragraphs 113 (b) based on the existing methodology as prescribed in the Tariff Order dated 30.03.2012 till the expiry of the extended period for installation of separate meters; and
- d) grant consequential relief by way of a direction to APPCC to forthwith release aforesaid payments to the petitioner.

5. The material averments of the counter filed by the respondent are briefly as follows :

- a) The petition under reply is not maintainable at law.
- b) Further Clause 2.2.4.1 of General Terms and Conditions of Supply which reads "point of supply" or "point of commencement of supply" means the incoming terminals of the cut-out of the consumer.

- c) In the Tariff Order for FY 2012-2013, Commission has created a separate category for the aviation activity at Airports under HT-III (AVIATION ACTIVITY AT AIRPORTS) with composite tariff as per the Hon'ble ATE order in appeal No. 12 of 2011 dated 22.07.2012.
- d) The Commission in its Tariff Order for FY 2012-13, has specifically directed the petitioner to segregate the loads of aviation and non aviation activities which means the consumer first has to clearly separate the loads in to two separate circuits and install one meter for each circuit at the voltage level at which it is availing the supply i.e., one for aviation loads, and the other for non aviation loads.
- e) The issue of creating two separate feeders by segregating loads into aviation and non aviation activity has to be examined with reference to GTCS. The clause 3.5.1 and 3.5.2 of GTCS reads as follows:

*Clause 3.5.1*

*For the purpose of the GTCS, separate establishments shall include the following types of establishments:*

- i) Having distinct set-up and staff;*
- ii) Owned or leased by different persons;*
- iii) Covered by different licenses or registrations under any law where such procedures are applicable; and*
- iv) For domestic category, the households having a separate kitchen.*

*Clause 3.5.2*

*Each separate establishment will be given a separate point of supply”*

- f) If the consumer separates the activities into two separate establishments and separate metering is arranged for these two establishments, the Licensee has no objection to extend two separate service connections, provided that the segregation of loads should be in such a way that aviation activity premises is separate from non-aviation activity. But since the consumer fails to comply the orders of

Commission, which entails with consequence, the petitioner is liable to pay HT-II tariff.

- g) The premises separation should be such that there should not be any contiguous area between aviation and non aviation activity. As per the Tariff Order each category would be given a separate service connection. The GTCS identifies the words “Establishment” and “Premises” for extending power supply under a particular category.
- h) Providing one supply connection for two different usages (Purpose) is not correct and it is very difficult to monitor the usage by the consumer as the area itself is vast. There is every possibility of extending power from aviation to non-aviation activity, since the area is contiguous area.
- i) For the reasons mentioned above, it is not correct to read two meters and raise the bill under two categories for one service connection. This is against the spirit of the Act. One tariff rate has to be applied to one point of supply and further a separate point of supply can be given to the same establishment, if the same establishment has a well defined separate premises.
- j) As per the Commission’s order, the consumer has to take two separate service connections, one for aviation activity and the other one for non-aviation activity by segregating the loads and premises with clear demarcation.
- k) As approved in the Tariff Order 2012-13, if this is method of levying two tariffs for one service is adopted, it will become precedence for all consumers who are using domestic / industrial service connection for non domestic / commercial use and may demand the Commission / Licensee to apply the same procedure for such usage.
- l) The claim of the petitioner that they have segregated load of Aviation Category from Non-aviation category and complied the direction contained in tariff order passed by the Commission is factually in correct and evidently false.
- m) Further, the claim of the petitioner that respondents have not approved the separation of meters is equally in correct.
- n) The petitioners are under obligation to segregate the loads as per the regulation of supply code and the GTCS in force. Dehor’s to the

procedure specified in the said regulations, the petitioner is precluded from claiming compliance, by setting up few meters else where. Such arrangement cannot be permitted in regulations said above.

- o) Initially the APTEL has allowed the appeal filed by M/s. GMR only based on the orders issued by APTEL in Mumbai Airport case. Later the Mumbai Airport management filed Civil Appeal vide C.A. 7525 of 2011, before the Hon'ble Supreme Court passed interim orders directing MERC to conclude the remand proceedings, but not to implement the same. The respondents have also filed appeal against the orders passed by APTEL in Appeal of 2011, before Supreme Court vide Appeal No. 34916 of 2011. The Hon'ble Supreme Court vide its orders dt. 03.02.2012 held that appeal admitted Tag with Appeal No. 7525 of 2011. Thus the appeal filed by respondents also clubbed with Appeal filed by Mumbai Airport. Consequently the interim orders passed in Mumbai Airport Appeal mutatis-mutandis applies to this case. Therefore evolving composite tariff for Airports is since seized by Hon'ble Supreme Court implementation of any other tariff than HT - II tariff is not permitted in law.
- p) It is prayed that the Hon'ble Commission may be dismissed with costs.

6. The main grounds of the rejoinder filed by the petitioner are briefly as follows:
- a) The reply filed by the respondent is misconceived and should be rejected at the outset.
  - b) The respondent had to approve the said drawings and inspect the premises. The respondent in breach of the order passed by this Commission did not do so.
  - c) The petitioner's request for extension of time is bonafide since it has made all efforts practicable on its part, but the respondent has failed to discharge its reciprocal obligations. The respondent cannot be permitted to take advantage of its own wrong.
  - d) As per the directions of this Commission's order the petitioner had submitted the drawings to the respondent for its approval so as to enable the petitioner to install the meters accordingly.

- e) As per APERC's order, till the separate meters for aviation and non-aviation activities are installed, the respondent has to follow the composite tariff at 61:39 respectively. Since the petitioner has complied its obligations under the order having submitted the drawings much before the stipulated time lines i.e., 31.07.2012 for the approval of the respondent, the petitioner is entitled to extension of time till the respondent discharges its obligations.
- f) The averment of the respondent that the consumer has to separate the loads into two separate circuits and install one meter for each circuit at the voltage level is untenable and is grossly erroneous understanding of the order. The Commission's order categorically directed to separate the loads by installing the separate meters which does not mean two separate circuits but is only installing two separate meters for identification of usage for aviation activities and non-aviation activities.
- g) The contention of the respondent that there has to be two separate establishments and two separate premises for aviation and non-aviation activities is impracticable and illogical.
- h) Considering this factual position the Hon'ble ATE has decided the matter and this Commission has passed the order. Hence, as already submitted above, the petitioner has not failed in its compliance with the order.
- i) However, without prejudice the petitioner submits that in view of a special category has been decided by the Commission for the airport sector the generally applicable conditions cannot be insisted by the respondent.
- j) The petitioner has submitted clear-cut-drawings showing how the usage shall be segregated between the aviation and non-aviation activities and its monitoring mechanism. However, instead of inspecting the drawings and premises the respondent has failed to give effect to the Commission's tariff order and denying the legitimate entitlement of the petitioner. The averment of the respondent that there is every possibility of extending power supply from aviation to non-aviation activity and it is not possible to identify and arrest such acts, in view of the vast area of the consumer premises, is totally false.

- k) The respondent has accessibility to inspect the meters installed in the airport premises as and when it seeks to carry out inspection. Hence, the averment is denied and cannot be a ground for objecting the extension of time for installation of the meters that too the reasons for such delay is solely attributable to the inaction of the respondent.
- l) The Hon'ble Supreme Court has not passed any interim order in the appeal filed by the respondent in the petitioner's matter. Mere tagging of the appeal does not give any right to the respondent to apply the same interim order as in MIAL's case.
- m) For the above said reasons the Commission may be pleased to grant the relief as prayed for by the petitioner in the present IA in the interest of justice.

7. Now the points for consideration are

- i) Whether the petitioner is entitled for extension of time for segregation of aviation and non-aviation activities as pleaded?
- ii) Whether the petitioner is entitled for metering as per the plans drawn up by the petitioner?
- iii) Whether the petitioner is entitled for a direction to the respondent to continue the bill in accordance with paragraph 113 (b) of the Tariff order as prayed for?
- iv) Whether the petitioner is entitled for consequential relief by way of direction to APCPDCL to forthwith release the payments as prayed for?
- v) To what relief?

Points (i) to (v):

8. The petitioner M/s GMR Hyderabad International Airport Ltd. has stated in its petition that, as per the orders given in the Tariff Order FY 2012-13, it pertains to HT-III category for segregation of loads and separate installation of meters which is to be completed by 31.07.2012, the drawings showing the separation of loads of aviation activities and non-aviation activities has been submitted to the respondent i.e. M/s APCPDCL vide letter dated 24.04.2012. The Petitioner also stated that he has met the officials of the Respondent and submitted the drawings showing the proposed

location of 4 meters at 33 kV feeders for approval of the location of the meters. The petitioner has also addressed another letter dated 08.06.2012 to the respondent requesting to conduct inspection of the site and advise on the location of the meters. And further stated that there has been complete inaction of the part of the respondent causing delay in segregation of loads and thus the petitioner has requested the Commission

- for extension of 3 months from the date of approval of the locations of the meter,
- issue direction to the Respondent to approve the metering arrangements within period of 15 days
- to continue the bill in accordance with para 113(b) based on the existing methodology as prescribed by the Tariff order FY 2012-13 till the expiry of the extended period for installation of separate meters and
- grant consequential relief by way of a direction to APPCC to forthwith release aforesaid payments to the petitioner.

9. The respondent in its counter stated that as per clause 2.2.4.1, 3.5.1 and 3.5.2 of GTCS the petitioner has to separate the establishment with distinct setup and staff for aviation and non-aviation activities and also to take separate connections i.e. at the point of commencement of supply and has to install two meters for two categories i.e. aviation activity at Airport and non-aviation activity at Airport. Further the respondent after verifying the drawings and conducting inspection has stated that

- the petitioner has not separated the loads specially the 33 kV feeders feeding within Passenger Terminal Building (PTB) and outside the building.
- The supply of power is extended through UG cable and interconnects the loads feeding aviation and non-aviation for the purpose of maintaining the uninterrupted supply.
- The airport is high security zone and it is difficult to inspect and verify the loads within the PTB.
- The airport is spread over in the vast area and it is difficult to inspect and verify the loads in the theft of energy point of view.

10. Further, the respondent stated in its inspection report dated 05.01.2013 that M/s. GMR has arrived the percentage of loads for aviation and non-aviation at 55.66:44.34, duly taking in to account of common loads (centralized Air conditioning & common lighting) and their utilization proportionate to floor area utilization between aviation activity and non-aviation activity. And also submitted that there will be increase of non-aviation loads month by month as there is lot of open space for non-aviation activities in future.

11. Subsequently, on the orders of the Commission, the team of APERC headed by Director(tariff) and team of APCPDCL headed by Director(Commercial) visited the Airport on 04.12.2012, where the petitioner has admitted the existence of the common loads viz. Centralized Air conditioning, Common lighting within the PTB and even outside the PTB and hence it is not possible to totally separate the loads by separating feeders in view of requirement of continuous supply.

12. Further as per Memo filed by the petitioner on dated 5<sup>th</sup> January 2013, the 33 kV feeder No.2 feeding PTB out side PTB (mixed loads), on which loads can not be segregated, the percentage of consumption between aviation and non-aviation is 75.93: 24.07. The memo says the 33 kV feeder No. 1 and feeder No. 4 are feeding exclusively Non-aviation loads and aviation load respectively. If total consumption of all above 33 kV feeders are taken in to account the percentage of consumption between aviation and non-aviation works out 55.66: 44.34.

13. In light of the above observations and facts, we are of the considered opinion that there is delay on the part of the respondent to act in response to the petitioner's drawings relating to segregation of loads within the time limit as prescribed in the Tariff order. Hence the Commission has extended time limit till December 2012 for segregation of loads and installation of meters.

14. Considering the inspection report, the Commission hereby directs the respondent to consider the percentage of loads for aviation and non-aviation activity as 61:39 till the billing month of December 2012 and revised ratio of 55.66:44.34 from the billing month of January 2013 till 31.03.2013 since the Tariff order determined is valid for FY 2012-13 only. Hence, the points are answered accordingly.

This order is corrected and signed on this 13<sup>th</sup> day of February, 2013.

**Sd/-**  
**(R.ASHOKA CHARI)**  
**MEMBER**

**Sd/-**  
**(C.R.SEKHAR REDDY)**  
**MEMBER**

**Sd/-**  
**(A.RAGHOTHAM RAO)**  
**CHAIRMAN**