



ANDHRA PRADESH ELECTRICITY REGULATORY COMMISSION

4th Floor, Singareni Bhavan, Red Hills, Hyderabad 500 004

TUESDAY, THE 28TH DAY OF MARCH

TWO THOUSAND TWENTY THREE

PRESENT

Justice C.V. Nagarjuna Reddy, Chairman

Sri P. Rajagopal Reddy, Member

Sri Thakur Rama Singh, Member

Review Petition No.5 of 2022 in O.P.No.124 of 2021

Between

Shree Jayalakshmi Powercorp Ltd.,

... Petitioner

And

Andhra Pradesh Central Power Distribution Company Ltd.

... Respondent

(APCPDCL)

Review Petition No.6 of 2022 in O.P.Nos.122 and 124 of 2021

Between

Tirumala Cotton & Agro Products Pvt. Ltd.

... Petitioner

And

1. Southern Power Distribution Corporation of Andhra Pradesh Ltd. (APSPDCL)

2. Andhra Pradesh Central Power Distribution Company Ltd.

... Respondents

(APCPDCL)

Review Petition No.7 of 2022 in O.P.Nos.122 and 124 of 2021

Between

Sri Dhanalakshmi Cotton & Rice Mills Pvt. Ltd.

... Petitioner

And

1. Southern Power Distribution Corporation of Andhra Pradesh Ltd. (APSPDCL)

2. Andhra Pradesh Central Power Distribution Company Ltd.

... Respondents

(APCPDCL)

The three Review Petitions have come up for final hearing on 17-08-2022 in the presence of Sri K. Gopal Chowdary, learned counsel representing Sri Telaprolu Sricharan, learned counsel for the petitioners; and Sri P. Shiva Rao, learned counsel for the respondents. Upon carefully considering the material available on record and after hearing the arguments of the learned counsel for both parties, the Commission passed the following:

COMMON ORDER

1. This batch of Review Petitions raise common issues. Hence, they are heard and being disposed of together. The case of the petitioners is briefly as follows:

A. The petitioner in Review Petition No. 5 of 2022 has a mini-hydel power plant of 4 MW capacity located in the area of operation of APCPDCL and is selling the energy generated from its plant to HT consumers within the area operation of the APCPDCL under third-party intra-state open access. The petitioners in Review Petition Nos. 6 and 7 of 2022 have captive wind power plants of varying capacities located at various places within the area of operation APSPDCL and captive mini hydel power plants of varying capacities located in the area of operation of APCPDCL. These petitioners are wheeling the energy generated from their power plants for captive use in their industrial units through open access.

B. The ARR and Retail Supply Tariff proposals for FY 2022-23 published by the respondents in newspapers in terms of section 64(2) of the Electricity Act, 2003 did not mention any proposal to levy GSC (Grid Support Charges) on generators per se including captive generating plants not co-located with the captive user industry and availing open access. The petitioners received no notice whatsoever that such charges were proposed to be levied. As a result, they had no opportunity to submit their objections in this regard. This is contrary

to the principles of natural justice and is also violative of the statutory requirement for transparency in terms of section 86(3) of the Electricity Act, 2003. The Commission has determined the GSC to be levied on all generators connected to the grid at different rates without there being any such proposal from the respondents and without giving any notice or opportunity to the affected generators to be heard.

C. The ARR and Retail Supply Tariff filings by the respondents for FY 2022-23 proposed the levy of GSC only on industrial consumers with co-located captive power plants/co-generation power plants. No generator, including a captive power plant that is not co-located and availing open access, could imagine that there would be an order affecting all such generators in the form of GSC.

D. The context and essence of the decisions of the Hon'ble APTEL referred to in the Retail Supply Tariff Order for FY 2022-23 is with regard to the effects of the consumer's loads located in a co-located captive power plant operating in parallel with the grid. Grid support/parallel operation charges were levied only on such industrial consumers as those determined by the Commission in the Retail Supply Tariff Orders for FY 2002-03 to FY 2008-09. The Maximum Demand contracted from the distribution licensees and also the exported capacity were excluded while determining the GSC. It is the nature of the consumer load in the co-located plants and its alleged effects on the grid arising therefrom that was the basis of these charges. In the petitioners' cases, such a situation does not arise as the generating plant is located in one place and the consumer to whom the energy is wheeled is located elsewhere.

E. The power conveyed from their power plants through open access for third-party/captive usage of an industrial unit always remains within the CMD of that unit. The generation from these power plants is inherently infirm depending

on the season, and vagaries of nature and it never reaches the generation corresponding to Installed Capacity except for a brief spell. The Plant Load Factors of wind and mini hydel power plants are only around 21% and 25% respectively. However, the respondents have issued bills towards the GSC @ Rs 25/- per kW per month on the entire Installed Capacity irrespective of actual generation.

F. The petitioners are paying the transmission/wheeling charges to APTRANSCO and the respondents for the energy conveyed for third-party/captive consumption under open access, based on the Installed Capacity. These charges, which are part of the ARR of APTRANSCO and the respondents, already include all costs and compensation to the licensee for the utilization of the transmission/distribution network including a proportion of the R&M expenditure incurred by them. Therefore, the levy of GSC is tantamount to double charging the petitioners for the same expenditure, which is unreasonable, irrational, discriminatory and arbitrary.

G. The levy of GSC on generating stations located in the State and selling energy to third-party consumers within or outside the State distorts the market and denies the petitioners a level playing field vis-a-vis the Distribution licensees and other generators located outside the State who are selling energy to the consumers located in AP through bilateral transactions or through power exchanges as these generators are not subjected to the levy of GSC.

H. For the above stated reasons and grounds, the order in O.P. Nos. 122 and 124 of 2021 requires to be reviewed in the interest of justice insofar as they relate to the levy of GSC on all generators connected to the grid as the same is violative of the principles of natural justice, erroneous from material apparent on the record, unreasonable, irrational, discriminatory and arbitrary.

2. The respondents filed counters to the Review Petitions. The averments contained in the counters are briefly as follows:

- A. The Review Petitions are not maintainable. The grounds raised are not permissions in review. Under the guise of review, the petitioners have canvassed grounds of appeal.
- B. The Hon'ble Supreme Court already upheld the commission's power to determine GSC.
- C. As per the Retail Supply Tariff Order for FY 2022-23, GSC are to be applied to the total installed capacity of the generators connected to the Grid. These charges shall be collected from all the applicable generators and not limited to captive power plants. Therefore, the action of the respondents cannot be faulted.
- D. The GSC were proposed in the ARR filings of the respondents for FY 2022-23 and the proposals were also placed on their websites inviting suggestions from stakeholders. Suggestions/Objections were received from SICWIA, FAPCCI, A.P. Textile Mills Association, K.C.P. Sugar and Industries Corporation Ltd & Nava Bharat Ventures Ltd, opposing the levy of Grid Support Charges. Some objectors also participated in the public hearing held by the Commission opposing the levy of Grid Support Charges. Therefore, the contention of the petitioners that they were to be given notice which was not done is not tenable.
- E. The disturbance caused by the generators due to their outages is being addressed by the grid support provided by the respondents and APTRANSCO. The respondents draw power from generators outside the State and do not provide any grid support to them. The other state generators pay ISTS charges. As such, there is no disadvantage to the generators located in the State.

F. The R&M costs are meant for repairs and maintenance of the transmission & distribution (T&D) system. The GSC are meant for providing the cost of equipment to maintain the security of the grid, absorption of harmonics, reactive power support and black start operation. The grid acts as a cushion/buffer during the generators' outages and also prevents the tripping of generators when there are sudden load throw-offs on the generators.

G. Therefore, the Commission may please dismiss the Review Petitions with cost.

Commission's analysis and decision

3. The Commission carefully considered the submissions made by learned counsels for the petitioners and the learned counsel for the respondents. In light of the rival contentions, the point arising for consideration is whether the petitioners made out a case for review.

Before discussing the points raised by the learned counsel for the petitioners, it is necessary to deal with the scope of review. This aspect was thoroughly discussed by this Commission in its common order dated 04.08.2020 in Review Petition No.1 of 2019 in O.P.No.30 of 2018 and Review Petition No. 3 of 2019 in O.P.Nos.28 and 29 of 2018 and order dated 08.04.2021 in Review Petition Nos.2 of 2019 and 1 of 2020 in O.P.NO.47 of 2017.

It is useful to reproduce the relevant portions of the orders hereunder:

".. Section 94(1)(f) of the Electricity Act, 2003 (for short "the Act") confers power of review of its decisions, directions and orders on the Commission. However, neither the Act nor the Rules framed thereunder indicated any parameters for exercise of this power. In the absence of any indicia, it is not only apt but also permissible to follow the law laid down by the constitutional courts in this regard.

In Sow Chandra Kanta & Another Vs. Sheik Habib (1975 SCC (4) 457) the Hon'ble Supreme Court held that a review of a judgement is a serious step and reluctant resort to it is proper only where a glaring omission or patent mistake or like grave error has crept in earlier by judicial fallibility. In P.N. Eswara Iyer vs. The Registrar, Supreme Court of India (1980 AIR 808) a constitution bench of the Supreme Court reaffirmed the ratio in Chandra

Kanta (1 supra). In Shri Ravinder Kumar Vs. Kamal Sen Gupta (2008) 8, the Hon'ble Apex Court held that unlike in appeal, scope of review is grossly circumscribed to such cases where review seeker has made a discovery of a new and important matter of evidence, which, after exercise of due diligence, was not within his knowledge and could not be produced by him when the decree or order where some mistakes or errors apparent on the face of the record have been made or when the court has overlooked some obvious facts on the basis of which decision could be made. The court further held that for a review, one of the above three considerations should be established.

In Devender Pal Singh vs. State of NCT of Delhi (2003)2 SCC 501, the Apex Court held that review is not a rehearing of appeal all over again and that scope of interference is very limited to aspects such as miscarriage of justice."

4. Further, in Lily Thomas & Ors. vs Union of India & Ors. [(2000) 6 SCC 224], the Apex Court held as under:

"56. It follows, therefore, that the power of review can be exercised for correction of a mistake and not to substitute a view. Such powers can be exercised within the limits of the statute dealing with the exercise of power. The review cannot be treated as an appeal in disguise. The mere possibility of two views on the subject is not a ground for review...."

In Union of India vs Sandur Manganese and Iron Ores Limited & others [(2013) 8 SCC 337], the Apex Court held as under:

"23. It has been time and again held that the power of review jurisdiction can be exercised for the correction of a mistake and not to substitute a view."

In Parsion Devi & Others Vs Sumitri Devi & Other [(1997) 8 SCC 715], the Apex Court held as under:

"9. Under Order 47 Rule 1 of CPC, a judgment may be open to review inter alia if there is a mistake or an error apparent on the face of the record. An error which is not self-evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of the record justifying the court to exercise its power of review under Order 47 Rule1 CPC. In exercise of the jurisdiction under Order 47 Rule 1 of CPC, it is not permissible for an erroneous decision to be "reheard and corrected". A review petition, it must be remembered has limited purpose and cannot be allowed to be "an appeal in disguise."

5. Keeping in view the limited scope of interference in review jurisdiction as per the dicta laid down by the authoritative pronouncements of the Apex Court as discussed above, we shall now consider the submissions of the learned counsel for the petitioners and the respondents.
6. The main contentions raised by the learned counsel for the petitioners that are relevant to the review are:
 - A. The Commission determined GSC for non-co-located captive generating plants and generating plants supplying power to third parties under open access without there being any publication in the newspapers under section 64(2) of the Electricity Act, 2003 and without any proposal from the respondents and prior notice to them in violation of natural justice and the transparency requirement specified in section 86(3) of the Electricity Act, 2003.
 - B. The ARR and Retail supply Tariff proposals for FY 2022-23 published by the respondents in newspapers in terms of section 64(2) of the Electricity Act, 2003 did not indicate any proposal to levy GSC (Grid Support Charges) on generators per se including captive generating plants not co-located with the captive user industry and availing open access
 - C. The basis for levying the GSC as per the Hon'ble APTEL arises in cases where consumers' loads located in captive power plants and operating in parallel with the grid affect the grid, which is not the case with their plants.
 - D. The petitioners are already paying the transmission/wheeling charges to APTRANSCO and the respondents which are part of the R&M expenditure incurred by the latter. Therefore, the levy of GSC is tantamount to double charging the petitioners.
 - E. The levy of GSC on the petitioners' generating plants selling energy to third parties denies them a level playing field vis-a-vis the Distribution licensees

and other generators located outside the State and selling energy to the consumers located in AP as they are not subjected to the levy of GSC.

The respondents mainly contented that the petitioners have canvassed grounds of appeal under the guise of review; the GSC are not part of R&M costs but are meant for providing the cost of equipment to maintain the security of the grid, absorption of harmonics, reactive power support and black start operation; and the GSC were proposed in the ARR filings for FY 2022-23 and the proposals were also placed on their websites inviting suggestions from stakeholders.

7. As regards the contention of the petitioners about the absence of proposals for levying of GSC in the public notices published in the newspapers, the petitioner may note that the respondents published the said notices in the format specified by the Commission. It was clearly mentioned in the public notices that the copies of the filings are available in the Offices of the Chief General Manager and the Superintending Engineers /Operation of the respondents and that the interested persons may inspect/peruse the said filings and take note thereof during office hours at any of the said offices free of charge. It was also indicated in the notices that these filings are also available on the websites of the Commission and the respondents. Further, the petitioners should understand that publishing every single proposal of tariff filings in newspapers is not feasible. The main objective of newspaper publication is to offer a concise overview of the filings and notify the public that the DISCOMs have submitted their tariff proposals to APERC. The publication also aims to provide information on the sources from which the public can obtain detailed information about the filings.

Therefore, by placing the filings on the websites, which contained, among other things, the proposals for the levy of GSC on Captive Power Plants/Co-generation plants operating in parallel with the grid, all the stakeholders and the public were

provided easy access to the proposals 24x7. In fact, the reach/access of the newspapers is far lesser compared to that of the websites. As per the TRAI report 2022, the number of internet subscribers in AP State as of June 2022 is 63 million. This figure far exceeds the combined readership of the two most widely circulated newspapers in the state, which stands at 12.15 million as per the latest Indian Readership Survey. Furthermore, the Commission allowed all stakeholders to submit their views, objections, and suggestions on the proposals of the respondents in writing or orally during public hearings. Thus, the petitioners' arguments regarding sections 64(2) and 86(3) of the Electricity Act, 2003, are not tenable.

8. The contention of the petitioners in Review Petition Nos. 6 and 7 of 2022 (who are having the captive power plants) that the respondents proposed grid support charges only on industrial consumers having co-located captive power plants/co-generation power plants, is not correct as the respondents clearly stated in their filings their proposals to levy GSC on Captive Power Plants/Co-Generation Plants which are operating in parallel with the grid.
9. The contention of the petitioner in Review Petition 5 of 2022 is that there was no proposal from the respondents to levy GSC on generators other than Captive Power Plants/Co-Generation Plants. In this regard, it needs to be noted that clause 8.2 of Regulation 4 of 2005 specifies that based on the Distribution Licensees' filings, objections/suggestions and other stakeholders, the Commission may accept an application with such modifications/or such conditions as may be deemed appropriate just and appropriate and issue, within 120 days of the receipt of the application, an order containing inter alia targets for controllable items and the approved Aggregate Revenue Requirement for the Distribution Business and the ARR for the Retail Supply Business. From the above clause, it

is evident that the Commission can make modifications to the proposals of the DISCOMs as deemed appropriate even in the absence of specific proposals for the levy of any charges. Further, it is not feasible to provide advance notice to the public on every modification that the Commission intends to make. Moreover, in the Retail Supply Tariff Order for FY 2022-23, the Commission noted on page 152 of Volume I that limiting the levy of GSC to CPPs (Captive Power Plants) only does not create a level playing field, as other generators connected to the grid receive similar benefits as that of CPPs. Therefore, the Commission extended the scope of GSC to cover other generators, with the exception of those that have Power Purchase Agreements with the DISCOMs.

10. Another contention of the petitioners is that they are already paying the transmission/wheeling charges to APTRANSCO and the respondents as a part of the R&M expenditure incurred by the latter and that therefore, the levy of GSC tantamounts to double charging by the respondents. In this regard, the petitioners may note that the Commission thoroughly addressed this issue in the Retail Supply Tariff Order for FY 2022-23. Pages 150 to 153 of Volume I of the Order provide a detailed explanation of the Commission's decision to impose GSC on generators other than those with PPAs with the DISCOMs.
11. As regards the contention of the petitioner in Review Petition 5 of 2022 that levy of GSC denies them a level playing field vis-a-vis the Distribution licensees and other generators located outside the State, the commission is of the view that as the third-party generators are also enjoying the benefits by virtue of being connected to the grid, they also need to pay the GSC.
12. During the hearings, Sri K. Gopal Chowdary, the learned counsel representing Sri Telaprolu Sricharan, the learned counsel for the Petitioners, relied on the judgment dated 08.10.2015 of the Hon'ble APTEL in Appeal No.167 of 2014 and

stated that Grid support charges are applicable for only co-located Captive Power Plants (load located in the same premises) as per the said judgment.

In the judgment of the Hon'ble APTEL, it was clarified that the order passed by the Madhya Pradesh Electricity Regulatory Commission (MPERC) on December 31, 2012, which levied Parallel Operation Charges (POC) on all Captive Power Plants (CPPs) connected to the utility grid in the state of Madhya Pradesh, did not apply to the Tawa Captive Power Plant, which is not a co-located power plant. Though the independent agency ERDA, to which the work of the study of POC was awarded, restricted its study to co-located CPPS and has not included Tawa Hydro Electric Power Plant in its study, MPERC went ahead and determined the POC charges for all CPPs connected to the grid. Hon'ble APTEL has considered the fact that the pre-condition for the levy of POC is the co-location of the CPP while arriving at its decision. On the other hand, the case on hand is different as no such pre-condition is stipulated anywhere in this case and it determined Grid Support charges after Hon'ble Supreme Court in its Order dated 29.11.2019 (APTransco Vs Rain CII & Others) upheld the Grid Support charges determined by APERC in its order dated 26.05.2001. The justification has been given in its Retail Supply Tariff Order for FY 2022-23 while making applicable the Grid support charges to all generators. Grid code is the basis for the levy of Grid support charges. The Grid support is required for all generators and it is a distinguishable service and hence, the proposal of the DISCOMS has been modified, and made applicable to all generators except for those having Power Purchase Agreements (PPAs) with DISCOMs. When the Generators operate in isolation from Grid, the grid support charges are not applicable. The harmonics injections or other technical issues discussed in the RST order for FY 2022-23 are one of the reasons applicable to captive co-located while deciding the Grid support charges

and it is not the sole reason. In respect of other generators, the transients and reactive power transfer are bound to take place between the Grid and generators as long as they operate in tandem with the Grid, more particularly with Wind and Solar generators that deploy inverters.

Hence, the Commission is not inclined to accept the contention of the learned counsel Sri K. Gopal Chowdary.

13. From the foregoing observations, it is evident that the petitioners have produced neither sufficient reasons/new and important matter or evidence which were not already considered by the Commission in its order in O.P.Nos 122 and 124 of 2021 nor there is any mistake or error apparent on the face of the record in the above order. Therefore, the Commission is of the view that the Review Petitions deserve to be rejected.

14. In the result, the Review Petitions are disposed of in terms of the above. All the IAs filed in the respective Review Petitions shall also stand disposed of.

Sd/-
Thakur Rama Singh
Member

Sd/-
Justice C.V. Nagarjuna Reddy
Chairman

Sd/-
P. Rajagopal Reddy
Member