



ANDHRA PRADESH ELECTRICITY REGULATORY COMMISSION  
4<sup>th</sup> Floor, Singareni Bhavan, Red Hills, Hyderabad 500 004

O.P.No.11 of 2016  
Dated: 19-11-2016

Present  
Sri Justice G. Bhavani Prasad, Chairman  
Dr. P. Raghu, Member  
Sri P. Rama Mohan, Member

**Between:**

M/s. Sarvaraya Sugars Ltd.  
Chelluru, Rayavaram Mandal  
Ramachandrapuram  
East Godavari District - 533 261  
Rep. by its Sr. General Manager  
Sri G. Koteswara Rao

... Petitioner

**A N D**

1. M/s. Transmission Corporation of  
Andhra Pradesh Ltd., Vidyut Soudha  
Khairatabad, Hyderabad - 500 082  
rep. by its Chairperson & Managing Director

2. Eastern Power Distribution Company of  
Andhra Pradesh Limited, Sri Shakti  
Opp Saraswati Park, Daba Gardens  
Visakhapatnam - 530 020  
rep. by its Managing Director

3. Superintending Engineer  
TL & SS Circle, AP TRANSCO  
Rajahmundry

... Respondents

This petition has come up for hearing finally on 05-11-2016 in the presence of Sri Challa Gunaranjan, learned counsel for the petitioner and Sri P. Shiva Rao, learned Standing Counsel for the respondents. After carefully considering the material available on record and after hearing the arguments of both the learned counsel, the Commission passed the following:

**ORDER**

A petition to declare the action of the respondents in levying on and collecting from the petitioner maintenance charges towards interconnection facility and unilaterally deducting `9,21,206/- from the monthly bill of the

petitioner in April, 2015 to be arbitrary, illegal and unjust, direct the respondents to refund the same, award costs of the petition and pass any other appropriate orders.

2. The petitioner states that it is an incorporated company which commenced the operation of the sugar mill in 1959. The petitioner established a bagasse based co-generation plant of 12.65 MW capacity in 2008 and is selling power to the 2<sup>nd</sup> respondent or third parties under short term Power Purchase Agreements either through a trader or directly. The petitioner is paying transmission, wheeling and other open access charges in full for the short term sales. The petitioner laid a 5 km 132 kV bay extension with metering arrangements at 132/33 kV sub-station at Ramachandrapuram with synchronization with the grid on 25-12-2008. On 09-03-2013, the petitioner communicated its desire to the Divisional Engineer, TL & SS Division, AP Transco to hand over the 132 kV DC/SC line, bay connected to the petitioner's feeder at the sub-station and terminal and metering arrangements connected to the petitioner's feeder. The 1<sup>st</sup> respondent communicated its acceptance of the proposal of the petitioner by a letter dated 30-04-2013. Still the 3<sup>rd</sup> respondent, an officer of the 1<sup>st</sup> respondent issued a letter dated 21-01-2011 demanding maintenance expenses of `2,62,540/- for the interconnection from the Commercial Operation Date to 31-03-2010 as per Article 3.3 of the Power Purchase Agreement of Non-Conventional Energy Developers. The petitioner informed on 14-01-2011 that the question of such payment does not arise in the absence of any Power Purchase Agreement between the parties. Again demands were raised by the 3<sup>rd</sup> respondent on 14-11-2011, 01-11-2012, 15-03-2013, 26-07-2013 and 04-03-2015 demanding such maintenance charges from the Commercial Operation Date till 2013-14 respectively. The petitioner vide its letters dated 02-12-2011,

28-11-2012, 05-08-2013 and 13-03-2015 clarified the absence of any liability to make such payments and in fact the petitioner handed over the line connected to its plant and sub-station to the 1<sup>st</sup> respondent which was accepted by letter dated 30-04-2013 and Article 3.3 of the Power Purchase Agreement of Non-Conventional Energy Developers makes the owner to bear the maintenance charges. The General Manager, PP & S, APPCC, Hyderabad informed the petitioner on 20-08-2015 that as per clause (ix) of the vendor registration form, they deducted `9,21,206/- from the petitioner's power purchase bill of April, 2015. Vendor registration form is an application to enable the petitioner to participate in the bid for short term power purchase but is not a contract between the parties. Sale of power is governed by the terms of short term bid documents and the purchase order cannot be subject to any registration form. The 3<sup>rd</sup> respondent issued a letter dated 14-10-2015 demanding `2,86,577/- towards maintenance charges for 2014-15 again under an agreement which was not entered into between the petitioner and the respondents. Such unilateral demand and deduction is illegal, arbitrary and unjust and is without jurisdiction and in violation of the principles of natural justice. As there was no response to the repeated pleas of the petitioner from the respondents, the petitioner was forced to file this petition.

3. While no separate counter was filed by the 2<sup>nd</sup> respondent, a counter was filed on behalf of respondents 1 and 3 stating that the petitioner, availing short term open access, paid transmission, wheeling and other open access charges but not the 132 kV bay and line maintenance charges. The Divisional Engineer, TL & SS, Bommuru through a letter dated 30-04-2013 only specified that 132 kV bay, line and metering points are the property of the AP Transco which is initiation of the procedure for taking over of the assets after which the company has to hand

over the assets like material/equipment to AP Transco as per T.O.O. (CE-Construction-2) Ms.No.20 dated 23-04-2012. The title/ownership of the assets was not transferred to the 1<sup>st</sup> respondent, the details of the material/equipment were not specified and the remaining formalities were not complied with to enter the assets, equipment and line in the books of record of the 1<sup>st</sup> respondent deleting them from the accounts of the petitioner. The staff of the 1<sup>st</sup> respondent maintained the bay and the feeder, the copies of the details of maintenance charges being enclosed to the counter and hence the bay and line maintenance charges are demanded and have to be paid. As per instructions of the Chief Engineer of the 1<sup>st</sup> respondent dated 10-08-2011, the demand was raised against the petitioner and the 1<sup>st</sup> respondent is not the owner of the bay and the line. The Chief Engineer, VSP Zone, Visakhapatnam requested the Deputy CCA, PP & S to recover the outstanding charges from the monthly power purchase bills to a tune of `9,21,206/- which was deducted from the running bill of April, 2015. Therefore, the petitioner has to bear the said charges and hence the petition be dismissed with costs.

4. Sri Challa Gunaranjan, learned counsel for the petitioner and Sri P. Shiva Rao, learned Standing Counsel for the respondents are heard.

5. The point for consideration is whether the respondents are entitled in fact or in law to levy and collect the maintenance charges in question and if not, whether the amount deducted has to be refunded to the petitioner?

6. While the respondents have not filed any document in support of their contentions in their counter, as already stated, the 2<sup>nd</sup> respondent did not file any

separate counter nor did it file a memo adopting the counter of the respondents 1 and 3.

7. The petitioner has filed a number of documents along with the petition but none of them relating to the question in controversy to be decided between the parties herein, except the letter dated 30-04-2013 from the Divisional Engineer, TL & SS Division, AP Transco, Bommuru. However, the absence of any documents on either side presents no difficulty as the facts in issue are based on admitted facts. The petitioner has a co-generation plant. It commenced its commercial operation in 2008. Since then the petitioner is selling power to various third parties including the 2<sup>nd</sup> respondent under short term Power Purchase Agreements. The petitioner is also paying transmission, wheeling and other open access charges payable for such short term sale of power. The petitioner laid the 5 km 132 kV bay extension with metering arrangements at 132/33 kV sub-station at Ramachandrapuram with synchronization with the grid on 25-12-2008. The petitioner also offered to hand over the line, bay and metering points to the 1<sup>st</sup> respondent which was accepted by a letter from the 1<sup>st</sup> respondent dated 30-04-2013. Though it was stated in that letter that bay, line and metering points are the property of the 1<sup>st</sup> respondent, the procedure prescribed by the 1<sup>st</sup> respondent in this regard was obviously not complied with thereafter to conclude the transfer of title/ownership of assets to the 1<sup>st</sup> respondent from the petitioner. There is no material on record to show any expenses incurred by the petitioner or the 1<sup>st</sup> respondent for maintenance of the bay, line and metering points from 25-12-2008, the date of synchronization with the grid up-to-date. There was also no material to show that bay, line and metering points are deleted from the accounts of the petitioner and were entered in the books of account of the 1<sup>st</sup>

respondent. There was also no separate provision or rule or regulation or agreement between the parties which indicates the liability of anybody to maintain the line, bay and metering points and right of anybody for recovering the expenses from the other party. The deduction of the alleged maintenance charges from the running bill of April, 2015 was also not specifically attributed to the exercise of any statutory or administrative power or any rights and liabilities arising out of any agreement between the parties.

8. With this factual background, useful reference can be made to the earlier order of this Commission in O.P.No.35 of 2014 dated 07-04-2016 in which also the record did not disclose any proof of any actual maintenance expenses and the contractual obligations placed the burden of such maintenance expenses on the generator and not on the transmitter.

9. While the analogy stops there, in the present case, there was no agreement between the parties providing for the incurring or recovery of such maintenance charges mutually. If the offer of the petitioner in its letter dated 09-03-2013 and the acceptance of the 1<sup>st</sup> respondent in its letter dated 30-04-2013 did not result in any transfer of title/ownership of assets in question, why the 1<sup>st</sup> respondent or its staff had maintained bay, line and metering points at its expense is unexplained. There is nothing on record to show that the petitioner was put on notice of such maintenance by the 1<sup>st</sup> respondent at its expense recoverable from the petitioner. While there is no proof of any actual expense towards maintenance by the 1<sup>st</sup> respondent, the petitioner was also significantly silent as to whether it maintained the bay, line and metering points or incurred any expenses for the same. Notwithstanding such omission, the entitlement of any of the respondents to

recover any maintenance expenses will squarely depend upon the proof of entitlement for such recovery in law due to any legal provision or agreement or otherwise and the incurring of actual expenses towards such maintenance.

10. Thus whether the petitioner maintained such bay, line and metering points at its expense or not, any entitlement of the respondents to recover any sum towards such expenses can be based only on either a legal provision or a contractual right or as per actual expenses which were never intended to be incurred gratuitously. The petitioner appeared justified in contending that the vendor registration form which is not a contract or an article in a proforma of Power Purchase Agreement for Non-Conventional Energy Developers which was not entered into between the parties cannot fasten any such liability. The unilateral demand and deduction under such circumstances do not appear to be sustainable in law or fact, more so, even without responding to several representations made by the petitioner against the demands made from time to time. If the assets were transferred to or admitted to be transferred to the 1<sup>st</sup> respondent as contended by the petitioner, the petitioner cannot be any more fastened with any liability to maintain the same. Even otherwise if the assets continued to be the property of the petitioner, in the absence of proof of any legal or contractual liability or the actual incurring of expenditure towards maintenance, the respondents could not have claimed payment of the same and could not have taken recourse to any coercive recovery through deduction in a running bill.

11. The petitioner should therefore succeed in its request for the declaration and refund sought for but its claim for award of the costs of the petition also need not be considered in the absence of the petitioner placing the correspondence

referred to in the petition before the Commission and any proof of incurring of any expenditure by itself for maintenance of assets in question. As both parties do not appear to be faultless, it will be reasonable and just to direct them to bear their own expenses.

12. Therefore, it is declared that the respondents cannot levy and collect maintenance charges from the petitioner in the manner in which they levied and collected or attempted to levy and collect such maintenance charges for the bay, line and metering points connected to the petitioner's co-generation plant at 132/33 kV sub-station at Ramachandrapuram and consequently the respondents shall refund the amount of `9,21,206/- deducted from the monthly bill for power purchase for April 2015 to the petitioner within three (3) months from the date of this order. The petition is allowed accordingly and the parties shall bear their own costs.

This order is corrected and signed on this the 19<sup>th</sup> day of November, 2016.

Sd/-  
**P. Rama Mohan**  
Member

Sd/-  
**Dr. P. Raghu**  
Member

Sd/-  
**Justice G. Bhavani Prasad**  
Chairman