

**BEFORE THE HONOURABLE ANDHRA PRADESH
ELECTRICITY REGULATORY COMMISSION**

AT ITS OFFICE AT IVTH FLOOR, SINGARENI BHAVAN, RED
HILLS, HYDERABAD

FILING NO. /2019

IN

R.P.NO. 3 OF 2019

IN

CASE No.O.P.No. 28 & 29 /2018

In the matter of: Review of the Order dated 15.4.2019 passed by
this Hon'ble Commission in O.P.No. 28 & 29 of
2018 with respect to the Wheeling Tariff of
Wind Generators/Users for Captive purpose for
FY 2019-20 to 2023-24.

AND

In the matter of :

1. M/s. Tirumala Cotton & Agro Products Pvt Ltd,

Regd. Office at
26-151, Subbaiah Tota,
Chilkaluri Peta- 522 616.
Rep. by its Director,
Sri. P. Kotirao.

2. M/s. Ravali Spinners Pvt Ltd.,

Regd. Office at
F-19, Industrial Estate, Tanuku – 534 218,
West Godavari dist. Andhra Pradesh.
Rep. by its Personnel Relations Officer,
Sri. K.V. Sita Ramaiah

...Petitioners

AND

1. Southern Power Distribution Company of

Andhra Pradesh Ltd.,
Corporate Office, Kesavayanagutta, Tirupathi
Represented by its Chairman & Managing Director.

2. Eastern Power Distribution Company of

Andhra Pradesh Ltd., represented by its
Managing Director, P & T Colony,
Seethamadhara, Visakhapatnam -517 503

...Respondents

REVIEW PETITION FILED UNDER REGULATION 49 OF
THE APERC (CONDUCT OF BUSINESS)
REGULATIONS, 1999 R/W S. 94(F) OF THE
ELECTRICITY ACT, 2003.

May it please the Hon'ble Commission:-

The address for the service of all notices on the petitioner is that of the Petitioner's counsel, Challa Gunaranjan, M.Indrani, M.Sridhar, Deepak Chowdary, M.Tharun, N.Sai Phanindra Kumar, 05, Subhodaya Apartments, Boggulakunta, Hyderabad – 500001.

The address for service of all notices and documents on the Respondent is as given in the cause title of this Petition.

FACTS OF THE CASE:

1. I state that the 1st petitioner is a company incorporated under the provisions of the Companies Act, 1956 and is engaged in the business of manufacturing and sale of cotton and agro products. Petitioner also established wind power plants for its captive consumption, one at Gandinkota at location no.007, Kadapa District commissioned on 6.7.2013 and another at Uravakonda (V&M) near Vajrakaroor, location No.VAR-436, Anantapur District, Andhra Pradesh with a capacity of 2.1 MW and same was commissioned on 19.12.2013. The petitioner is having its manufacturing units located at Timmapuram (V), Guntur District with HT SC Nos. GNT-740 and GNT- 491.
2. I state that 2nd petitioner is a company incorporated under the provisions of the Companies Act, 1956 and is engaged in the business of manufacturing and sale of cotton yarn. Petitioner also established wind power plant at Uravakonda (V&M) near Vajrakaroor, Anantapur District, Andhra Pradesh with a capacity of 4.2 MW and

commissioned on 15.10.2013. The petitioner is having its manufacturing unit at Khandavali (V), Peravali (M), West Godavari Dist in the state of Andhra Pradesh within the area of APEPDCL with the HT Service Connection ELR-505. It is further submitted that both the petitioners have entered into Power Purchase and Wheeling Agreements with the Respondents. The petitioners are captive consumers of the electricity generating by its plants and may be selling a part or surplus to the Respondents or IEX.

3. The demand for electricity has been growing by leaps and bounds over several years and the country has been in the grip of chronic power shortages. The erstwhile policy was to vest the monopoly for generation of power in public sector enterprises. It was subsequently realized that State resources would be insufficient to meet the growing demand for electricity, and new policy initiatives were taken to enable and encourage the participation of the private sector in the generation, transmission and distribution of electricity. It was also considered necessary to establish small generating stations, geographically distributed and utilizing local resources including renewable sources of energy, so as to reduce transmission and distribution losses.
4. It is necessary to recognize that the present renewable sources of energy such as wind, hydel, biomass etc are not only the resources which can be preserved and maintained for the use of future generations; and if they are not used beneficially now, they are lost forever. It is therefore mandatory that, even at higher direct or indirect costs, the present generation is bound to support the

development of renewable sources of energy and to consume and support all energy generated from such sources by suitable preferential treatments and incentives. A target of 13% of the energy consumption being from renewable sources, i.e., 8 % Non solar and 5% Solar for 2019-20 is envisaged by framing Regulation No.1 of 2017 by this Hon'ble Commission.

5. The Government of India set up the Ministry for Non-Conventional Energy Sources (MNES) to promote and develop non conventional energy and to evolve policy guidelines. Accordingly, institutional mechanisms (e.g. IREDA, NEDCAP) were established and the Government of India announced a policy package of incentives, which included duty concessions, tax exemptions, subsidies, concessional and promotional finance, waiver of transmission and wheeling charges etc. It is submitted that the MNES guidelines provided for wheeling of electricity at 2%, banking facilities, and purchase of electricity by Utilities on terms which constitute incentives as envisaged and mandated by international agreements and national policy.
6. The State Governments were also required to promote and facilitate the establishment of non-conventional energy projects based on the guidelines issued by the MNES. The State of Andhra Pradesh also encouraged the establishment of non-conventional power projects by private enterprise. The facilitation and incentives to these power projects included sale of electricity to third parties, wheeling by the State Utilities, banking of energy and purchase of electricity by the

DISCOMS. The Government of Andhra Pradesh, keeping in view the policy formulated and the guidelines issued by the Central Government for promotional and fiscal incentives, formulated incentives schemes for non conventional sources of energy, and improved upon the same from time to time. The State Government, by G.O.Ms. 93 dated 18.11.1997, allowed uniform incentives to all projects based on renewable sources of energy. The said G.O., inter alia, allowed third party sales and stipulated a wheeling charge of 2%. I submit that, by G.O. 112 dated 22.12.1998, the State Government made certain amendments in order to remove certain ambiguities and to ensure that the incentives contemplated are channeled for promotion and development of non conventional energy sources in keeping with the spirit of the G.O. 93 dated 18.11.1997.

7. The Government of A.P in order to encourage, develop and promote Wind Power Generation issued Wind Power Policy vide G.O.Ms.No.99 dated.09.09.2008 for a period of 5 years or shall remain in force till such time a new policy is issued. Subsequently, Wind Power Policy, 2015 was announced vide G.O.Ms.No.9 dated.13.02.2015 for a further period of 5 years under the 2015 policy, the Government has announced various incentives, one of which being exemption of Transmission and Wheeling Charges for Wind Power Developers for a period of 10 years who sell power to 3rd Party captive users. In line with the policies of the Government, the Hon'ble Commission determined Transmission Charges and Wheeling Charges vide tariff orders in O.P Nos.62 of 2013 & OP.No.66 and 70

of 2013, for the FY.2014-15 to 2018-19 wherein Transmission and Wheeling charges were exempted for NCE Projects, including Wind Projects in line with the GO.AP Policy.

8. It is submitted that both Central government and State government framed policies encouraging non conventional energy generators particularly wind and solar power generators. In view of, and relying upon, the various promotional and fiscal incentives initiated and promised by the Central and State Governments, the substantial investments were made and substantial loans were contracted to establish the generating plant for the generation of power from non conventional energy sources including wind power sources. The petitioners also entered agreement for wheeling of power through open access for captive use by its industrial units.
9. It is submitted that this Hon'ble Commission has determined wheeling charges for the control period 2019-20 to 2023-24 in O.P No.28 and 29 of 2018 by orders dated.15.4.2019. The Hon'ble Commission has computed Wheeling charges for the each year of control period and also specified the losses to be borne by the users of wheeling system. For the F.Y 2019-20, the wheeling charges are determined as 61.16 per Kva Per month for 1st respondent and 45.24 per Kva Per month for 2nd respondent and losses corresponding to entry and exit points are 3.20% and 2.70% respectively. In the notes on the Wheeling Tariff and losses at Para 107, it has been specified the wheeling charges payable by the open access users basing on the contractual capacities approved by the commission in this order and similarly corresponding losses in kind shall be borne by all open access consumers based on

contracted capacity in Kva at the entry and exit points. The order dt.15.4.2019 does not either make reference to or considered the NCE developers as class who used open access either for captive purpose or 3rd party sale, while determining these charges.

10. The Hon'ble commission determined Wheeling Charges by applying the formula. The formula reads under:-

$$\begin{array}{lcl} \text{Wheeling tariffs at 33kV} & & \\ \text{(Rs./kVA/month)} & : & \text{ARR apportioned to 33 kV} \\ & & \hline & & \text{Contracted Demand at 33kV *12} \end{array}$$

Whereas coming to levy of the above charges, the Hon'ble commission directed that the same shall be levied based on contracted capacities but not the system demand or the units wheeled. This vital aspect has very great bearing in case of NCE Projects as their generation/CUF is very low and keeps varying upon the season and has no co-relation with contracted capacity. Besides which, NCE Projects form a class by itself requiring differential treatment in furtherance to the object and legislative mandate contained in Section 86(1) (e) of Electricity Act, 2003.

11. Therefore, the petitioners are constrained to file the present petition to review the order dt. 15.4.2019 in OP.No.28 and 29 of 2018 passed by this Hon'ble Commission for the following among other

GROUND S

- a. The Order of the Hon'ble Commission dated 15.4.2019 suffers from error and mistake apparent from the record and non-

consideration of relevant materials, and therefore requires review. The order of the Hon'ble Commission dated 15.4.2019 requires review in the interest of justice.

- b. That considering the PLF/CUF of the wind projects, in particular wind projects being very low, in the range of 23 to 24 %, compared to conventional projects, levy of wheeling charges based on the contracted capacities approved by the Hon'ble Commission would be unreasonable and irrational.
- c. That even the PLF/CUF of the wind projects varies from one plant to another plant depending on the height of the turbine, length of the blade, altitude and weather conditions of the location where plant is located even though the installed capacity of the plants are one and the same. In these circumstances levy of Wheeling Charges based on the installed capacity would be illogical, rather it should have been based on the generation and wheeling.
- d. That if the Wheeling charges are to be levied it can only be levied on the injected quantities at exit point but not on installed capacity of the plant.
- e. In considering the issue of transmission and/or wheeling charges it is necessary for the Hon'ble Commission to consider and take into account relevant factors of load flow and direction, and the fact that the energy fed into the grid is in fact consumed by nearby loads, and that the distributed generation of small amounts of power makes considerable savings and

benefits to the licensees in the transmission and distribution losses and in the capacity and use of transmission and distribution assets, and that due credit therefor ought to be given.

- f. Because it is not apparent in the order whether or not it is applicable to Non-conventional open access users. However, the Hon'ble Commission while acting under S.86(1)(e) of the Electricity Act, 2003 always given special preference and specific focus in taking any decisions or passing orders with regard to non conventional power plants. A separate publication of the consultative paper and public hearing is being conducted by this Hon'ble Commission with regard to each issue regarding the non conventional power plants and no common order at any point of time was passed by this Hon'ble Commission.
- g. The electrical energy which is fed into the grid for the purpose of wheeling it to a distant consumer is not physically carried by the transmission and distribution system all the way to the consumer from the point at which it has been fed into the grid. The energy, more particularly from small capacity generating plants, is consumed by nearby loads. In doing so, the corresponding losses in respect of the energy consumption by nearby loads, is significantly reduced. There is also a reduction in the transformation losses associated with this energy. Additionally, transmission capacity is released such that the existing transmission system can handle larger quantities of

energy, which is tantamount to resulting in additional transmission capacity. The consequences that follow from the situation, particularly in terms of the effect on transmission and distribution losses and the use of the transmission system and the associated costs of the distribution licensees, needs to be considered.

- h. That the transmission/distribution loss compensation for transmission / distribution should properly also appropriately take into consideration the directional sensitivity while determining the same on the basis of the average losses at the relevant voltage level of the system is recognised also by the National Tariff Policy (paragraph 7.2 read with paragraph 8.5.5), which is based upon the National Electricity Policy mandating that the tariff framework should be sensitive to distance, direction and related to quantum of power flow. That distributed generation of electricity causes substantial savings and losses and use of the transmission/distribution assets has been recognised by the Hon'ble Tribunal.
- i. On a due and proper appreciation of such relevant factors, taken together with the mandate to promote generation from renewable sources of energy, a general and promotional rate of wheeling charges which are reasonable and appropriate be determined for small generating stations.
- j. The network costs on the basis of kVA or kW/month does not take into consideration the cases of hydel and/or wind energy

where the generation and use of the transmission network or wheeling is not constant due to continuously varying generation depending upon the vagaries of nature and/or generation resources outside the control of the generating company.

- k. The generation of electricity from wind or mini hydel sources is not firm or constant. It varies from season to season according to the vagaries of nature and also according to the availability of water released for irrigation purposes. In the case of wind energy also, the generation varies from season to season according to the vagaries of nature. These sources of energy are invariably of small capacity.
- l. The existing wheeling agreements in such cases and also in the cases of certain other generating plants provide for wheeling in terms of units of energy wheeled and not in terms of capacity. There is no possible division of capacity to different consumers in different areas. There is no such thing as “contracted demand” in respect of the energy wheeled to which such charges may be applied.
- m. Petitioner’s power plant’s entry point is 132 Kv substation of APTRANSCO, therefore, it attracts Transmission Charges and Exit Point where the factory of the petitioner is drawing power in 33Kv potential from the 1st respondent’s substation, which attracts Wheeling Charges. In these circumstances both Transmission charges and Wheeling charges are applied, it will

be burdensome to the petitioner's power plant. As the petitioner's power plant's PLF is too low, the generating units are less, apart from the loans, interests and other liabilities, if burdened with levy of Transmission and Wheeling charges that too on installed capacity it will be highly difficult to run the power plant.

- o. If the determined transmission charges and wheeling charges are accepted the total of such charges would be around 46 lakhs per year apart from maintenance charges of the plant of about 30 lakhs, it would not be workable to the generator to sustain and it would be difficult to pay the bank interest and principle for the loans for the establishment of non conventional power plants.
- p. The fact that the consumption of electricity by the consumer nevertheless continues from the distribution licensee even if there is no generation from the generating company is relevant and needs to be taken into consideration. During the periods that there is a diminished generation or no generation, the charges have to be paid by the distribution licensee to the extent of supply made by them for which they have realised revenue. It is submitted that the basis of determination of the charges therefore requires reconsideration with regard to petitioner's power plants and similarly situated power plants.
- q. Having regard to the Preamble of the Act and the provisions of sections 86(1)(e) and 61(h) and the policy guidelines including

the MNES policy guidelines, the Commission ought to maintain and determine the transmission charges and wheeling charges for non-conventional energy sources at reasonable rates.

- r. The impugned order of the Commission was passed on 15.4.2019 and uploaded in the website, and petitioners sought for copy of the order by letter dated 4.6.2019 and was eventually made available by the office of the Commission on _____.6.2019.
- s. For the above reasons and for such other reasons as may be raised in the course of the proceedings, it is prayed that the Hon'ble Commission may be pleased to review the order dated 15.4.2019 passed in O.P. No.28 & 29 of 2018, and to review and re-determine the wheeling tariff thereunder in respect of the Petitioner's wind power plants and/or such similar or similarly placed power plants.
- t. That the policy of the state government under Wind Policy, 2015 exempted Transmission and Wheeling charges for Wind Power Projects setup during the control period either for captive users or 3rd party sale for a period of 10 years and the same has been accepted by the Hon'ble Commission in OP.No.62 of 2013 and OP.No.66 and 70 of 2014, Transmission and Wheeling charges issued for control period 2014-19. The projects covered by the said period continue to avail the said incentive for a period 10 years. This policy was also adopted by making necessary amendments to Clause 17.1 of the

Regulation No.2 of 2005 through Regulation 1 of 2016. The Hon'ble APTEL held in its order dt.24.5.2013 in Appeal no.197 &198 of 2012 that the non conventional power projects cannot be differentiated depending upon their commissioning. Therefore, as the incentives are given considering their kind of generation plant, being to encourage the generation from the non conventional sources, such differences shown amounts to discrimination.

- u. That event wheeling charges are leviable it is submitted that in the other states such as Tamilnadu and Karnataka etc are 50% 25% of the wheeling charges determined for conventional power plants were levied on the non conventional power plants on the wheeled units where as in our state it is determined at 61.16ps per KW. Moreover, the wheeling loss in those States are higher than that of our State. There is no such difference sought out in the impugned order for non conventional power projects.
 - v. The petitioners reserve their right to file additional grounds in support of the present Review Petition if they are so advised.
 - w. Any other ground or grounds that may be urged at the time of hearing.
13. This Hon'ble Commission passed the order on 15.4.2019 and on uploading the same in the website of the Commission, the petitioners have approached the Hon'ble Commission on 24.4.2019 for issuance of certified copy of the order and after

compliance of the procedure of payment of the fee the copies of the orders were issued. In the meanwhile the petitioners approached their counsel for seeking advise on the orders and on furnishing of the copies of the orders the petitioners are advised to file review on said order, hence the present petition is filed. In this process there occurred delay in filing the review, which is neither willful nor wanton. For the reasons stated above the petitioners therefore prays this Hon'ble Commission to condone the delay in filing the present in the interest of justice.

14. The requisite fee of Rs.12,500/- is paid by way of Demand Draft..... which is enclosed to this Review petition.

15. PRAYER

In these circumstances and for the facts and reasons stated above it is therefore prayed that the Hon'ble Commission may be pleased to review the orders dated 15.4.2019 in O.P.No.28 & 29 of 2019 to the extent of determination of wheeling tariff in respect of the energy wheeled from petitioner's Wind Power Projects for captive use and pass such other order or orders as this Hon'ble Commission may deem fit and proper in the circumstances of the case.

Hyderabad

Date: 22.7.2019

PETITIONER NO.1

COUNSEL FOR THE PETITIONER