

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

R.P.No.1 of 2015 & I.A.No.10 of 2015
Dated: 17-10-2015

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

Between:

Transmission Corporation of
Andhra Pradesh Limited

... Petitioner/Applicant

A N D

Deccan Cements Ltd.
ITC Limited
NILE Limited

... Objectors

The Review Petition and the Interlocutory Application have come up for hearing finally on 03-10-2015 in the presence of Sri P. Shiva Rao, learned Standing Counsel for the petitioner/applicant, Sri K. Gopal Choudary and Sri Challa Gunaranjan, learned counsel appearing for objector Nos.1 and 2. After carefully considering the material available on record and after hearing the arguments of both the counsel, the Commission passed the following:

ORDER

A petition under Section 94 (1) (f) of the Electricity Act, 2003 read with Regulation Nos.56 and 59 of APERC (Conduct of Business Regulations),1999 for review of the order of the erstwhile Andhra Pradesh Electricity Regulatory Commission dated 09-05-2014 determining the transmission tariffs for the period FY 2014-15 to FY 2018-19.

2. Transmission Corporation of Andhra Pradesh Limited (AP Transco) / Applicant found fault with the order in question with reference to the aspect of reimbursement of the exempted transmission charges for solar, wind and mini hydel generation and computation of such generation in contracted capacities of the Distribution Companies. The Applicant claimed the impugned order to be inconsistent with the

Government Solar Policy of 2012, Government Wind Policy of 2008 and Government Policy for NCE Projects including Mini Hydel Power Plants of 1987 in giving total waiver for solar, wind and mini hydel generators for the 3rd control period of 2014-19, more so without providing for any reimbursement from the Government. The Applicant apart from other things, claimed the respective policies to be in operation during different periods. The Applicant also raised the question of foregoing revenue to the extent of power procurement from solar, wind and mini hydel developers by the Distribution Companies, if they do not pay the transmission charges for that capacity though bills are raised by the Applicant for transmission charges of the Distribution Companies.

3. After condonation of delay in filing the Review Petition and after a public notice soliciting views / suggestions / objections of all the stakeholders, three objectors filed their objections before the Commission, two of them being represented by their counsel.

4. Deccan Cements Ltd., in its objections contended that the Commission rightly exempted Non-Conventional Energy generation from transmission tariff as per the mandate of the Electricity Act, 2003 to encourage green and Non-Conventional sources of energy and for a specific reason in tune with the policies of the State and the Central Governments and the exemption should be extended to NCE plants which were in operation since earlier also. The Applicant started issuing bills, levying transmission charges on NCE generators, who are selling power to third parties even before any review was made, which is unjust.

5. ITC Limited in its objections, as captive power generator from 7 wind mills, claimed that the Review Petition is barred by time. The Commission consciously and specifically provided in the impugned order, the present exemption after considering

the Government policies from time to time and the legislative policy and the mandate under Section 86 (1) (e) of the Electricity Act, 2003. There was no omission or error and the references to the contracted capacities of the Distribution Companies are vague and obscure. To the extent that solar, wind and mini hydel sources are fully embedded within the distribution system i.e., the injection point is within the distribution system and use of the energy is within the same distribution system, there are no transmission assets being utilised and there can be no transmission charges in such cases. Any other computations or other aspects of the tariff order cannot be corrected by review and the maintainability of the Review Petition and the jurisdiction of this Commission also have to be considered, the transmission Tariff Order being with reference to the undivided Andhra Pradesh. I.A.No.10 of 2015 filed for an interim direction has no *prima facie* case or balance of convenience to be ordered and the Applicant approached the Commission with unclean hands having already collected transmission charges from the objector in contravention of the Tariff Order.

6. NILE Limited in its objections through a letter dated 28-05-2015 desired that the wind generators should be exempted from the transmission charges irrespective of new or old projects in line with the Government policy and without linking the same to reimbursement from the Government.

7. Sri P. Shiva Rao, learned Standing Counsel for the Applicant, Sri K. Gopal Choudary and Sri Challa Gunaranjan, learned counsel for the two objectors respectively are heard and NILE Limited is unrepresented before the Commission during the hearing.

8. The point for consideration is whether the request for review is sustainable either in law or on facts?

9. The impugned order of the erstwhile Andhra Pradesh Electricity Regulatory Commission determining the transmission charges for FY 2014-15 to FY 2018-19 is an elaborate and reasoned order duly following all the prescribed procedures and formalities and referring extensively to the data, background and circumstances for various conclusions of the Commission.

10. On the issue of promoting Non-Conventional Energy, the Commission specifically referred to the Solar Policy of the Government of Andhra Pradesh under G.O.Ms.No.39 dated 26-09-2012 which mandated no transmission charges for solar energy producers. That apart, Commission specifically referred to Commission being required under Section 86 (1) (e) of the Electricity Act, 2003 to promote Non-Conventional Energy and its consequent decision to exempt solar, wind and mini hydel generators from wheeling charges. In tune with the said decision expressed at Page No.19 of the Tariff Order, Notes on Transmission Tariff Item (i) at Page No.74 and again at Item 1 at Page No.77 mentioned that in line with Government Policy, there shall be no Transmission Charges for Non-Conventional Energy generators of using Wind, Solar and Mini hydel.

11. The Applicant primarily seeks to take advantage of the said reference in the notes on the transmission tariff to the exemption from transmission charges being “in line with Government policy”. The contention is with reference to the different Government policies on different NCE sources never contemplating total exemption from transmission charges. Though the operative portion of the Tariff Order made no specific reference to it, the Commission expressly stated in its reasoning at Page 19 that it was exercising its jurisdiction under Section 86 (1) (e) of the Electricity Act, 2003 in this regard in taking the decision to exempt solar, wind and mini hydel generators from wheeling charges. Section 86 (1) (e) of the Electricity Act, 2003 makes

it a function of a State Commission to promote co-generation and generation of electricity from renewable sources of energy by providing suitable measures for connectivity with the grid and sale of electricity to any person and if in discharge of its statutory function, the Commission performed its duty of promoting generation of electricity from renewable sources of energy, it is definitely within its jurisdiction and the mere absence of reference in the notes on transmission tariff to Section 86 (1) (e) does not make the decision any less binding or legal or reasonable or justifiable. The legislative intention and mandate are further reiterated when it was prescribed that the Commission shall be guided in specifying the terms and conditions for the determination of tariff by promotion of co-generation and generation of electricity from renewable sources of energy under Section 61 (h) of the Electricity Act, 2003. In any view, the merits of the decision of the Commission cannot be the subject of a review when it does not fit in any of the parameters of Order XLVII Rule 1 of the Code of Civil Procedure, 1908 as what has been conferred under Section 94 (1) (f) of the Electricity Act, 2003 on the Commission are powers as are vested in a Civil Court for review.

12. The question raised by the objectors about the entitlement of old Non-Conventional Energy generators to incentives or the request of the Applicant for providing for reimbursement of exempted transmission charges from the Government or the issues raised about the contracted capacities of the distribution companies or the consequences of the contingency of Distribution Companies not honouring the demand for transmission charges from the Applicant or the Applicant issuing bills levying or collecting transmission charges from any Non-Conventional Energy generators are not germane for the inquiry herein and a review cannot lie solely on the ground of any loss of revenue or expenditure for evacuation for the Applicant. It is open to any generator or the Applicant to take recourse to any remedies available to them under law in respect of issues considered not germane and hence not decided

in this inquiry. The issue raised regarding the Review Petition being barred by time is of course unsustainable as the delay in filing of the review petition is condoned by this Commission in exercise of its jurisdiction, after the delay condonation petition has been brought to the notice of all the stakeholders through publication on the web site of this Commission on which no stakeholder intimated or presented any objections to this Commission in any manner.

13. Sri K. Gopal Choudary, learned counsel reiterating the objections of ITC Limited also referred to the impugned order made by the erstwhile Andhra Pradesh Electricity Regulatory Commission being contended to be not susceptible to the jurisdiction of this Commission either due to non maintainability in respect of transmission system of the residual State of Andhra Pradesh alone or due to want of jurisdiction for reviewing any exemption granted for the entire undivided State by this Commission. Though there is considerable and may be, sufficient force in the contention of the learned counsel, no expression of opinion is being made on the same herein as identical issues are pending determination by the Commission in some other matters and as ex-facie, the petition for review does not lie on merits.

14. For the reasons above stated, as the request for review is unsustainable on facts and law, the question of granting any relief does not arise, while no interim relief has been granted since the filing of I.A.No.10 of 2015 for interim orders to enable the Applicant to collect transmission charges from wind and mini hydel developers.

15. In the result, R.P.No.1 of 2015 and I.A.No.10 of 2015 therein are dismissed. The parties shall bear their own costs.

This order is corrected and signed on this the 17th day of October, 2015.

Sd/-
Dr. P. Raghu
Member

Sd/-
Justice G. Bhavani Prasad
Chairman