

ANDHRA PRADESH ELECTRICITY REGULATORY COMMISSION

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

R.P.No.12 of 2015 & I.A.No.20 of 2015

Dated: 19-12-2015

Present

Sri Justice G. Bhavani Prasad, Chairman

Sri P. Rama Mohan, Member

Between:

1. Southern Power Distribution Company of
Andhra Pradesh Limited

2. Eastern Power Distribution Company of
Andhra Pradesh Limited

... Petitioners/Applicants

A N D

-Nil-

... Respondent

The Review Petition and the Interlocutory Application have come up for hearing finally on 28-11-2015 in the presence of Sri G.V. Brahmananda Rao, learned counsel representing the learned Standing Counsel for the petitioners/applicants and Sri P.S.S. Prasanna, representing ITC Limited, Objector representing Sri K. Gopal Choudary, Advocate. After carefully considering the material available on record and after hearing the arguments of the parties present, the Commission passed the following:

ORDER

A petition under Section 94 (1) (f) of the Electricity Act, 2003 for review of the Commission's order dated 09-05-2014.

2. The petitioners are the distribution licensees in the State of Andhra Pradesh and were aggrieved by the order of the Commission dated 09-05-2014 fixing the wheeling charges for the distribution business for the control period 2014-15 to 2018-19 exempting all Non-Conventional Energy Generators using wind, solar and mini hydel sources from wheeling charges stating the same to be in line with the

Government policy. Claiming that the policy in respect of wind and mini hydel developers expired by April, 2013 as mentioned in Advisory No.2 issued by the erstwhile Andhra Pradesh Electricity Regulatory Commission and that the Government's Solar Policy of 2012 applies to the projects commissioned before June, 2014, the petitioners questioned the exemption. Earlier, uniform incentives to all categories of NCE projects including mini hydel power plants were announced by the Government of Andhra Pradesh vide G.O.Ms.No.93 dated 18-11-1997 and the Government has not offered any monetary reimbursement for waiver of the wheeling charges which causes loss to the distribution licensees. The Commission also did not exempt the distribution licensees from payment of the transmission charges for the power procured from NCE developers and the tariff orders are also ambiguous as to whether exemption was only for captive use / third party sales and hence the tariff order may be duly revisited and reviewed.

3. The Review Petition was filed along with I.A.No.13 of 2015 to condone the delay of 170 days in filing the Review Petition. The said Interlocutory Application and verifying affidavit were placed on the website of the Commission for reference of all the stakeholders inviting their responses / objections on or before 31-03-2015. There was no response to this public notice and after hearing the learned Standing Counsel for the petitioners, I.A.No.13 of 2015 was allowed on payment of costs of ₹5,000/- to the account of the Commission and the delay was condoned.

4. After the Review Petition was taken on file along with I.A.No.20 of 2015 filed for an interim direction to enable the petitioners to collect the wheeling charges, again a public notice was placed on the website of the Commission along

with copies of the petition and the application. The copies of the petition and the application were also made available at the specified offices of the petitioners and also on the websites of the petitioners. All interested persons / stakeholders were requested to place their views / objections / suggestions before the Commission before 28-07-2015. The stakeholders were also informed about the hearing by the Commission on 31-07-2015.

5. Objections were received from RPP Limited and ITC Limited -ABD - ILTD.

6. RPP Limited firstly contended that the Review Petition is barred by time, claiming ignorance about any application to condone the delay. The contentions of the Review Petitioner were claimed to be vague, confusing and mixing up issues and the Commission considered all the policies of the State Government from time to time and having regard to the legislative policy and the mandate to promote renewable energy sources like under Section 86 (1) (e) of the Electricity Act, 2003, the Commission took a conscious decision to exempt. The transmission tariff order or the absence of any exemption there-under is not relevant and the balance of convenience is not in favour of any interim direction.

7. The objections of ITC Ltd - ABD - ILTD are also identical.

8. Sri P. Shiva Rao, and Sri G.V. Brahmananda Rao, learned counsel for the petitioners and Sri K. Gopal Choudary, learned counsel for the objectors were heard and orders passed by this Commission in R.P.No.1 of 2015 & I.A.No.10 of 2015 dated 17-10-2015 relating to the Transmission Corporation of Andhra Pradesh Limited were brought to the notice of both parties.

9. The point for consideration is whether the order in question is liable to be reviewed.

10. R.P.No.1 of 2015 on the file of this Commission was with a request to review the order of the erstwhile Andhra Pradesh Electricity Regulatory Commission determining the transmission charges for FY 2014-15 to FY 2018-19 and the questions raised therein and the objections of the objectors therein are identical, as raised herein.

11. In that order also, the Commission stated that there shall be no transmission charges for Non-Conventional Energy Generators using wind, solar and mini hydel sources. The Commission specifically referred to in the said order its duty 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 the orders on R.P.No.1 of 2015 dated 17-10-2015, this Commission has therefore opined that if the Commission in discharge of its statutory function and duty of promoting generation of electricity from renewable sources of energy granted an exemption, it is clearly within its jurisdiction and power. If Section 86 (1) (e) and Section 61 (h) of the Electricity Act, 2003 mandate the Commission to be guided in specifying the terms and conditions for determination of tariff, by the need to promote co-generation and generation of electricity from renewable sources of energy, the same cannot be considered not legal or reasonable. Like herein, questions were raised therein also about the absence of reimbursement of exempted charges from the Government, the contracted capacities of the distribution companies and other issues which are not germane for this inquiry. The Commission stated therein that review cannot lie solely on the ground of expenditure for evacuation for the applicant. Consequently such issues were left open. Facts in issue R.P.No.1 of 2015 and the reasoning and the conclusions of the Commission in the order thereon apply on all

fours to the questions of fact and law involved herein also and this Review Petition also should fail for the same reasons.

12. About the objections of the objectors about the delay in filing the Review Petition, as already stated, the Interlocutory Application for condonation of delay was put on public notice on the website of the Commission and in spite of a reasonable opportunity, no stakeholder has come forward with any views / objections in that regard. The Commission well within the exercise of its jurisdiction, condoned the delay on appropriate terms as to payment of costs and the question cannot be reopened at this stage.

13. Even assuming that there was no policy of the State Government in force relating to wind and mini hydel developers as on the date of the order of the Commission and even assuming that the exemption granted without any scope for any reimbursement for any distribution losses on any expenditure incurred by them is financially burdensome, the same are no grounds for review. Power of review conferred on Commission is the same as that conferred on a civil court by virtue of the specific language of Section 94 (1) of the Electricity Act, 2003 and that power of review is restricted and limited and never on merits. Similarly, the question whether exemption could have been specifically restricted to third party sales or captive consumption or the impact of the exemption on the contracted capacities or the need for any redetermination of wheeling charges for others etc., are questions not relevant herein. While no interim orders are granted in I.A.No.20 of 2015 pending the main Review Petition, the Review Petition has to therefore fail.

14. The learned counsel for the objectors also raised questions about the jurisdiction of this Commission to review the orders of the erstwhile Commission which contention may have sufficient force but unnecessary to be decided herein, in view of the conclusions on merits. The claim of the objectors that the petitioners were collecting wheeling charges in spite of the exemption granted by the Commission and even in the absence of any stay or suspension during the pendency of this Review Petition may entitle them for an appropriate relief in an appropriate proceeding before an appropriate Forum, which cannot be the subject of the inquiry in the Review Petition and hence, no opinion is expressed on the truth or otherwise of the claim.

15. Therefore, the Review Petition No.12 of 2015 and I.A.No.20 of 2015 are dismissed. The parties shall bear their own costs.

This order is corrected and signed on this the 19th day of December, 2015.

Sd/-
P. Rama Mohan
Member

Sd/-
Justice G. Bhavani Prasad
Chairman