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

O.P.No.35 of 2014 & I.A.No.8 of 2014
Dated: 07-04-2016

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

Between:

M/s. RVK Energy Pvt. Ltd.
Plot No.484/A, Road No.36
Jubilee Hills, Hyderabad – 500 033 … Petitioner/Applicant

A N D

1. The Chief Engineer
   Vijayawada Zone
   A.P. Transco, Gunadala
   Krishna Dist., Vijayawada

2. APTRANSCO
   Rm-301, 3rd Floor, Block-A
   Vidyut Soudha, Somajiguda
   Hyderabad, Andhra Pradesh 500 082 … Respondents / Respondents

The petition has come up for hearing finally on 20-02-2016 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 counsel, the Commission passed the following:

O R D E R

A petition for refund of ₹45,41,001/- deducted by the 2nd respondent from the payments to be made to the petitioner for the supplied power in the months of November and December, 2012 and January and February, 2013 with interest @24% per annum from the date of deduction till the disposal of the case and again from the date of the order till the date of realization and costs and also to restrain the respondents from levying further charges towards line and bay maintenance expenses till the disposal of the main petition.

2. The petitioner's case is that the energy generated in its plant is pumped into the A.P. State Power Grid for which the petitioner is paying the wheeling charges to the 2nd respondent. The 1st respondent by a letter dated 09-11-2012 and subsequent letters demanded the petitioner to pay ₹45,41,001/- towards line and bay maintenance expenses from 17-01-2000 to 31-03-2012. The petitioner denied in its replies any liability for the demanded amount as it was paying the wheeling charges under the Wheeling Agreement dated 26-02-2000 till 23-07-2009 and a No Objection Certificate was granted to the petitioner for open access. Since the termination of the Wheeling Agreement on 23-07-2009, the petitioner was supplying power to A.P. Power Coordination Committee under short term LOIs paying the applicable transmission charges to the 2nd respondent and throughout, the petitioner is bearing the expenses incurred for maintenance of its feeder bay at 132/33 kV Machilipatnam Sub-Station. Wheeling charges were collected by the 2nd Respondent under Clause 2.7 of the Wheeling Agreement dated 26-02-2000 and Clause 2.6 of the Wheeling Agreement made the power generating company responsible for operating and maintaining the interconnecting line and dedicated network and quality and O & M of equipment installed at the interconnection point. Clause 5.2.1 of the Wheeling Agreement made the petitioner bear all the expenses incurred for maintenance of its feeder bay and no separate operation and maintenance charges need be paid by the petitioner. As the 2nd respondent is still insisting on payment of the demanded charges by letter dated 16-11-2012, the 2nd respondent made approval for synchronization of 4 numbers each 1.12 Mega Watt engines of the petitioner subject to three conditions including the payment of that amount and requiring an undertaking. The petitioner in its undertaking clearly agreed to pay the claimed amount after verification and ascertaining the entitlement for the said claim. However, the 2nd respondent illegally deducted the total amount from the power bills during the relevant period. In fact, the petitioner furnished all the details of the maintenance works carried out by it with a covering letter dated 28-03-2013 for which, there was no response and hence the petition.

3. The respondents 1 and 2 in their counter contended that the 2nd respondent is entitled to deduct the applicable wheeling charges based on the distance between the interconnection point and consumer's premises, but not the line between interconnection point and generating end. The demand charges include

both bay and line maintenance and the wheeling charges do not include the O & M charges for the line between interconnection point and generator premises and the bay at 132 kV Sub-Station, though Article 2.6 making the company responsible for operating and maintaining the interconnecting line and dedicated network, maintenance is carried out by the 2nd respondent at the company expense. AP Transo engineers were inspecting the line and were also carrying out the preventive maintenance works and as alleged, the exclusive maintenance of the interconnection line by the petitioner is hence not correct. The petitioner misconceived difference between interconnection point and consumer premises and interconnection point and generator premises. The petitioner did not raise any objection for payment of O & M charges, when it was approaching for vendor registration or synchronization and the deduction was made after number of letters and notices. Hence, respondents desired that the petition be dismissed with costs.

4. The petitioner filed rejoinder contending that from generating station to the interconnection specialty at 132 kV Machilipatnam Sub-Station, the entire expenditure of 132 kV towers and line for about 12 Kms and the interconnection facility which includes the bay which again consists of CT, PT, CVT, SF6 Breaker, Compressor, Relays and Energy Meters were borne by the petitioner and the petitioner is maintaining these facilities. Either respondent has no obligation to maintain or to collect any charges for the purpose of operation and maintenance. In fact, the fact is that the requirement for maintenance was communicated to the petitioner with an estimated cost and the petitioner is attending to the same. The demand is for undue enrichment and any monitoring of the maintenance activity is false. The respondents are in a dominant position, unilaterally imposing onerous conditions and the petitioner requested for allowing its petition.

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

6. The point for consideration is whether the petitioner is entitled for refund of any amount with interest and if so to what quantum and with what interest and whether the petitioner is also entitled to interim restraint against any demand and collection of such charges.

7. The Power Purchase and Wheeling Agreement dated 26-02-2000 governs the contractual obligation of the generator with AP Transco and it is Clause 5.2.1 of the Agreement that governs the interconnection facilities. The said Clause places responsibility solely on the generator to evaluate, design, install, operate and maintain the interconnection facilities at its expense as per the standards, requirements and approved makes of the equipment of AP Transco. Article 5 of the Agreement consisting of Clauses 5.1 to 5.6, no where places the relevant responsibilities on the AP Transco except when required by the generator, in which event alone, the AP Transco may establish the interconnection facilities on deposit and payment of the amounts due. Clause 2.6 in Article 2 of the Agreement also makes the company responsible for operating and maintaining the interconnection line and dedicated network and quality and O & M of equipment installed at the interconnection point by / for the company.

8. The copy of the letter of the Joint Managing Director, Vigilance & Security of the 2nd respondent dated 19-10-2012 filed by the respondents, shows that since inception upto that letter, no charges were ever collected from the petitioner towards the maintenance of interconnection facilities and a decision on that question was requested to be taken before approving the vendor registration. Either that letter or the subsequent letter from the Chief Engineer, AP Transco to the 1st respondent herein dated 07-11-2012 did not specify why the 2nd respondent is carrying out the operation and maintenance of the connecting line and bay though the Power Purchase and Wheeling Agreement dated 20-02-2000 was clearly stated by the Chief Engineer / IPC to be making the company responsible for the operation and maintenance of the interconnection facilities at the company's expense.

9. While the respondents did not prove through any documentary evidence that any installation or maintenance works were carried out by them on the feeder of the petitioner or incurred any expenditure towards the line and bay expenses, the very silence from 2000 to 2012 militates against the probability of such claims being true. When the contractual obligations between the parties do not impose any such obligations on the respondents and in fact, positive obligations were imposed on the petitioner under the agreement between the parties, as already referred to, the sudden claim for ₹45,41,001/- made at the end of 2012 appears neither convincing nor acceptable. Strangely, the initial

demand was for ₹4,02,412/- for 2010-11 and when the petitioner denied any such liability, the present demand suddenly surfaced for an exorbitant sum. In spite of the denials by the petitioner of any such liability, the amount was deducted from the amounts payable to the petitioner. The respondents conveniently claimed that they did not inform the petitioner about carrying out certain works such as free monsoon inspection, tree cutting, thermal scanning, rectification of hot spots, changing of insulation and maintenance of bay equipment, which claim itself shows that the petitioner never had notice of the respondents carrying out such preventive maintenance works. Thus, in the light of the admitted contractual obligations between the parties and in the absence of any proof that the parties acted to the contrary on any aspect, the defence of the respondents does not appear sustainable.

10. The very letter from the Joint Managing Director, Vigilance and Security of the AP Transco dated 19-10-2012 refers to a joint inspection disclosing that no charges were ever collected from the petitioner under this head since inception and it should also be remembered that in the transaction between the parties, the respondents always stood at a dominating position.

11. While the deduction is hence not sustainable on facts, it is seen from the demand that the respondents did not include any claim for damages or interest on the amount demanded and deducted from the amounts due to the petitioner only the amounts which in their opinion are due from the petitioner. Grant of interest is recognized to be a matter of judicial discretion of the Court or other adjudicating authority and the claim of the petitioner for the interest at 24% per annum or at any other rate from any date to any date need not be considered. It should also be remembered that the petitioner admittedly gave an undertaking affidavit may be under compelling circumstances to pay the amount subsequently deducted from its dues. It should also be remembered that the 2nd respondent is a public utility, devoted to public service without any profit making and for any default of any of its personnel, it need not be burdened with avoidable expenses towards interest and costs. On an overall view of the facts and circumstances, interests of justice will be served by directing the refund of the principal amount by the 2nd respondent while not awarding any interest or costs on the same, more so, when the petitioner admittedly did not pay any such maintenance charges from 2000 till now except the amounts deducted and it may not be totally untrue

that the personnel of the 2nd respondent might be attending to any emergency maintenance needs on the interconnection line even without the knowledge of the petitioner. Apart from the claim for interest and costs, the petitioner also sought for an interim restraint from levying further charges towards line and bay maintenance expenses in future till the date of disposal of this petition. However, even the petitioner did not claim that any such charges were levied by the respondents towards such expenses from the date of the petition till now and hence such a relief cannot be considered.

12. In the result, the 2nd respondent shall refund a sum of ₹45,41,001/- (Rupees forty five lakhs forty one thousand one only) to the petitioner within three (3) months from the date of this order and both parties shall bear their own costs in the petition. The petition is ordered accordingly. I.A.No.8 of 2014 for interim relief is dismissed as *infructuous*.

This order is corrected and signed on this the 7th **day of April, 2016**.

Sd/-	**Sd/-**	**Sd/-**
P. Rama Mohan	**Dr. P. Raghu**	**Justice G. Bhavani Prasad**
Member	Member	Chairman