

Record of Proceedings dated 20.06.2017

R. P. No. 7 of 2015

&

I. A. No. 15 of 2015

In

O. P. No. 13 / 2012 on the file of erstwhile APERC

M/s. Axis Energy Venture (India) Pvt. Ltd., & its subsidiaries Vs Indian Wind Energy Association, TSDISCOMs, APDISCOMs & Rayala Wind Power Co. Pvt. Ltd. (Implead petitioner)

Petition filed seeking to review the order dated 15.11.2012 passed in O. P. No. 13 of 2012, on the file of the erstwhile APERC.

I A filed for impleading the petitioner therein as respondent to the R.P.

Sri. V. A. N. Murthy, Advocate representing Sri. S. V. S. Chowdary, Advocate for review petitioner, Sri. Challa Gunaranjan, Advocate for the impleading petitioner and Sri. Y. Rama Rao, Standing counsel for the respondents alongwith Sri. B. Vijaya Bhaskar, Advocate are present. The advocate representing the counsel for the petitioner stated that the counsel is out of station on arbitral work and therefore he requested for adjournment. The counsel appearing for impleading petitioner stated that originally the petition was filed by the petitioner before the erstwhile APERC and the original petition was disposed of determining the tariff for the control period 2012-15 in the suo moto proceedings in O. P. No. 13 of 2012 on 15.11.2012. Subsequently, the review petition was filed for reviewing the said order. As it was not disposed of the said review petition in part relating to DISCOMs in Telangana has been transferred and re-numbered by this Commission in the above number. At the relevant time as a implead petitioner had interest in the order and was in the process of establishing generating capacity in both States of Telangana and Andhra Pradesh, sought to implead itself as party respondent to it.

The counsel for the DISCOMs stated that the review petition is not maintainable and moreover, it involves jurisdiction. The implead petition is also not maintainable as the generator was not even party to the original petition proceedings before the erstwhile APERC. The orders sought to be reviewed is not amenable to review by this Commission and the period for which it was applicable has already expired long back.

The Commission observed that the petition is involving jurisdiction as well as the Commission is awaiting wind policy from the government, therefore, it cannot be proceeded with. Accordingly, the same is adjourned without any date.

Sd/-
Member

Sd/-
Chairman

R. P. No. 1 of 2016
in
O. P. No. 11 of 2015

M/s. SLT Power & Infrastructure Projects Pvt. Ltd. Vs. GoTS Energy Department,
TSTRANSCO, TSSPDCL & NEDCAP

Petition filed seeking for reviewing the order dated 27.01.2016 passed in O. P. No. 11 of 2015.

There is no representation for the review petitioner. Sri. Y. Rama Rao, Standing counsel for the respondent alongwith Sri. B. Vijaya Bhaskar is present. In the absence of the review petitioner, the matter is adjourned without any date.

Sd/-
Member

Sd/-
Chairman

R. P. No. 3 of 2016
in
O. P. Nos. 6 & 7 of 2016

M/s. Binjusaria Ispath (P) Ltd. Vs. TSDISCOMs

Petition filed seeking to review the order dated 23.06.2016 passed in O. P. Nos. 6 & 7 of 2016.

Sri. N. Vinesh Raj, Advocate for the review petitioner and Sri. Y. Rama Rao, Standing counsel for the respondent alongwith Sri. B. Vijaya Bhaskar are present. The counsel for the petitioner sought review of the order determining cross subsidy surcharge for the year 2016-17 in O. P. Nos. 6 and 7 of 2016. It is his case that the DISCOMs sought determination based on the earlier policy of the Government of India and the policy changes were not acceded to, however, the revised formula was used for determination. In doing so, the surcharge resulted in a rate exceeding 20% of the applicable tariff for that category of consumers contrary to the National Tariff Policy (NTP). He also stated that the DISCOMs sought to interpret the alphabet 'T' in the formula to include demand charges, energy charges and customer charges. Assuming the same is accepted, even then, the surcharge determined by the Commission

exceeds 20% of the total tariff contrary to the provisions in the NTP of the Government of India.

The Counsel for the respondents stated that the determination is as per the NTP and the Commission had also adopted the formula given in the said policy. In respect of the formula, Meghalaya Commission has adopted and determined cross subsidy surcharge, which was upheld by the Hon'ble ATE on appeal. Therefore, there are no grounds for reviewing the order passed by the Commission.

The Commission having heard the submissions of the parties to the petition directed the counsel for the respondents to file his written submissions. The review petition is reserved for orders.

Sd/-
Member

Sd/-
Chairman

R. P. No. 4 of 2016
in
O. P. Nos. 6 & 7 of 2016

M/s. Anand Ispath Udyog Vs. TSDISCOMs

Petition filed seeking to review the order dated 23.06.2016 passed in O. P. Nos. 6 & 7 of 2016.

Sri. N. Vinesh Raj, Advocate for the review petitioner and Sri. Y. Rama Rao, Standing counsel for the respondent alongwith Sri. B. Vijaya Bhaskar are present. The counsel for the petitioner sought review of the order determining cross subsidy surcharge for the year 2016-17 in O. P. Nos. 6 and 7 of 2016. It is his case that the DISCOMs sought determination based on the earlier policy of the Government of India and the policy changes were not acceded to, however, the revised formula was used for determination. In doing so, the surcharge resulted in a rate exceeding 20% of the applicable tariff for that category of consumers contrary to the NTP. He also stated that the DISCOMs sought to interpret the alphabet 'T' in the formula to include demand charges, energy charges and customer charges. Assuming the same is accepted, even then, the surcharge determined by the Commission exceeds 20% of the total tariff contrary to the provisions in the NTP of the Government of India.

The Counsel for the respondents stated that the determination is as per the NTP and the Commission had also adopted the formula given in the said policy. In respect of

the formula, Meghalaya Commission has adopted and determined cross subsidy surcharge, which was upheld by the Hon'ble ATE on appeal. Therefore, there are no grounds for reviewing the order passed by the Commission.

The Commission having heard the submissions of the parties to the petition directed the counsel for the respondents to file his written submissions. The review petition is reserved for orders.

Sd/-
Member

Sd/-
Chairman

R. P. No. 5 of 2016
in
O. P. Nos. 6 & 7 of 2016

M/s. Sugna Metals Limited Vs. TSDISCOMs

Petition filed seeking to review the order dated 23.06.2016 passed in O. P. Nos. 6 & 7 of 2016.

Sri. N. Vinesh Raj, Advocate for the review petitioner and Sri. Y. Rama Rao, Standing counsel for the respondent alongwith Sri. B. Vijaya Bhaskar are present. The counsel for the petitioner sought review of the order determining cross subsidy surcharge for the year 2016-17 in O. P. Nos. 6 and 7 of 2016. It is his case that the DISCOMs sought determination based on the earlier policy of the Government of India and the policy changes were not acceded to, however, the revised formula was used for determination. In doing so, the surcharge resulted in a rate exceeding 20% of the applicable tariff for that category of consumers contrary to the NTP. He also stated that the DISCOMs sought to interpret the alphabet 'T' in the formula to include demand charges, energy charges and customer charges. Assuming the same is accepted, even then, the surcharge determined by the Commission exceeds 20% of the total tariff contrary to the provisions in the NTP of the Government of India.

The Counsel for the respondents stated that the determination is as per the NTP and the Commission had also adopted the formula given in the said policy. In respect of the formula, Meghalaya Commission has adopted and determined cross subsidy surcharge, which was upheld by the Hon'ble ATE on appeal. Therefore, there are no grounds for reviewing the order passed by the Commission.

The Commission having heard the submissions of the parties to the petition directed the counsel for the respondents to file his written submissions. The review petition is reserved for orders.

Sd/-
Member

Sd/-
Chairman

R. P. No. 6 of 2016
in
O. P. Nos. 6 & 7 of 2016

M/s. Salasaar Iron and Steel (P) Ltd. Vs. TSDISCOMs

Petition filed seeking to review the order dated 23.06.2016 passed in O. P. Nos. 6 & 7 of 2016.

Sri. N. Vinesh Raj, Advocate for the review petitioner and Sri. Y. Rama Rao, Standing counsel for the respondent alongwith Sri. B. Vijaya Bhaskar are present. The counsel for the petitioner sought review of the order determining cross subsidy surcharge for the year 2016-17 in O. P. Nos. 6 and 7 of 2016. It is his case that the DISCOMs sought determination based on the earlier policy of the Government of India and the policy changes were not acceded to, however, the revised formula was used for determination. In doing so, the surcharge resulted in a rate exceeding 20% of the applicable tariff for that category of consumers contrary to the NTP. He also stated that the DISCOMs sought to interpret the alphabet 'T' in the formula to include demand charges, energy charges and customer charges. Assuming the same is accepted, even then, the surcharge determined by the Commission exceeds 20% of the total tariff contrary to the provisions in the NTP of the Government of India.

The Counsel for the respondents stated that the determination is as per the NTP and the Commission had also adopted the formula given in the said policy. In respect of the formula, Meghalaya Commission has adopted and determined cross subsidy surcharge, which was upheld by the Hon'ble ATE on appeal. Therefore, there are no grounds for reviewing the order passed by the Commission.

The Commission having heard the submissions of the parties to the petition directed the counsel for the respondents to file his written submissions. The review petition is reserved for orders.

Sd/-
Member

Sd/-
Chairman

R. P. (SR) No. 40 of 2016
in
I. A. No. 2 of 2016
in
O. P. No. 10 of 2015

M/s. Sundew Properties Ltd. Vs. TSSPDCL

Petition filed seeking to review the order dated 04.08.2016 passed in I. A. No. 2 of 2016 in O. P. No. 10 of 2015.

Sri. P. Sri Ram, Advocate for the review petitioner and Sri. Y. Rama Rao, Standing counsel for the respondent alongwith Sri. B. Vijaya Bhaskar, Advocate are present. The counsel for the petitioner stated that the review petition is filed for reviewing the order dated 04.08.2016 in I. A. No. 2 of 2016. The review petitioner has already filed appeal against the order of the Commission in the origin petition and the same is pending consideration before the Hon'ble ATE. Therefore, he requested for adjournment of the present petition. The standing counsel for DISCOMs, while confirming the filing of appeal in Appeal No. 3 of 2017, stated that the petitioner cannot pursue two remedies at a time and that too in respect of same case.

The Commission is of the view that since the appeal is pending the matter cannot be proceeded with and therefore adjourned the matter without any date.

Sd/-
Member

Sd/-
Chairman

R. P.(SR) No. 59 of 2016
in
O. P. No. 94 of 2015

TSSPDCL & its CGM Vs. M/s. MLR Industries Pvt. Ltd.

Petition filed seeking to review the order dated 04.08.2016 passed in O. P. No. 94 of 2015 U/s. 94 (1) (f) of Electricity Act, 2003.

Sri. Y. Rama Rao, Standing counsel for the review petitioners alongwith Sri. B. Vijaya Bhaskar, Advocate and Sri. M. Mohan Rao, Advocate for the respondent are present. The standing counsel for the DISCOM stated that there were errors that have crept in to the order contrary to the record available on file and one aspect of the case that is agreement was required to be framed by the Commission under its regulatory power. It is his case that the necessary respondent SLDC has not been made party to the

original proceedings and that fact has been stated in the counter-affidavit also. However, it escaped the attention of the Commission. It is also his case that much prior to the filing of the petition, the original petitioner was put to terms including obtaining clearance from the SLDC, which has not been complied with and which was required to be considered by the Commission.

The counsel for the original petitioner sought to deny that there are errors in the order passed by the Commission and that the power generated by the original petitioner has already been drawn and enjoyed by the DISCOM. At this stage, it is not fair on the part of the licensee to take benefit and also deny reasonable return to the generator. It is the case of the counsel for the petitioner that the generator itself came forward to enter in to any agreement as may be decided by the licensee and that too gave it in writing. The counsel for the original petitioner pointed out that the order has not been complied with eventhough ten months have passed by.

The Commission pointed out the DISCOM instead of providing banking has enriched itself from the power pumped into the grid by the generator. Eventhough, the SLDC may be required to certify, it is ultimately the licensee, which has to provide banking. Nothing stopped the licensee from entering into an agreement with the generator at earlier point of time, which was in any case subject to regulatory scrutiny. Now the Commission has also issued necessary regulation in this regard. There is no reply from the counsel from the respondent except accepting the observation of the Commission.

Having heard the arguments of the counsel for the parties, both the counsels are directed to file written arguments within a period of one week by providing a copy to the other side. The matter is reserved for orders.

Sd/-
Member

Sd/-
Chairman

O. P. No. 8 of 2017

M/s. Shree Cement Limited Vs. TSSPDCL, Vedanta Limited & Bharat Aluminium Company Limited

Petition filed seeking to recover the amounts due from the respondents towards sale of power on short term basis U/s. 86 (1) (f) of Electricity Act, 2003.

Sri. M. Abhinay Reddy, Advocate representing Sri. P. Vikram, Advocate for the petitioner and Sri. Y. Rama Rao, Standing Counsel for the respondent alongwith Sri. B. Vijay Bhaskar, Advocate are present. The advocate representing the counsel for the petitioner stated that the matter is relating to the recovery of amounts due for the power supplied on short term basis. The counsel for the respondent stated that the matter is coming up for the first time and that therefore, he needs time to file counter-affidavit.

The Commission, considering the request of the standing counsel for the respondent, granted adjournment of the matter, however, without any date.

Sd/-
Member

Sd/-
Chairman

O. P. No. 10 of 2017

M/s. Arhyama Solar Power Pvt. Ltd., Vs. TSSPDCL

Petition filed seeking questioning the action of the respondent in not implementing provisions of regulations / orders issued by the Commission in respect of Balancing and Settlement Code of 2006.

Sri. G. Ranadheer, Manager of the petitioner alongwith Sri. N. K. K. Venkat, Consultant of the petitioner and Sri. Y. Rama Rao, Standing Counsel for the respondent alongwith Sri. B. Vijay Bhaskar, Advocate are present. Sri. Venkat stated that he is a consultant and has been engaged by the company to represent the petition. It is stated that the consumer availing supply from the generator is mulcted with additional charges relating to time of the day and also not reducing tariff for off peak period. The time of the day tariff is applicable to power drawn from the DISCOM and not for the supply availed under open access. The generator is already paying the said charges including network charges.

The counsel for the respondent stated that he is not ready with the matter and the same may be adjourned as necessary counter-affidavit is also required to be filed.

The Commission sought to know as to how the petitioner is aggrieved by the action of the licensee, when the end consumer is burdened with the charges, who should be before the Commission. It is the reply of the consultant that the amounts are being adjusted from the bill payable to the generator. The consultant sought to rely on clause

10.5 of Regulation No. 2 of 2006 and clause 8.3 also. At this stage, the Commission required the petitioner to place the agreement that it has entered with its consumer for supplying power.

In view of the request of the standing counsel for the respondent, the matter is adjourned without any date.

Sd/-
Member

Sd/-
Chairman

O. P. No. 11 of 2017

M/s. Sugna Metals Limited Vs. Officers of TSSPDCL

Petition filed seeking to punish the officers of the TSSPDCL for not implementing the orders of the Commission passed in O. P. No. 92 of 2015.

Sri. N. Vinesh Raj, Advocate for the review petitioner and Sri. Y. Rama Rao, Standing counsel for the respondent alongwith Sri. B. Vijaya Bhaskar are present. The counsel for the petitioner stated that the Commission passed orders in favour of the petitioner on 20.01.2016 and the orders have to be implemented by 03.02.2016. The licensee implemented the order on 02.08.2016. Under section 142 of the Act, 2003, the licensee is liable for punishment and therefore, petitioner has filed the present petition to punish the officers of the licensee and to recover penal charges from the date of the order to be implemented till it is finally implemented and also penalty for not paying the fine imposed by the Commission upto the filing of the petitioner and further.

The counsel for the respondent stated that there is a delay in complying the order of the Commission but it has been complied with after a period of four months, however, the petitioner cannot seek penalty over fine also that is running into lakhs of rupees. He also stated that the licensee is filing counter-affidavit today.

The Commission, at the request of the parties, adjourned the hearing without any date.

Sd/-
Member

Sd/-
Chairman

O. P. No. 20 of 2016

&

I. A. No. 13 of 2016

M/s. Sugna Metals Limited Vs. Officer's of TSSPDCL

Petition filed seeking to question the action of DISCOM in not implementing the order of the CGRF and to punish the licensee under Sec. 142 of the Electricity Act, 2003.

I. A. filed seeking for interim orders not to disconnect the power supply pending disposal of the original petition.

Sri. N. Vinesh Raj, Advocate for the review petitioner and Sri. Y. Rama Rao, Standing counsel for the respondent alongwith Sri. B. Vijaya Bhaskar are present. The counsel for the petitioner stated that the petition is filed for punishing the officers of the licensee in not implementing the order of the CGRF. The counsel for the respondents stated that he needs further time for implementation of the said order and for filing counter-affidavit. He reiterated the contention that in the event of orders of CGRF and Ombudsman being arbitrary, without application of mind or absurd, then the licensees have no remedy to appeal and there is no appellate forum provision, which is, otherwise, given to the consumer.

Since the counsel for the petitioner is insisting on implementation of the orders of the CGRF, as the respondents need more time to reply to the present petition and also comply with the said orders, the matter is adjourned without any date. However, it is made clear to the counsel for the respondents that the respondents should report about the action taken for complying with the orders of the CGRF by the next date of hearing.

Sd/-
Member

Sd/-
Chairman

O. P. No. 27 of 2016

M/s. Sugna Metals Limited Vs. Officer's of TSSPDCL

Petition filed seeking to question the action of DISCOM in not implementing the order of the CGRF and to punish the licensee under Sec. 142 of the Electricity Act, 2003.

Sri. N. Vinesh Raj, Advocate for the review petitioner and Sri. Y. Rama Rao, Standing counsel for the respondent alongwith Sri. B. Vijaya Bhaskar are present. The counsel for the petitioner stated that the petition is filed for punishing the officers of the licensee in not implementing the order of the CGRF. The counsel for the respondents stated that he needs further time for implementation of the said order of CGRF and Ombudsman and for filing counter-affidavit. He reiterated the contention that in the event of orders being arbitrary, without application of mind or absurd, then the

licensees have no remedy to appeal and there is no appellate forum provision, which is, otherwise, given to the consumer.

Since the counsel for the petitioner is insisting on implementation of the orders of the CGRF, as the respondents need more time to reply to the present petition and also comply with the said orders, the matter is adjourned without any date. However, it is made clear to the counsel for the respondents that the respondents should report about the action taken for complying with the orders of the CGRF by the next date of hearing.

Sd/-
Member

Sd/-
Chairman

O. P. No. 6 of 2017
&
I. A. No. 21 of 2017

M/s. Mytrah Vayu (Godavari) Pvt. Ltd. Vs. TSSPDCL & TSTRANSCO

Petition filed seeking to amend the PPA concerning evacuation and metering arrangements.

I. A. filed seeking for directions to the respondents to release the withheld payments to the tune of Rs. 21.75 crores immediately and to pay the monthly power purchase bills regularly.

Sri. Challa Gunaranjan, Advocate for the petitioner and Sri. Y. Rama Rao, Standing counsel for the respondent alongwith Sri. B. Vijaya Bhaskar are present. The counsel for the petitioner stated that the matter was adjourned on the earlier occasion at the behest of the counsel for the respondent, who sought to report to the Commission with regard to the time that is required for installing meters at the choice of the place identified by the licensee. He also stated that pending adjudication with regard to location of meters in the main petition, the Commission may direct the licensee to release the payments due towards power supplied for the period January, 2017 to April, 2017. He sought to rely on the arguments made in the earlier date of hearing.

The counsel for the respondent sought further time with regard to clarifying the time required for shifting of the meters as there are several administrative procedures, which need to be followed between transmission and distribution licensees. It is also imperative on the respondents to undertake the shifting of the meters in accordance with the agreement as per directions of the Commission and regulations in vogue. He

also stated that though approximately two months time is required, unless the transmission licensee clears the same and decision is taken by the management of the DISCOM then only actual period starts.

To a particular question as regards obtaining consent to the power purchase agreement with the petitioner, the counsel for the respondent stated that the erstwhile Joint Regulatory Commission for A. P. and Telangana had by letter dated 01.08.2014 required licensees to enter into agreement in line with the model PPA provided by them and no further action is required from the Commission, Pursuant thereto, the licensee entered into PPA with the applicant and forwarded it to the Commission in April, 2015 for favour of record. At this stage, it was observed by the Commission that the PPAs in particular and agreements in general are required to be examined in respect of the consideration set out between the parties. Since, the tariff is the prime component of the PPA, it had directed each PPA signed by the licensee to be sent for the Commission's approval. The PPA in the present case is not consented by the Commission and therefore, the payment of amounts or cognizance of the dispute cannot be entertained, however, as power had already been drawn by the licensee and payments were effected for some time, the same is not fair on the part of the licensee to withhold further amounts.

Considering the submissions of the rival parties, the licensee is directed to release the payment of 75% of the amounts due to the applicant from January, 2017 to May, 2017 subject to the PPA to be scrutinized and consented by the Commission as well as the issue pending in this petition. Accordingly, the Commission reserves the order in the interlocutory application and the main petition is adjourned without any date.

Sd/-
Member

Sd/-
Chairman