



TELANGANA STATE ELECTRICITY REGULATORY COMMISSION
5th Floor, Singareni Bhavan, Red Hills, Hyderabad-500 004

R. P. No. 8 of 2015

Dated: 20.01.2016

Present

Sri. Ismail Ali Khan, Chairman
Sri. H. Srinivasulu, Member
Sri. L. Manohar Reddy, Member

Between

Transmission Corporation of Telangana Limited
(TSTRANSCO),
Vidyutsoudha, Somajiguda, Hyderabad.

.... Petitioner

AND

Nil.

.... Respondents

This petition and application having come up for hearing on 28.01.2015, 13.04.2015, 22.06.2015, 08.09.2015, 04.11.2015, 23.11.2015, and 23.12.2015. Sri. P Shiva Rao, Advocate for the petitioner along with Sri. G. V. Brahmananda Rao Advocate appeared for the petitioner on 28.01.2014. Sri. Y. Rama Rao, Standing Counsel for the petitioner along with Sri. J. Ashwini Kumar and Sri. P. Venkatesh, Advocates appeared on various other dates mentioned above. The petition having stood for consideration to the date, the Commission passed the following:

ORDER

M/s. Telangana State Transmission Corporation Limited (TSTRANSCO) (review petitioner) has filed a petition seeking review of the order dated 09.05.2014 passed in respect of transmission tariff for the period 2014 – 2015 to 2018 – 2019 under sec 94 (1) (f) of the Electricity Act, 2003 and relevant provisions of conduct of business regulation, 1999 (CBR). This petition was originally filed before the erstwhile APERC. Upon constitution of this Commission, the same was transferred and was taken up for hearing by registering in the SR at the same stage.

2. The review petitioner has stated that exemption of transmission charges to solar, wind and mini-hydel generation is sought to be reviewed in this petition. The erstwhile APERC had issued multiyear transmission tariff order for the years 2014-2019 wherein it is given that “in line with the government policy, there shall be no transmission charges for non-conventional energy generators using wind, solar and mini-hydel”. The solar policy was announced by the erstwhile Government of Andhra Pradesh (GoAP) in 2012 vide G. O. Ms. Nos. 39 dated 26.09.2012 and 44 dated 16.11.2012 and the erstwhile government has given certain concessions under the policy to the solar developers who commission the projects before June, 2014. The same are as extracted in the petition as stated below.

- i) No wheeling and transmission charges for wheeling of the power generated from the solar power projects to the desired locations for captive use / third party sale within the state through grid system, subject to industries maintaining the demand within its contracted demand.
- ii) Cross subsidy surcharge will not be applicable for utilization within state.
- iii) The projects are exempted from payment of Electricity duty etc.

3. The review petitioner stated that the solar power policy is applicable from the date of issuance to 2017. Now the Commission has issued multiyear transmission tariff order for the years 2014-2019 wherein it has held that “in line with the government policy, there shall be no transmission charges for non-conventional energy generators using wind, solar and mini-hydel”. The Commission has not given any guidelines on this waiver of transmission charges. There are certain contradictions in between the tariff order and government solar policy 2012 which are tabulated below.

Sl.No.	Government Solar Policy 2012	APERC Order
1.	Government has given waiver for only solar developers	APERC has extended the waiver for wind and mini - hydel also.
2.	Government Policy is applicable up to 2017 only	APERC has not fixed any time limit in the tariff order for waiver
3.	The Govt. Solar Policy is applicable for generators who commission their projects before June, 2014	There is no such limit in APERC order

4.	The Govt. has not offered any monetary reimbursement for this waiver	APERC has also not mentioned about the amount of loss due to this waiver
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4. The review petitioner has requested to limit the exemption of transmission charges as per the government solar policy to only solar developers who have commissioned their units before June, 2014 and for a period up to 2017 only with a proper reimbursement mechanism from the government. It is stated that review petitioner is spending crores of rupees on evacuation schemes of solar, wind and mini-hydel projects. Without proper reimbursement mechanism if transmission charges are exempted for these generators, it will be detrimental to the financial position of review petitioner.

5. The review petitioner stated about the inclusion of solar, wind and mini-hydel generation in contracted capacities of DISCOMS. In the Commission's multiyear transmission tariff order issued for the years 2014-2019, it is held that "in line with the government policy, there shall be no transmission charges for non-conventional energy generators using wind, solar and mini-hydel". The erstwhile APERC has not exempted DISCOMS from payment of transmission charges for the power procured from solar, wind and mini-hydel as the capacities of the above generators also were included in contracted capacities of DISCOMS in the tariff order. Out of the total NCE capacities of 2114 MW included in the contracted capacities of DISCOMS for the year 2014-15, the solar consists of 361 MW, wind consists of 1064 MW and the mini-hydel consists of 106 MW totaling to 1531 MW.

6. The review petitioner is raising transmission charges on DISCOMS for this capacity also. If DISCOMS do not pay transmission charges for the capacity showing the clause of no transmission charges for solar, wind and mini-hydel generation, the review petitioner will fore go revenue to that extent. As the Commission has not included the capacity of 1531 MW in DISCOM contracted capacities then the transmission charges rate would have been more. It has requested to revisit the contracted capacities of DISCOMS duly taking into consideration the exemption clause and new rate of transmission charges may be arrived accordingly.

7. The review petitioner stated that all the above issues of tariff order as explained above may be taken on record and revise the tariff order by duly reviewing it. The Commission may permit it to make any additional submissions during the proceedings in support of the prayer. In view of the submissions made in the foregoing paragraphs, the review petitioner requests that the Commission may be pleased to consider and accept the review petition and effect the modification as sought in the review petition.

8. Heard the counsel for the petitioner and have also perused the record as filed by the petitioner.

9. The counsel for the petitioner and its representatives who have appeared on the respective dates of hearing have reiterated the submissions in the review petition and also pointed out the lapse on part of the erstwhile APERC in not noticing the absence any policy in respect of wind and mini hydel projects have been made by the then GoAP. There is revenue loss which is not taken care in the order.

10. Now we may briefly record what has been argued and what went through during the several hearings in the matter

28.01.2015

“Commission pointed out that in the case of fresh filing of tariff proposals for transmission, the issue can be addressed by the petitioner itself and Commission will decide the matter. Counsel requested that the matter be adjourned to another date on which date he will report whether he will prosecute the matter or not.”

13.04.2015

“He has stated that he is instructed to appear for the DISCOMs only today morning and would like take instructions to appear in this matter on filing vakalath and arguing the matter. Therefore, sought adjournment of the same.”

22.06.2015

“The counsel for the petitioner stated he is seeking review of the tariff order passed by the erstwhile Commission (APERC). The Commission pointed out that the matter amendment of the title and required that the petitioner to file the same by filing a fresh petition before it is taken up for hearing.”

08.09.2015

“The counsel for the petitioner sought adjournment of the matter stating that the matter involves the issue of jurisdiction as the petitioner is seeking review of the order passed by the erstwhile APERC determining transmission tariff for the control period 2014 to 2019 in the combined application filed by erstwhile APTRANSCO.

As it has a bearing a several issues and petitions before the Commission, the same is adjourned.”

04.11.2015

“The counsel for the petitioner stated that the review petition is filed for reviewing the order passed by erstwhile APERC on 09.05.2014 determining the tariff for transmission for the control period 2014-2019. This petition has a bearing on some of the petitions pending before the Commission.

The Commission pointed out despite direction from the Commission the transmission licensee did not file revised application for the control period 2015 – 2019 in the revised scenario of bifurcation of the state.

However, the petition is admitted. Office is directed to number the same and call for necessary data / information required for undertaking review of the order.”

23.11.2015

“The Counsel for the petitioner sought adjournment as material in support of the review petition is not filed before the Commission.

The Commission pointed out that in the absence of any orders from the Commission on the review petition and there being no challenge to the order, by the licensee, why the said order is not being implemented. It also noted that a similar review petition filed by M/s. APTRANSCO before APERC has already been dismissed stating that review cannot be undertaken in respect of an order passed in respect of combined state.

The Commission having regard to the position as is available and in the absence of necessary material being filed in the review petition accordingly adjourned for reporting whether the licensee is still inclined to pursue the present review petition.”

23.12.2015

“The Counsel for the petitioner sought adjournment as material in support of the review petition is not filed before the Commission.

The Commission expressed its displeasure that the licensee has chosen not to file the material as directed by it on the basis of which the review petition is being filed and prosecuted. It is also pointed out that in the absence of any orders from the Commission on the review petition and there being no challenge to the order, why the said order is not being implemented. It also noted that a similar review petition filed by M/s APTRANSCO before APERC has already been dismissed stating that review cannot be undertaken in respect of an order passed in respect of combined state.”

We were constrained to proceed to decide the matter in view of the matter being dragged on and the attitude shown in prosecuting the petition before the Commission.

11. The counsel for the review petitioner has stated that the review petition is filed and unless a decision is rendered by the Commission on the review petition, the licensee will be constrained not to implement the order dated 09.05.2014 in the

respect of transmission charges issued by the erstwhile APERC. In respect of wheeling charges, counsel for the review petitioner pointed out that the wheeling charges for the control period 2014-2019 were decided by the erstwhile APERC, however, after establishment of this Commission, the Commission directed filing of fresh proposals on wheeling charges and decided the same in O. P. No. 78 & 79 of 2015 which are applicable to the persons availing open access for the period 2015 to 2019. In these the said circumstances the earlier wheeling charges order dated 09.05.2014 shall be applicable for one year that is for the year 01.04.2014 to 31.03.2015. However, though similar action was proposed by the Commission, since the review petition is pending before the Commission, the same was not followed by the review petitioner.

12. We have given our anxious consideration to various contentions put forth by the parties to this case both written and oral.

13. We noticed that the order passed by the erstwhile APERC, either in respect of wheeling charges or transmission charges has not been reviewed, appealed to or modified, either by the erstwhile APERC or this Commission or the ATE upon appeal by the respective licensee, the said orders have to be implemented by the licensee in true letter in spirit. There cannot be any deviations in the implementation of the said orders in the absence of any order to the contrary by any authority. As there are no orders to the contrary to order of the Commission, the licensees should have at first instance implemented the tariff orders without fail.

14. The other issue which comes for consideration is whether a review of the order on transmission tariffs of the erstwhile APERC dated 09.05.2014 can be undertaken or not by this Commission since the order relates to combined state and the licensee, TSTRANSCO has undergone a change in its territorial composition and including power sector infrastructure quantum. In view of the change of composition of the licensee related to power sector infrastructure as well as quantum that is TSTRANSCO and in the absence of the relevant material of the combined state and or portion of original order is affecting in changed territorial composition the exercise of reviewing the order of transmission business, which cannot be undertaken by the Commission.

15. We may ostensibly notice a contention has been raised by the licensee in a connected case which we have heard together with this case, though feebly that is the application of the policy made by the erstwhile GoAP is not applicable to the state of Telangana. The review petitioner who sought to rely on this contention has either lost sight of the provisions of the law or has chosen to interpret it in narrowly. To appreciate this contention the provision of the A P Reorganisation Act, 2014 need consideration. While the Act itself has been made to create the two separate states of Telangana and the Andhra Pradesh fulfilling the aspiration of the people of Telangana, the provisions of the Act have made enunciating the position of law and its application while dealing several aspects of division of the state, at present we are concerned with the specifically application of law. In this regard we may aptly refer to sec 100 and 101 of the said Act in order to appreciate the contention of the respondent. Sec 100 and 101 read as follows.

“100. *Territorial extent of laws.* The provisions of Part II shall not be deemed to have affected any change in the territories to which the Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Act, 1973 and any other law in force immediately before the appointed day extends or applies, and territorial references in any such law to the State of Andhra Pradesh shall, until otherwise provided by a competent Legislature or other competent authority be construed as meaning the territories within the existing State of Andhra Pradesh before the appointed day.

101. *Power to adapt laws.* For the purpose of facilitating the application in relation to the State of Andhra Pradesh or the State of Telangana of any law made before the appointed day, the appropriate Government may, before the expiration of two years from that day, by order, make such adaptations and modifications of the law, whether by way of repeal or amendment, as may be necessary or expedient, and thereupon every such law shall have effect subject to the adaptations and modifications so made until altered, repealed or amended by a competent Legislature or other competent authority.

Explanation.— In this section, the expression “appropriate Government” means as respects any law relating to a matter enumerated in the Union List, the Central Government, and as respects any other law in its application to a State, the State Government.”

The above provisions make it clear that the law as was available before the appointed day in the combined state before the advent of the two states would continue to apply. The contention that is raised that the policy is erstwhile GoAP cannot apply to the state of Telangana is farfetched. Thus, the contention raised by the respondents is not sustainable and has to be rejected.

16. The contention is relating to the aspect of pendency of review petition filed by the review petitioner in the above number, which was originally filed before the erstwhile APERC and transmitted to this Commission pursuant to establishment of separate Commissions and renumbered here at SR stage, the Commission had on several dates of hearing required the counsel for the review petitioner to place on record in that matter all the material required for undertaking a review of the order dated 09.05.2014 of the erstwhile APERC. However, to the dismay of the Commission no material has been placed before the Commission. Therefore, the Commission is constrained to dispose of the review petition, in the absence of any material in support of it.

17. Consequently the review petitioner in this case is not entitled to any relief as prayed by it in the petition. The review petition is dismissed.

18. Before parting with this case, we also take judicial notice of the fact that a similar petition filed by M/s. Transmission Corporation of Andhra Pradesh Limited before APERC has been dismissed for the reason of lack of merits. In that view of the matter also the contentions raised by the review petitioner do not merit consideration. With the observations made above, the review petition is dismissed leaving the petitioner to bear its own costs.

This order is corrected and signed on this 20th day of January, 2016

Sd/-
(L. MANOHAR REDDY)
MEMBER

Sd/-
(H. SRINIVASULU)
MEMBER

Sd/-
(ISMAIL ALI KHAN)
CHAIRMAN

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