



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

O. P. No. 74 of 2015

And

I. A. No. 24 of 2015

Dated: 10.02.2016

Present

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

Between

M/s Hetero Wind Power Ltd.
8-3-166 / 7, Hetero House,
Erragadda, Hyderabad – 500 018

.... Petitioner
Petitioner in I. A. No. 24 of 2015 also

AND

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

Transmission Corporation of Andhra Pradesh Limited,
(AP TRANSCO),
Vidyutsoudha, Somajiguda, Hyderabad.

Southern Power Distribution Company of Telangana Ltd
(TSSPDCL), 6 – 1 – 50, Corporate Office,
Mint Compound Hyderabad – 500063

.... Respondents

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

Southern Power Distribution Company of Telangana Ltd
(TSSPDCL), 6 – 1 – 50, Corporate Office,
Mint Compound Hyderabad – 500063

Proposed Respondents
to be impleaded in place of existing respondents
Respondents in I. A. No. 24 of 2015

This petition and application having come up for hearing on 05.02.2015, 27.04.2015, 22.06.2015, 16.07.2015, 04.08.2015, 25.08.2015, 08.09.2015, 04.11.2015, 23.11.2015 and 23.12.2015. Sri. Prasad Rao Vemulapalli, Advocate for the petitioner along with Sri. N. Sree Ramachandra Murthy, Consultant for the petitioner and Sri. Y. Rama Rao, Standing Counsel for the Respondents along with Sri. J. Ashwini Kumar and Sri. P. Venkatesh, Advocates for the respondents appeared on various dates mentioned above. The petition and application having stood for consideration to the date, the Commission passed the following:

ORDER

This is a petition filed under Sections 86 (1) (a), (e) and (k) of the Electricity Act, 2003 (Act, 2003) read with Article, 15 of Regulation 2 of 2006 seeking execution of Tariff Order dated 09.05.2014 with regard to exemption of transmission and wheeling charges for the petitioner's wind power project at Tirumalayapalli in Kadapa District as Group Captive project to cater to the needs of the group companies in the State of Andhra Pradesh.

2. The petitioner stated that it is a limited company registered under the Companies Act, 1956 having its Corporate and Administrative Offices at the address given in the cause title above. The petitioner belong to Hetero Group and is promoted by M/s. Hetero Drugs Limited and M/s. Hetero Labs Limited, Hyderabad who is in the field of manufacture of drugs and associated products at various places in the State of Andhra Pradesh. To avoid the perennial problem of power cuts, which has been adversely affecting the productivity of the manufacturing units of group scattered all over the State, the management of the group established the petitioner company at Tirumlayapalli in Kadapa District. It has an installed capacity of 54 MW of electric power generated through wind energy. The nodal agency (NREDCAP at that time) had approved the same for an initial capacity of 54 MW through letter dated 06.06.2011.

3. The petitioner stated that in pursuance of a petition filed by the 2nd respondent in O.P. No. 62 of 2013 before the erstwhile APERC for various reliefs the said Commission held public hearing on 21.01.2014. Having heard all the stake holders including the representatives of various political parties the said Commission passed

the tariff order on 09.05.2014 in respect of Transmission Tariff for the control period of 2014 – 15 to 2018 – 19. Having stood over the matter and having regard to the travails of the NCE generators and further having regard to the Government Policy the said Commission ruled that “there shall be no Transmission Charges for Non-Conventional Energy Generators of using wind, solar and mini-hydel”. Similarly in response to petitions filed by the then DISCOMS (APCPDCL in O.P. No. 64 of 2013, APEPDCL in O.P. No. 66 of 2013, APNPDCL in O. P. No. 68 of 2013 and APSPDCL in O.P. No. 70 of 2013 in respect of wheeling the said Commission held public hearings at Karimnagar on 23.01.2014, at Tirupati on 25.01.2014, at Visakhapatnam on 01.02.2014 and at Hyderabad on 04.02.2014 in the erstwhile state of Andhra Pradesh. Having heard the stake holders the said Commission was pleased to hold in chapter – VII at page 77 at note (iii) “in line with Government Policy there shall be no wheeling charges for non-conventional energy generators using wind, solar and mini-hydel sources”. It stated that the said orders have since become final, as per the information available to it, as the same were not assailed before the Appellate Authority.

4. The petitioner stated that it is apposite to consider the fact that it had entered into an agreement with NREDCAP to harness the wind power and generate energy on 06.10.2011. Having regard to the guidelines of the Ministry of New and Renewable Energy (MNRE), Govt. of India and also the guidelines under New Wind Power Policy of the then Government of Andhra Pradesh (GoAP) through G.O. Ms. No. 48, Energy (RES) Department, dated 11.04.2008, the nodal agency allotted 54 MW of wind power project at Tirumalayapalli, Kadapa District, Andhra Pradesh. Clause 4 of the said G.O. says that the order is applicable for a period of TEN years from the date of the said policy unless superseded or modified by any other order. Subsequently the said period was modified through G.O.Ms. No. 99 dated 09.09.2008 at Clause 4 (1) as five years. The petitioner has erected and commissioned 54 MW wind power plant at above said location and declared Commercial Operation Date (COD) on 03.07.2013. Thus the unit was synchronized with the grid within the policy period. The energy from the above wind project is being wheeled through the year 2013-14 duly paying the transmission and wheeling charges along with SLDC charges to the concerned authorities as per the orders of the erstwhile Commission.

5. The petitioner stated that after due consideration of submissions of various stake holders, the said Commission was pleased to pass the transmission and wheeling tariff orders on 09.05.2014, became final since the respondents did not assail the said orders before the Appellate Authority and are bound by the orders of the said Commission. Having regard to the orders of the said Commission, it made a representation to the 2nd respondent on 17.07.2014 and to the 1st respondent on 02.08.2014 requesting them not to raise any bill for transmission charges. In response to the said representation the 1st respondent vide letter dated 13.08.2014 rejected the said request and informed it that a review petition is being filed before the erstwhile Commission to review the tariff order dated 09.05.2014 and till such time the petitioner should continue to pay the transmission charges in time to avoid surcharge on payments. The 1st respondent, through the said letter undertook to refund the amount paid if it did not succeed. Without regard to the orders dated 09.05.2014 and in continuation of its reply dated 13.08.2014 the 1st and 2nd respondents have been charging the transmission charges by raising bills with effect from 17.05.2014, which the petitioner is not obligated to pay transmission charges as per the regulations passed by the said Commission.

6. The petitioner stated that the wheeling charges are being deducted by the 3rd respondent at the stage of preparation of the revised energy adjustment bills for NCE developers, is contrary to the regulations pertaining to wheeling tariff order dated 09.05.2014. It is stated that this fact was brought to the notice of the said Commission on 01.08.2014 along with bills. According to the petitioner it is advised that in the absence of any stay order or an order of abeyance by the issuing authority, in this case, the said APERC, the respondents could not have ventured to raise the bill for transmission and wheeling charges. Since there was an imminent threat of throttling of transmission and wheeling to its captive consumers, the petitioner per force had paid the said charges amounting to Rs. 1,05,78,600/- for the period 17.05.2014 to 31.08.2014. It also stated that the action of the respondents is arbitrary and illegal as it violates the orders of the said Commission dated 09.05.2014.

7. The petitioner stated that it is advised that this Commission is invested and endowed with the powers to ensure that the orders are implemented until the same are either modified or set aside by competent authority. In the above circumstances,

the petitioner herein prays that the Commission will be pleased to direct the respondents.

a) Not to compel or insist the petitioner to pay the transmission and wheeling charges on the electric power generated by it.

b) To refund an amount of Rs. 1,05,78,600/- paid to the respondents from 17th May 2014 till 31st August 2014 along with interest as per clause 62 (6), Electricity Act, 2003 in respect of its 54 MW wind power project at Tirumalayapalli, Kadapa District, A.P.

8. The respondents have filed a counter affidavit on the following lines. The contention of the petitioner in the petition is that it had set up the wind power project to harness the wind power and generate energy in pursuance of the new wind power policy notified by the erstwhile GoAP under G. O. No. 48, Energy Department dated 11.04.2008, for wheeling power to their consumers located in A. P. and Telangana States. The petitioner further averred that APERC had ordered in the multi year transmission tariff order for FY 2014-15 to FY 2018-19 dated 09.05.2014 as follows:

“..... In line with the government policy, there shall be no transmission charges for Non-Conventional Energy Generators of using Wind, Solar and Mini Hydel”

It further contended that the transmission multiyear tariff order for FY 2014-15 to FY 2018-19 dated 09.05.2014 issued by the erstwhile APERC had not been challenged before the Appellate Tribunal for Electricity (ATE) and averred that the said order therefore attained finality.

9. The respondent stated that the petitioner installed 54 MW capacity wind power plant at Tirumalayapalli, Mylavaram (Mandal) in Kadapa District, Andhra Pradesh. It's 54 MW Wind Power Plant was synchronised with grid at 132 KV level on 03.07.2013 at 220 / 132 KV Kondapuram substation. The then APTRANSCO had granted the long term open access (LTOA) to it on 07.05.2014 for the transmission of 54 MW capacity power from their wind power plant located at Tirumalayapalli, Mylavaram (Mandal) in Kadapa District, A. P., at 132 KV level to certain H.T Services located at Visakhapatnam in A.P. and also to some HT services located in Telangana State such as MDK – 199, MDK – 747, MDK – 708, MDN – 787 in Mahaboobnagar District and RRN – 299 in Ranga Reddy District, the LTOA being valid upto 31.03.2004.

Accordingly, LTOA was concluded among erstwhile APTRANSCO, APEPDCL, APCPDCL and the petitioner on 31.05.2014, with commencement of open access from 01.06.2014, within united A.P. (Intra-State Open Access).

10. The respondent stated that consequent to the bifurcation of Andhra Pradesh State into Residuary A. P. and Telangana States w. e. f. 02.06.2014, these open access transactions have become inter-state, which will be governed by Central Electricity Regulatory Commission (CERC) Open Access Regulations. For undertaking inter-state OA transactions, the LTOA granted by the then APTRANSCO will not suffice as it was contemplated for Intra-State Open Access transactions and for undertaking inter-state open access transactions, Southern Region Load Despatch Centre (SRLDC, Bengaluru) has to issue NoC for the same. Hence the petitioner was advised to change the consumers from Telangana State to within Andhra Pradesh state as the wind power plant is located in A. P., so that the transactions would be brought into Intra-State OA purview. For change of consumers to within A P State, the petitioner was given time upto 31.08.2014. For the period 02.06.2014 to 31.08.2014, the respondent No. 1 has levied transmission charges for STU network usage for the aggregated capacity of Telangana State consumers, who were availing open access from the petitioner's wind power plant. From 01.09.2014 onwards, these transactions were stopped and no further transmission charges were collected.

11. The respondent stated that the petitioner is contesting the levy of transmission charges by the respondent No. 1 for the period 17.05.2014 to 31.08.2014 and sought for refund of amount paid along with interest as per Section 62 (6) of Act, 2003. The respondent stated in reply to the contentions raised in the petition by rebutting the same as follows.

- i) In the united Andhra Pradesh state, the new wind power policy was notified by the then GoAP vide G. O. Ms. No. 48, dated 11.04.2008, which was initially made applicable to upcoming wind power plants thenceforth and for a period of 10 years from the date of issuance of the policy (i.e. 10 years from 11.04.2008). Later on, this policy was amended vide G.O.Ms. No. 99, dated 09.09.2008, under which the operative period was reduced from 10 years to 5 years. Accordingly, this policy had lapsed by 10.04.2013.

- ii) The petitioner commissioned its 54 MW wind power plant on 03.07.2013, beyond the date lapse of GoAP Policy.
- iii) The New Wind Power Policy contemplated certain concessions to wind power projects, that were set up in the united A.P. state within the operative period of the policy i.e. 5 years from the policy date 11.04.2008 viz., by 10.04.2013, subject to approval of APERC.
- iv) However, APERC did not notify any such concessions to wind power projects, as contemplated by GoAP Policy.
- v) There was no state government policy in force in respect of new wind power projects, by the time the petitioner's wind power project was commissioned (on 03.07.2013). As such, the concessions notified in the G. O. Ms. No. 48, dated 11.04.2008 would not be applicable to the petitioner's wind power project.
- vi) This fact was not taken into cognizance by the then APERC but it passed ruling in the tariff order exempting, inter alia, wind power projects from payment of transmission charges on par with solar & mini-hydel projects, as extracted below:
..... "In line with the government policy, there shall be no transmission charges for non-conventional energy generators of using wind, solar and mini hydel".....
The then APERC passed the above ruling despite the expiry of wind policy and also oblivious to the fact that there was no government policy subsisting for mini hydel projects.
- vii) That apart, the aforesaid wind policy contemplated concessional wheeling & transmission charges @ 5% of energy delivered into the grid but the then APERC waived transmission charges for wind power projects completely, which order was inconsistent with the said GoAP policy. Hence a review petition was filed before the Joint APERC, which has been numbered as R.P. No.1 of 2015 by this Hon'ble Commission.
- viii) Further, any policy related to NCE power projects as notified by the state government will be applicable to such projects commissioned within the geographical region of the State.
- ix) The wind power projects so far commissioned in united A.P. State are located in Ananthapur, Kurnool & Kadapa Districts of A.P state and no

single wind project was commissioned in Telangana State under the said wind policy.

- x) Post bifurcation of Andhra Pradesh State into Residuary Andhra Pradesh & Telangana States, any government policies notified during the united Andhra Pradesh, shall confine to Residuary Andhra Pradesh state and cannot be extended to Telangana State unless notified otherwise in the Andhra Pradesh Re-organisation Act, 2014.
- xi) It is the privilege of the Telangana State Government whether to continue such policy or notify a new policy.
- xii) As could be seen from the petition, the wind power plant set up by the petitioner is located in Kadapa District of A. P. state and the H.T. consumers availing power from this wind power project under open access are located in Telangana State. By virtue of the state bifurcation and consequent formation of Telangana State w. e. f. 02.06.2014, these intra-state open access transactions have become inter-state open access transactions, which are to be governed by CERC Open Access Regulations. Hence, the petitioner cannot claim concessions such as waiver of transmission charges for wind power projects as ordered by the then APERC based on non-existent wind power policy, since the earlier GoAP wind policy would be applicable in Andhra Pradesh state only and Telangana State is not bound by previous A. P. government policies. Similarly, if Telangana State government announces any policy on wind power projects by giving certain concessions, then such concessions would be applicable to wind power projects set up in Telangana State only but not applicable for projects set up in the neighboring state.

12. The respondent raised the following contentions in reply to each of the paragraphs as follows.

- i) In reply to the contents at para – 2 of the petition, it is stated that in the transmission multiyear tariff order for FY 2014-15 to FY 2018-19 dated 09.05.2014 issued by erstwhile APERC, though the Commission had granted waiver of Transmission charges to wind power projects, TSTRANSCO had filed a review petition

before said APERC contesting that there was no subsisting policy on wind and mini-hydel projects and prayed the Hon'ble Commission to re-consider the levy of transmission charges on wind and mini-hydel, which was again registered as R. P. No. 1 of 2015 by the Commission. The hearing of the review petition is yet to be taken up by the Commission.

- ii) Pending the final outcome in the review petition, TSTRANSCO has levied the transmission charges on the petitioner for the period from 02.06.2014 to 31.08.2014.
- iii) In reply to the contents at para – 3 of the petition, as already submitted earlier the wind power policy which was announced by the erstwhile GoAP in 2008 vide G. O. Ms. No. 48, dated 11.04.2008 had expired by 10.04.2013. The petitioner is claiming that the applicability of the policy G. O. should be reckoned 5 years from the date amended G. O. 99 dated 09.09.2008, which is misconceived. The petitioner commissioned its wind project on 03.07.2013. The 5 years period is to be reckoned from the date of issuance of the Original G. O. No. 48 but not from the date of issuance of amended G. O. No. 99 dated 09.09.2008 as incorrectly presumed by the petitioner.
- iv) The argument advanced by the petitioner that the unit was synchronized with the grid on 03.07.2013 within the policy period is not correct. The said wind policy would not be applicable to the petitioner's plant.
- v) In reply to the contents at para – 4 of the petition, as already stated, TSTRANSCO had filed a review petition before the then APERC on the exemption given to wind & mini hydel power projects, which was registered as R. P. No. 1 of 2015 by TSERC. The hearing of the review petition is yet to be taken up by the Commission. Pending the final outcome of the petition, the respondent No. 1 has levied transmission charges on the petitioner for the period 02.06.2014 to 31.08.2014 and not from 17.05.2014 to 31.08.2014 as claimed by the petitioner.

- vi) In reply to the contents at para – 5 of the petition, it is stated that the 2nd respondent has been preparing energy settlements of the scheduled consumers availing power from the petitioner's wind power plant as per the procedure prescribed in the Regulation No. 2 of 2006 issued by the then APERC.
- vii) In reply to the contents at para – 6 of the petition, it is stated that the respondent No. 1 has levied and collected a sum of Rs. 47,58,809/- towards transmission charges including surcharge from the petitioner for the period 02.06.2014 to 31.08.2014 as against the claim of the petitioner that it had paid Rs. 1,05,78,600/- for the period from 17.05.2014 to 31.08.2014.
- viii) In reply to the paras – 7 & 8 of the petition, it is stated that when the new wind policy was in force, erstwhile APERC did not notify concessional wheeling & transmission charges for wind power plants. But after the wind policy got expired, the APERC passed orders exempting transmission charges for wind generators. Hence a review petition was filed by TSTRANSCO under Section 94 (1) (f) of the Act, 2003 seeking review of the order dated 09.05.2014 passed in O. P. No. 62 of 2013, wherein the APERC had determined transmission multiyear tariff for FY 2014-15 FY 2018-19. The review petition is yet to be taken up by the Commission. The wind power policy had expired on 10.04.2013 whereas the petitioner commissioned its wind power plant on 03.07.2013, beyond the expiry of wind policy. Pending outcome of the review petition filed by respondent No. 1 before APERC, respondent No. 1 has raised the claim for transmission charges for an amount of Rs. 47,58,809/- only towards transmission charges (including surcharge) for the period 02.06.2014 to 31.08.2014 on the petitioner for availing respondent's transmission network, but not from 17.05.2014 to 31.08.2014 as claimed by the petitioner.

13. The respondent had stated that in view of the above facts, the petitioner is not entitled for refund of amounts paid to the respondent No. 1 towards transmission

charges. Further, it is stated that the petition is not maintainable as the open access transactions undertaken by the petitioner post state bifurcation have become inter-state transactions to be governed by CERC Inter-State Open Access Regulations. If the petitioner is aggrieved by the levy of transmission charges, then it should have filed petition before CERC as the disputes on Inter-State Open Access transactions shall be adjudicated by CERC only in terms of the provisions of the Act, 2003.

14. In the light of the above, the respondents have stated that there is no merit in the petition filed by the petitioner and therefore it is liable to be dismissed.

15. The petitioner filed a reply to the averments and stated that in paragraphs 1 to 6 of the counter affidavit being the factual matrix need no advertence. The averments of the respondents in paragraph 7 of the counter affidavit are also admitted except that it is required to obtain NOC from SRLDC, Bengaluru. It is stated that it need not obtain the said NOC as there are no further transactions with the respondents after 01.09.2014. As admitted by the respondents in paragraph under reply, the LTOA was valid until 31.08.2014 whereby the parties agreed to treat the power conveyed through the respondents as intrastate transaction and not as interstate transaction. In this regard petitioner was advised to amend the existing LTOA and to confine it to the captive units in the state of Andhra Pradesh. Thereafter the petitioner was advised to change the exit points to bring the transmission to intrastate and accordingly from 01.09.2014 the petitioner discontinued the power to its captive consumers in the state of Telangana and the power was transmitted only to the units in the state of Andhra Pradesh.

16. The petitioner stated that from the above two letters it is evident that the petitioner was allowed to treat the transmission of power to its captive units in both the states of A.P. and Telangana as intrastate up to 31.08.2014. Accordingly, settlement was done treating the power as intrastate transaction. From note 4 of the said settlement statements it is evident that TSTRANSCO and TSSPDCL have agreed to treat the period upto 31.08.2014 as intrastate and not interstate as contended by the respondents in their counter. It is further necessary to consider the fact that both the respondents were signatories to the above statement of settlement and hence the contention that the transaction between the petitioner and the respondents

subsequent to 02.06.2014 needs to be treated as interstate is without any merits and requires to be rejected.

17. The petitioner stated that the averment of the respondent in paragraph 9 of the counter affidavit, very elaborately tried to impress that there was no wind power policy as on the date of Commission date of petitioner plant. The said contention appears to be from erroneous application both the law as well as facts. It is stated that the erstwhile GoAP notified the wind power policy through G. O. Ms. No. 48 dated 11.04.2008. Accordingly the said policy was applicable for Ten years for the NCE generators. Thereafter the said period was reduced to five years through G. O. Ms. No. 99 dated 09.09.2008. Admittedly the petitioner's power plant was commissioned before the amendment came into force from 09.09.2008. It is also stated that any legislation or the executive order can only be prospective and cannot be retrospective unless so stated in either the Act or the Order. Thus the contention of the respondents that the new wind power policy announced by the erstwhile GoA.P. is not applicable as the plant was commissioned on 03.07.2013 is a misnomer. There is no denying the fact that every state has absolute powers to formulate its policies within the constitutional frame work. From the customs, traditions, conventions supported by settled law a system has been evolved to ensure continuity and as little aberration as possible to the policies of the governments to infuse confidence in the general public as well as the global community. Having regard to the above, the petitioner states that applicability of wind power policy reducing the operation of the said policy to five years is applicable to the units that have come after 09.09.2008 and not as contended by the respondents.

18. The petitioner stated that the contention of the respondents in paragraph 9 (vi) of the counter affidavit, that the then regulator exempted the NCE generators from payment of transmission and wheeling charges without there being any wind power policy is either without proper appreciation of the powers of the regulator or the respondents do not have any respect to the regulator. The then APERC was a statutory authority so is the Commission. When the statutory authorities function within their notified frame work any disagreement requires to be challenged in an appropriate forum and till such time the orders, rulings, regulations etc. passed by the Commission will be in tune with the constitutional mandate and hence the contention under reply

needs to be rejected. It is most unfortunate to note the contents of paragraph 9 (vi) wherein the respondents had the gumption to say that there cannot be any continuity of policies. Without any further discussion suffice it to say that the proposition advanced is unknown in the annals of law and cannot be accepted.

19. The petitioner stated that it is true that the orders passed by the erstwhile APERC are sought to be reviewed and the application is coming up on 14.08.2015 along with an application of this petitioner for the similar relief sought in this petition. It is also true, as contended by the respondents in paragraph 9 (viii), that the NCE policy as notified by the respective state government will be applicable only to the geographical region of that state. However, this application is concerned with the orders passed by the predecessor of the Commission concerning the then undivided state of Andhra Pradesh and hence the meaning sought to be implied cannot be countenanced. The contention of the respondents in paragraph 9 (x) that the policies notified during the pre-bifurcation of state will only be applicable to the residuary state of Andhra Pradesh is new to the legal jurisprudence. Whenever a policy is made in a unified State, the same shall continue and the resultant states are bound to continue the said policies unless revoked through new policies. However, all actions taken in pursuance of the earlier policies shall continue and there is no escaping. The petitioner stated that it is not questioning the privilege of the state of Telangana but only trying to get the orders implemented that have attained finality.

20. The petitioner stated that the contention of the respondents in paragraph 9 (xii) of the counter affidavit, that since the captive consumers of the petitioner company are located in the state of Telangana, the transactions have become interstate transactions and are governed by CERC Open Access Regulations is either without proper appreciation of facts or off the cuff. It is stated that due to administrative reasons and convenience both the states have agreed to treat the transactions up to 31.08.2014 as intrastate transactions. As admitted by the respondents there are no further transactions from 01.09.2014 and hence the orders passed by the erstwhile APERC are binding on the respondents. The contention that the regulations made and orders passed by the erstwhile APERC in the absence of any wind policy bind only the state of A P is a misnomer. So long as the said orders are not disturbed the respondents cannot escape the rigor of the orders more particularly when they have

accepted to treat the period upto 31.08.2014 as intrastate and acted upon. Any other view or denial will be of no avail.

21. The petitioner stated that the contention of the respondents in paragraph 10 (i) and (ii) are only partially true. The levy and collection of the transmission wheeling charges by the 1st respondent was not subject to the result of the review petition filed by the counterpart of the respondents before their regulator. It is difficult to digest the stand of the respondents. On one hand they state that the orders passed by the erstwhile APERC are not binding on them since the said orders were passed when there was no subsisting wind power policy. On the other hand they say that the orders that may be passed by the present APERC in the review petition filed by APTRANSCO and another will be binding on them. It is interesting to note the averments of the respondents in paragraph 10 (vi) wherein it is stated that the energy settlements are being done as per the procedure laid down in Regulation 2 of 2006 formulated by the erstwhile APERC. The respondents cannot have a choice to pick and choose. They are either bound by the regulations and orders passed by the erstwhile regulator or not. In that view of the matter the other averments made in paragraph under reply and paragraph 11 are liable to be rejected.

22. The petitioner stated that the contention of the respondents in paragraph 12 that post bifurcation of the state of A.P. the transactions will become interstate transactions and hence are governed by CERC regulations is not in dispute. But the fact remains that the respondents with their eyes open agreed to treat all the transactions upto 31.08.2014 as intrastate and accordingly settlement was done. The respondents being signatories cannot escape the rigor. In that view of the matter the averments made and contentions raised by the respondents in their counter are devoid of merits, liable to be rejected. Consequently, the Commission will be pleased to allow the above petition.

23. Heard the counsel for the petitioner and the respondent we have also perused the record as filed by the petitioner and the respondent.

24. During the course of hearing the petitioner had filed I. A. No. 24 of 2015 mentioned above seeking to amend the title in the original petition by bringing the parties to the case in line with the territorial jurisdiction of the Commission. The

respondents did not oppose this said petition, therefore, the prayer in the interlocutory petition is allowed.

25. The counsel for the petitioner and its representatives who have appeared on the respective dates of hearing have reiterated the submissions in the original petition and also pointed out the lapse on part of the transmission and distribution licensees in not giving effect to the orders passed by the erstwhile APERC. The counsel for the respondents however sought to support the action taken by the licensees. In the case of transmission charges. He has stated that a 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 respondent 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 petitioner 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.

26. It has been stated by the counsel for the petitioner that none of the amounts paid by the petitioner have been refunded, though, the order passed by erstwhile APERC are in operation at the relevant time that is for the period 17.05.2014 to 31.08.2014 for which period the petitioner has availed open access. On the contrary the counsel for the respondent sought to refute the submission by stating that the wheeling charges have been refunded to all generators.

27. We have given our anxious consideration to various contentions put forth by the parties to this case both written and oral. The first contention is relating to the aspect of pendency of review petition filed by the Telangana State Transmission Corporation in R. P. (SR) No. 1 of 2015, 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 respondents 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. The Commission had dismissed the said review petition separately by order dated 20.01.2016.

28. Since 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 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 the licensees should have at first instance implemented the tariff orders without fail.

29. The order passed by the erstwhile APERC on transmission charges was sought to be reviewed by this Commission in the petition filed by TSTRANSCO. The same has been dismissed as has been stated in the earlier paragraph. The order of erstwhile APERC has not been appealed by the TSTRANSCO in a higher judicial forum. Further, the Commission also has not modified the same, therefore, the order dated 09.05.2014 has attained finality in so far as transmission charges are concerned within the state of Telangana that is intra state transmission with effect from 02.06.2014. Therefore, the transmission licensee has to implement the order dated 09.05.2014 till the said charges or modified or amended by the Commission.

30. Though feebly a contention has been raised by the parties, is the application of the policy made by the erstwhile GoAP is not applicable to the state of Telangana. The respondents who sought to rely on this contention have either lost sight of the provisions of the law or have chosen interpret it in narrow mindedness. 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.

31. Even otherwise assuming that the argument of the respondent that the erstwhile Government of Andhra Pradesh policy is not in vogue by the time the petitioner has commenced its operations, before adverting to this contention it is necessary to notice the observation made by the erstwhile APERC in the tariff orders for better appreciation of the case.

Transmission Tariff Order 2014 – 2019 of erstwhile APERC

“The installed capacity is further regulated in view of the need to promote Non Conventional Energy as per G.O.M.S.No.39, Dated:26.09.2012 announced a

solar policy in GOAP which mandated amongst other no transmission charges for Solar Energy producers. The Commission is required in section 86(1)(e) of Electricity Act to promote NCE. Accordingly the Commission has decided to exempt Solar Wind and Mini Hydel Generation from wheeling charges. The planned generation from this source is deducted from the proposed generation in the 3rd Control Period.”

.....

“Notes on Transmission Tariff:

i) In line with Government Policy there shall be no Transmission Charges for Non-Conventional Energy generators of using Wind, Solar and Mini hydel.”

.....

Wheeling charges / distribution tariff order 2014 – 2019 of erstwhile APERC

“Note on Wheeling Charges:

i) A consumer drawing energy at the 33 kV level of the Distribution licensee network would have to pay the 33 kV wheeling charges.

ii) A consumer drawing energy at 11 kV level of the Distribution licensee network would have to pay the wheeling charges of 11 kV.

iii) In line with Government policy there shall be no wheeling charges for Non-Conventional Energy generators using Wind, Solar and Mini-Hydel sources.”

As seen from the above it is clear that the erstwhile APERC was conscious of the fact that there is no policy as such. However, it appears from the observation above that the APERC was giving effect to the provision of the Act, 2003 that is sec 86 (1) (e) and Section 61 (h) with regard to encouraging the non conventional energy sources. Thus it is not correct on part of the transmission or the distribution licensee to aver that in the absence of any policy of government of Telangana there cannot be exemption from payment of transmission charges by the Commission. Thus the contention is also rejected for this reason also.

32. In the light of the observations made above the transmission and distribution licensees being the respondents in this case are bound to give effect to the orders passed on 09.05.2014 by the erstwhile APERC in the respect of transmission and wheeling charges. Consequently the petitioner in this case is entitled to the relief as prayed by it in the petition. In respect of prayer (a) in the petition, the transmission

licensee shall not demand transmission charges in the respect of petitioner for the period 2014-2019 for the intra – state transactions within Telangana State as the transmission charges / rate determination made by erstwhile APERC or applicable to Telangana State also unless the said order is rescinded by the Commission which has been clearly stipulated at paragraph 3 to 6 of page 1 of the order of APERC dated 09.05.2014. As regards wheeling charges, the petitioner is entitled to the relief of not levying the same by the distribution licensee for the year 2014-2015 only. For the remaining period of 2015-2019 which is originally covered by the order of the erstwhile APERC dated 09.05.2014, this Commission by its order dated 27.03.2015 has modified the same upon fresh filing made by the distribution licensees and allowed levy of wheeling charges. Therefore, the petitioner is entitled to relief of wheeling charges for the year 2014 – 2015 only.

33. In the respect of relief sought by the petitioner for transmission and wheeling charges refund, the licensees have to verify the claim of Rs. 1,05,78,600/- paid by the petitioner between 02.06.2014 to 31.08.2014 and refund the same in terms of the findings given in the earlier paragraph.

34 The refund of the amounts shall be done by the licensees immediately and not later than 6 weeks from the date of the order, failing which the petitioner will be entitled to a simple interest of 12% per annum up to the date of payment made by the licensees after the period of 6 weeks given above.

35. 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 respondents do not merit consideration. With the observations made above, the original petition as well as interlocutory application are disposed of leaving the parties to bear their own costs.

This order is corrected and signed on this 10th day of February, 2016

Sd/-
(L. MANOHAR REDDY)
MEMBER

Sd/-
(H. SRINIVASULU)
MEMBER

Sd/-
(ISMAIL ALI KHAN)
CHAIRMAN

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