

**ANDHRA PRADESH ELECTRICITY REGULATORY COMMISSION**  
**4<sup>th</sup> & 5<sup>th</sup> Floors, Singareni Bhavan, Red Hills, Hyderabad-500 004**

RP (SR) No. 71 / 2009

&

IA (SR)No. 8 of 2010

Dated: 20.07.2010

Present

Sri A. Raghotham Rao, Chairman  
Sri R.Radha Kishen, Member  
Sri C.R.Sekhar Reddy, Member

In the matter of

Review of the order dated 20.03.2009 passed by the Commission in O.P. No. 21 of 2008 with respect to the Transmission Tariff for FY 2009-10 to FY 2013-14.

Small Hydro Developers Association & 16 others ..... Petitioners

And

Transmission Corporation of Andhra Pradesh Ltd ..... Respondent

Upon consideration review petition filed by the petitioners mentioned above, the Commission passed the following:

**ORDER**

On 25.09.2009 the petitioners filed a petition under Regulation No. 49 of APERC Conduct of Business Regulations, 1999 read with Section 10 (4) of the AP Electricity Reform Act and / or Section 94 of the Electricity Act, 2003 seeking review of the order dated 20.03.2009 passed by the Commission in O.P. No. 21 of 2008 in so far as it relates to the Transmission Tariff for FY 2009-10 to FY 2013-14.

2. After scrutiny, it is found that there is delay in filing the above mentioned review petition and that the petitioners did not file any petition for condoning delay in filing the said petition. By letter dated 23.12.2009, the petitioners were put to notice of the same. Subsequently on 10.02.2010, petitioner No. 1 on behalf of all the petitioners filed an application requesting the Commission to entertain review petition notwithstanding delay, principally on the ground that eventhough the impugned order was passed on 20.03.2009, copy of the said order was not made available to the petitioners or to the public. Copy of the order dated 20.03.2009 was made available by the Commission to the petitioner No. 1 on 10.08.2009 and to other petitioners on subsequent dates. In view of the above, the Commission has to consider the period of the limitation only from the date when a copy of the order dated 20.03.2009 was made available to the petitioners. Even otherwise the Commission can entertain review by recourse to the Regulations 55 to 58 and it is just and necessary in the present case to do so.

3. The averments mentioned in the review petition filed by the petitioners are as follows:

a) The 1<sup>st</sup> petitioner is an association of the small hydro power projects in Andhra Pradesh and is representing the cause of all existing of all existing and potential mini hydro power plants in Andhra Pradesh who require, or may require, wheeling facilities for the energy generated by them. Petitioners 2 to 11 are members of the 1<sup>st</sup> petitioner association having pre-existing and subsisting wheeling agreements. Petitioners 12 to 15 are biomass based developers having pre-existing and subsisting wheeling agreements and have joined in this petition on common grievance and grounds. Petitioners 16 and 17 are wind power generators for captive use having pre-existing and subsisting wheeling agreements and have joined in this petition on common grievance and grounds.

b) The ATE, in its judgment dated 08.05.2008 in Appeal Nos. 51 of 2005 & batch in respect of 2004-05, 2005-06 and 2006-09, had held that the wheeling charges as per the agreements entered into in pursuance of policy and / or directions and the rights vested thereby stand preserved. Accordingly the all

inclusive wheeling charges for the energy generated by us shall necessarily be at the rate of 2% in kind. The submissions herein on the question of the general manner and methodology for the determination of wheeling charges are made without prejudice to the aforesaid rights vested by the pre-existing policy / directions / subsisting agreement.

c) In passing the order impugned herein, the Commission had not taken judicial notice of the Tribunal's judgment dated 08.05.2008 which binds the Commission and the pending proceedings in pursuance thereof, and the order was passed in substantially the same manner and upon the same considerations as for 2006-09 without regard to the setting aside of those orders with respect to transmission and wheeling charges and the observations of the Tribunal. The impugned order therefore requires review.

d) In considering the issue of transmission and / or wheeling charge it is necessary for the Commission to consider and take into account relevant factors of load flow and direction, and the fact that the energy fed into the grid is in fact consumed by nearby loads, and that the distributed generation of small amounts of power makes considerable savings and benefits to the licensees in the transmission and distribution losses and in the capacity and use of transmission and distribution assets, and that due credit therefore ought to be given.

e) The electrical energy which is fed into the grid for the purpose of wheeling it to a distant consumer is not physically carried by the transmission and distribution system all the way to the consumer from the point at which it has been fed into the grid. The energy, more particularly from small capacity generating plants, is consumed by nearby loads. In doing so, the transmission and distribution losses in respect of the energy consumption by nearby loads, is significantly reduced. There is also a reduction in the transformation losses associated with this energy. Additionally, transmission capacity is released such that the existing transmission system can handle larger quantities of energy, which is tantamount to resulting in additional transmission capacity. The consequences that follow from the situation, particularly in terms of the effect on

transmission and distribution losses and the use of the transmission system and the associated costs of the distribution licensees, needs to be considered.

f) That the transmission / distribution loss compensation for transmission / distribution should properly also appropriately take into consideration the directional sensitivity while determining the same on the basis of the average losses at the relevant voltage level of the system is recognized also by the National Tariff Policy (paragraph 7.2 read with paragraph 8.5.5), which is based upon the National Electricity Policy mandating that the tariff framework should be sensitive to distance, direction and related to quantum of power flow. That distributed generation of electricity cause substantial savings and losses and use of the transmission / distribution assets has been recognized by the Tribunal.

g) On a due and proper appreciation of such relevant factors, taken together with the mandate to promote generation from renewable sources of energy, a general rate of wheeling charges at 2% in kind only for small generating stations is reasonable and appropriate.

h) The transmission network costs on the basis of KVA or KW/ month does not take into consideration the cases of hydel and / or wind energy where the generation and use of the transmission network is not constant due to continuously varying generation depending upon the vagaries of nature and / or generation resources outside the control of the generating company.

i) The generation of electricity from wind or mini-hydel sources is not firm or constant. It varies from season to season according to the vagaries of nature and also according to the availability of water released for irrigation purposes. In the case of wind energy also, the generation varies from season to season according to the vagaries of nature. These sources of energy are invariably of small capacity. The transmission charges on the basis of per KVA per month could not be applied in such facts and circumstances. Moreover, it is a known fact that the annual plant load factor for wind / hydro is between 15% to 45% usually. The maximum generation would hardly exceed 70% for short periods and full capacity

for even shorter period. It is not equitable therefore to have an annual charge on the basis of full rated plant capacity as that would be an illusory and unduly onerous basis.

j) The existing wheeling agreements in such cases and also in the cases of biomass, wind and certain other generating plants provide for wheeling in terms of units of energy wheeled and not in terms of capacity. There is no possible division of capacity to different consumers in different areas. There is no such thing as “contracted demand” in respect of the energy wheeled to which such charges may be applied.

k) The fact that the consumption of electricity by the consumer nevertheless continues from the distribution licensee even if there is no generation from the generating company is relevant and needs to be taken into consideration. During the periods that there is a diminished generation or no generation, the charges have to be paid by the distribution licensee to the extent of supply made by them for which they have realized revenue.

l) The conditions imposed with respect to the payment of transmission charges and transmission losses having regard to such conditions stated in Annexure C to the wheeling tariff order dt. 20.03.2009 in OP No. 17-20 of 2008, where the wheeling is alleged to involve transmission of electricity through the transmission licensee was erroneous, irrational and unreasonable.

m) It was provided that the transmission charges and the transmission losses in kind is also to be paid if the wheeling involves transmission of electricity through the transmission system of a transmission licensee. For this purpose, it is provided that the transmission system is considered to be involved in the wheeling of electricity in certain cases, including where the entry / exit point is connected to the networks of more than one DISCOM.

n) If the Generator and the consumer are under different distribution licensees within their respective distribution networks, the distribution licensee receiving energy from the Generator saves the transmission charges and losses

to that extent. The distribution licensee which delivers the energy to the consumer requires to pay the transmission charges and losses to the transmission licensee to the extent. Therefore, the two distribution licensees are required to settle accounts between themselves such that the distribution licensee receiving the energy from the Generator pays an amount equal to the transmission charges and losses for that capacity to the distribution licensee delivering energy to the consumer. There is therefore no warrant or justification whatsoever in imposing or levying any transmission charges and losses upon the generator of the consumer.

o) Having regard to the Preamble of the Act and the provisions of sections 86 (1) (e) and 61 (h) and the policy guidelines including the MNES policy guidelines, the Commission ought to maintain and determine the transmission charges and wheeling charges for non-conventional energy sources at 2%, generally.

p) Relief :- For the above reasons and for such other reasons as may be raised in the course of the proceedings, it is prayed that the Commission may be pleased to review the order dated 20.03.2009 passed in O.P. No 21 of 2008, and to review and re-determine the wheeling tariff there under in respect of the petitioner's mini-hydel power plant and / or such similar or similarly placed power plants.

4. At the out set it is necessary to mention that the order dated 20.03.2009 was communicated to the parties by way of certified copies much later than the stipulated 90 days for filing the review due to administrative exigencies. Hence Commission is not inclined to return the review petition on the ground of delay in filing the review petition.

5. The Commission notices that several of the developers who are the petitioners herein filed appeals before ATE against orders of the Commission in so far as they relate to transmission charges fixed by the Commission earlier on different dates for different years, which were allowed by the ATE. Thereafter, the DISCOMs preferred further appeals vide Civil Appeal Nos. 7029 to 7062 of

2008 against common order of the ATE passed by it in all such matters and the same are pending before the Hon'ble Supreme Court. Upon perusal and examination of the above proceedings, it is observed that the points that would arise for consideration of the Commission in the present review petition are similar to the issues raised in the appeals before the Hon'ble Supreme Court in Civil Appeals mentioned supra.

6. It is also noticed that though the Commission has determined charges for a control period of 5 years based on several aspects and taking into consideration different factors, the petitioners have raised several issues which have not been raised at the time of hearing in O.P. No. 21 of 2008 and therefore, the Commission is of the opinion that the same cannot be dealt with at this stage.

7. In view of the above, the Commission is not inclined to entertain the petition filed by the petitioners and the same is rejected.

The order is corrected and signed on this 20<sup>th</sup> day of July, 2010

Sd/-  
(C.R.SEKHAR REDDY)  
MEMBER

Sd/-  
(R.RADHA KISHEN)  
MEMBER

Sd/-  
(A. RAGHOTHAM RAO)  
CHAIRMAN

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