

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Review Petition No. 21/RP/2011

**Coram :
Dr.Pramod Deo, Chairperson
Shri S. Jayaraman, Member
Shri V.S. Verma, Member**

**Date of Hearing: 19.1.2012
Date of Order: 9.5.2013**

In the matter of

Review of orders of the Commission dated 22.6.2011 and 29.6.2011 in File No.L-1/44/2010-CERC pertaining to Central Electricity Regulatory Commission (Sharing of inter-State Transmission Charges and losses) Regulations, 2010.

**And
in the matter of**

LANCO Kondapalli Power Ltd, HyderabadPetitioner
Vs	
National Load Despatch Centre (POSOCO)Respondent

Parties Present:

Shri Sitesh Mukherjee, Advocate for the petitioner
Shri Sakia Choudhery, Advocate for the petitioner
Shri V.K.Agarwal, NLDC
Shri S.S.Barpanda, NLDC
Shri Mohit Tosh, NLDC
Ms. Vaishally Bhardwaj, NLDC
Shri Nripen Mishra, NLDC
Shri Gaurav Verma, NLDC

ORDER

The petitioner which has set up a 350 MW generating station in the State of Andhra Pradesh has filed this petition, seeking review of the Commission's orders dated 22.6.2011 and 29.6.2011 alleging computational errors in the data used for approval of Zonal Point of Connection (PoC) charges for generation nodes in Andhra Pradesh and also for applying slab rates in computing PoC charges for Southern Region Grid. The specific prayers made by the petitioner are extracted hereunder:

- “(i) Condone the delay of 55 days and 48 days in filing the review petition against the orders dated 22.6.2011 and 22.6.2011 respectively and admit the review petition;*
- (ii) Review the said orders by which the Commission has approved the erroneous computations that had been provided by Implementing Agency in relation to the commutation of zonal PoC charges and for applying slab rate PoC charges for the SR Grid;*
- (iii) To direct the implementing Agency to carry out fresh computations for the zonal PoC charge of Andhra Pradesh generation nodes and to submit the same before the Commission, all documents and details relating the computation of such zonal charge;*
- (iv) To discontinue the practice of fixing slab rate PoC charges for generation and demand nodes in the SR Grid, introduced by the IA pursuant to the order dated 22.6.2011, and recover the zonal or node-wise PoC charges from DICs, as the case may be, in the manner provided under the Sharing Regulations;*
- (v) To declare the correct zonal charges for the State of Andhra Pradesh for generation nodes and pass consequential directions for recovery of transmission charges from the petitioner at such zonal charges and further direct the IA to adjust the excess charges collected from the petitioner in the future bills; and*
- (vi) Appropriate orders/directions from the Commission allowing the*

petitioner to deposit, without prejudice transmission charges @ 80,000/MW/month till the disposal of the present proceedings.”

Background

2. In exercise of powers conferred under Section 178 of the Electricity Act, Central Electricity Regulatory Commission (the Commission) has notified the Central Electricity Regulatory Commission (Sharing of Inter-State Transmission Charges and Losses) Regulations, 2010 (hereafter “the Sharing Regulations”), which came into effect on 1.7.2011. The Sharing Regulations prescribe the methodology and the mechanism, in line with the National Electricity Policy and the Tariff Policy, for sharing of the transmission charges and losses among the Designated ISTS Customers (DICs). National Load Despatch Centre, the respondent herein, is presently designated as the Implementing Agency under the Sharing Regulations to undertake the estimation of allocation of transmission charges and losses at various nodes/zones and in addition performs other functions under these regulations.

3. In accordance with Regulation 3 of the Sharing Regulations, Yearly Transmission Charge (YTC), revenue requirement on account of foreign exchange rate variation, changes in interest rates etc. as approved/adopted by the Commission and the transmission losses for use of the Inter-State transmission system (ISTS) are shared by all Designated ISTS Customers (DICs). The Power Stations/Generating Stations that are regional entities as

defined in the Indian Electricity Grid Code are, among others, included in the category of DICs. For the fact that the petitioner is a regional entity as it supplies power after availing long term access on inter-State transmission system is included in the category of DICs. The Point of Connection Charges (PoC) and Loss Allocation Factors are computed by the Implementing Agency based on the principles laid down by the Commission. The computation of the PoC charges and transmission losses by the Implementing Agency is based on the technical and commercial information provided by DICs, ISTS transmission licensees, and other relevant entities. Regulation 7 defines the process for collection and compilation of the technical and commercial information. On the basis of the Yearly Transmission Charges approved/adopted by the Commission, the Implementing Agency computes the charges applicable to each Designated ISTS Customer for use of the ISTS to the extent of the Approved Injection or Approved Withdrawal, as provided under Regulation 8. After computation of the transmission charges and losses applicable to each Designated ISTS Customer, the Implementing Agency submits the details to the Commission in accordance with Regulation 17 for the Commission's approval before publication of the information.

4. Regulation 21 of the Sharing Regulations, contains provisions for removal of difficulties, and is extracted hereunder:

“21. Power to Remove Difficulties

(1) If any difficulty arises in giving effect to any of the provisions of these Regulations, the Commission, may by general or special order, direct the Implementing Agency, NLDC, CTU, RLDC, RPC, ISTS Licensees and Designated ISTS Customers, to take suitable action, not being inconsistent with the provisions of the Act, which appears to the Commission to be necessary or expedient for the purpose of removing the difficulties.

(2) The Implementing Agency, NLDC, CTU, RLDC, RPC, ISTS Licensees and Designated ISTS Customers may make an application to the Commission and seek suitable orders to remove any difficulties that may arise in implementation of these Regulations.

(3) Notwithstanding Sub-Regulations (1) and (2), if any difficulty arises in giving effect to the provisions of these Regulations, the Commission may, by general or specific order, make such provisions not inconsistent with the provisions of the Act, as may appear to be necessary for removing the difficulty.”

5. The respondent as the Implementing Agency through its letter dated 12.1.2011 approached the Commission under Regulation 21 of the Sharing Regulations pointing to certain difficulties envisaged in giving effect to some of the provisions of these Regulations. One of the difficulties pointed out by the Implementing Agency was that the PoC charges computed in accordance with the methodology and principles specified by the Commission varied widely between zones, they being in the range of 5 paisa to over 25 paisa, considering Approved Injection and Approved Withdrawal separately. It was pointed out that the stakeholders could not comprehend the reasons for such huge variations. The Implementing Agency suggested creating slab rates in order to minimize the diversity of PoC rates. After a detailed analysis of the proposal of the Implementing Agency and on taking into consideration

concerns of the stakeholders, the Commission, in its order dated 4.4.2011, accepted the proposal. The Commission also observed that there could be three slab rates of PoC charges for the year 2011-12. Pursuant to the said order dated 4.4.2011, the Implementing Agency in its letter dated 8.6.2011 proposed slab rates of ₹70,000/-, ₹85,000/- and ₹1,00,000/- per MW per month for NEW Grid and ₹80,000/-, ₹95,000/- and ₹1,10,000/- per MW per month for Southern Region Grid. The Implementing Agency in its letter dated 8.6.2011 also proposed slabbing of transmission losses on regional basis and sought approval of the Commission to its proposal. The Commission vide its order dated 22.6.2011 had approved the proposals made by the Implementing Agency in the said letter dated 8.6.2011, in exercise of power under Regulation 21 of the Sharing Regulations. The said order dated 22.6.2011 is one of the orders whose review has been sought,

6. The Implementing Agency under its letter dated 17.6.2011 submitted the following information for 2011-12 in compliance with Regulation 17 of the Sharing Regulations:

- (a) Basic Network and load flow data approved by Validation Committee;
- (b) Yearly Transmission Charge (YTC) details of ISTS Licensees;
- (c) PoC rates and loss percentage computation details;

- (d) Assumptions used for computation of PoC rates and Losses;
- (e) Schedule of charges payable by each DIC for the year 2011-12;
and
- (f) List of assets of other non-ISTS licensees whose assets have been certified by the RPCs as being used for inter-state transmission

7. In exercise of power under clause (2) of Regulation 17 of the Sharing Regulations, the Commission in its order dated 29.6.2011 approved the basic network computations, load flow studies, assumptions used for computation of PoC rates and transmission losses, submitted by the Implementing Agency. After careful examination of the transmission charges of the ISTS licensees, calculation of PoC charges and PoC losses, average losses, final % losses for generation and demand zones for the year 2011-12 submitted by the Implementing Agency, were also approved by the Commission in the said order dated 29.6.2011. The Commission directed the Implementing Agency to publish zonal PoC Rates and zonal Transmission Losses and associated details, along with the underlying network information and base load flows used, in accordance with clause (3) of Regulation 17 of the Sharing Regulation.

8. The PoC rates and losses approved by the Commission for Andhra Pradesh in the order dated 29.6.2011 are as under:

Slabs for PoC Rates and PoC Losses for Andhra Pradesh

	PoC Rates			PoC Losses	
	Final PoC Rate (Rs./MW/Month)	Long Term and Medium Term Slab Rate Rs/MW/Month)	Short Term Slab Rate (Paisa/Unit)	Loss (%)	Slab using Weighted Average
Andhra Pradesh (Injection)	311496	110000	15	4.87%	High
Andhra Pradesh (Withdrawal)	86182	80000	11	3.82%	Normal

9. The order dated 29.6.2011 is the second order whose review has been prayed for by the petitioner.

10. The Commission has since notified the Central Electricity Regulatory Commission (Sharing of inter-State Transmission Charges and Losses) (Second Amendment) Regulations, 2012 on 28.3.2012 to give effect to the clarifications issued in exercise of powers to remove difficulties under Regulation 21 of the Sharing Regulations. Though the amendments are many, the following are most relevant for the purpose of present order:

(a) A proviso has been inserted after the first proviso to sub-clause (l) of clause (1) of Regulation 7 of the Sharing Regulations:

"Provided further that there shall be three slab rates for injection and demand PoC charges for the year upto 2013-14, after which the same shall be rationalized in the year 2014-15 based on a review by the Commission."

(b) Para (iv) of sub-clause (t) of clause (1) of Regulation 7 of the principal Regulations has been substituted as under:

"(iv) Any inter-State Generating Station directly connected to the 100 kV inter-State Transmission System shall be treated as a separate zone and shall not be clubbed with other generator nodes in the area, for the purpose of calculation of PoC injection rate.

Provided that in case of a merchant power plant in a State connected to the 400 kV inter-State Transmission System, with zero LTA or LTA granted by the CTU, the entire merchant capacity plus the LTA granted by the CTU shall be considered to arrive at the PoC injection rate. "

Grounds for Review

11. The petitioner has urged the following grounds in support of its prayer for review and other reliefs claimed:

(a) PoC rates for Andhra Pradesh zone for injection are significantly higher than the actual zonal charge for injection in Andhra Pradesh, as the Implementing Agency has placed the Southern Region Grid at the highest slab rate.

(b) Adoption of slab rates for Southern Region Grid and NEW Grid as proposed by the Implementing agency in its letter dated 8.6.2011 and allowed by this Commission in its order dated 22.6.2011, is contrary

- to the Sharing Regulations since the concept of slab rate of PoC charges has not been specified in the Sharing Regulations.
- (c) The slab PoC rate fixed for Andhra Pradesh for injection is significantly higher than the general trend of slab PoC rates for Approved Injection and Approved Withdrawal for other States in Southern Region Grid.
- (d) No reason has been indicated by the Implementing Agency for sudden and drastic increase in the zonal PoC charges for injection in Southern Region Grid as compared to NEW Grid.
- (e) There are errors in the assumptions applied by the Implementing Agency for working out deemed Approved Injection and Approved Withdrawal, and are inconsistent with the provisions of the Sharing Regulations.
- (f) The Implementing Agency has considered the entire injection of a DIC for the last 4 years for arriving at the representative injection. Such an assumption is contrary to the provisions of the Sharing Regulations since it includes short-term open access and UI injections as part of the representative injection of a DIC for the period 2010-11.
- (g) Inclusion of short-term open access and UI volumes for the purpose of determining representative injection for the DICs is erroneous and will

have the effect of changing the quantum of load for the concerned DIC and thereby change the nature of load flow for that particular node.

- (h) The assumption of 80% Plant Load Factor (PLF) for the newly commissioned (or to be commissioned) generating units is erroneous since it does not take into consideration the break-up of the generation capacity in terms of long-term and medium-term open access as required under the Sharing Regulations.
- (i) For determination of node-wise PoC charges, the long-term access of 350 MW declared by the petitioner has been considered as the aggregate long-term access for the entire State of Andhra Pradesh and no other long-term access has been considered. As a result, the PoC charges for generation for the State of Andhra Pradesh have been divided by 350 MW LTA instead of aggregate Approved Injection of 4,383 MW worked out by the Implementing Agency for the State of Andhra Pradesh, leading to excessively high zonal charges of the petitioner.
- (j) The total recoverable transmission charge per month of ₹16,39,28,650/- for injection in Southern Region Grid has been divided by 350 MW of the petitioner to arrive at the zonal PoC charge of ₹4,68,368/- per MW per month, which is 12.5 times the actual zonal charge of ₹37,401/- per

MW per month. The amount of ₹16,39,28,650/- has been scaled up for Southern Region Grid by a factor of 1.13 (approx) for recovery of the total yearly transmission charges, which comes to ₹18,65,12,904/MW/month. This amount divided by 350 MW gives the result of ₹5,32,894/MW /month, which is 100% PoC rate as determined by the Implementing Agency.

(k) Introduction of concept of slab PoC rates by the Implementing Agency is bad in law being in deviation to the process of determination of PoC charges.

(l) An aggregate Approved Injection of 4383 MW has been adopted by the Implementing Agency for load flow tests and the total transmission charges recoverable for injection in the State of Andhra Pradesh have been worked out at ₹16,39,28,650 per month. Based on the load flow study and the cost of transmission network, the node-wise PoC charges have been computed. For the petitioner, the nodal PoC charge had been worked at ₹39,089/MW/month. The average zonal PoC charge for the State of Andhra Pradesh works out at ₹37,401/- per MW per month (₹16,39,28,650/- divided by 4,383 MW). Therefore, 50% of the zonal PoC charges for Andhra Pradesh according to the above calculations works out to ₹18,700/- (50% of ₹37,401/-). However, the Implementing Agency has worked out 50% of the PoC charges for Andhra Pradesh

injection at ₹2,66,447/-. Having regard to the figure published by the Implementing Agency, 100% zonal charge for Andhra Pradesh works out at ₹5,32,894/- per MW per month. The slab rate so worked out has placed the zonal injection of Andhra Pradesh at ₹80,000/- per MW per month while of Tamil Nadu was ₹1,10,000/- per MW per month. Similarly, for withdrawal, zonal charge of Andhra Pradesh was ₹80,000/- per MW per month whereas it was ₹1,10,000/- per MW per month for Tamil Nadu and Kerala and ₹95,000/- MW per month for Karnataka. However, imposed zonal injection charge of ₹1,10,000/- per MW per month for Andhra Pradesh while, such charges for Tamil Nadu was reduced to ₹80,000/- per MW per month.

12. The petitioner has submitted that under slab rate of PoC charges, it is forced to pay an additional amount of ₹30,000/- per MW per month (which aggregates to approximately ₹1 crore per month for 350 MW) on account of the erroneous computation of zonal charges for Andhra Pradesh. Such high levy of zonal charges of ₹1 crore/MW/month will cause irreparable loss to the petitioner, and ultimately to its beneficiaries.

13. Accordingly, the petitioner seeks review of the orders dated 22.6.2011 and 29.6.2011 and other incidental reliefs.

Reply by Implementing Agency

14. The Implementing Agency has made submissions vide affidavit dated 20.12.2011. The Implementing Agency has submitted that it has not committed any computational error in working out the Approved Injection by generation nodes for determining of PoC charges, or in computation of PoC injection charge for Andhra Pradesh. The Implementing Agency has submitted that the zonal PoC rates are calculated by dividing total zonal charges with aggregate of the total long-term access and medium-term open access of the zone, in accordance with the decision arrived at the 4th meeting of the Validation Committee constituted under the Sharing Regulations. The Implementing Agency has pointed out that there is no generating station in Andhra Pradesh generation zone, other than the 350 MW generating station of the petitioner has been granted long-term access.

15. We have heard the representatives of the parties. We have perused the entire record leading to issue of the orders dated 22.6.2011 and 29.6.2011 as also the submissions of the parties in the present case.

Maintainability

16. The foremost question that arises before us is regarding maintainability of the application for review. In accordance with clause (f) of sub-section (1) of

Section 94 of the Act, the Commission for the purpose of any enquiry or proceedings under the Act is conferred certain powers as are vested in a civil court under the Code of Civil Procedure (the Code). The powers conferred include the power for reviewing its decisions, directions and orders. The powers of the civil court in regard to review are contained in Section 114 read with Order 47 of the Code. According to these provisions, any person feeling aggrieved by an order passed by the Commission may seek review under the following circumstances, namely:

- (a) On discovery of new and important matter or evidence which after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the order was made;
- (b) An error apparent on the fact of the record; and
- (c) For any sufficient reason.

17. The civil court under Section 9 of the Code has jurisdiction to try and adjudicate suits of a civil nature, that is, adjudication of civil rights and obligation of the parties to the suit. The civil court does not exercise any regulatory powers. The powers of review conferred on a civil court under the Code are exercisable only in respect of the orders passed in adjudicatory proceedings. It follows that the powers of review conferred on the Commission by virtue of clause (f) of sub-section (1) of Section 94 of the Act

to review its decisions, directions and orders are limited to the adjudicatory functions under the Act. In other words, the power of review is not available as a remedy against any grievances, if any, arising out of the orders passed by the Commission in exercise of regulatory powers. Put differently, the scope of review under clause (f) of sub-section (1) of Section 94 of the Act does not extend to the orders/directions issued by the Commission in exercise of regulatory powers.

18. The above proposition of law follows out of the judgment of the Appellate Tribunal dated 28.7.2011 in the case of ***Maharashtra State Electricity Distribution Company Limited Vs. Central Electricity Regulatory Commission and others***. In this case, the Appellate Tribunal examined the question of maintainability of appeal against an order passed by this Commission in exercise of regulatory power. The Appellate Tribunal held that it cannot interfere with an order passed by the Commission under regulatory power in view of the judgment of the Hon'ble Supreme Court in ***PTC India Ltd Vs Central Electricity Regulatory Commission***. The specific observations of the Appellate Tribunal in this regard are reproduced hereunder:

" 28. As per the ratio, referred to above, laid down by the Hon`ble Supreme Court, this tribunal, under Section 111 of the Act cannot interfere with the orders passed by the exercise of the Regulatory Powers vested with the Central Commission under Section 61 and 178 of the Electricity Act, 2003. We can only entertain the Appeal related to the orders passed by the

Commission for determination of tariff and for resolution of the disputes through the exercise of the adjudicatory power, but not against the order passed under Regulatory power."

19. The Appellate Tribunal held that an appeal is not maintainable against an order made in discharge of regulation function. For parity of reasoning, review of such an order in exercise of power of review under the Code too is not admissible.

20. The orders dated 22.6.2011 and 29.6.2011 have been made by the Commission in exercise of power to remove difficulties under Regulation 21 of the Sharing Regulations in order to effectively implement those regulations. These orders were not passed in any adversarial proceedings where one party is pitted against another. In fact, there were no parties before this Commission when these orders were passed. These orders were in exercise of regulatory power. The Commission vide its said orders dated 22.6.2011 and 29.6.2011 directed the Secretariat of the Commission to process amendments of the Sharing Regulations. In compliance with the directions of the Commission, the Sharing Regulations have been amended and enforced. The slabbing of PoC rates for computation of the Zonal PoC charges is now part of the statutory framework.

21. For the above reasons, the application for review is not maintainable and is hereby dismissed.

**SD/-
(V.S. Verma)
Member**

**SD/-
(S. Jayaraman)
Member**

**SD/-
(Dr. Pramod Deo)
Chairperson**