

**BEFORE THE KARNATAKA ELECTRICITY REGULATORY COMMISSION,  
BENGALURU**

**Dated : 24<sup>th</sup> April, 2018**

**Present:**

Shri M.K. Shankaralinge Gowda	..	Chairman
Shri H.D. Arun Kumar	..	Member
Shri D.B. Manival Raju	..	Member

**OP No. 81/2016**

**BETWEEN:**

J K Cement Limited,  
Kamla Tower,  
Kanpur – 208 001  
Uttara Pradesh

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**PETITIONER**

*[Represented by Navayana Law Offices, Advocates]*

**AND:**

Karnataka Power Transmission Corporation Limited,  
Cauvery Bhavan,  
K.G. Road,  
Bengaluru – 560 009.

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**RESPONDENT**

*[Represented by Justlaw, Advocates]*

**OP No. 64/2017**

**BETWEEN:**

Dnyanayogi Shri Shivakumar Swamiji Sugars Limited,  
Shri Siddeshwar Nagar,  
Hirebevanur,  
Indi Taluk,  
Vijayapura.

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**PETITIONER**

*[Represented by Navayana Law Offices, Advocates]*

**AND:**

Karnataka Power Transmission Corporation Limited,  
Cauvery Bhavan,  
K.G. Road,  
Bengaluru – 560 009.

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**RESPONDENT**

*[Represented by Justlaw, Advocates]*

**OP No. 118/2017****BETWEEN:**

Vijayanagar Sugar Private Limited,  
8-2-293/82, J III/359,  
Plot No.359-III, Road No.80,  
Jubilee Hills,  
Hyderabad – 500 034.

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**PETITIONER**

*[Represented by Navayana Law Offices, Advocates]*

**AND:**

Karnataka Power Transmission Corporation Limited,  
Cauvery Bhavan,  
K.G. Road,  
Bengaluru – 560 009.

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**RESPONDENT**

*[Represented by Justlaw, Advocates]*

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**COMMON ORDER**

- 1) The above Petitions involve common questions of law and facts. Therefore, this common Order is being passed.
  
- 2) In substance, the Petitioners, in the above Petitions, have prayed for a declaration that the demands made by the Respondent – Karnataka Power Transmission Corporation Limited (KPTCL), in the name of O&M

charges, for the dedicated transmission line constructed by the Petitioners, from their respective Independent Power Producers (IPPs) till the respective Sub-Stations of the Respondent (KPTCL), are illegal. In OP No.64/2017, the Petitioner has requested for a direction for refund of a sum of ₹10,28,873/-, paid towards the above-said O&M charges. In OP Nos.81/2016 and 118/2017, the Petitioners have requested for a direction to withdraw the Demand Notices issued towards the O&M expenses.

- 3) The material facts required for the purpose of disposal of the controversy involved in these Petitions may be stated as follows:
  - (a) The Respondent (KPTCL) had filed OP No.13/2014, praying for an Order for recovery of the O&M expenses, incurred in maintaining the HT / EHT lines and the terminal line bays at the KPTCL's premises, from the HT / EHT consumers and IPPs, as proposed in the said Petition. The KPTCL had, in support of its claim relied upon the Circular dated 17.08.2012 issued by it. The said Circular stated that, the O&M charges for the HT / EHT lines and the terminal line bays should be 1.5% of the Capital Cost, incurred for construction of the HT / EHT line and the terminal line bays, respectively.
  - (b) This Commission held public hearings in OP No.13/2014, considered the objections of the stakeholders and ultimately passed the Order on 26.02.2015, which reads thus:

“1. The Petition is dismissed in so far as it relates to collection of O&M charges from the HT/EHT consumers. The Petitioner is directed to withdraw the notices issues to HT/EHT consumers and refund the amount so collected from HT/EHT consumers.

2. The Petitioner is entitled to collect O&M charges from the IPPs, if the petitioner maintains the dedicated transmission line, subject to such charges being mutually agreed between the parties and in default, being adjudicated by the Commission.”

- (c) The Commission has not accepted the manner of collection of the O&M charges, as indicated in the Circular dated 17.08.2012. Subsequently, the Respondent (KPTCL) has not taken any action for collection of the O&M charges from the IPPs, though it continued to maintain the dedicated transmission lines and the terminal line bays.
- (d) The KPTCL had filed the Tariff Petition on 30.11.2015 for review of its APR for FY15 and for approval of ARR and determination of the transmission tariff for the Control Period FY17 to FY19. As per the provisions of the MYT Regulations, the Transmission Licensee was required to propose the O&M expenses on the basis of per Circuit-Kilometre (Ckt-Km) of transmission lines and per bay of the Sub-Stations and also on the actuals, for the base year, and to apply the appropriate inflation factors, in order to propose the O&M expenses for the subsequent years. During the Tariff Order for FY16, the Commission has computed the allowable O&M expenses for the Control Period FY17 to FY19, by considering the actual O&M expenses for the base year FY15, duly applying the inflation, apportioned the O&M

expenses between the total number of bays and the total Ckt-Km of transmission lines, in the ratio of 70:30 and arrived at the average per bay cost and average per Ckt-Km of transmission line cost, irrespective of the various voltage classes, viz., 400 kV , 200 kV, 110 kV. 66 kV and 11 kV (for bays). This has been done to arrive at the future year-wise O&M cost of the KPTCL, based on the total number of bays and Ckt-Km of transmission lines and the annual inflation rate. During such an exercise of the determination of the transmission tariff, this Commission had factored the O&M cost in respect of per terminal line bay and per Ckt-Km of transmission line, as follows:

<b>Particulars</b>	<b>FY17</b>	<b>FY18</b>	<b>FY19</b>
O&M cost in terms ₹ Lakhs / bay	2.79	2.99	3.21
O&M cost in terms ₹ Lakhs / KM of transmission line	0.73	0.78	0.84

- (e) Based on the O&M cost per terminal line bay and the O&M cost per Ckt-Km of transmission line, as noted above, the Respondent (KPTCL) issued an amended Circular dated 25.03.2017, to collect the O&M expenses, at the rates as stated above, instead of the rates of the O&M expenses stated in its earlier Circular dated 17.08.2012.
- 4) The Petitioners have challenged the validity of the present amended Circular dated 25.03.2017, issued by the Respondent (KPTCL) and the levy of the maintenance charges in respect of the terminal line bays and the

dedicated transmission lines, based on the said amended Circular dated 25.03.2017.

- 5) The Respondent (KPTCL) has appeared through its learned counsel and filed its Statement of Objections in all the above Petitions. The Respondent (KPTCL) has contended that it is entitled to collect the O&M expenses, as it has maintained the dedicated transmission lines and terminal line bays of the IPPs and accordingly, it has raised the demands in this regard. Therefore, the Respondent (KPTCL) has prayed for dismissal of the above Petitions.
- 6) We have heard the learned counsel for the parties. Following Issues would arise for our consideration:
  - (1) Whether the claim of the Respondent (KPTCL) for levying the O&M expenses on the Petitioners, for the maintenance of the terminal line bays and the dedicated transmission lines, is as per the directions given by this Commission, in its Order dated 26.02.2015 in OP No.13/2014?
  - (2) What Order?
- 7) After considering the submissions of the parties and the pleadings on record our findings on the above Issues are as follows:

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- 8) **ISSUE No.(1)**: *Whether the claim of the Respondent (KPTCL) for levying the O&M expenses on the Petitioners, for the maintenance of the terminal line bays and the dedicated transmission lines, is as per the directions given by this Commission, in its Order dated 26.02.2015 in OP No.13/2014?*
- (a) In OP No.13/2014, this Commission has held, in its Order dated 26.02.2015, that the Respondent (KPTCL) is entitled to collect the O&M charges, for the dedicated transmission lines, from the IPPs, provided it maintains such dedicated transmission lines, subject to such charges being mutually agreed upon between the parties, and in default, being adjudicated by this Commission.
- (b) Here itself, we may note that, there is an accidental omission, in the operative portion of the above-said Order dated 26.02.2015, to specifically include the entitlement of the KPTCL to collect the O&M charges for the terminal line bays from the IPPs. This could be so inferred, because the Petition was filed by the KPTCL to recover the O&M expenses in maintaining the HT/EHT lines and terminal line bays from the HT/EHT consumers, as well as the IPPs, as proposed therein. After following the due process, this Commission rejected the claim of the KPTCL for collection of the O&M expenses as against the HT/EHT consumers, but upheld the claim as against the IPPs, provided that the KPTCL maintained the dedicated transmission line and the terminal line bay, subject to such charges being mutually agreed upon between the IPP and the KPTCL, and in default, the same being adjudicated by this Commission. A plain

reading of the said Order, in its entirety, would indicate that the O&M expenses for the dedicated transmission line, as well as the terminal line bay have been allowed, subject to the other conditions stated therein. Nowhere, in the said Order, has it been stated that the O&M charges for the terminal line bay have been rejected for any reason, whatsoever. Therefore, one can clearly hold that, the non-inclusion of the claim, for collection of the O&M expenses towards the terminal line bay, is only an accidental omission in the operative portion of the said Order. Therefore, one should read the said Order as authorizing the KPTCL to collect the O&M charges from the IPPs, towards the dedicated transmission line, as well as the terminal line bay. It can also be noted that, the terminal line bay is nothing but an extension of the dedicated transmission line. Therefore, the omission of the words 'terminal line bay' in the operative portion of the said Order would not be very material.

- (c) As noted above, in the Tariff Order 2016 relating to the KPTCL, the O&M cost in respect of per terminal line bay and per Ckt-Km of Transmission Line are arrived at, as follows:

Particulars	FY17	FY18	FY19
O&M cost in terms ₹ Lakhs / bay	2.79	2.99	3.21
O&M cost in terms ₹ Lakhs / KM of transmission line	0.73	0.78	0.84

- (d) The amounts shown in the above Table have been arrived at, after taking into consideration the total number of terminal line bays, Transformer bays, PT bays, Capacitor Bank bays and 11 kV bays, and the total length of the



transmission lines in Ckt-Km of 400 kV, 220 kV, 110 kV and 66 kV transmission lines and the total O&M expenses incurred for maintaining these bays and the transmission lines. These figures, arrived at on the actuals for FY15, have been enhanced, with appropriate inflation factors, to arrive at the O&M cost per bay and per Ckt-Km of the transmission line, for FY17 to FY19.

- (e) While considering the total number of different kinds of bays and the total length of the transmission lines, the Commission has not taken into account the voltage class of the transmission lines and the nature and size of the different bays. It cannot be disputed that the maintenance cost per Ckt-Km of transmission line of higher voltage class would be more than the maintenance cost per Ckt-Km of the transmission line of lower voltage class. In the same manner, the O&M cost of bays of different voltage classes and types would be different and the O&M cost cannot be made equal. Therefore, the O&M cost per terminal line bay and the O&M cost per Ckt-Km of the transmission line, as arrived at in the Tariff Order 2016 for the KPTCL, cannot be treated as the O&M expenses, determined by this Commission, for different voltage classes of transmission lines and for the different terminal line bays. The O&M cost of the 11 kV terminal line bay would be much lower than the 220 kV terminal line bay. In the same manner, the maintenance cost per Ckt-Km of transmission line would also vary as per the different voltage classes of transmission lines.

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- (f) The Respondent (KPTCL) has issued the amended Circular dated 25.03.2017, directing the officials concerned to collect the O&M charges relating to the terminal line bays and the transmission lines, on the basis of the O&M expenses arrived at by this Commission in the Transmission Tariff Order 2016 for the KPTCL, in respect of the terminal line bays and the transmission lines. The amended Circular dated 25.03.2017 of the Respondent (KPTCL) does not distinguish the different voltage classes of transmission lines and the terminal line bays of different voltage classes, for fixing the different O&M costs, but it has fixed uniform O&M charges on the basis of the Tariff Order 2016. This is clearly a mistaken procedure adopted by the Respondent (KPTCL) for fixing the O&M charges.
- (g) in OP No.13/2014, the direction given by this Commission, for collection of the O&M charges from the IPPs towards the dedicated transmission line and the terminal line bay, is clear. The O&M charges, payable by the IPPs, should be mutually agreed upon between the parties; otherwise, as adjudicated by this Commission. From the facts of the above cases it is clear that the parties have not agreed mutually regarding payment of the O&M charges. Therefore, either the IPP or the Respondent (KPTCL) could have filed proper proceedings before this Commission, for adjudicating the O&M charges payable to the Respondent (KPTCL), provided the Respondent (KPTCL) has been maintaining the dedicated transmission line and the terminal line bay. The filing of the Petition by the Respondent (KPTCL) appears to be the more appropriate course of action for requesting to determine the quantum of O&M charge payable by the IPP.

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- (h) In the present cases, the Petitioners are IPPs and each of them has constructed a dedicated 110 kV transmission line and a terminal line bay at the KPTCL's end. The pleadings of the Respondent (KPTCL) would show that it is maintaining only the terminal line bays, constructed by the IPPs, within the KPTCL's premises. The Petitioners have not denied that the terminal line bays concerning the dedicated transmission lines are being maintained by the Respondent (KPTCL). It is submitted by the Respondent (KPTCL) that, as the terminal line bay of the dedicated transmission line is located within the premises of the Sub-Station of the KPTCL, it has undertaken to operate and maintain the terminal line bay. Further, it is submitted that the premises of a Sub-Station are a 'protected area' and any outsider is prohibited from entering into the said premises. Therefore, any employee of an IPP is not allowed inside the premises of the Sub-Station for safety and security reasons. The Petitioners do not dispute these facts.
- (j) It is also submitted on behalf of the Respondent (KPTCL) that, the observations made by this Commission in OP No.13/2014 to the effect that the amount of the O&M charges, to be collected from the IPPs, should be supported with the actual expenses incurred and the claim to recover the O&M charges at the rate mentioned in the KPTCL's Circular dated 17.08.2012 was not supported by adequate material / calculations or reasonings and the Respondent (KPTCL) should produce the actual expenses incurred, in support of its claim for the maintenance charge, are

though theoretically correct, it is not possible to collect the actual expenses incurred towards the O&M expenses relating to the terminal line bay of a dedicated transmission line, because the Respondent (KPTCL) maintains the Sub-Station, as a whole, wherein a large number of terminal line bays and other types of bays are existing and the O&M expenses for all these bays are incurred jointly and it is not possible to segregate the expenses for different terminal line bay and other kinds of bays.

- (k) The Petitioners do not dispute that the Respondent (KPTCL) is maintaining the terminal line bays concerning the dedicated transmission lines. The Petitioners do not claim that they themselves can operate and maintain these terminal line bays. As these terminal line bays are within the 'protected area' of the Sub-Station of the Respondent (KPTCL), it may not be proper to allow the Petitioners to attend to the O&M of these terminal line bays. The Petitioners have not come forward with any actual expenses incurred, to ascertain the actual cost of maintenance of these terminal line bays. The Petitioners have to maintain the similar terminal line bays at the generation end and it appears, they were in a better position to furnish the actual expenses to be incurred for the maintenance of the terminal line bays.

- (l) In the above circumstances, it may not be just and proper, not to allow the O&M expenses that would be incurred by the Respondent (KPTCL) in maintaining the terminal line bays concerning the dedicated transmission lines. The difficulties now expressed by the Respondent (KPTCL) were not

brought to the notice of this Commission at the time of hearing of OP No.13/2014. The Respondent (KPTCL) could have filed a Review Petition, highlighting its difficulties in furnishing the actual expenses incurred and seeking review of the Order passed in OP No.13/2014. In the present proceedings also, the Respondent (KPTCL) could have made that request, specifically, but no such ground has been taken in its Statement of Objections. The Order in OP No.13/2014 was passed after holding a public hearing. Therefore, we are of the considered view that any review of the Order, passed in OP No.13/2014, should be made only after following that procedure. However, till the Order in OP No.13/2014 is subjected to review in a due procedure, the Respondent (KPTCL) should be given an interim relief for claiming the O&M charges incurred for the terminal line bays. For that limited purpose, we deem it proper to allow the Respondent (KPTCL) to claim the O&M charges in respect of the terminal line bays, as it was being claimed under the earlier Circular dated 17.08.2012 of the Respondent (KPTCL).

- (m) In view of the above discussions, we hold that the claim of the Respondent (KPTCL) for levying the O&M expenses on the Petitioners for maintaining the terminal line bays concerning the dedicated transmission lines, as per the amended Circular dated 25.03.2017 of the Respondent (KPTCL), is not legally sustainable and it is not in line with the directions given by this Commission in its Order dated 26.02.2015 in OP No.13/2014.
- (n) For the above reasons we answer Issue No.(1) in the negative.

9) **ISSUE No.(2):** *What Order?*

- (a) As already observed above on Issue No.(1), there is a necessity to make an interim arrangement for recovery of the O&M expenses incurred by the Respondent (KPTCL), for the maintenance of the terminal line bays, from the IPPs. For this purpose, the earlier Circular dated 17.08.2012, issued by the Respondent (KPTCL), is to be revived, enabling the Respondent (KPTCL) to claim the maintenance charge, subject to adjustment of the rights of the parties, after final adjudication on this issue.
- (b) In OP No.81/2016 filed by J.K. Cement Limited, a consequential relief is claimed, stating that the Respondent (KPTCL) has not taken further steps to approve the interconnection for the proposed enhanced exportable capacity, from 25 MW to 45 MW, from its Power Plant, because of non-payment of the alleged claim made by the Respondent (KPTCL) for the maintenance charge. As we have proposed an interim arrangement, in this regard, the claim for the maintenance charge towards the terminal line bays is to be raised, accordingly, by the Respondent (KPTCL) and the Petitioner is required to abide by the same. In view of our interim arrangement suggested above, there may not be any issue regarding the liability for payment or non-payment of the maintenance charge for the terminal line bays, thereby, the Respondent (KPTCL) can go ahead to process the claim for the interconnection for the enhanced exportable capacity made by the Petitioner in OP No.81/2016.

(c) For the foregoing reasons, we pass the following:

**ORDER**

- (1) (a) As an interim measure, the Respondent (KPTCL) is permitted to raise the bills towards the arrears of the O&M charges, incurred by it, till now, for maintaining the terminal line bays located in the Sub-Stations of the Respondent (KPTCL) and to make a demand from the IPPs concerned, as per the Circular dated 17.08.2012, till the Commission takes a view on the question of the methodology to be adopted for arriving at the O&M charges payable by the IPPs, in the due proceedings;
- (b) The rights and liabilities of the parties, pertaining to the payments / receipts of the maintenance charges, shall be subject to the final outcome of the determination of the O&M charges;
- (2) The claims now raised by the Respondent (KPTCL), as per its amended Circular dated 25.03.2017, are hereby set aside; and,
- (3) The parties shall suggest their proposals and guidelines, within 10 (ten) weeks from the date of this Order, for ascertaining the maintenance charges to be incurred by the Respondent (KPTCL) for maintaining the terminal line bays in its Sub-Stations, for issuing a Discussion Paper in this regard.

The original Order be kept in OP No.81/2016 and copies, thereof, in the other two connected cases.

Sd/-  
(M.K. SHANKARALINGE GOWDA)  
CHAIRMAN

Sd/-  
(H.D. ARUN KUMAR)  
MEMBER

Sd/-  
(D.B. MANIVAL RAJU)  
MEMBER