

OP 02/2010

No.N/02/10

**BEFORE THE KARNATAKA ELECTRICITY REGULATORY COMMISSION
BANGALORE**

Dated this 29th July 2010

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| 1. Sri M.R. Sreenivasa Murthy | Chairman |
| 2. Sri Vishvanath Hiremath | Member |
| 3. Sri K. Srinivasa Rao | Member |

Case No. OP 02/2010

Between

M/s Limbavali Power Private Limited
No.1161, 26 'A' Main, 32rd Cross
4th 'T' Block, Jayanagar
Bangalore – 560 041
(Represented by its Advocate Sri Shridhara Prabhu) Petitioner

And

The Managing Director
Karnataka Power Transmission Corporation Limited
Kaveri Bhavan, Kempegowda Road
BANGALORE – 560 001
(Represented by its Advocate Sri Sriranga) ... Respondent

1. The present petition is filed by the petitioner M/s Limbavali Power Private Limited challenging the action of the respondent M/s Karnataka Power Transmission Corporation Limited (KPTCL) in demanding and collecting the network augmentation charges as per Annexure P-9.

2. We have heard both the counsels appearing for the parties and material placed along with petition and objections.

3. The admitted facts are that the petitioner has set up a 12 MW mini hydel project at Dhanaguru village, Malavalli Taluk of Mandya district and has also signed a Power Purchase Agreement (PPA) on 8.4.2006. Further the petitioner

has drawn a 66 kV transmission line and provided an additional bay to connect its generating station at 220 kV receiving station T.K.Halli. It is also averred that on 13.3.2009, the petitioner has synchronized its first unit and is in the process of synchronizing the remaining units.

4. The grievance of the petitioner is that the respondent has made a demand vide its letter dated 18.11.2009 to pay Rs.5.00 lakhs at the rate Rs.60,000/- per MW towards Network Augmentation Charges hereinafter referred to as 'NAC' and this is against the provisions of Electricity Act, 2003.

5. It is contended by the petitioner's counsel that the demand for 'NAC' made by the respondent is in violation of the Electricity Act, 2003. According to him under the provisions of Electricity Act, 2003 it is the duty of the transmission licensee to develop the transmission network at its cost for which it is entitled to collect only transmission charges from the distribution companies and the generators and not any other charges like 'NAC'. Further, according to him allowing Transmission Licensee to collect 'NAC' will amount to double charges collection, as this is already included in the Transmission Charges.

6. The petitioner's counsel relied upon the orders of the Appellate Tribunal for Electricity (ATE) in Appeal No.93/2009 Tamil Nadu Electricity Board (TNEB) Vs. Tamil Nadu Electricity Regulatory Commission (TNERC) and Independent Wind Energy Association reported in 2010 ELR 0009 wherein the Hon'ble ATE has upheld the claim of TNEB for infrastructure development charges to contend that any claim made by the respondents shall be from a prospective date and not from the retrospective date.

7. Per contra the Counsel for the Respondent submitted that under Section 40 of the Electricity Act, 2003 the obligation is cast upon the State transmission utility to build, maintain and operate an efficient, coordinated and economical intra-State transmission system. Therefore the respondent, with a view to build and maintain a dynamic intra-State transmission system, is spending huge amounts for construction of new lines besides augmenting the existing ones. He

further submitted that under Section 10(1) of the Act, only generating companies have to establish, operate and maintain generation stations, tie lines, sub stations and dedicated transmission lines connected therewith and main transmission network is built and operated by KPTCL. As NCE projects are small in nature they are able to establish and operate only small stations and tie lines and rest is taken care of by the transmission utility. For this the respondent wherever required is building / strengthening the lines and other connected systems. He also submits that under the provisions of the PPA entered into by the petitioners, the petitioners are required to put up any inter connection facility. Considering all these factors the respondents have fixed a general rate of network augmentation charges instead of fixing separately in each case. The Respondent's Counsel in support of the levy of network augmentation charges also brought to the notice of the Commission the practice prevailing in the other states.

8. In the light of the rival submissions the question that arises for consideration is whether the respondent is entitled to demand and collect separate Network Augmentation Charges in addition to the transmission charges under the provisions of the Electricity Act, 2003 or the regulations framed under it.

9. Under Section 39 & 40 of the Act, it is the State Transmission Utility / Transmission Licensee (KPTCL) which has to undertake transmission of electricity through intra-State Transmission System. It is also required to provide for non-discriminatory open access to its transmission system for the use of the generating companies, consumers and licensees subject to payment of transmission charges and surcharge thereon as prescribed by the Commission.

10. If the demand made by the respondent is tested with the touchstone of Section 39 and 40 of the Act, we are of the considered opinion that the transmission licensee, KPTCL, is well within its rights to collect the Network Augmentation Charges. As stated above in law, it is the KPTCL who has to build, maintain and operate an efficient, coordinated and economical inter-State and intra-State transmission system and has to provide non-discriminatory open

access to the licensee or the generating companies. For this it has to incur necessary expenditure. Then it has to recover the same in turn from the persons for whose sake the transmission network has been developed.

11. Under the Act, the word 'Transmission Charge' has not been defined. However, the word 'Transmission' has been defined in Section 2(74) of the Act. According to this provision, 'Transmission' means "conveyance of electricity by means of Transmission Lines". The word 'Transmission Lines' is defined in Section 2(72) of the Act. According to this provision, the 'Transmission Lines' means "*all high pressure cables and overhead lines (not being an essential part of the distribution system of a licensee) transmitting electricity from a generating station to another generating station or a sub-station, together with any step-up and step-down transformers, switchgear and other works necessary to and used for the control of such cables or overhead lines, and such buildings or part thereof as may be required to accommodate such transformers, switchgear and other works*".

In the absence of definition of 'Transmission charge', it has to be understood as the cost incurred by the Transmission Licensee for transmitting the energy fed into its lines for using the same elsewhere. Therefore, in our considered opinion, the transmission charge shall include all expenditure incurred by the transmission licensee. As a corollary the expenditure incurred by the Transmission Licensee towards augmenting the network will also become part of the Transmission Charge. The generator who wants to make use of the lines of Transmission Licensee / Distribution Licensee shall really have no complaint to pay the Network Augmentation Charges as other consumers cannot be made to pay the same.

12. In the Memo filed on 25.6.2010 the Respondent has stated that the wheeling charges that are now being collected do not include Network Augmentation Charges. On considering this it has to be held that there is no double benefit to KPTCL.

13. In the impugned demand the respondents have claimed 'NAC' uniformly instead of on an individual basis, i.e., Rs.5 lakhs per MW. In our opinion this is also permissible particularly in the absence of challenge to the rate of 'NAC', as KPTCL has to develop the transmission network taking overall requirement and not on an individual requirement.

14. Considering the provisions of law and facts placed before the Commission, it has to be held that the Network Augmentation Charges levied and collected separately by the respondent KPTCL is in accordance with the provisions of the Electricity Act, 2003 and therefore is valid and legal.

However we are of the opinion that claiming charges on an adhoc basis as is being done now that too without the express approval of the Commission is not desirable. Therefore we direct that KPTCL / ESCOMs shall submit their proposal to the Commission for collection of 'NAC' on or before 31.3.2011 duly supported by necessary details and seek approval of the Commission. Till the Commission considers the proposal and passes its orders, KPTCL / ESCOMs shall continue to collect 'NAC' at the rates at which it is being collected now, that is, Rs.5 lakhs per mega watt.

Sd/-

(M.R. SREENIVASA MURTHY)
CHAIRMAN

Sd/-

(VISHVANATH HIREMATH)
MEMBER

Sd/-

(K. SRINIVASA RAO)
MEMBER