

No.N/64/11

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

Dated : 30th November, 2012

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

OP No.32/2011

BETWEEN :

Karnataka Power Transmission
Corporation Limited
Cauvery Bhavan
BANGALORE – 560 009 ... **Petitioner**
(Represented by M/s. Justlaw, Advocates)

AND

Nil ... **Respondent**

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1) This Petition is filed by Karnataka Power Transmission Corporation Limited (KPTCL) for approving the collection of Network Augmentation Charges (NAC) at Rs.5 Lakhs per MW from NCE Generators in the State.

2) It is submitted that the Petitioner being a Transmission Licensee under the Electricity Act, 2003, has a duty to build, maintain and operate an efficient co-ordinated and economical Intra-State Transmission System. It is submitted by the Petitioner that since NCE Projects are small in nature, many of their obligations are undertaken by it as Transmission Utility, and for this purpose it is collecting Network Augmentation Charges earlier, and it desires to continue to collect the

same for augmenting the Transmission System to facilitate evacuation of the power generated by these NCE Projects.

3) It is submitted that there has been a drastic increase in the number of independent power producers from the year 2006 till date and the total capacity addition during the year 2010-11 by Wind Mill Projects, Co-generation Projects, Captive Generation Projects and Mini Hydel Plants, is of the order of 379.90 MW, which is in addition to the 1370 MW existing as on 2009. Therefore, in order to have an efficient Intra-State Transmission System, the Petitioner has sought approval from the Commission to collect Network Augmentation Charges from NCE Projects. The Petitioner has also furnished the details of the generation that is anticipated and the cost of major materials required for augmentation, etc., in support of its prayer for collection of Network Augmentation Charges.

4) As the charges claimed by the Petitioner will, in turn, affect the Consumers at large, the Commission decided to conduct a Public Hearing, and accordingly, the Public Hearing was held on 16.11.2011 at the Commission's Court Hall.

5) At the Public Hearing, Sri Shridhar Prabhu, learned counsel for M/s.Dharwad Bio Energy Pvt Ltd., and M/s. Orange Power Gen, Sri Raja Rao and Sri Ashwath Narayan for Consumer Care Society and Sri Nagaraj Shetty in his personal capacity, appeared and made their submissions.

6) During the hearing, Sri Sriranga, counsel for Petitioner submitted that Network Augmentation Charges (NAC) have to be collected from NCE generators since evacuation of NCE power is difficult as the generation is of low capacity and the projects are distributed over a wide area. He also submitted that the NAC is only a part of the expenditure incurred by the Petitioner and not the entire cost borne by it for creating additional infrastructure for evacuation of power from NCE Units. To substantiate this point, he submitted that as against the total cost of Rs.5,35,426/- per MW, Network Augmentation Charges are being collected at a reasonable rate of Rs.5 Lakhs per MW only.

7) Per contra, Sri Sridhar Prabhu, Advocate for M/s. Dharwad Bio Energy Pvt. Ltd., submitted that the petition filed by KPTCL is not in order, inasmuch as, it ought to have been filed under section 62(1)(b) of the Electricity Act, 2003 in the prescribed format and the procedure stipulated for determination of tariff under section 64 has to be followed after scrutiny of audited accounts. He submitted that invoking section 86(1)(f) of the Act is not proper, as there is no provision for adjudication before the Commission. He also pointed out that Tariff Petition is already filed by the KPTCL for determination of transmission tariff to be collected from the Distribution Companies, and on the same analogy, KPTCL has to apply for determination of NAC to be collected from generators. He further submitted that NAC to be collected shall be based on actual expenditure incurred for each generator and not on *ad-hoc* basis as being proposed in the Petition. He pointed out that NAC is not collected uniformly from all Generators and is being

collected from only such Generating Companies connected to below 220 kV capacity. He brought to the notice of the Commission that in Tamil Nadu, NAC charges are not being collected from the generators who comply with the provisions of section 10 of the Act.

8) Shriyuths Aswathnarayana and Raja Rao of Consumer Care Society submitted that there is no justification for collecting the 'NAC' and that it would amount to discrimination if it is different for Conventional and Non-conventional energy Generators. They further submitted that ultimately consumers will have to bear the burden and the rate of Rs. 5 Lakhs per MW sought to be levied has no logical basis. They also expressed a doubt as to whether the NAC collected so far has been utilized for the purpose by the Petitioner. They further submitted that they had filed written objections and the same need to be considered while passing the Order.

9) Sri Nagaraj Setty, drawing attention of the Commission to various provisions of the Electricity Act, 2003, submitted that it is the duty of the Generator under section 10(1) of the Act to establish, operate and maintain Generating Stations, Tie-lines, Sub-stations and dedicated Transmission Lines connected therewith. He submitted that the expenses borne by the Generators will have to be considered while determining the tariff for the power generated by such Generators. He pointed out that under Section 30, the State Commission is required to facilitate and promote transmission, wheeling and interconnection arrangements for transmission and supply of electricity by economical and

efficient utilization of electricity. Pointing out the functions of the State Transmission Utility under Section 39(2) and Section 40, he submitted that it is the transmission licensee who has to maintain an efficient, co-ordinated and economical transmission system. He also submitted that under section 86(1)(e), the Commission is required to promote NCE generation and Network Augmentation Charges of Rs 5 Lakhs would be against this legislative intent of this provision. He also submitted that there is no provision under the Act for the Transmission Company to collect such charges. He submitted that NCE Generators are connected to 11 kV lines and the power generated is usually supplied in local areas without using the KPTCL network and therefore KPTCL is not entitled to levy NAC.

10) After conclusion of the Public Hearing, the Commission posed a question to the Counsel for the Petitioner as to why a Petition under Section 62 of the Electricity Act, 2003, has not been filed by the KPTCL and why only a separate Petition for Network Augmentation Charges is filed. In reply, Sri Sriranga, learned Counsel for the Petitioner submitted that the Petitioner will file an Application and seek approval.

11) On 2.4.2012, the Petitioner filed a Memo stating that it is appropriate to consider Network Augmentation Charge as a separate charge, independent of Transmission Charge, as the Network Augmentation Charge is a one-time payment collected and the same will not fit into the ARR under the KERC's MYT

Regulations framed for determination of Transmission Charges, and hence requested that the Petition be heard on its merits.

12) Accordingly, the Petitioner has been heard again. The Petitioner has also filed two Affidavits dated 23.8.2012 and 3.10.2012.

13) In the Affidavit dated 23.8.2012, it is submitted that to accommodate the power injected by the NCE Generators and for smooth dispersal and absorption of the said power into the State Grid, it is necessary for the Petitioner to create and expand the Grid beyond the 'point of interconnection' of the Generating Unit, and therefore, considering the additional investment specifically required for such Generating Units, Network Augmentation Charges need to be collected. It is further submitted that the collection of Network Augmentation Charges will reduce the tariff on the general Consumers, as it will go into the Other Revenue account. It is further submitted that so far as the conventional Generators are concerned, KPTCL is developing the Transmission Network, at its cost, as a Transmission Utility, on the lines on which Power Grid Corporation creates inter-State Transmission Network. As regards Transmission Lines built for evacuating the electricity generated by Udupi Power Company, KPTCL has created the 400 kV Double Circuit Transmission System for evacuation of power generated at Udupi to Bangalore, a major Load Centre.

14) In the latest Affidavit dated 3.10.2012, the Petitioner has further submitted that the Generating Companies are discharging their obligations as imposed on

them under Section 10 of the Electricity Act, 2003. Further, it is stated that the NCE Generating Companies being small in nature, which come up in different places at different times, the Petitioner has to develop and strengthen their existing networks beyond the interconnection point from time-to-time, and therefore, its claim for Network Augmentation Charges is justified.

15) We have considered the submissions made on behalf of the Petitioner and the materials produced in support thereof and the views expressed in the Public Hearing by the persons who appeared and made submissions.

16) In OP No.2/2010 and other connected Petitions, some of the NCE Generators challenged the action of the present Petitioner-KPTCL in demanding and collecting the Network Augmentation Charges. This Commission, vide its Order dated 29.7.2010, had dismissed the said Petitions, holding that the demand and collection of Network Augmentation Charges by the Respondent (Petitioner herein) was in accordance with the provisions of the Electricity Act, 2003, and therefore, it was valid and binding. However, this Commission had expressed an opinion that claiming of the Network Augmentation Charges on an adhoc basis, without express approval of the Commission, was not desirable, and therefore, KPTCL and ESCOMs should submit a proposal to the Commission, duly supported by necessary details and seek approval.

17) While coming to the above conclusion, the Commission recorded that:

- “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 words, ‘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."

18) Pursuant to the directions issued in the above proceedings, the Petitioner has come up with the present Petition, seeking approval for collection of Network Augmentation Charges at the rate of Rs.5 Lakhs per MW from NCE Generators.

19) The submissions made on behalf of the Petitioner are only reiteration of the submissions made earlier, except for the production of additional material in support of its claim now made.

20) We have considered the submission made on behalf of the Petitioner – KPTCL and also the views expressed in the Public Hearing and the Counsel appearing for one of the NCE Generators.

21) This Commission has already upheld the Network Augmentation Charges collected till 29.7.010 for the reasons stated in the Petition referred to above. For collecting the Network Augmentation Charges thereafter, this Commission, as recorded above, had directed the Petitioner to file a proper proposal to the Commission and seek its approval for future collection of Network Augmentation Charges. Accordingly, the Petitioner has submitted the present proposal, seeking approval for collection of Network Augmentation Charges at the rate of Rs.5,00,000/- per Mega Watt from NCE Generators.

22) In support of its submission, the Petitioner-KPTCL has submitted that it is not desirable to include Network Augmentation Charges to the general transmission expenses, as collection of Network Augmentation Charge is a one-time charge and is specifically meant for evacuation of the electricity generated by the NCE Generators. In our view, this submission cannot be accepted, as the Petitioner has a duty under Section 40 of the Electricity Act, 2003, to build, maintain and operate an efficient, coordinated and economical inter-State transmission system or intra-State transmission system, as the case may be, and to provide non-discriminatory open access to its transmission system for use by any Generating Company on payment of the transmission charges. It is our further

view that instead of developing the Transmission Network piece-meal, it is advisable to develop the System Network as a whole, as contemplated under Sections 39 and 40 of the Electricity Act, 2003. This will help the Petitioner as well as the future Generators, who intend to establish Generating Plants. At the same time, the expenses required to be incurred for augmenting the existing Network can be included in the expenses earmarked for Capital Works, and this Commission will consider the same while approving the Transmission Tariff of the Petitioner.

23) As regards the duty of the Generating Company of developing its own Evacuation System up to the interconnection point, Section 10(1) of the Electricity Act, 2003, is very clear. As per the said provision, it is the duty of the Generating Company to establish, operate and maintain the Generating Stations, Tie-lines, Sub-stations and dedicated Transmission Lines connected therewith in accordance with the provisions of this Act or the Rules or Regulations made thereunder. In other words, it is the Generating Company which has to develop a Network till the same is interconnected to the Transmission Utility's Network and no part of that expense can be incurred by the Transmission Utility. The duties of the Generating Companies as well as the Transmission Utilities are well-defined under the Act and they should discharge their respective functions strictly in accordance with the said provisions of law.

24) It is submitted by the Petitioner that the Network Augmentation Charges are being collected only from the NCE sources and not from all other Generating

Companies, including the State-owned Generating Company, Karnataka Power Corporation Limited (KPCL). In our view, this is not in accordance with the provisions of the Electricity Act, 2003. Irrespective of who generates the electricity, the Network up to the interconnection point has to be developed by the respective Generating Company, and from the interconnection point, and thereafter, the Transmission Company shall have to develop the network and recover the cost incurred through the Transmission Charges. The classification introduced by the Petitioner between the NCE Generators and other Generators cannot be allowed to be continued, as it may result in distortion in course of time. However, the expenditure, if any, incurred towards the developing the network only for a Generator up to the interconnection point shall be recovered separately from the concerned Generator and through Transmission Tariff.

25) In our view, the Petitioner will be well within its limits, if it collects all the charges that it incurs in building up its Transmission Networks from all the Generators and persons who use the said Network. We have looked into the Network Augmentation Charges collected in the earlier years by the Petitioner. The amounts collected as Network Augmentation Charges also do not add substantially to the Capital Expenditure incurred by the Petitioner. For example, during the years FY-08 to FY-11, the average Network Augmentation Charges collected amounted to Rs.26.16 Crores as against the average Capital Expenditure of the Company at Rs.1,595 Crores (information as available with the Commission). Therefore, we hold that the Network Augmentation Charges shall also be included in the Capital Expenditure of the Petitioner, as and when

proposed. Consequently, we do not find any justification in allowing the Petitioner to continue to collect the Network Augmentation Charges, separately.

26) In the light of the above, the proposal of the Petitioner for collection of General Transmission at Rs. 5,00,000/- (Rupees Five Lakhs only) per Mega Watt from NCE Generators separately, is not approved. However, the Petitioner shall be free to include the estimated expenditure for augmentation of its Network to evacuate renewable energy as part of its Capital Expenditure proposals while filing its application for determination of Transmission Tariff by the Commission.

27) In view of our above decision, the Petitioner-KPTCL shall discontinue collection of Network Augmentation Charges separately from NCE Generators with immediate effect.

28) Accordingly, the Petition is disposed of.

Sd/-

Sd/-

Sd/-

(M.R. SREENIVASA MURTHY) (VISHVANATH HIREMATH) (K.SRINIVASA RAO)
CHAIRMAN MEMBER MEMBER