

No.N/52/14

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

**Dated : 16<sup>th</sup> January, 2015**

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|------------------------------|----------|
| 1. Sri M.R.Sreenivasa Murthy | Chairman |
| 2. Sri H.D.Arun Kumar        | Member   |
| 3. Sri D.B.Manival Raju      | Member   |

**OP No. 27 of 2014**

**Between :**

M/s. Brindavan Hydropower Private Limited,  
No.7, N. S. Iyengar Street,  
Seshadripuram,  
Bengaluru – 560 020

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**PETITIONER**

*[Represented by Shri L.M. Chidanandayya, Advocate]*

**And :**

- 1) Karnataka Power Transmission Corporation Limited,  
By its Managing Director  
Cauvery Bhavan,  
Bengaluru – 560 009
- 2) Chief Engineer (Electricity)(TAQC)  
Karnataka Power Transmission Corporation Limited,  
Cauvery Bhavan,  
Bengaluru – 560 009
- 3) Deputy General Manager (Technical),  
Karnataka Power Transmission Corporation Limited,  
Cauvery Bhavan,  
Bengaluru – 560 009

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**RESPONDENTS**

*[Respondents represented by M/s. Justlaw, Advocates]*

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1. This petition is filed under section 86(1)(f) of the Electricity Act, 2003,  
praying for the following reliefs :

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- (a) Declare the Circular dated 25.01.2014 (Annexure A) and the order dated 11.02.2014 (Annexure A1) as void and contrary to the orders passed by the Commission.
- (b) Set aside the Circular dated 25.01.2014 (Annexure A) and the order dated 11.02.2014 (Annexure A1) declaring them as void and contrary to the orders passed by the Commission in OP No.32/2011.
- (c) Issue an order or direction, directing the respondents to refund the sum of Rs.1.20 crores collected from the petitioner as the Network Augmentation Charges contrary to the law laid down in OP No.32 of 2011.
- (d) Issue an order or direction, directing the respondents to pay interest on Rs.1.20 crores at the rate of 15% which comes to Rs.51,30,000/- up to the date of filing the petition and direct the payment of future interest at the rate of 15% p.a.

2. The brief facts of the case are as follows:

The petitioner was granted permission by the Government of Karnataka for establishing a mini hydel plant of 24 MW capacity at Tunga Dam, Gajanur, Shivamogga. The petitioner submitted an application dated 23.10.2009 to the first respondent for construction of 110 KVA SC line for evacuation of power from the power plant to Gajanur Sub-Station of the first respondent. The entire expenses of the construction of the line had to be borne by the petitioner under the technical supervision of the first respondent. On considering the application, the first respondent granted approval for inter-connection subject to the petitioner paying Rs.1.20

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crores as network augmentation charges (NAC). The said amount was paid on 29.08.2011 by the petitioner. In the meanwhile, a petition was filed before the Commission in OP No. 2/2010 by another mini hydel generator challenging the collection of NAC by the first respondent. The Commission passed an order dated 29.07.2010 in OP No.2/2010 upholding collection of NAC by the first respondent, but opined that claiming charges on ad hoc basis without express approval of the Commission was not proper. Hence the Commission directed the first respondent to submit a proposal for collection of NAC on or before 31.03.2011 and seek approval of the Commission. The Commission added in its order that till such proposal is considered and orders passed, the first respondent shall continue to collect NAC at Rs.5 lakhs per MW. Thereafter, the first respondent filed OP No.32/2011 on 15.07.2011 seeking approval of the Commission for collection of NAC from NCE Generators. The Commission passed an order dated 30.11.2012 holding that collection of NAC from NCE generators separately is not proper. The Commission directed that the respondent, the petitioner in OP No.32 of 2011 shall include the estimated expenditure for augmentation of network to evacuate renewable energy as part of its capital expenditure while filing the petition for determination of transmission tariff. The Commission therefore, directed the respondent to discontinue collection of NAC separately from NCE generators with immediate effect. The petitioner made a request to the first respondent vide letters dated 7.2.2013 and 2.3.2013 to refund the NAC paid by it. Pursuant to the order of the Commission dated 30.11.2012, the respondent issued Orders dated 10.01.2013, 10.07.2013

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and 25.01.2014 (Annexures J, K & A respectively). Based on the Order dated 25.1.2014, the respondent issued a letter dated 11.02.2014 to the petitioner informing that NAC paid by it will not be refunded (Annexure A1).

3. The grounds urged by the petitioner are as under:
  - i. The collection of NAC is contrary to Sections 39 and 40 of the Electricity Act, 2003, as the respondent, being a transmission licensee, is duty bound to augment the network for supplying electricity to consumers.
  - ii. Under section 10 of the Act, the petitioner, a generating company is required to establish the necessary infrastructure for transmission of power from the generating unit to the grid of the respondent. The petitioner and other generating companies supply power to the grid or to ultimate consumers by paying applicable charges.
  - iii. The Orders dated 10.01.2013, 10.07.2013 and 25.01.2014 issued by the respondent are in violation of the order of the Commission dated 30.11.2012, and the respondents are liable for action under section 146 of the Electricity Act, 2003 for not implementing the Order of the Commission dated 30.11.2012.
  - iv. The impugned Orders passed by the respondent are violative of Articles 14, 19(1)(g) and 300A of the Constitution of India.

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4. Upon issuance of notice, the respondents entered appearance through their Counsel and filed Statement of objections on 06.11.2014, stating as follows :

(a) The respondent had issued an Order 11.05.2009 requiring NCE generators to pay NAC at Rs.5 lakhs per MW. This Order was issued before the Commission passed the order dated 29.07.2010 in OP No.2/2010.

(b) On 23.05.2011 the respondent issued another Order to levy NAC on captive power plants seeking Open Access at Rs.5 lakhs per MW.

(c) The Commission passed an Order dated 30.11.2012 in OP No.32 of 2011 filed by the respondent directing to discontinue collection of NAC with immediate effect. The respondents thereafter issued an Order dated 10.01.2013 to the effect that for the plants which are already synchronized and have paid NAC, no refund will be made, but for the plants yet to be synchronized, no NAC will be collected after 30.11.2012. It was also clarified that for the generators who had paid NAC in part, any amount due after 30.11.2012 will not be collected. The respondent thereafter passed another Order dated 10.07.2013 in supersession of the order dated 10.1.2013, deciding not to refund any NAC paid before 30.11.2012 and to refund all NAC collected after 30.11.2012 and not to collect any balance NAC which would fall due after 30.11.2012.

(d) The respondents issued another Order dated 25.01.2014 in supersession of all the previous Orders directing to refund NAC

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collected after 30.11.2012 and not to refund any NAC collected before 30.11.2012. Based on this Order, a letter was addressed to the petitioner on 11.2.2014, informing that the NAC paid by it will not be refunded.

(e) In the circumstances, there is no violation of Section 10, 39 or 40 of the Electricity Act or any Article of the Constitution of India, as alleged and the respondent has not acted contrary to the order of the Commission.

5. The petitioner has filed a rejoinder on 26.11.2014 reiterating the submissions made in the petition. Relying on clause 4 of the order dated 10.7.2013 issued by the Respondent, the petitioner has stated that it is entitled to refund of NAC as the project was synchronised on 13.6.2014. It has stated that it is entitled to refund of NAC paid by it on 29.8.2011, as collection of NAC pursuant to the order dated 29.7.2010 was subject to the order dated 30.11.2012.

6. We have perused the records and heard both parties. The Counsel for the petitioner argued that collection of NAC after 29.07.2010 was subject to the outcome of OP No.32 of 2011 and any NAC collected had to be refunded by virtue of the order passed in OP No.32 of 2011. The Counsel for the respondents argued that the Commission's order dated 30.11.2012 clearly directs to discontinue collection of NAC prospectively.

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7. The only point which arises for consideration is "Whether the petitioner is entitled to refund of NAC paid by it to the respondent on 29.8.2011, in view of the order dated 30.11.2012 in OP No. 32/2011"?

8. The operative portion of the order dated 30.11.2012 in OP No. 32/2011 reads as follows:

*"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".*

9. In the above decision, the Commission had directed the KPTCL to discontinue collection of NAC separately from NCE generators with immediate effect. 'With immediate effect' means starting from now or hence forth. Hence, the order is prospective in nature and applies only from the date of the order viz., 30.11.2012. In the earlier order dated 29.7.2010 in OP No. 2/2010, the Commission had passed the following order:

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*"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".*

In this order, it is clear that the Commission while upholding the validity and legality of collection of NAC by KPTCL, had permitted the collection till the Commission passed an order on the proposal of KPTCL/ESCOMs for approval of collection of such charges.

10. A conjoint reading of the two orders reveal that the Commission had upheld the validity and legality of collection of NAC by KPTCL and permitted collection but ordered it to be discontinued from the date of its Order in OP No.32/2011 as the Commission considered that it is more expedient to recover the expenditure incurred towards developing the transmission network through transmission tariff.



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11. It is pertinent to note that the Commission had clarified the issue to M/s.Doddannavar Global Energy Pvt Ltd and GM Sugar and Energy Ltd on the representations submitted by the said Companies seeking clarification on refund of NAC paid by them on 20.12.2011 and 2.2.2011 respectively. The Commission had clarified vide letters dated 8.3.2013 and 8.1.2013 that the discontinuation of collection of NAC has to be from the date of the order viz, 30.11.2012. The case of the petitioner is similar in as much as the NAC is paid on 29.8.2011.

12. We note that the respondents by issue of three Orders dated 10.1.2013, 10.7.2013 and 25.1.2014 interpreting the Order of the Commission dated 30.11.2012 each time differently have caused avoidable confusion. Nowhere in the Orders dated 29.7.2010 or 30.11.2012 had the Commission mentioned that the date of synchronisation of the project should be the bench mark for collection or refund of NAC. Instead of trying to interpret the Order of the Commission, the respondents should have been well advised to seek clarification from the Commission, if they had felt that there was some ambiguity in the Order or practical difficulties in implementing the same. Be that as it may, we find that the impugned Order of the respondents dated 25.1.2014 issued in supersession of its earlier Orders, is in consonance with the Order of the Commission dated 30.11.2012 and does not call for any intervention by the Commission as sought by the petitioner.

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13. In view of the above, we hold that the petitioner is not entitled to the reliefs sought.

14. Accordingly, we pass the following order:

**ORDER**

The Petition is dismissed.

Sd/-

(M.R. SRENIVASA MURTHY)  
CHAIRMAN

Sd/-

(H.D. ARUN KUMAR)  
MEMBER

Sd/-

(D.B. MANIVAL RAJU)  
MEMBER