

No.: N/102/2013

**BEFORE THE KARNATAKA ELECTRICITY REGULATORY COMMISSION,
No.16, C-1, Millers Tank Bed Area, Vasanth Nagar, Bengaluru-560 052.**

Dated: 29.12.2020

Present

Shri Shambhu Dayal Meena	: Chairman
Shri H.M. Manjunatha	: Member
Shri M.D. Ravi	: Member

COMPLAINT No.13/2013

BETWEEN:

Cauvery Hydro Energy Limited,
No. 67, "Lavina Courts" First Floor,
No.102, 8th Main, 7th Cross,
RMV Extension,
Bengaluru-560080.
(Represented by its-Managing Director)

... COMPLAINANT

[Complainant represented by Srinivas & Badri Counsels]

AND:

1. Karnataka Power Transmission Corporation Limited,
Cauvery Bhavan, Kempegowda Road,
Bangalore-560 009.
(Represented by its-Managing Director)

2. State Load Dispatch Center Karnataka,
Operated by Karnataka Power Transmission
Corporation Limited, with its Office at
Anand Rao Circle,
Bangalore-560 009.
(Represented by its Chief Engineer)

... RESPONDENTS

[Respondents represented by Sri S. Sriranga,
for Just Law Advocates]

ORDERS

1. After the remand from the Hon'ble Appellate Tribunal for Electricity in Appeal No.109/2016, disposed of on 27.11.2017, the matter is taken up for final hearing.

2. Brief Facts of the Case:

- 1) The Complainant filed under Section 142 of the Act by M/s Cauvery Hydro Energy Ltd. is a generating company incorporated under the Companies Act, 1956, having its registered office in Bengaluru and has established a 3 MW hydroelectric project at Shivanasamudram, Mandya District of Karnataka.
- 2) The Respondent No.1 i.e., Karnataka Power Transmission Corporation Limited, is the State Transmission Utility under Section 39 of the Act.
- 3) The Respondent No. 2 is the State Load Despatch Centre (SLDC) in the State of Karnataka, established under Section 31 of the Act.
- 4) The Complainant had entered into an agreement with the Government of Karnataka, for setting up of 3-MW hydroelectric project at Shivanasamudram, Mandya District on 09.09.1992.
- 5) The Complainant entered into Wheeling and Banking Agreement on 17.08.1998, with the erstwhile Karnataka Electricity Board (KEB), now KPTCL/Respondent No.1 for wheeling of the energy produced from the Project by utilising the network of the Respondent No.1, with the wheeling charges and banking charges at 5% and 2% respectively, in accordance with the order of GoK dated 13.06.1996.

- 6) The Respondent No.1, vide order dated 30.08.2000, increased the wheeling charges for the Project of the Appellant from 5% to 20% with effect from 01.09.2000, unilaterally. The unilateral increase of the wheeling charges was challenged by the Complainant before the Hon'ble High Court of Karnataka in a writ petition No.690/2003 and the Hon'ble High Court passed orders on 13.04.2007, directing the Respondent No.1 to reconsider the matter in accordance with law and pass appropriate orders.
- 7) Subsequently, the Complainant approached the Respondent No.1 to return/adjust the excess energy/monies collected from it, which was rejected by the SLDC vide letter dated 1.7.2010. Aggrieved by the above action of the Respondents, in 2010, the Complainant approached the State Commission filing a Petition in OP No. 47/2010 under Section 86 of the Act for the quashing of the Order dated 30.8.2000 passed by the Respondent No.1.
- 8) After hearing the parties the Commission passed the following order in OP 47/2010 on 02.06.2011:
- “(1) The petition is allowed.
- (2) It is declared that the order of KPTCL dated 30.8.2000 impugned in the petition is not enforceable against the petitioner and petitioner is liable to pay only 5% of the energy as wheeling charges for the first ten years period as provided in the contract. Consequently, the order No. CEE/SLDC/SEE/ TBC/1042, dated 1.7.2010 of the Chief Engineer. LDC is set aside.
- (3) Respondent is directed to re-calculate the charges payable by the petitioner considering the above observations made in this order and make necessary claims after making due adjustments to the charges already paid by the petitioner.”

- 9) Thereafter, the complainant made correspondence with the Respondent No.1 regarding refund of energy/monies. The Respondent No.1, vide letter dated 28.11.2011, informed that in terms of the order dated 02.06.2011 of the State Commission, it was not required to refund any excess energy/monies. In 2013, the Respondents challenged the order of the State Commission before the Hon'ble Appellate Tribunal for Electricity (IA No.191 of 2013 in DFR No. 908 of 2013), but the appeal was not allowed by the Tribunal on the ground that it was filed with an inordinate delay for which the Respondent No. 1 failed to provide proper justification. The matter was further carried in appeal before the Hon'ble Supreme Court as Civil Appeal No. 9963 of 2014, which was also dismissed by the Hon'ble Supreme Court, vide order dated 27.01.2015.
- 10) As the excess energy/monies paid by the complainant to Respondent No.1 were not being refunded, the complainant filed execution proceedings vide Complaint No.13 of 2013 before the Commission. The State Commission, after hearing the parties passed order on 07.01.2016, as follows:
- “(a) For the present, the Respondents cannot be held to have contravened the directions issued in the Order dated 2.6.2011 in OP No.47/2010;
 - (b) The Commission holds that the true effect and meaning of the directions issued in the Order dated 2.6.2011 in OP No.47/2010 shall be as explained in this Order, particularly in Paragraphs-16 to 18 thereof; and,
 - (c) The Respondents are now directed to recalculate the charges payable by the Complainant as explained in Paragraphs-16 to 18 of this Order and to raise necessary claims, after effecting due adjustments of the Wheeling and Banking Charges, in kind and/or cash, already collected from the

Complainant, and/or to refund the excess Wheeling and Banking Charges, in kind and/or cash, if any, collected from the Complainant, within 02 (two) months from the date of this Order.”

11) Aggrieved by the above order of the Commission, the Complainant filed an appeal before the Hon'ble ATE in Appeal No.109 of 2016.

12) After hearing both the sides, the Hon'ble ATE had passed order dated 27.11.2017 as under:

“We are of the considered opinion that the issues raised in the present Appeal have some merit as discussed above. The Appeal is hereby partially allowed.

The Impugned Order dated 7.1.2016 passed by the State Commission is set aside to the extent on the issue of Wheeling charges and remanded to the State Commission for clarifying its stand on Transmission and Network charges at Para 11 d) above.”

13) In view of the above Orders of the Hon'ble ATE, requiring this Commission to clarify as to whether the transmission and network charges as envisaged in Tariff Order, 2003 and Tariff Order, 2005 are the part of the wheeling charges or different from the wheeling charges, the Commission took up the current proceedings and issued notices to the parties on 01.01.2018. During the course of several hearings, the parties have filed their written submissions which are briefly dealt in the following paragraphs:

The Complainant, in his written submissions made on 07.09.2020 has highlighted the following aspects:

(a) Referring to the Para – 11 (b)(x) at page 25 of the orders of the Hon'ble ATE, the Complainant has submitted that the ATE has held that the Commission could not have

re-opened and re-examined the findings in OP No.47/2010 and restored the wheeling charges to 5%.

- (b) Referring to the Para-11(d) (iv) (page-30) of Hon'ble ATE order, it is submitted that, the ATE has held that the tariff order 2003 excluding wheeling charges and subsequent orders, the Regulations issued by the State Commission, until 16.08.2010(The Commission notes that as per Hon'ble ATE's order it is 16.08.2008), would be applicable to the complainant.
- (c) Referring to Para 11(d) (v) (page-31) of the Hon'ble ATE order, it is submitted that, the ATE has remanded the matter back to the Commission on the contention of the complainant that the wheeling charges would include transmission and network charges as opposed to respondents' contention that the transmission and network charges are distinct from the wheeling charges.
- (d) The complainant has referred to the definition of the wheeling as per Electricity Act, 2003. Further, it is stated that in common parlance, the transmission charges would necessarily mean the cost borne by the generator for transmitting energy by using the transmission grid between generating facility and the local distribution network. Further, referring to Clause-5.10 of the agreement it is submitted that, in the event of energy being drawn using complainant's own transmission and distribution system without using the respondent grid facilities, no wheeling charges are payable. Thus, the Complainant has inferred that the concept of wheeling and transmission is one and the same and wheeling charges would take into account the transmission cost. There cannot be any independent levy of transmission charges more so when the contract has already fixed the wheeling charges for a fixed period of time. Even otherwise the agreement does not contemplate levy of transmission charges.

- (e) Referring to Para – 13.24.1 and 13.24.2 of the Tariff Order 2003, it is submitted that transmission and network cost have been taken into account by the Commission as relevant factors for determining the wheeling charges. Thus, the Tariff Order 2003 does not separately and distinctly levy any charges vis-à-vis wheeling charges, transmission charges/network charges.
- (f) As per settled principles of law, levy of any charge without having legitimate source and power, would be illegal. The respondent should disclose the source of power to levy transmission and network charges and if such levy is permissible then in such a case these charges are distinct from wheeling charges.
- (g) The complainant has requested the Commission to direct respondents to refund the energy collected in excess of 5% and to render a finding as directed by the Hon'ble ATE, as to whether the levy of transmission and network charges are included in wheeling charges and the same are not distinct in nature.

14) The respondent KPTCL filed its written submissions on 22.09.2020, stating that:

- (1) The Commission in OP No. 47 of 2010 vide order dated 02.06.2011 has held that the Complainant is liable to pay wheeling charges at 5% and the Respondent herein was directed to re-calculate the charges payable. Further, this Commission was pleased to observe at para 14 of the said order that parties have to pay surcharge as determined by this Commission from time to time in exercise of its statutory power. In accordance with the order of this Commission, the Respondent has adjusted the excess charge collected over and above 5% of wheeling charges in subsequent bills.
- (2) Thereafter, the Complainant filed the present complaint on the alleged ground of non-compliance of order of this Commission in OP 47 of 2010 by the Respondent. After hearing both the parties, on

07.01.2016, this Commission was pleased to hold that the Complainant is liable to pay wheeling and banking charges and cross subsidy surcharge as determined by this Commission in tariff was not in contravention of any of the direction issued in OP No. 47 of 2010. This Commission in said order directed the Respondent herein to refund the excess wheeling charges collected if any after adjusting the claim for cross subsidy surcharge.

- (3) Aggrieved by the order dated 07.01.2016, the Complainant preferred an appeal bearing number Appeal No. 109 of 2016 before the Hon'ble ATE on the ground that this Commission in Complainant No. 13 of 2013 has re-opened the original petition in OP No. 47 of 2010 and adjudicated the new issues which were not part of the original proceedings.
- (4) The Hon'ble ATE vide judgement dated 27.11.2017 in Appeal No. 109 of 2016 has partially allowed the appeal and set aside the finding of this Commission dated 07.01.2016 in respect of payment of wheeling charges as per the Tariff order and remand is confined to the finding at para 11 (d). It is to be noted that at para 11 (c) (iv) (The Commission notes that as per Hon'ble ATE's order it is 11 (d) (iv)), the Hon'ble ATE has affirmed the order of this Commission in respect of payment of Cross Subsidy Surcharge as per the tariff order for 2003 and Tariff order dated 09.06.2005.
- (5) In pursuance of the order passed by this Commission on 07.01.2016, the Respondent No.2 has implemented direction contained in para 20 (c) as per which re-computation had to be undertaken taking into consideration direction contained in para 16 to 18. After undertaking the computation, a demand for Rs.3,30,84941 was issued vide communication dated 28.10.2016 and copy of the same is produced herewith as Annexure-1. The contents of the said letter make the position clear. The computation and demand have not made any calculation or reference to network charge. In view of the re computation strictly in terms of the

aforementioned direction, the question of computing network charge or interest thereon would not arise. In view of the demand raised, it is clear that the issue of network charge has been rendered academic.

(6) In view of the above, Respondent KPTCL has requested to hold that, in view of the demand made on 28.10.2016 and computation of the same based on Para 16 to 18 of Order dated, 07.01.2016, present complaint has been rendered infructuous and issue of computation of transmission and network and its applicability does not arise in the present proceedings.

15) In response to the above, the complainant submitted its response on 25.11.2020 stating that:

(1) In light of the admission made by the Respondent at paragraph 6 of its Written Arguments stating that they have complied with the order passed by this Commission and no demands have been made with respect to network charges or interest thereupon and the question of computation of transmission and network charges and its applicability does not arise in the present proceedings, it is most respectfully prayed that the above admission be taken on record.

(2) In the written arguments the Respondents have referred to a letter dated 28.10.2016 wherein the Respondents have computed the charges. Since more than 4 years have lapsed from the date of the said letter, without prejudice to the rights of the Complainant, both the parties may be directed to make a fresh computation and the Complaint maybe disposed of accordingly.

16) Considering the directions given by the Hon'ble ATE and the submissions made by the parties, we are of the opinion that the remand made by the Hon'ble ATE is limited to the clarification envisaged at Para 11 (d) of the Order of the ATE.

17) Before clarifying the issues involved, the Commission has taken note of the following definitions contained in the Electricity Act,2003:

- (a) Section 2 (74) "transmit" means conveyance of electricity by means of transmission lines and the expression "transmission" shall be construed accordingly;
- (b) Section 2 (76) "wheeling" means the operation whereby the distribution system and associated facilities of a transmission licensee or distribution licensee, as the case may be, are used by another person for the conveyance of electricity on payment of charges to be determined under section 62;
- (c) Section 2 (73) "transmission licensee" means a licensee authorised to establish or operate transmission lines;
- (d) Section 2 (72) "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, switch-gear 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;
- (e) Section 2 (17) "distribution licensee" means a licensee authorised to operate and maintain a distribution system for supplying electricity to the consumers in his area of supply;
- (f) Section 2 (19) "distribution system" means the system of wires and associated facilities between the delivery points on the transmission lines or the generating station connection and the point of connection to the installation of the consumers;
- (g) Section 2 (40) "Line" means any wire, cable, tube, pipe, insulator, conductor or other similar thing (including its casing or coating) which is designed or adapted for use in carrying electricity and includes any line which surrounds or

supports, or is surrounded or supported by or is installed in close proximity to, or is supported, carried or suspended in association with, any such line;

- 18) From the definition of wheeling read with definitions of transmission lines and distribution system, it can be inferred that, wheeling involves both distribution and transmission networks for conveying electricity from a certain source to destination of use. The Commission, under Section 86(1)(a) of the Electricity Act, 2003, while discharging its functions, shall determine the tariff for generation, supply, transmission and wheeling of electricity, wholesale, bulk or retail, as the case may be, within the State.
- 19) It is noted from Tariff Order, 2003, that the Commission has, under the heading "wheeling" at para 13.24.2 has determined the wheeling charges for the following cases:
- (a) Wheeling at transmission voltage only without involving any ESCOMs, the transmission network charges, in cash and transmission losses in kind are payable, which is nothing but the transmission tariff and losses.
 - (b) Wheeling from a generator in one ESCOM to a consumer in other ESCOM, network charges of both ESCOMs, in addition to KPTCL network charge are payable in cash. Also, KPTCL losses and average distribution losses, in kind have to be borne.
 - (c) Wheeling of energy by a generator to a consumer within the same ESCOM, Network Charges of the concerned ESCOM and KPTCL network charges in cash are payable in addition to KPTCL Transmission losses and average distribution losses, at the rates approved by the Commission in its Tariff Order for the relevant year, in kind.
- 20) Similarly, in case of Tariff Order, 2005 dated 27.09.2005, the Commission has determined the Transmission charges on per MW basis and wheeling charges on per unit basis. At page-342 of the above Tariff Order, the Commission has stated that in all other

matters of Transmission charge, wheeling charge and cross subsidy surcharge under open access, the order dated 09.06.2005 of the Commission in the matter of "Determination of Transmission charge, wheeling charge and cross subsidy surcharge under open access" is applicable. It is noted that as per order dated 09.06.2005, at para 9.01 under wheeling, the following transactions are envisaged:

- (a) Wheeling transaction involves only transmission, Transmission charges in cash and losses in kind as determined by the Commission.
- (b) Wheeling Transaction involves only one ESCOM, Network cost of the ESCOM in cash and losses in kind, both based on point of injection and drawal.
- (c) Wheeling transaction involving (i) transmission and one or more distribution network or (ii) involving more than one ESCOM, Transmission charges in cash and losses in kind as determined by the Commission, and Network cost of drawal ESCOM (both HT & LT) in cash and Network losses (both HT & LT) of drawal ESCOM in kind.

20.1) Further, in the order dated 09.06.2005, the Commission decided that for Non-Conventional Energy (NCE) sources, the wheeling charges is 5% of the energy input to the system and that they are not liable to pay any other transmission charges or wheeling charges either in cash or kind as determined in the above order, but are liable to pay surcharge, if the wheeling of energy is for other than their own use.

20.2) Thus, on perusal of the above orders read with the definition of Wheeling, clearly indicates that, the wheeling charges determined for Renewable Energy sources, include Transmission network charges and distribution network charges including the losses, which is dependent on type of network which is used i.e. the point of injection and point of drawal. Thus, the Commission

concludes that Transmission and distribution network charges are part of the wheeling charges determined for RE sources.

20.3) Further, it is clarified that in common electrical parlance, a distribution network is a system or part of a system at nominal voltage below 66kV of electric lines or cables, substations and associated equipment and buildings for distributing electricity regardless of whether a generating plant is connected to such system or not. Similarly, the network operating at 66 KV and above level is termed as Transmission network. In view of the above the network cost referred to in the Orders of the Commission refers to the wheeling charges.

3. Hence, the following Order:

ORDER

- (1) The Wheeling charges determined by the Commission are the charges for use of transmission network and/or distribution network, depending upon whose network is used. i.e. based on the point of injection of electricity and point of drawal of electricity.
- (2) Accordingly, the issue referred to the Commission by the Hon'ble ATE is clarified.
- (3) In view of the above clarification, the parties are at liberty to mutually resolve the issue.

Accordingly, the Complaint is disposed of.

sd/-
(SHAMBHU DAYAL MEENA)
Chairman

sd/-
(H.M. MANJUNATHA)
Member

sd/-
(M.D. RAVI)
Member