

**TAMIL NADU ELECTRICITY REGULATORY COMMISSION**  
**(Constituted under section 82 (1) of the Electricity Act, 2003)**  
**(Central Act 36 of 2003)**

**PRESENT:-**

ThiruS.Akshayakumar .... Chairman  
Thiru.G.Rajagopal .... Member  
and  
Dr.T.PrabhakaraRao .... Member

**I.A.No.1 of 2016 in R.P.No.1 of 2016**  
**and**  
**R.P.No.1 of 2016**

Indian Wind Power Association  
Rep. by its Secretary General  
Door No.E, 6<sup>th</sup> Floor  
Shakti Towers – II  
766, Anna Salai  
Chennai – 600 002.

... Petitioner  
(Thiru. Rahul Balaji  
Advocate for the Petitioner)

Vs.

1. Tamil Nadu Generation and Distribution Corporation Limited  
Rep. by its Chairman and Managing Director  
144, Anna Salai  
Chennai – 600 002.
2. TANTRANSCO/SLDC  
Rep. by its Director  
144, Anna Salai  
Chennai 600 002.

... Respondents  
(Thiru M. Gopinathan  
Standing Counsel for the Respondents)

**Date of hearing:** 02-06-2016

**Date of Order:** 09-12-2016

The I.A. No.1 of 2016 in R.P.No.1 of 2016 and R.P.No.1 of 2016 came up for hearing on 02-06-2016 to decide on the question of admissibility. The Commission

upon perusal of the Petition and after hearing the submissions of the Petitioner and Respondents hereby makes the following:

### **ORDER**

#### **1. Prayer of the Petitioner:-**

##### **Prayer of the Petitioner in R.P.No.1 of 2016:-**

1.1. The prayer of the Petitioner in the above R.P.No.1 of 2016 is to review the Commission's tariff order in the Comprehensive Tariff Order on Wind Energy dated 31-03-2016 passed in T.O.No.3 of 2016 in so far as the fixation of Scheduling and System Operation Charges are concerned by issuing appropriate orders for levy of the said charges by considering the factors specific to Wind Energy Generation, including by directing the collection of the said charges to be proportionate to the capacity of the WEG and to pass such further or other orders as the Commission may deem fit and proper in the facts and circumstances of the case and thus render justice.

##### **1.2. Prayer of the Petitioner in I.A.No.1 of 2016 in R.P.No.1 of 2016:-**

The prayer of the Petitioner in I.A.No.1 of 2016 in R.P.No.1 of 2016 is to grant an interim order of stay of operation of Comprehensive Tariff Order on Wind Energy dated 31-03-2016 passed in T.O.No.3 of 2016 in so far as the fixation of Scheduling and System Operation Charges under para 10.1 viz. Open Access Charges and Line Losses by directing collection of the said charges to be proportionate to the capacity of the WEG pending disposal of the Review Petition.

#### **2. Contentions of the Petitioner in R.P.No.1 of 2016:-**

2.1. There is an error in fixing the new Scheduling and System operation charges since whereby the small WEGs have to pay 10 times more charges when compared

to big generators, which was clearly not intended by the Commission as this would run contrary to its own stated approach and adoption of the statutory and regulatory framework while fixing the charges under the Tariff Order.

2.2. There is an error apparent on the face of the record in fixing the new Scheduling and System operation charges since the WEGs have to pay relatively more Scheduling and System operation charges when compared to the Scheduling and System operation charges to be paid by the conventional plant.

2.3. The very purpose of providing promotional measures to the renewable energy by the Electricity Act, 2003 would stand defeated by the imposition of the charge in the manner sought to be done as the effective cost of Scheduling and System operation charges are higher than that of a conventional generator which has never been the approach of the Commission in this very order or its earlier orders.

2.4. There is an error apparent on the face of the record in fixing the new Scheduling and System operation charges since as per the new Scheduling and System operation charges, the revenue of the SLDC jumps to two to three times approximately, which is not consistent with the Commission's Tariff Regulations.

2.5. The portion requiring its review stand justified by the very premise that was adopted by the Commission and if the charges relating to Scheduling and System Operation charges is not corrected, it would lead to an incongruous position, which the Commission would have never intended.

2.6. A reading of the Tariff Order makes it explicitly clear that the Commission has fully appreciated the Statutory and Regulatory mandate with respect to Non-Conventional power in general and Wind Energy in particular. It has been conscious of the preferential treatment that is to be adopted and also that measures to encourage Wind Energy are to be incorporated. More importantly, it has also recognized aspects such as the WEG capacity, the CUF etc. which are aspects peculiar to Wind Energy generation. Most importantly the exercise of power under section 61 and section 62 of the Electricity Act, 2003 has been recognised, which makes it mandatory to adopt commercial principles, i.e., the charges fixed ought not to impose a disproportionate burden on one party and unjust enrichment for the other. These are aspects that would be relevant to demonstrate the error that has crept into the fixation of the impugned charges which would cause enormous hardship and prejudice to the generators by imposing a huge and unbearable burden upon them which was evidently never intended to operate in such manner. Thus the error is required to be corrected by the Commission by Review.

2.7. There is evidently an error in the impugned Tariff Order as there is no mention as to the basis and logic for the departure from the approach already adopted by the Commission by levying a pro-rata levy. In the absence of any cogent reason, the levy requires a review and corrective action.

2.8. The impugned charge is required to be Reviewed since the WEGs would be grossly discriminated when compared to Conventional generators in their Return on Investment, this is an exactly opposite approach to the statutory mandate which requires preferential treatment.

2.9. The impugned charge requires Review as it would lead to a huge and unjustified revenue to the SLDC for no justifiable reason.

2.10. The impugned charge requires Review, as it is evident that such a large levy was not taken into account while fixing the return on Investment. Any charge for which the generator has not been compensated would be unjustified. It would lead to a situation where a generator is burdened with a huge levy which was never in its contemplation while putting up the capacity.

3. In the hearing on 02-06-2016, orders were reserved as to the admissibility of the petition.

#### **4. Findings of the Commission:-**

4.1. We have heard the Review Petitioner. The Review Petition has been filed against the orders of this Commission dated 31-03-2016 in comprehensive tariff order on Wind Energy T.O.No.3 of 2016, insofar as the fixation of Scheduling and System Operation charges are concerned. According to the Petitioner, the said orders suffer from certain errors apparent on the face of the record requiring a review of the same and if it is not corrected, it could lead to an incongruous position, which this Commission would never have intended.

4.2. In this connection, the orders of the Commission in the said T.O.No.3 of 2016 relating to Scheduling and System Operation charges is relevant to quote:-

*“10.1. Open Access charges and Line Losses:-*

*10.1.1 Transmission, Wheeling and Scheduling and System Operation Charges are generally regulated by the Commission’s Tariff regulations, Grid Connectivity and Open Access Regulations and Commission’s Order on Open Access Charges issued from time to time. **However, as a promotional***

*measure under sections 61 and 86 (1) (e) of the Act, the Commission decides to adopt 40% in each of the transmission, wheeling and Scheduling and System operation charges as applicable to the conventional power to the wind power. Apart from these charges, the WEGs shall have to bear the actual line losses in kind as specified in the regulation orders of the Commission issued from time to time.”*

4.3. From the above, it could be seen that the orders of the Commission is specific, unambiguous and specifies 40% of the Scheduling and System Operation Charges as applicable to the conventional power to the wind power as a promotional measure. It is a conscious decision taken by the Commission and there is no error apparent on the face of the record. The contention of the Petitioner is that small Wind Electric Generators (WEGs) would tend to pay ten times the charges when compared to big generators and the effective cost of Scheduling and System operation charges are higher than that of a conventional generator. The above plea taken by the Review Petitioner can be considered only by reopening the case afresh and examine them on merits. Obviously they are all matters to be agitated in the Appellate Forum, if he is so advised. In this connection, we would like to refer Regulations of the Commission in regard to the scope of review. Regulation 43 of the Conduct of Business Regulations, 2004, which is relevant herein is reproduced below;

*“(1) The Commission may on its own or on the application of any of the persons or parties concerned within 30 days of the making of any decision, direction or order, review such decision, directions or orders on the ground that such decision, direction or order was made under a mistake of fact, ignorance of any material fact or any error apparent on the face of the record.*

*(2) An application for such review shall be filed in the same manner as a petition under Chapter-I of these Regulations”.*

4.4. Going by the above regulation, the review of an order is permissible only when the order issued was under mistake of fact, ignorance of material fact or error

apparent on the face of the record. The petitioner's contention that the charges fixed in the impugned order for the petitioner would cause enormous hardship and prejudice to one party and unjust enrichment for the other which was never intended is not a matter which falls within the scope of review. It is a well known fact that the Scheduling and System operation charges are collected for the works involved in scheduling and carrying out the system operation by the agency involved, irrespective of the capacity of the generator. Therefore, the contention of the petitioner that the Scheduling and System operation charges fixed for the WEGs would lead to an incongruous position and the same was never intended by the Commission is misplaced. The Commission has fixed the Scheduling and System operation charges taking into account the provisions of the Act and regulations / orders of the Commission. The petitioner's comparison of the charges for small and big generators does not fall within the scope of review. It is also not out of place to mention that an appeal is already pending before APTEL in the same issue in Appeal No.177 of 2016.

4.5. All the grounds raised by the petitioner do not form grounds for review. A review petition cannot be an appeal in disguise and deserves to be dismissed.

Accordingly, R.P.No.1 of 2016 is dismissed.

#### **5. Appeal:-**

An appeal against this order shall lie before the Appellate Tribunal for Electricity under section 111 of the Electricity Act, 2003 within a period of 45 days from the date of receipt of a copy of this order by the aggrieved person.

(Sd .....)  
**(Dr.T.PrabhakaraRao)**  
**Member**

(Sd.....)  
**(G.Rajagopal)**  
**Member**

(Sd.....)  
**(S.Akshayakumar)**  
**Chairman**

/True Copy/

Secretary  
Tamil Nadu Electricity  
Regulatory Commission