

In the matter of:
M/s Steel Furnace Association of India
Vs
Punjab State Power Corporation Limited

SYNOPSIS

The Hon'ble Tribunal while delivering its order dated 12.09.2014 in the Appeal No.245, 176, 237 and 191 of 2012 decided the following four issues, which are as follows -:

- (a) Determination of Wheeling Charges;
- (b) Non implementation of cost to supply;
- (c) Non segregation of Cost of Generation from Distribution;
- (d) High un-metered agricultural pump set consumption.

The issues mentioned in (a) and (c) above were decided in favour of the Appellant and issues mentioned in (b) and (d) above were decided against the Appellant.

The order dated 12.09.2014 passed by the Hon'ble APTEL was thereafter challenged before the Hon'ble Supreme Court by Punjab State Power

Corporation Ltd. (PSPCL) vide statutory Appeal under Section 125 of the Electricity Act, 2003.

The Hon'ble Supreme Court vide its order dated 27.03.2015 granted a stay on the operation of the order of the Hon'ble Tribunal due to which the Wheeling Charges could not be determined as directed by the Hon'ble Tribunal and Non-Segregation of Cost of Generation from Distribution also could not be undertaken. The relevant excerpts of the order dated 27.03.2015 passed by the Hon'ble Supreme Court is produced below - :

“There shall be stay of the impugned judgment, in the meanwhile.”

As of now, order dated 16.07.2012 passed by the Commission remains in effect and no relief in terms of wheeling charges as provided by the Hon'ble Tribunal could be availed. The same difficulty has been also expressed by the Hon'ble Commission vide its 07.05.2015, the relevant excerpts of the same is produced below - :

“.....Further, the judgement of the Hon'ble APTEL dated 12.09.2014 has been stayed by the Hon'ble Supreme Court as per its Order dated 27.03.2015 in Civil Appeal No(s). 2151-2152/2015.

.....
Further action in the matter can now be taken only after the final disposal of statutory Appeals by the Hon'ble Supreme Court of India.

The petition is disposed of as above.”

In the light of above, it becomes imperative and necessary to plead and to bring on record Open Access Users Association case and highlights merits of the order dated 12.09.2014 of the Hon'ble Tribunal before the Hon'ble Supreme Court of India.

Therefore, if the Open Access Users Association is not a party in the proceedings before Hon'ble Supreme Court then it must first become party as it has direct and subsisting interest in the subject matter of the said proceedings, and the members of the Association are going to be affected by the outcome of the case. Further the Association was a party to the Appeal and a common order was passed by the Hon'ble APTEL while disposing of the Appeal.

The Open Access Users Association can also file an Interlocutory Application for Vacation of the Stay granted vide order dated 27.03.2015 along with impleadment Application (if it is a not party):

The Grounds for Vacation of Stay and Contesting the Appeal - :

To provide Open Access in non-discriminatory manner is a duty of the Transmission Utility under Section 38 (2) (d) and Distributing licence under Section 40 (C) of the Electricity Act.

The right of consumers to avail the Open Access has been severely curtailed by the Impugned Order. The Commission has increased the Wheeling Charges by almost 700% in relation to Open Access customers. As a result of such increase in Wheeling Charges, the Open Access transactions in the State have considerably reduced and resultantly having bearing Competition which is one of the objective of the Electricity Act. Open Access is a vested right enshrined under the Electricity Act, 2003, and the State Utilities are further under obligation to progressively make the electricity market suitable for promoting access of the distribution and transmission system by the open access users. Therefore, increase of wheeling charges amount to denial of vested right to have open access to the open access consumers, which is against the very basis and objective with which the Electricity Act, 2003 has come into existence.

The State Commission has determined Wheeling Charges against the National Tariff Policy - :

The Wheeling charges have not being determined as per Clause 8.5.5 of the National Tariff Policy 2005. The Wheeling Charges have been increased from 18.6 Paise per unit to 124 Paise per unit.

The Imposition of wheeling charges is against the basic principles and also against the own policy of the State - :

Imposition of Wheeling Charges on Open Access Customers getting power supply directly through the transmission network of the transmission licensee, is illegal. Under Regulation 25 (1), Wheeling Charges for distribution system can be only levied on Open Access Customers utilising their distribution network for Wheeling of electricity. When the Open Access customers are using the 220 KV or 132 KV transmission systems, they are liable to pay only transmission charges and not Wheeling Charges of the distribution licensee.

Commission has imposed cost without analyzing the extent of use:

The Commission has done incorrect interpretations of the Regulations. The Commission has made an attempt to levy the costs of the entire distribution network (without segregation) on all consumers irrespective of the extent of utilisation of the distribution network by a consumer under Open Access.

The State Commission while passing the Impugned Order has failed to ensure segregation of all common cost:

The State Commission has committed a fundamental flaw while while passing the Order. It has failed to ensure segregation of all common cost and to direct the licensee to file separate petitions for annual revenue requirements for generation and distribution businesses. By not filing separate ARR's, the Power Corporation (has not segregated the cost of generation. Therefore, the inefficiencies in the generation business and the distribution business cannot be clearly identified by the State Commission. The State Commission is mandated to determine the tariff for each generating station owned by the Distribution licensee in terms of the Regulations established by it. However, the tariff order does not show that any such exercise was undertaken by the State Commission towards such a determination.