

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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Case No. 29 of 2010

In the matter of
Petition of M/s. Wardha Power Company Limited for quashing of letter dated March 30, 2010 issued by Maharashtra State Electricity Transmission Company Limited demanding transmission charges.

Shri. V.P. Raja, Chairman
Shri. Vijay L. Sonavane, Member

M/S. Wardha Power Company Limited.

... Petitioner

Versus

1. Maharashtra State Electricity Transmission Company Ltd.

2. Maharashtra State Load Dispatch Centre

... Respondents

ORDER

Dated: June 1, 2011

M/s. Wardha Power Company Limited (“WPCL”) submitted a Petition under affidavit on June 9, 2010, under Section 86(1)(f) of the Electricity Act, 2003 (“EA 2003”), read with 9.4 of the MERC (Transmission Open Access) Regulations, 2005 for quashing of letter dated March 30, 2010 issued by the Maharashtra State Electricity Transmission Company Ltd., demanding transmission charges.

2. The main prayers in the Petition are as follows:

“

- a) *quash the letter dated March 30,2010 being Annexure P-6 hereto and hold that the Respondent No.1 is not entitled to transmission charges or any system strengthening charges as is demanded in the said letter;*

- b) *direct the Respondent No1 to return the Bank Guarantee for Rs.5,90,77,627 provided to the Respondent No1 under Cover Letter dated April 8, 2010 being Annexure P-8”*

3. WPCL, in its Petition dated June 9, 2010, submitted as under:

a) WPCL is setting up a Captive Power Generating Plant at Warora of capacity 540 MW (4 x 135MW). WPCL was required to supply 270 MW (Phase I- 2 x 135MW) to M/s Viraj Profiles, a captive consumer of the Petitioner.

b) WPCL had executed Bulk Power Transmission Agreement (BPTA) dated June 12, 2008 and Connection Agreement (CA) dated November 19,2009 with MSETCL for Power evacuation from Phase I (2 x135MW=270MW) through MSETCL’s existing 220 KV Warora substation. MSETCL has granted rights for evacuation of Generation from Phase II of WPCL (2 x135MW) through the MSETCL proposed 400/220 KV

Substation at Warora.

c) WPCL completed Phase-I of the Generating station at Warora within the projected time frame. As a result of delay in setting up the industrial plant, BPTA for supply of Power to Viraj Profiles could not be altered. This resulted in failure of Viraj Profiles to draw Power from WPCL Power Plant. It was also stated that the 220 KV link between Boiser II and Viraj Profiles was not made ready to receive Power as user did not need Power. WPCL was therefore compelled to write a letter dated February 23, 2010 to the Respondent No.1 stating that the BPTA cannot be affected due to failure of M/s.Viraj Profile to draw power, which resulted in reduction in capacity at the drawl point and overall change in evacuation scheme. WPCL than arranged to divert this Power to MSEDCL and executed Short Term Power Purchase Agreement for one year with supply obligation from April 1 , 2010 to March 31 , 2011 and another PPA for a period of 3 years with R Infra for 260 MW (up to 320MW) from April 1, 2011. Further, the Petitioner stated that having set up its Generating Station in Maharashtra for supply of power to consumers in Maharashtra, it has been qualified as a Long Term Transmission System user, in terms of the MERC (Transmission Open Access) Regulations, 2005.

d) MSETCL informed WPCL Vide letter dated March 30, 2010 that BPTA will stand cancelled only after payment of system strengthening charges of Rs 55 Lakhs &

transmission charges as applicable from the date of readiness from evacuation arrangements. As per petitioner, MSETCL, instead of directing the Petitioners to seek amendment of long term BPTA, linked issue of synchronization of the plant with BPTA. The Petitioners had applied to MSEDCL for 20 MW of Startup Power, which was provided to them under separate HT Connection Agreement at 220 KV from Warora substation through Petitioners' circuit w.e.f December 19, 2009 and continued till March 22, 2010, (till plant commissioning). This HT connection was terminated on March 30, 2010 from which date Petitioners started supplying Power to MSEDCL under Short Term Open Access agreement. At no stage MSETCL informed the Petitioners in writing (as required in BPTA) that the transmission system is ready for bulk transfer of Power.

f) WPCL, while maintaining its above stand on BPTA, paid the system strengthening charges of Rs.55 Lakhs and requested MSETCL not to claim Long Term Open Access charges beyond February 23, 2010 (the date on which Petitioners requested in writing to MSETCL to cancel BPTA) and submitted interim Bank Guarantee of Rs.5,90,77,267/- to MSETCL against Long Term Open Access charges (for a period from December 19, 2009 till February 23, 2010, for 66 days) till the MERC decides on this matter.

4. The Commission, vide its Notice dated August 30, 2010, scheduled a hearing in the matter on September 3, 2010. Respondents requested for additional time to submit their replies.

5. Respondents submitted the reply on affidavit on September 23, 2010. The salient points are as under :

5.1 M/s Wardha Power Company Limited (WPCL) had applied for Long Term Open Access (LTOA) for 2 X 135 MW phase – I on May 14, 2007 & accordingly was given letter for granting connectivity/ LTOA for its phase – I (2 X 135 MW) Generation at 220 KV Warora substation for supplying to captive power to M/s Viraj Profiles limited through 220 kV link at 220 KV Boiser- II substation vide MSETCL letter dated May 21, 2007.

5.2. Chief Engineer (Commercial) MSEDCL sanctioned 20 MW start-up power to WPCL vide letter dated November 12, 2009. Accordingly WPCL intimated about the work completion & readiness for drawing start up power via dedicated 220 KV Warora- WPCL Double Circuit 220 KV line.

5.3. Chief Engineer Nagpur zone MSETCL informed to Chief Engineer (STU) about the date of readiness of evacuation arrangement with details of strengthening works carried out for WPCL phase – I evacuation from 220 kV Warora substation vide Letter dated March 12, 2010.

5.4. MSETCL submitted that M/s WPCL was allocated Long Term transmission capacity rights of 243.7 MW as per MERC (Transmission Open Access) Regulations 2005. Accordingly WPCL is required to pay the transmission charges w e f December 19, 2009 (the date of charging the dedicated link). According to BPTA, effective date is either Plant Commissioning or readiness of evacuation arrangement, whichever is earlier. The connectivity was kept spare /open w.e.f December 19, 2009, for the enjoyment of the WPCL. Accordingly the transmission charges are required to be paid by WPCL to MSETCL as per BPTA & MERC Regulations. Such charges got accumulated from December 19, 2009 onwards till March 30, 2010. Total period for which transmission charges had become due comes to 101 days. As per the MERC Regulations, Rs 3673/MW/ per day are the transmission charges on LTOA. As such transmission charges payable by WPCL comes to Rs 3673 per day X 243.7 MW X 101 days = Rs 9,04,06,120.1 /- (Nine crore Four Lakh Six Thousand one hundred twenty and ten paisa only) . Against this amount a Bank Guarantee of partial amount has been voluntarily given by WPCL and sought the consent from MSETCL for ending the Long Term transmission BPTA.

6. During the hearing held on February 24, 2011, Petitioner and Respondents stated their respective positions and legal points were raised. The Commission directed both the Parties to submit their notes of arguments. The petitioner in its oral submission during the hearing submitted that:

6.1 Present demand made for alleged non-utilization is wrong & if allowed would constitute for double accounting for the use of same system.

6.2 MSETCL has to demonstrate that there were other parties in the queue who wanted to utilize the transmission capacity and were denied the same because of the MSETCL's commitment to provide capacity to the WPCL; hence MSETCL wants to recover the sum by way of open access charges from existing allottee.

6.3 The demand for transmission charges can not be made on the basis of a letter after termination of the BPTA.

6.4.WPCL prayed that Commission may squash the letter dated March 30, 2010 and hold that Respondent No1 is not entitled to transmission charges demanded and direct Respondent No1 to return the Bank Guarantee of Rs 5,90,77,627 provided to them under letter dated April 8,2010.

7. MSETCL Rejoinder:

7.1 MSETCL in its rejoinder dated March 18, 2011 submitted that Regulations do not permit modification of BPTA with a right to TSU to avail STOA, in lieu of LTOA, without cancelling of BPTA.

7.2 MSETCL submitted that Petitioner's offer of Bank guarantee of Rs.5, 90, 77,267/- cannot be considered as a surety against the Long Term Open Access charges from December 19, 2009 to February 23, 2010 (66 days as alleged). Also giving of Bank Guarantee shows the admission of the charges payable by the petitioner in respect of the totality of the terms of the BPTA.The Petitioner was aware about the readiness of transmission system for evacuation of power.

7.3 MSETCL submitted that Petition is not maintainable as there are no disputes and only the Petitioner wants to make claim beyond the terms of BPTA. The Petition is therefore liable to be dismissed with heavy cost.

8. SLDC in its reply dated September 23, 2010 submitted that there is no issue pertaining to SLDC hence there are no comments/submissions from SLDC.

9. As per the Meeting held between the MERC Officers and Shri D.G. Marathe Chief Engineer (STU) & Shri A.V.Deo Superintending Engineer (STU- R& C) on December 28, 2010 , various issues have been clarified by STU in their affidavit submitted to MERC , as below:-

9.1 The effective date of BPTA was evidently known to WPCL, as WPCL had executed Connection Agreement with MSETCL & had availed start – up power from the same

evacuation corridor intended for WPCL, though a formal letter was not issued to WPCL to that effect. Though STU did not raise the bills for LTOA to WPCL or has not asked for Letter of Credit, it does not absolve WPCL of their liability to pay dues on Long Term Open Access charges. These LTOA charges claimed by STU from WPCL are as per MERC tariff order dated May 31, 2008 in the case no 104 of 2008 & these charges cannot be substituted by Short Term Open Access (STOA) charges.

10. The Commission received the written submission from Petitioners on March 15, 2011 which stated that the Petitioner is not seeking relief from payment of system strengthening charges of Rs 55 Lakhs. The BPTA was executed on tentative basis subject to approval of the Commission. As per clause 32.2 of the BPTA was not approved by the Commission. No invoice or intimation was given to WPCL regarding readiness of the transmission system. Even if the transmission system was deemed ready as per MSETCL, the other end at Boiser II, which is the delivery point was not available, therefore the transmission charges levied by the MSETCL could not have accrued.

11. Accordingly MSETCL filed their further arguments on March 17, 2011 and reiterated their previous position and denied all allegations and maintained that as per BPTA, the LTOA charges were payable by Petitioners. They further stated that:

i) Referring to the clause No. 5.2 of model BPTA, the Petitioner is liable to pay for unutilized contracted Open Access capacity at the tariff determined by the Commission. MSETCL contended that the petitioner did not use the transmission capacity w.e.f. December 19, 2009 for their own reasons and whenever there is non-utilization of the system the full charges are required to be paid.

ii) MSETCL argued that WPCL was required to inform them regarding the relevant details such as voltage levels etc. for receipt and transfer of 270 MW power to M/S Viraj Profiles Ltd as the evacuation system of MSETCL was ready up to 220 KV Boiser Substation from December 19, 2009 for 270 MW of power.

iii) MSETCL contends that BPTA executed by WPCL on June 12, 2008 is legal and binding and remains in force till it is substituted by new BPTA on approval by the Commission as already indicated in the clause no. 23.

iv) After signing the BPTA, the Petitioners vide their letter dated December 5, 2009, demanded start-up power and assured that the other works required to be carried out by WPCL would be ready by December 20, 2009. The Petitioner confirmed charging of system for startup power on December 5, 2009. Vide letter dated December 22, 2009, the Petitioner was informed that system was charged on December 5, 2009 and was finally operational on December 19, 2009. Before that the parties had also signed the "Connection Agreement dated November 9, 2009 as required in clause no 10 of BPTA.

v) By letter dated February 23, 2010 the Petitioner had conveyed its intention of cancellation of BPTA for the inability on their part to utilize the system which was ready. The Respondent no 1(MSETCL) informed the Petitioner by letter dated March 18, 2010 that BPTA will be cancelled only after paying of the system strengthening charges and transmission charges.

12. WPCL filed an urgent application on March 24, 2011 and prayed before the Commission for restraining MSETCL from invoking the bank guarantee of Rs 5,90,77,627 (Rs Five Crore Ninety Lacs Seventy Seven Thousand Six Hundred and Twenty Seven Only) as per letter dated March 22, 2011 to Petitioners' bankers. However the Bank Guarantee was invoked on March 30, 2011 by MSETCL.

13. Before issuing a decision in the matter, the following facts need to be considered:-

- a) The BPTA was signed on June 12, 2008, after which WPCL has laid 13.4 KM of 220 KV Double Circuit dedicated transmission line to evacuate the generated power through existing Warora S/S of MSETCL. WPCL has also paid for strengthening the existing Warora S/S as demanded by MSETCL/ STU.
- b) The inability of M/S Viraj Profile, a captive user, to draw power from the Petitioner WPCL, was a matter between the Petitioner and the captive user. The BPTA was signed between Petitioner and MSETCL granting LTOA to Petitioner in the year 2007. There is no material on record to show when Petitioner came to know that captive user is unable to draw power. Commission observes that Petitioner was aware of the fact that captive user will not draw power as it stated that additional strengthening on 220 KV side at Boiser II was not carried out as captive user was not ready to draw power. Therefore the formal request made by petitioner for cancellation of BPTA and LTOA few

weeks, before the COD does not hold ground as it appears to be an after thought. The application for cancellation of BPTA should have been made immediately after Petitioner became aware of captive users status instead of waiting till February 23, 2010. In item 9 of the Petition WPCL states that the delay in setting up the industrial facility of captive user is on account of global recession, it still does not state that when they became aware of the delay.

- c) The Petitioner and Respondents cooperated with each other and exchanged correspondence leading to the commissioning of 13.4 km dedicated 220 KV link between Petitioner's power plant and Warora substation. The system strengthening was also done to ensure connectivity of this link. The Petitioner has accepted to pay the Rs 55 lakhs charges towards this as demanded by MSETCL. Thus, though, MSETCL erred in not writing formally to WPCL as required by BPTA, there is enough evidence to show that Petitioner was aware of the readiness of the evacuation facility. There is no material placed on record that Petitioner followed up with MSETCL for expediting the evacuation link.
- d) MSEDCL started supply of startup power of 20 MW at on December 19 , 2009 Through WPCL dedicated circuit to WPCL Power Plant on commercial basis as HT consumer. Thus it is established that the evacuation link was available from December 19, 2009.
- e) MSETCL has raised bills for Long Term Open Access charges on WPCL from December 19, 2009 till March 30, 2010 (the date of COD of plant) and Rs 55 Lakhs for system strengthening .WPCL while accepting to pay Rs 55 Lakhs for system strengthening, have denied to pay LTOA charges for 101 days, (from December 19, 2009 to March 30, 2010). Simultaneously Petitioners have voluntarily given an interim Bank Guarantee for 66 days (from December 19, 2009 to February 23, 2010), thus indirectly confirming that the system was ready on December 19, 2009.
- f) In accordance with the direction of the Commission, separate meetings were held in Commissions office with representatives of WPCL & MSETCL.WPCL representatives agreed to bear and pay the Short Term Open Access transmission charges to MSETCL,besides charges for startup power as HT consumer , provided the claim of Rs 9,04,06,120.10 raised by MSETCL for LTOA is withdrawn and BG (of Rs 5,90,77,266.60) is returned to them. MSETCL on the other hand reiterated their stated position and wanted WPCL to bear the cost of

LTOA as invoiced. MSETCL maintained that the bills raised and paid by WPCL for startup power as HT consumer to MSEDCL is independent of current LTOA issue as the WPCL executed a separate HT supply contract with MSEDCL which is an independent entity and not part of MSETCL. The meetings aforesaid did not yield any results.

- g) The Petitioner, in their original prayer part a) had contested both system strengthening charges and LTOA charges for 101 days. Subsequently WPCL conceded to pay the system strengthening charges and as such, the claim of the petitioner was limited to quashing demand made by the Respondents towards LTOA transmission charges as set out letter dated March 30, 2010.

14. Having heard the parties and after considering the materials placed on record, the Commission is of the view as follows:-

(i) The Commission is inclined to accept the contention of respondents MSETCL & STU that the evacuation arrangements were in place on December 19, 2009 due to the following reasons :-

- a) The WPCL signed a connection agreement dated November 11, 2009 with MSETCL for evacuation of its phase 1 power (2x135 MW) through 220 KV Warora substations via 220 KV Double circuit line from WPCL Bus.

- b) Chief Engineer (Comm.) MSEDCL sanctioned 20 MW start up Power to WPCL vide letter dated November 12, 2009 .Vide letter dated December 5, 2009 ,WPCL informed MSETCL about the readiness of 220 KV Double Circuit line and substation bays for charging and requested MSETCL to charge the line. The line was test charged on December 5, 2009 and finally charged on December 19, 2009 and information given vide letter dated March 12, 2010 from Chief Engineer /MSETCL /Nagpur Zone. Thus as per clause 31.1 of BPTA, (The Agreement comes into force from the Commissioning of Power plant or date of readiness of the transmission system for evacuation of generated power whichever is earlier December 19, 2009 became the effective date of BPTA. From December 19, 2009, WPCL started drawing startup power using this circuit. The COD of the Power plant was achieved on March 30, 2010. Thus, WPCL is liable to pay LTOA charges to MSETCL for 101 days (from December 19, 2009 up to March 30, 2010).

ii) MSETCL is directed to cancel the BPTA and terminate the LTOA granted to WPCL w. e .f. March 30, 2010 due to following reasons:-

a) WPCL vide their letter dated February 23, 2010 requested MSETCL to cancel the BPTA (executed between MSETCL and WPCL on June 12, 2008) and grant STOA as their Captive client M/S Viraj Profiles were not ready to draw power due to project delay and requested for STOA for delivery of power to MSEDCL in lieu of non functional LTOA.

b) MSETCL in their reply dated March 18, 2010, informed WPCL that “ BPTA will stand cancelled ,after payment of actual cost of system strengthening work incurred by MSETCL and Transmission Charges as applicable from the date of readiness of evacuation arrangements i.e. from December 19, 2009 as informed by CE/MSETCL/Nagpur zone vide letter dated March 12, 2010”

c) WPCL has already paid system strengthening charges as demanded by MSETCL in their letter dated March 30, 2010.WPCL have also given voluntary interim BG for 66 days (from December 19, 2009 to February 23, 2010) .

iii) In view of i) and ii) above ,the Petitioner WPCL is directed to pay the Transmission Charges for 101 days (from December 19 2009 to March 30 , 2010) to MSETCL amounting to Rs 9,04,06,120.10 /- (Nine Crore Four Lakh Six Thousand One Hundred Twenty and Ten Paise only) as invoiced by MSETCL vide their letter Dated March 30, 2010 along with interest at prevailing interest rate of a scheduled bank (interest to be calculated after expiry of grace period for payment).WPCL is directed to pay to MSETCL within 4 weeks of this order. WPCL is permitted to make payment after adjusting the amount of Rs 5,90,77,627 (Rs Five Crore Ninety Lakh Seventy Seven Thousand Six Hundred and Twenty Seven Only) already taken by MSETCL through encashment of interim Bank Guarantee of WPCL.

With the above rulings, the Petition of WPCL stands disposed of. No order as to costs.

Sd/-
(Vijay L. Sonavane)
Member

Sd/-
(V. P. Raja)
Chairman