

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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Case No. 64 of 2010

In the matter of
Petition of M/s JSW Energy (Ratnagiri) Limited for adjudication of disputes with
Maharashtra State Electricity Distribution Company Limited

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

JSW Energy (Ratnagiri) Limited,
Jindal Mansion,
A, Dr. G. Deshmukh Marg,
Mumbai – 400 026 - Petitioner

Maharashtra State Electricity Distribution
Company Limited,
5th Floor, Prakashgad,
Plot No. G-9 Bandra (East),
Mumbai – 400 051 - Respondent

ORDER

Dated: May 26, 2011

M/s. JSW Energy (Ratnagiri) Limited (JSWERL) submitted a Petition under affidavit before the Commission on October 08, 2010, under Section 86 (1) (f) of the Electricity Act, 2003 (EA 2003), for adjudication of disputes with Maharashtra State Electricity Distribution Company Limited (MSEDCL).

2. The Prayers of the Petitioner are as under:

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- a) *Entertain the present petition under Section 86 (1) (f) of the Electricity Act, 2003 and adjudicate on the disputes which have arisen between JSW Energy (Ratnagiri) Ltd and Maharashtra State Electricity Distribution Company Limited as detailed herein above;*
- b) *Hold that the transmission line from the generating switchyard to the New Koyna / karad sub station of Maha Transco established by Jaigad Power Transco Limited being a part of the Intra State Transmission System, the Delivery Point for the delivery of electricity generated and supply by JSW Energy (Ratnagiri) Limited to Maharashtra State Electricity Distribution Company Limited against the contracted capacity of 300 MW under the Power Purchase Agreement dated 23.02.2009 is the generating switchyard and consequently all the transmission and other charges are payable to Jaigad Power Transco Limited by Maharashtra State Electricity Distribution Company Limited and not by JSW Energy (Ratnagiri) Limited;*
- c) *Direct MSEDCL to not to deduct from the energy Supply Bills raised by the Petitioner, any sum towards the charges paid by MSEDCL to Jaigad Power Transco Limited for evacuating power from the generating station of the Petitioner;*
- d) *Award exemplary cost in favour of JSW Energy (Ratnagiri) Limited and against the Maharashtra State Electricity Distribution Company Limited for the unreasonable stand taken by Maharashtra State Electricity Distribution Company Limited; ”*

3. The brief facts of the case as stated in the Petition are as follows:

- i) The Petitioner - JSWERL is a generating company within the meaning of Section 2 (28) of the Electricity Act, 2003. JSWERL has proposed to establish a generation project of 4 x 300 MW capacity at Jaigad, Ratnagiri. The Respondent – MSEDCL is a company engaged in the distribution and retail supply of electricity in the State of Maharashtra and a deemed licensee in terms of Section 14 – First Proviso of the Electricity Act, 2003.
- ii) The Petitioner and the Respondent have entered into a Power Purchase Agreement dated 23.2.2010 where under MSEDCL has agreed to purchase from JSWERL and JSWERL has agreed to sell to MSEDCL, the energy equivalent to the capacity of 300 MW on the terms and conditions contained in the said agreement.
- iii) The Petitioner submitted that, MSEDCL had issued a Request For Proposal (‘RFP’) which was revised on 05th July, 2007 and again on 11th February, 2008 under competitive bidding guidelines issued by the Central Government under Section 63

of the Electricity Act, 2003 setting out the terms and conditions for the competitive procurement of electricity

- iv) The Petitioner further clarified that , during the pre-bid discussion, on the request made by the bidders, MSEDCL clarified the above provision in the RFP to the effect that in case, in future the evacuation facilities which are developed in the State of Maharashtra are considered as Intra State Transmission System, then the generation switchyard shall be considered as Delivery Point for payment purposes and MSEDCL shall bear the transmission charges for the capacity contracted from the bidder as per the payment mechanism issued in MERC order dated 27.06.2006 in Case No.58 of 2005.
- v) The Petitioner further referred to the MERC Order dated 24.01.2008 in Case No.38 of 2007 where the Delivery Point was redefined in the Bid documents at the request of MSEDCL as follows : *“Delivery Point” means the points of delivery for fulfilling the obligation of the Seller to deliver the Contracted Capacity to the Procurer provided that such Delivery Point shall be Seller-Maharashtra Intra State Transmission System interconnection point in case the Seller is connected to the Maharashtra Intra State Transmission System.*

In the said Case No.38 of 2007, MSEDCL itself, in its replies, had submitted that in future, since the evacuation facilities for such projects which are developed in the State of Maharashtra will be considered as part of the Intra-State Transmission System, then the generation switchyard shall be considered as the delivery point for payment purposes and MSEDCL shall bear the transmission charges for the capacity contracted from the bidder.

- vi) The Petitioner clarified that in the bid submitted by JSWERL for generation and sale of 300 MW of electricity under the above bidding process by JSWERL, it was specifically mentioned that the bid is based on the assumption that the Delivery Point for transfer between 300 MW of electricity from JSWERL to MSEDCL shall be the interconnection point at the generation switchyard of JSWERL generating station and Maharashtra Intra State Transmission System. The bid submitted by JSWERL was accepted by MSEDCL leading to the execution of a Power Purchase Agreement dated 23.2.2010.

- vii) The Petitioner also submitted that the Government of Maharashtra executed a Memorandum of Understanding dated 10.6.2005 with JSW Group in regard to the project proposed to be established in the District of Ratnagiri in the State of Maharashtra and according to this Memorandum of Understanding, the Government of Maharashtra assured facilitating evacuation of power for the power project, through the transmission network of Maharashtra State Electricity Transmission Company Limited (Maha Transco).
- viii) The transmission system for evacuation of power from the generating station of JSWERL at Ratnagiri to the STU interconnection point at New Koyna / Karad substation was also a part of the project proposed to be implemented by Maha Transco in terms of the three year rolling capital investment and five year capital expenditure plan of Maha Transco in terms of Paragraph 12 contained in Order No.34 of 2007 passed by MERC in the petition filed by MSEDCL. Accordingly, the entire transmission line for evacuation of power from the said project was part of the intra State Transmission Network to be developed.
- ix) The Petitioner further informed that vide Case No. 34 dated 13.11.2007 filed by Maha Transco, the Commission had decided on various aspects concerning the transmission system to be established for evacuation of power from the said power project and also for treating such transmission system as Intra State Transmission Network in the State. The Order dated 13.11.2007, inter alia, read as under:
- “23. Accordingly, the Commission hereby rules that so far as the generation projects of MSPGCL, private developers under the CBG route are concerned, the approach adopted while determining the transmission pricing framework for Maharashtra in respect of evacuation arrangement and transmission lines for existing generation projects should be adopted in the present matter. The Commission thus reiterates that the evacuation arrangement including transmission lines for such project forms part of InSTS network, the rationale for which has already been elaborated under Commission’s Transmission Pricing Framework Order. In this regard, the Commission further clarifies that being part of InSTS, the expenditure incurred for development of such transmission infrastructure shall form part of total transmission system cost of InSTS independent of who develops such transmission infrastructure. The same shall be recovered in accordance with the principles outlined under Transmission Pricing Framework Order of the Commission. Accordingly, in case MSETCL undertakes to develop such evacuation infrastructure, the expenditure made by MSETCL shall form part of its ARR.*
- x) The Petitioner informed that MSETCL expressed financial constraints in establishing the transmission network in time for evacuation of power, synchronizing with the

commercial operation of the generation station. In the circumstances, in order to avoid any delay in the evacuation of power from the power project of JSWERL, after a lot of correspondence between JSWERL and MSETCL, both companies formed a Joint Venture Company –Jaigad PowerTransco Limited (JPTL) on 5.8.2008 with the equity participation of 74 % from JSW Energy Limited and 26% from Maha Transco to construct and commission the transmission system from the Ratnagiri to New Koyna/Karad Transmission Network of MSETCL. JPTL was to establish the transmission system from the existing New Koyna/Karad as an Intra state transmission system to the place of generation of JSWERL and not as a dedicated transmission system of the generating company.

- xi) In the circumstances JPTL filed for grant of license under Section 12 read with Section 14 of the Electricity Act, 2003 for establishing and operating the transmission system on 28.5.2008 and the Commission by Order dated 8.2.2009, granted transmission licence to JPTL.
- xii) The Power Purchase Agreement (PPA) dated 23.2.2010 entered into between JSWERL and MSEDCL, inter alia, provides as under which are relevant for the aspects of Delivery Point i.e. place of delivery of electricity by JSWERL to MSEDCL:

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- (a) ***`Delivery Point or Interconnection Point:** means the points of delivery for fulfilling the obligation of the Seller to deliver the Contracted Capacity to the Procurer provided that such Delivery Point shall be Seller-Maharashtra Intra State Transmission System interconnection point in case the Seller is connected to the Maharashtra Intra State Transmission System*
- (b) *Clause 4.2: inter alia provides that the Procurer shall be responsible for payment of the intra-state Transmission Charges and SLDC Charges;*
- (c) *Clause 1.2.7 of Schedule 7: the payment of transmission charges shall be settled between the CTU/STU and the Procurer;All Transmission charges, Transmission losses and RLDC/SLDC charges for STU, regional, inter regional transmission power flows (except on dedicated links from selected Bidder's Generation Bus Bar to SDTU) shall be on account of procurer....Any changes in Transmission charges, RLDC/SLDC Charges and Transmission losses from the transmission charge and loss quoted in the price bid for evaluation that are*

approved by the Appropriate Commission shall be on account of Procurer and shall be considered as a pass through.....

(d) **Schedule 7-** *The Interconnection Point or Delivery Point shall be as defined in Article 1 of the PPA which shall be Interconnection point of dedicated transmission line from the Power Station with MSETCL substation at New Koyna and Karad. However, only for the payment purposes, the delivery point shall be the generation bus bar. The responsibility of making available the transmission link between the generation bus bar and the New Koyna /Karad substation shall be solely with the Seller.”*

xiii) The Petitioner also stated that the Bulk Power Transmission Agreement (BPTA) has been executed between MSEDCL and MSETCL & JPTL. The Petitioner is not a party to the said Tripartite Agreement. Under the Tripartite Agreement, JPTL provides transmission services to MSEDCL for evacuation of power from the generating station of JSWERL in terms of the agreement reached between the parties.

xiv) By letter dated 26.8.2010, MSEDCL wrote to JSWERL on the issue of payment of the transmission charges to JPTL stating that it shall be to the account of JSWERL in terms of Schedule 7 of the PPA dated 23.2.2009. By letter dated 01.09.2010, MSEDCL has reiterated its contentions and conveyed, inter alia, to JSWERL that the Delivery Point is MSETCL's Sub-station at New Koyna and Karad and hence transmission charges required to be paid under the BPTA will be recovered from the energy bills of JSWERL.

4. The Commission vide its Notice dated December 13, 2010 scheduled a hearing in the matter on December 20, 2010 in the presence of four Consumer Representatives authorised under Section 94(3) of the EA 2003.

5. During the hearing, Advocate Shri. M.G.Ramchandran and Advocate Shri. Anand K Ganesan appeared on behalf of the Petitioner (JSWERL) and Advocate Mrs. Deepa P. Chavan, Advocate, Shri. Pravin Dhage and Advocate Shri. Ravindra Chile appeared on behalf of the Respondent (MSEDCL).

- a) Counsel for the Petitioner (JSWERL) stated that the transmission line for evacuation of power is constructed by JPTL as a Transmission Licensee which is a part of InSTS and hence not to be considered as a dedicated transmission line. MSEDCL is referring to the Schedule VII of the PPA and is ignoring the Commission's Orders regarding the "Delivery Point" and "Transmission Charges". Further, Counsel for the Petitioner stated that GoM had also assured evacuation of power from Ratnagiri Power Project as per MoU dated June 10, 2005 between Jindal Thermal Power Company Ltd. (JTPCL) and GoM. As this is Case I bidding process under Competitive Bidding Guidelines, no other charges are applicable. JSWERL has not quoted the bid including the Transmission Charges. As per the tri-partite BPTA signed by MSEDCL, MSETCL and JPTL, it is agreed by MSEDCL that it will pay the Transmission Charges for 300 MW of power evacuation of JSWERL.
- b) Counsel for the Respondent (MSEDCL) referred to the contracted terms of the PPA dated February 23, 2010 entered into between MSEDCL and JSWERL and stated that the interpretation of other Clauses in the PPA should be taken in to account. She also referred to Para 11 and Para 15 of the Commission's Order dated November 13, 2007 in Case No 34 of 2007. Much before the Joint Venture agreement was entered between JSW Energy and MSETCL, RFP was issued by MSEDCL and the understanding was it will be constructed as a dedicated transmission line. It was further stated that the PPA was entered on February 23, 2010 and the documents JSWERL is referring to is Commission's Order dated November 13, 2007 in Case No 34 of 2007. At the time when bid was received from JSWERL, MSEDCL's understanding was that it was a dedicated transmission line. Now JSWERL is referring to Commission's Order dated January 24, 2008 in Case No. 38 of 2007 and claiming that it forms part of InSTS. Counsel further questioned that if it forms part of InSTS, it would defeat the terms of contractual agreement including the bid document. Counsel further stated that the bid submitted by JSWERL factored the Transmission Charges.
- c) The Commission enquired whether the said transmission line is a part of the Grid or it is a pure dedicated line and whether any power other than that of JSWERL flows through the transmission line. After hearing arguments from both the Parties, the Commission instructed both the parties to submit the information in the form of chronological events by 10.01.2011.

6. Accordingly, the Petitioner submitted its Written Note of arguments on January 14, 2011 giving chronology of events-

- a) Petitioner submitted that the Petitioner had sent various communications including letters dated 10.4.2007, 23.4.2007, 24.7.2007 to the MSETCL/Government of Maharashtra regarding the building of the transmission, inter-connection facilities to the generator. These letters were much prior to the bid submission date and establish the fact that transmission system was required to be developed by MSETCL as an intra-state transmission system and not as a dedicated transmission system.
- b) The Petitioner in the said note argued that there cannot be any issue whatsoever that the obligation for delivery of electricity by the Petitioner is at the bus bar of the project, the obligation for evacuation from the bus bar is of the Respondent, the transmission line of JPTL is an intra-state Transmission System and for undertaking such evacuation the Respondent had entered into BPTA with JPTL agreeing to pay the transmission charges. This Transmission system cannot be considered as dedicated transmission line of the generating company as defined in section 2 (16) of the Electricity Act, 2003. It is submitted that the reading of the various clauses in the PPA leave no doubt that it is the responsibility of the Respondent to pay all the transmission charges and the transmission losses in the intra-state transmission system. The risk and delivery over the electricity passes to the Respondent at the point of inter-connection of bus-bar of the Generating Station with the intra-state transmission system.
- c) It was further argued by the Petitioner in the said note that at Item No. 6 of the Petitioner's Assumptions in the Financial Bid enclosed in the PPA, the delivery point is specifically mentioned as the 'Interconnection Point between the Generation Switchyard and Maharashtra Intra State Transmission Network'. In the circumstances, there can be no question of any transmission cost being included in the bid of the Petitioner.
- d) The Petitioner argued that that the only reliance placed by the Respondent for claiming the transmission charges from the Petitioner is Schedule 7 of the PPA which reads as under:

Schedule 7: DETAILS OF INTERCONNECTION POINT AND FACILITIES

“The Interconnection Point or Delivery Point shall be as defined in Article 1 of the PPA, which shall be interconnection point of dedicated transmission line from the Power Station with MSETCL sub station at New Koyna and Karad. However only for the payment purposes, the delivery point shall be the generation bus bar. The responsibility of making available the transmission link between the generation bus bar and the New Koyna/Karad substation shall be solely with the Seller.”

Schedule 7 of the PPA relied on by the Respondent also specifically states that for payment purposes, the delivery point shall be the generation bus bar. The Respondent is conveniently avoiding reference to this provision of Schedule 7 while referring to the other provision of Schedule 7.

From the above contents of Schedule 7 it is clear that it refers the Delivery Point as defined in Article 1 of the PPA and does not mention that transmission between generation bus bar and the New Koyna/Karad substation is Seller's responsibility. Moreover, it specifically clarifies that for all payment purposes the delivery point shall be the generation bus-bar.

The Petitioner pointed out in the said note that though Schedule 7 has been attached to the Power Purchase Agreement dated 23.2.2010, the main part of the Power Purchase Agreement makes no reference to Schedule 7.

7. Similarly, The Respondent, MSEDCL filed its submission on February 04, 2011 giving chronology of events. In its affidavit, the Respondent(MSEDCL) stated the following:

- a) MSEDCL and JSWERL have entered into a Power Purchase Agreement dated 23.02.2010, wherein MSEDCL has agreed to purchase 300 MW Electricity from JSWERL on terms and conditions contained in the said agreements pursuant to a competitive bidding process initiated by MSEDCL.
- b) For the above competitive bidding, MSEDCL had issued the Request For Proposal (RFP) wherein it is mentioned that as per clause 2.3.1 the responsibility of evacuation of power beyond delivery point shall be of MSEDCL.

- c) As per Article 1 and Schedule 7 of PPA between MSEDCL and JSWERL, the delivery point shall be interconnection point of dedicated transmission line from the power station with MSETCL's substation at New Koyna and Karad.
- d) The responsibility of providing transmission link between the generation bus bar and new Koyna/Karad shall be solely with the seller. As per PPA dated 23-02-2010 it was agreed by both the parties that the delivery point is new Koyna/Karad.
- e) As per Clause 1.2.7 of Schedule 6 of PPA all transmission charges, transmission losses and RLDC/SLDC charges of STU, regional, inter-regional transmission power flows (except on selector bidder's generation bus bar to STU) shall be on account of procurer, MSEDCL. Therefore MSEDCL is conspicuous that MSEDCL is not liable to pay transmission charges for evacuation of 300 MW of power through dedicated line from Jaigad power station upto new Koyna/Karad substation.
- f) It is admitted by both the parties that JPTL has been approved as a Transmission Licensee by the Commission and aggregate of Annual Revenue Requirement (ARR) of all transmission licensees as approved by the Commission shall form Total Transmission System Cost (TTSC), to be recovered from the Transmission System Users (TSUs) based on their Co-incident peak demand.
- g) It is evident from the bid submitted by JSWERL, that JSWERL has to construct dedicated line from Jaigad to new Koyna/Karad and also to pay the transmission charges for these dedicated lines. Thus JSWERL has considered cost towards these dedicated lines and included in the cost of the bid. Therefore, the transmission charges payable to JPTL shall have to be paid by JSWERL.
- h) Alternatively, and without prejudice to the contentions of MSEDCL it would be just and equitable on this Commission to take into consideration the chronology of events as they have transpired. The cost which was bid by the Petitioner was inclusive of evacuation cost considering the Jaigad to new Koyna/Karad lines as dedicated lines. If subsequent events have to be taken into consideration, then all the facts and actions of the parties have to be considered in their entirety. It would therefore be just and equitable to rework the cost taking into consideration this vital factor.

8. The Commission vide its Notice dated April 8, 2011 scheduled a hearing in the matter again on April 20, 2011 in the presence of four Consumer Representatives authorised under Section 94(3) of the EA 2003. During the hearing, Advocate Shri. Sachin Pandey appeared on behalf of the Petitioner (JSWERL) and Advocate Mrs. Deepa P. Chavan, Advocate Shri. Pravin Dhage and Advocate Shri. Ravindra Chile appeared on behalf of the Respondent (MSEDCL).

9. During the hearing MSEDCL and JSWERL have reiterated the contents of their respective submissions.

10. Having heard the parties and after considering relevant materials/ documents on record, the Commission is of the view that the core issue that arises in the present case is as to whether the transmission line from the generating switchyard to the New Koyna / Karad sub station of Maha Transco is to be treated as a dedicated transmission line or as a part of the Intra State Transmission System. Answer to this issue will determine the party which is liable to pay the transmission charges. At the outset, the following events and facts need to be taken into account :-

- a. MSEDCL signed a PPA with JSWERL on 23. 02. 2010 for procurement of 300 MW of Power from JSWERL through open competitive case 1 bidding as per CBD guidelines (the **price bid was submitted on 21 02 2008**). Schedule 7 of the PPA defines the point of interconnection / or delivery of the **dedicated transmission lines** at MSEDCL New Koyna/ Karad substation. Schedule 7 of the PPA reads as follows-

The Interconnection Point or Delivery Point shall be as defined in Article 1 of the PPA which shall be Interconnection point of dedicated transmission line from the Power Station with MSETCL substation at New Koyna and Karad. However, only for the payment purposes, the delivery point shall be the generation bus bar. The responsibility of making available the transmission link between the generation bus bar and the New Koyna /Karad substation shall be solely with the Seller.

- b. Article 1.2.7 of Schedule 6 of PPA defines the charges (except on the dedicated links from selected bidders' Generation Bus bar to STU) as follows:-.

“the payment of transmission charges shall be settled between the CTU/STU and the Procurer; All Transmission charges, Transmission losses and RLDC/SLDC charges for STU, regional, inter regional transmission power flows (except on dedicated links from selected Bidder’s Generation Bus Bar to SDTU) shall be on account of procurer.... Any changes in Transmission charges, RLDC/SLDC Charges and Transmission losses from the transmission charge and loss quoted in the price bid for evaluation that are approved by the Appropriate Commission shall be on account of Procurer and shall be considered as a pass through.....”

- c. JSW’s MOU with **GOM was entered on 10th June 2005** regarding establishment of Jaigad Power plant. Vide clause 3(iii)e of MOU shows that it was the responsibility of state to arrange to evacuate Power from Power project .
- d. JSW was in correspondence with GOM/ MSETCL in **April/May 2007** requesting MSETCL to construct the transmission line for evacuation from Jaigad Power station.
- e. The JV company between MSETCL and JSWEL, namely JPTL, was formed on 5th October 2008 to construct and provide a transmission system for evacuation of power from JSWERL’s generation project of 4 x 300 MW capacity at Jaigad, Ratnagiri. Transmission Licence to JPTL was issued considering the transmission system as a part of Maharashtra InSTS transmission network. The Commission also directed that the approved Annual Revenue Requirement (“ARR”) of JPTL shall form part of the Total Transmission System Cost (TTSC) of InSTS, to be recovered from transmission system users in accordance with the Commission’s Intra-State Transmission Pricing framework.
- f. The Commission’s Order Dt. 13th Nov 2007 in Case No. 34 of 2007 and MSEDCL clarification Dt. 26th Dec 2007 on RFP defined the connection between Generation Switchyard and Intrastate Transmission line of Maharashtra state (InSTS) both for delivery and payment purposes. MSEDCL was granted approval by the Commission vide Order Dt. 24th January 2008 in Case No. 38 of 2007 regarding changes in definition of Delivery point.
- g. JSWERL tariff was discovered through Competitive Bidding Guidelines (CBG) Case 1. As per information provided by MSEDCL, following are discovered levellised tariff.

Sr. No	Name of Bidding Company	Location	Successful Bidders	Capacity Offered in MW	Levelling Tariff Rs./kWh	PPA Signed date
1	M/s. Adani Power Maharashtra Ltd.	Tiroda, Dist Gondia	L1	1320	2.642	14.08.2008
2	M/s. Lanco Mahanadi Power Pvt. Ltd	Mandava Dist Wardha	L2	680	2.700	04.09.2008
3	M/s. JSW Energy(Ratnagiri) Ltd.	Jaigad, Dist Ratnagiri	L3	300	2.716	23.02.2010

- h. MSEDCL continues to have a view that since the bid was submitted earlier than the formation of JV, JSWERL must have loaded the cost of the transmission line on the tariff and as such must bear the transmission charges from Jaigad upto New Koyna/Karad. However, the Commission is of the following views:
- i. As per Annexure 'A' clause 3(iii)e of MOU dated 10th June 2005 between GOM and JSW Power, the responsibility of evacuation rested with the State.
 - ii. The bid was submitted on 21-02-2008
 - iii. Pursuant to i) above and correspondence as in 5(a), the parties decided to form JV Company (JPTL) on 05-08-2008 to construct transmission system for evacuation of power from Jaigad to MSETCL's New Koyna/Karad substation. Subsequently the Commission granted transmission licence to JPTL on 8-02-2009 by which the said transmission system became part of InSTS.
 - iv. From the comparative study of the tariffs discovered through bids received from CBG process dated 21-02-2008, it is observed that the variance among the discovered tariffs of the three companies is very small and hence it is very clear that there is no extra loading on the tariff quoted by JSWERL on account of transmission system between Jaigad and New Koyna/Karad as the bid was received subsequent to the MOU dated 10th June 2005, correspondence with GOM/MSETCL in 2007 leading to formation of JV company, JPTL.

- v. Therefore, the Commission is of the view that the tariff quoted by JSWERL does not include any loading on account of transmission system costs and losses.
- i. As regards, the clarification regarding the “Delivery point”, the Commission in its various Orders has clarified about the definition of “Delivery Point” and the “Transmission Charges” to be borne by Distribution Licensee or Transmission System Users. The relevant extracts of Commission’s Orders are reproduced as under:
 - j. The Commission vide its Order dated November 13, 2007 has ruled in Case No. 34 of 2007 at Para 23 that,

“Accordingly, the Commission hereby rules that so far as the generation projects of MSPGCL, private developers under the CBG route are concerned, the approach adopted while determining the transmission pricing framework for Maharashtra in respect of evacuation arrangement and transmission lines for existing generation projects should be adopted in the present matter. The Commission thus reiterates that the evacuation arrangement including transmission lines for such project forms part of InSTS network, the rationale for which has already been elaborated under Commission’s Transmission Pricing Framework Order. In this regard, the Commission further clarifies that being part of InSTS, the expenditure incurred for development of such transmission infrastructure shall form part of total transmission system cost of InSTS independent of who develops such transmission infrastructure. The same shall be recovered in accordance with the principles outlined under Transmission Pricing Framework Order of the Commission.”
 - k. The Commission vide its Order dated November 13, 2007 has ruled in Case No. 34 of 2007 at Para 29 that,

“the Evacuation Arrangement including transmission lines for evacuation of power from generating station forms part of the Intra-State Transmission system. In this regard, the Commission further clarifies that being part of InSTS, the expenditure incurred for development of such transmission infrastructure shall form part of total transmission system cost of InSTS independent of who develops such transmission infrastructure. The same shall be recovered in accordance with the principles outlined under Transmission Pricing Framework Order of the Commission. Thus, question of differential treatment for evacuation arrangement for generating stations depending on ownership of the generating station does not arise, so long as generating

station uses state transmission network for wheeling power to distribution licensees or open access users within State”.

- I. The Commission vide its Order dated January 24, 2008 in Case No. 38 of 2007 at Para 22 (1) has specified the Delivery Point for procurement of 2000 MW power under Case-1 Bidding as follows:

“Delivery Point” means the points of delivery for fulfilling the obligation of the Seller to deliver the Contracted Capacity to the Procurer provided that such Delivery Point shall be Seller-Maharashtra Intra State Transmission System interconnection point in case the Seller is connected to the Maharashtra Intra State Transmission System, provided that such Delivery Point shall be Maharashtra Intra State Transmission System -CTU interconnection point in all other cases”.

In the same Order of Case 38 of 2007 of page 31 Item I, MSEDCL in its replies, submitted that *“in future, since the evacuation facilities for such projects which are developed in the State of Maharashtra will be considered as part of the Intra-State Transmission System, then the generation switchyard shall be considered as the delivery point for payment purposes and MSEDCL shall bear the transmission charges for the capacity contracted from the bidder.”*

- m. The relevant extract (ref. Cl. 2.9.3 and Cl. 2.9.4) of the Commission’s Transmission Pricing Framework Order is as under:

“2.9.3 However, it is envisaged that generating companies located within State would be required to use STU (MahaTransco) network for wheeling power within as well as outside of State under open access regime. Further, as generation capacity within the State is expanded either through State/Private parties in order to exploit available natural resources and wheel power to/ from other States, there would be a requirement for MahaTransco as STU to expand/augment transmission network and provide evacuation facilities to such generating companies. The Commission opines that in case, transmission tariff is devised such that the recovery is linked only to drawal within State and not linked to injection, the Transmission System Users within State would be required to bear cost of transmission facilities (evacuation facilities) created mainly for wheeling power outside the State.

2.9.4 Hence, the Commission rules that the generating companies shall bear transmission charges for injection of energy and use of transmission network only

if they seek open access for sale to consumers/licensees outside the State. (Cl. 2.9.3 and Cl. 2.9.4 of Transmission Pricing Framework Order).”

- n. Para 11 of the Commission’s Order dated November 13, 2007 in Case No 34 of 2007 is reproduced below:

MSETCL, submitted that under Section 39(2)(c) of EA 2003, it is the duty of STU to “ensure the development of an efficient, coordinated and economical system of intra-State transmission lines for smooth flow of electricity from generating stations to the load centres”. However, in contradiction, Section 10(1) of EA 2003 vests the duty of establishment of dedicated transmission lines upon a generating company. Referring to the generation augmentation projects undertaken by MSEDCL at Dhopave, and the merchant plants being set up by M/s. J.S.W. Energy Ltd., it was submitted that there is no certainty as to whether the dedicated transmission lines for the said projects need to be established by respective project developers (i.e., either MSEDCL or M/s. J.S.W. Energy Ltd., etc.) or MSETCL.

11. The Commission observes that the above extracts undoubtedly establish the fact that the transmission system was required to be developed by MSETCL as an Intra-State Transmission System and not as a dedicated transmission system. Hence, the Commission holds that the transmission line from the generating switchyard at Jaigad to the New Koyna/Karad sub-station of Maha Transco is not a dedicated transmission line but is a part of the Intra State Transmission System.

12. Furthermore, in view of the fact that a Transmission Licence was issued by the Commission to JPTL for development of the Transmission System for evacuation of power from the generating switchyard of JSWERL to MSETCL Karad/New Koyna substation which forms the part of InSTS Network and the transmission line from the generating switchyard to the New Koyna / Karad sub station of Maha Transco cannot be a dedicated transmission line but a part of the Intra State Transmission System. As per Article 1 of the PPA between MSEDCL and JSWERL, the delivery point is Seller-InSTS interconnection point in case the seller is connected to the Maharashtra InSTS. In this case the Seller (JSWERL) is connected to Maharashtra InSTS. Therefore, the Delivery Point is the generating switchyard of JSWERL and MSEDCL is required to pay as per the energy

metered at Jaigad generating station bus bar. MSEDCL being the Transmission System User of Maharashtra InSTS, it will be paying the monthly bills raised by STU as per the peak demand drawn by MSEDCL at the time of Co-incident peak demand of Maharashtra State. It may be noted that as per the payment mechanism formulated by the Commission as per Commission's "Transmission Pricing Framework Order", there is no provision for payment of transmission charges by the generator to the Transmission Licensee since the Transmission Licensee receives payment for its ARR through STU.

13. In view of the above mentioned established payment mechanism already in vogue as per Commission's "Transmission Pricing Framework Order", the Commission directs MSEDCL not to deduct from the energy supply bills raised by JSWERL any amount towards the transmission charges for evacuating power from the Petitioner's generating station at Jaigad.

With these observations, the Commission disposes of the petition in Case No.64 of 2010. No order as to costs.

Sd/-
(Vijay L. Sonavane)
Member

Sd/-
(V.P. Raja)
Chairman