

**MADHYA PRADESH ELECTRICITY REGULATORY COMMISSION
BHOPAL**

Sub: In the matter of petition under section 86(1)(f) of the Electricity Act, 2003 for adjudication of dispute regarding illegal claim of transmission charges by the State Transmission Utility in M.P.

Petition No. 47/2013

ORDER

(Date of Hearing: 26th November, 2013)
(Date of Order: 28th November, 2013)

M/s. K.S. Oils Ltd., Jiwajiganj, Morena (M.P.)

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Petitioner

V/s

- 1. M.P. Power Transmission Company Ltd., Jabalpur**
- 2. M.P. Paschim Kshetra Vidyut Vitaran Company Ltd, Indore**
- 3. M.P. Madhya Kshetra Vidyut Vitaran Company Ltd, Bhopal**
- 4. M.P. Power Management Company Ltd., Jabalpur**

} **Respondents**

Shri Ravin Dubey, Advocate and Shri Kumar Rajesh, Manager (Legal) appeared on behalf of the petitioner.

Shri Ashish Anand Bernard, Advocate, Shri V.D'souza, EE. (CRA) and Shri D.Chakraborty, EE, CRA Cell appeared on behalf of M.P. Power Transmission Co. Ltd., Jabalpur.

Shri Manoj Dubey, Advisor (Law) appeared on behalf of M.P. Power Management Co. Ltd., Jabalpur.

Shri Bhaskar Mishra, C.A. appeared on behalf of West Discom, Indore.

The petitioner filed the subject petition under Section 86(1)(f) of the Electricity Act, 2003 against the illegal claim of "Transmission Charges" by the Respondent No. 1 contravening the provisions of Tariff Orders dated 20.09.2012 and 02.04.2013 passed by the Commission and the Policy for promoting non-conventional source based generation notified by the Government of MP (GoMP) on 17th October, 2006.

2. The petitioner broadly submitted the following:

“(i) The petitioner is a Company incorporated under Company Act 1956. The petitioner has setup Wind Electric Generators (WEGs) at Ratedi Hills, Dewas (M.P.) for captive use as below:

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- (a) 9 nos. WEGs of 800 KW each at location nos. 45 to 53 with total installed capacity – 7.2MW.
- (b) 11 nos. WEGs of 800 KW each at location nos. 54 to 56, 63 to 65 and 90 to 94 with total installed capacity – 8.8 MW.
- (ii) The petitioner has H.T. power connections also as H.T. Industrial Consumer at following locations:
- (a) At Guna (M.P.) from M.P. Madhya Kshetra Vidyut Vitaran Co. Ltd. with 3000 KVA Contract Demand at 33 KV.
- (b) At Ratlam (M.P.) from M.P. Paschim Kshetra Vidyut Vitaran Co. Ltd. with 3000 KVA Contract Demand at 33 KV (Now permanently disconnected on 30-06-2013).
- (iii) Prior to setting up two Wind Electric Power projects, statutory approval required under Section 86(1)(c) of Electricity Act 2003 for Wheeling and Transmission power generated was obtained from this Hon'ble Commission vide order dated 06-1-2009 passed in Petition No. 75 of 2008.
- (iv) The consent of Respondent No. 1 was also obtained for Long Term Open Access for Wheeling and Transmission of power generated to its H.T. connection (consumption point) vide their letter dated 15-01-2009 and to H.T. connection (consumption point) vide their letter dated 24-03-2011.
- (v) Two Power Purchase and Wheeling Agreements dated 09-06-2009 and 21-08-2009 have been signed between Respondent No. 4 and the Petitioner along with a Developer (M/s Enercon (India) Ltd.) for wheeling of Power generated by WEGs of the Petitioner to its H.T. connections at Guna and Ratlam primarily for captive consumption and purchase of excess/ inadvertent flow of power (by the Respondent No. 4 considered as “Deemed Sale”).
- (vi) On a petition filed by Respondent No. 1, this Hon'ble Commission vide order dated 20-09-2012 determined the Transmission Charges applicable in case of Non Conventional Energy Sources based Generation, where power is being injected at 132 KV level.

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- (vii) *The Respondent No. 1 started raising bills for Transmission Charges to the Petitioner from April 2012.*
- (viii) *The present petition is against illegal claim of the “Transmission Charges” by the Respondent No. 1, contravening the provisions of Tariff Orders dated 20-09-2012 and 02-04-2013 passed by this Hon’ble Commission and also flouting the Policy of the State Government of Madhya Pradesh notified on 17-10-2006 for promoting Non-Conventional Sources Based Generation.*
- (ix) *State policy provides that Non-conventional Sources based power projects shall be exempted from Open Access charges except wheeling charges. The Tariff Orders provide that Transmission Charges shall be applicable on energy supplied by the Petitioner Company to “customers other than Discoms/ M.P. Power Management Co. Ltd.”.*
- (x) *The Respondent No. 1 has illegally claimed Transmission Charges on the total quantum of power injected at Generation point at Dewas, whereas these charges are not applicable at all since no “third party sale” or no “customer other than Discoms/ M.P. Power Management Co. Ltd.” is involved. Power is either being used captively by the Petitioner Company or supplied by it to Respondent No. 2, 3 or 4.*
- (xi) *With the above contention, the petitioner prayed the following in its petition:*
- (a) *“Declare that levy of Transmission Charges by Respondent No. 1 on the Petitioner is against the provisions of Tariff Order dated 20-09-2012 and 02-04-2013 and the Policy of State Government of M.P. dated 17-10-2006 for promotion of Non Conventional Energy based generation.*
- (b) *Consequently direct Respondent No. 1 to withdraw all the bills in respect of Transmission Charges and stop issuing fresh bills.*
- (c) *Direct the Respondent Nos. 2 and 3 to provide correct input information to Respondent No. 1, in accordance with the Power Purchase and Wheeling Agreements in force, so that energy accounting is corrected.*
- (d) *Pass such further and other order(s) as this Hon’ble Commission may deem fit in the facts and circumstance of the case.”*

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3. Vide Commission's order dated 1st October, 2013, the petition was admitted and the petitioner was directed to serve copy of the petition on all the respondents in the matter. The respondents were also directed to file their reply to the petition by 21st October, 2013.

4. The following compliance was made by the parties in response to the above directives:

- (i) Vide letter dated 23rd October' 2013, MPPTCL filed its reply to the subject petition.
- (ii) By affidavit dated 24th October' 2013, the petitioner confirmed the service of petition on all Respondents in the matter.
- (iii) Vide letter dated 25th October' 2013, M.P. Power Management Co. Ltd., Jabalpur filed its reply to the subject petition.
- (iv) Vide letter dated 28th October' 2013, M.P. Paschim Kshetra Vidyut Vitaran Co. Ltd., Indore (Respondent No. 2) submitted that they were agreed to with the reply submitted by M.P. Power Management Co. Ltd., Jabalpur in the subject petition.

5. M.P. Power Transmission Company Ltd., Jabalpur (Respondent No.1) broadly submitted the following in its response to the petition:

- (i) Once the Appeal is rejected by the Hon'ble Tribunal for Electricity in Interlocutory Application (IA) No. 65/13 filed by M/s. K.S. Oils Ltd, there is no ground for review by the State Commission.
- (ii) The petitioner has approached the Commission for adjudication of dispute under section 86(1)(f) of the Electricity Act, 2003 whereas, there is no dispute as the billing is being done in terms of the Tariff Order.
- (iii) The petitioner has challenged the determination of Transmission Charges with the objective to reopen the issue under appeal rejected by the Hon'ble APTEL.
- (iv) MPPTCL reckoned the energy transmitted by the petitioner as given below:
 - (a) Undisputed units transmitted and consumed by the petitioner in its factories at Guna and Ratlam.
 - (b) Disputed units as inadvertent flow to the concerned Discoms.
- (v) The petitioner is not paying bills of transmission charges at all for total units including undisputed units. The bills amounting to Rs. 1.50 Crores have not been paid by the petitioner.
- (vi) The petition may be dismissed, in case M/s. K.S. Oils Ltd. does not pay the bills at least to the extent of undisputed amount.

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(vii) The petitioner could make firm contract for sale to Discoms/MPPMCL, if it is not able to consume total generating units. In the aforesaid situation, the transmission charges will be limited to balance energy transmitted to the petitioner.

6. Vide Commission's order dated 30th October, 2013, the respondents were directed to ensure service of their reply to the petitioner. The petitioner was also asked to file its response on the submissions filed by the respondents by 20th November, 2013. With the aforesaid directions, the case was fixed for hearing on 26th November, 2013.

7. By affidavit dated 21st November' 2013, the petitioner filed its rejoinder on the objections raised by the respondents.

8. M.P. Power Management Ltd., Jabalpur, Respondent No. 4 also filed its written reply to the petition on 26.10.2013. In its aforesaid reply, MPPMCL submitted that the petitioner is making captive use of the power generated from its WEGs. Therefore, the petitioner is liable to pay Transmission Charges for the quantum of power being consumed as captive consumers.

9. By affidavit dated 21st November' 2013, the petitioner broadly submitted the following in response to the above mentioned objections raised by Respondents No. 1 and 4:

“(i) The averments made in paragraph (i) of the reply of Respondent 1 are emphatically denied. I say and submit that the subject matter of present Petition is neither related to the Appeal filed (registered as DFR No. 303 of 2013) in Hon'ble Appellate Tribunal nor a review is being sought for the matter of Transmission Tariff already determined by this Hon'ble Commission.

(ii) The instant Petition is filed under section 86(1)(f) of Electricity Act 2003 in respect a bonafida dispute regarding grossly incorrect billing of Transmission Charges in respect of energy Transmitted/wheeled from Wind Electric Generators of the Petitioner to its consumption points besides the energy being consumed by the Respondent No. 2, 3 or 4, violating provisions of Tariff Orders passed by this Hon'ble Commission, a representation to the Respondent in this regard having been rejected, leading to the genesis of the dispute.

(iii) It is also vehemently denied that determination of Transmission Charges is ever being challenged or reopened in the instant Petition in any manner whatsoever. The reference to the State's Promotional Policy 2006 apropos Non Conventional Energy Based

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Generators has been made only to state the correct legal position of the Petitioner in light of the Tariff Orders passed by the Hon'ble Commission which are in perfect consonance with the said Policy and already incorporate its essential features.....

- (iv) *I say and submit that the issue of accounting of the energy has been raised because, as submitted and shown in the Petition, it is quite apparent from the records that the input information provided by the Discoms for billing of Transmission Charges is erroneous. It needs to be corrected to give factual position of transaction of energy i.e. actual quantum of energy generated at Petitioner's Wind Farm, injected into the Grid of Discom/Transco, consumed at Petitioner's HT connections. This is essential for knowing as to what amount if at all, is actually to be considered for billing of Transmission Charges as per Transmission Tariff Order.*
- (v) *Also, as the Petitioner understands the provisions of the Transmission Tariff Order passed by the Hon'ble Commission, the Petitioner is not liable for levy of Transmission Charges for the reasons elaborated in the Petition and elucidated again in subsequent paras. Therefore, when the Respondent No. 1 started issuing bills for Transmission Charges in January 2013, the Petitioner approached authorities of Respondent No. 1 and Respondent No. 2, 3 and 4 for obtaining necessary clarifications as to why are they raising Transmission Charges bills on entire amount of energy injected, when substantial amount of energy is being supplied and sold to the Respondent No. 2, 3 or 4 as per the agreement. Written representations were also made in July 2013, which was rejected in August 2013. This is the time when cause of action started.*
- (vi) *I say and submit that it was never been the intention of the Petitioner to delay or avoid payment of any amount legitimately due to the Respondents and it is specifically denied that the Appeal (registered as DFR No. 303 of 2013) was at all filed with APTEL with the intention to delay/ avoid payment of Transmission Charges to Respondent No. 1 or the present Petition is filed with such intention.*
- (vii) *The relevant provision of the Transmission Tariff Order dated 20-09-2012 is reproduced again:
"5(viii) – These charges shall be applicable for such non-conventional sources based generating units which are connected to the Transmission System at voltage 132 KV and above for energy supplied by them to customers other than Discoms/ M.P. Power Management Co. Ltd."*

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Bare reading of the above charging provision makes it absolutely clear than the quantum of energy supplied to Respondent Nos. 2, 3 or 4 is expressly excluded from levy of Transmission Charges whereas the Petitioner being a Non Conventional Energy based Generator does not come in the category of “customers other than Discoms/ M.P. Power Management Co. Ltd.” owing to reasons elucidated in the subsequent paras.

- (viii) *The intent and purpose of Clause 11.3 of Power Purchase and Wheeling Agreement (PPWA) explained is totally misconceived. The PPWA signed with Respondent No. 4, clearly envisages that even though the 100% power generated at Wind Farms is allocated for its Captive use at the HT connections of the Petitioner at Guna and Ratlam, there can be unused power available (termed as inadvertent flow). Also there are specific provisions for purchase of this “surplus power and inadvertent flow of power” by the Respondent No. 4 in the said PPWA.*
- (ix) *At the same time there is perennial requirement of both Peaking Power and energy in the system. Therefore, any power – infirm or firm is welcome to meet out this shortage. Also, the rate of such “inadvertent flow” of power is very attractive* (low) (Currently at Rs. 2.90 per kWh). Besides, this is “Green Power”, produced from “Non Conventional Sources of Energy”.*
- * *Average Rate of power at Discom boundary for 2013-14 is Rs. 3.46 per kWh (Retail Tariff Order 2013-14)*
- * *Wind Energy Tariff (similar vintage) through PPA mode – Rs. 3.35 per kWh (Applicable Tariff Order 2007)*
- (x) *So to say that the “only to encourage Non Conventional Energy Based Generator a mechanism is provided to compensate for this spill over energy” by Discom is incorrect. In fact this mechanism encourages optimal generation from such units which provide attractively priced power while protecting environment.*
- (xi) *It is most humbly submitted that, while considering applicability of Transmission Tariff Order, the Petitioner cannot be categorized as a “Customer” in the sense contemplated in the Clause 5(viii) of the said Tariff Order, since the Petitioner is a “Generator” and it either captively uses its own generation or supplies unused power to Respondent Nos. 2, 3 or 4. Therefore it is most humbly submitted that the applicability of the Transmission Tariff Order is limited only to the cases of Third Party Sale by a NCE Generator.*

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(xii) *Whether “inadvertent flow of power” is “supply” or “sale” to Discoms/ M.P. Power Management Co. Ltd.?*

(a) *The “Preamble” of the Power Purchase and Wheeling Agreements (PPWA) dated 09-06-2009 and dated 21-08-2009 itself clarifies this aspect and is reproduced below to clarify above”*

*.....AND WHEREAS subject to technical feasibility and distribution/ transmission availability, M.P. TRADECO” has agreed to the proposal of the above Company and **agreed to purchase surplus power and inadvertent flow of power, if any, fed into the distribution/ transmission network of the DISCOM/ TRANSCO at the rates, terms and conditions, as decided by MPERC,***
.....”

(b) *The term “Supply” is defined in Electricity Act 2003 as below:*

“2. Definitions :- In this Act, unless context otherwise requires:-

(1)

(70) “Supply” in relation to electricity, means the sale of electricity to a licensee or consumer;

.....”

It is evident from above that – since on offer by Petitioner, Respondent No. 4, on behalf of “Licensees”, has agreed to purchase surplus power and inadvertent flow of power, if any, fed into the distribution/ transmission network of the DISCOM/ TRANSCO at the rates, terms and conditions, as decided by MPERC and both parties have been acting in accordance with the terms and conditions of the said Agreement, it is obviously and ongoing Contract of Sale and therefore involves “Supply” of electricity to the Respondent No. 4, 2 & 3, even if it involves “inadvertent flow of power”.

10. Based on the averments made by the parties and the documents placed on the record, the observations of the Commission are as given below:

(i) The Interlocutory Application No. 65 of 2013 referred by MPPTCL was related to condonation of delay in filing the appeal. The Interlocutory Application for condonation of delay was dismissed and the appeal was rejected by the Hon’ble Tribunal consequent to dismissal of IA.

(ii) In the present petition, the petitioner neither challenged the Order of the Commission nor approached for any review. The appellant has approached for adjudication of dispute under section 86(1)(f) of the Electricity Act, 2003.

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- (iii) The bills of transmission charges for the entire units transmitted by M/s. K.S. Oils Ltd were not paid by it. The correspondence between the petitioner and Respondent No.1 regarding non-payment of bills by the petitioner clearly indicates that there is dispute in the matter.
- (iv) During the course of last hearing held on 26th November'2013, Counsel who appeared on behalf of the petitioner informed that the amount of billing for the units transmitted and utilized by the petitioner for captive consumption in its HT connections has been paid today through cheque to Respondent No.1. The aforesaid development was confirmed by Counsel of the Respondent No. 1 also during the hearing.
- (v) To deal with the disputed issues in the petition, relevant provisions under various documents related to the subject matter have been referred to by the Commission as given below:
 - (a) The policy notified by GoMP on 17th October 2006 for promotion of power generated from Non-Conventional Sources clearly stipulated that the WEGs shall be exempted from "Open Access Charges" but the facility of wheeling shall be made available to WEGs by MPPTCL in accordance with the wheeling charges as determined by M.P. Electricity Regulatory Commission. The subsidy of 4% for the aforesaid wheeling charges shall be provided as per policy of the M.P. Government.
 - (b) The tariff order issued by the Commission on 21st November 2007 for procurement of power from wind electric generators is applicable to all wind electric generation projects in Madhya Pradesh commissioned on or after the date of issue of this order and intended for sale of electricity to the distribution licensees within the state. The tariff determined in the aforesaid order is applicable to all projects which came up within the control period of this order and this tariff shall remain in effect for the whole project life of 20 years from the date of grid connectivity.
 - (c) The above mentioned tariff order which is applicable to the WEGs of the petitioner also provides the following:

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“11.3 These tariffs and applicable conditions would remain constant for the remaining period of operation of the project considering the life of project as 20 years. However, wheeling charges as per provisions made in the incentive policy of the Government of Madhya Pradesh dated 17.10.2006 will be applicable to such sale.

12.10 Wheeling charges and applicable surcharge on wheeling charges shall be levied as determined by the Commission from time to time for third party sale/captive consumption. Wheeling charges shall be payable to the Discom where the energy is consumed irrespective of the point of injection. No wheeling charges are payable for sale to M.P. Power Trading Co. Ltd. on behalf of Discoms.

12.11 Till such time the wheeling charges are determined by the Commission for third party sale/ captive consumption, the Distribution Company in whose area the energy is consumed (irrespective of the point of injection) shall deduct 2% of the energy injected towards provisional wheeling charges in terms of units. The M.P. Power Trading Company Limited shall also claim subsidy from the State Government towards wheeling charges @4% of the energy injected at the rate of prevailing energy charges for the user in terms of provisions made in the Government of M.P. incentive policy for encouraging generation of power in M.P. through Non-conventional Energy Sources notified on 17.10.2006. This amount of subsidy shall then be passed on to the Discom/ Discoms in whose area the energy is consumed on the basis of allocation indicated by the generator in the agreement executed.”

(d) Vide order dated 6th January, 2009, the Commission granted permission to the petitioner for wheeling of power generated from its WEGs for captive consumption from the date of commissioning of WEGs for a period of 20 years.

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The Commission also allowed the Respondent No. 4 to purchase any surplus electricity at the rate and as per other terms and conditions mentioned in the tariff order dated 21st November 2007. In the aforesaid order, it was also mentioned that the provisional wheeling charges in terms of units as determined in the Commission's tariff order dated 21.11.2007 shall be levied subject to adjustment.

- (e) The transmission charges for Non-Conventional Energy Based Generating Units determined by the Commission in its order dated 20th September, 2012 and 2nd April 2013 for FY 2012-13 and FY 2013-14 to FY 2015-16 respectively are applicable for such Non-conventional energy based generating units which are connected to the transmission system at 132 KV and above for energy supplied by them to customers other than Discoms /M.P. Power Management Co. Ltd.
- (f) It is explicitly clear from the Preamble in Power Purchase and Wheeling Agreements executed between the petitioner and Respondent No. 4 that Respondent No 4 agreed to the purchase of surplus power and inadvertent flow of power if any, fed into the Distribution/ Transmission network of the Discom/ Transco at the rate, terms and conditions as decided by MPERC.
- (g) Clause 5.0 of the aforesaid PPAs provides that the wheeling charges and applicable surcharge on wheeling charges shall be levied for captive consumption as determined by the Commission from time to time. It is also provided that no wheeling charges are payable by the Company for sale to Respondent No.4. on behalf of the Discom(s). M.P. Tradeco (now MPPMCL) shall also claim subsidy from the state Government towards wheeling charges in terms of the provisions made in the policy for Non-conventional energy sources notified by GoMP on 17.10.2006.

11. On conjoint reading of the above provisions, the Commission has decided the issues under dispute in the subject petition as under:

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- (i) The Transmission Charges are applicable to the units transmitted by the petitioner and utilized by it as captive consumption in its factories/ HT connections. These charges are payable by the petitioner to Respondent No 1 as per the applicable rates, terms and conditions mentioned in the relevant order of the Commission.
- (ii) The respondent No. 4 also agreed in the PPAs to purchase “inadvertent flow of power” in the Distribution/ Transmission network in accordance with the rates, terms and conditions in the Commission’s order dated 21.11.2007. The tariff for inadvertent flow of energy has been determined through an order under section 62(1) and 86 (1)(a),(b) & (c) which is applicable for sale of electricity by WEGs projects to the Distribution Licensees in M.P. Therefore, the inadvertent flow of power which is purchased by the respondent No.4 as per PPAs is the sale of electricity and sale of electricity to a licensee means “Supply” as defined in Section (2)(70) of the Electricity Act, 2003. Accordingly, the Transmission charges shall not be payable by the petitioner for the inadvertent flow of energy from its WEGs to Discoms/M.P. Power Management Co. Ltd in terms of the provisions under Commission’s Tariff Orders issued on 21.11.2007 (for procurement of power from Wind Electric Generators), 20.09.2012 and 02.04.2013 and also the Power Purchase and Wheeling Agreements filed by the petitioner.
- (iii) The Commission also directs the petitioner to clear all the outstanding dues immediately and ensure regular payments of applicable transmission charges.

Ordered accordingly.

sd/-
(Alok Gupta)
Member

sd/-
(A.B.Bajpai)
Member

sd/-
(Rakesh Sahni)
Chairman