

**Appellate Tribunal for Electricity**  
**(Appellate Jurisdiction)**

**Appeal No. 171 of 2011**

**Dated: 3<sup>rd</sup> October, 2012**

**Present: MR. JUSTICE P. S. DATTA, JUDICIAL MEMBER**  
**MR. V J TALWAR, TECHNICAL MEMBER,**

**IN THE MATTER OF:**

Maharashtra State Electricity Distribution Company Limited,  
Prakashgad, Bandra (East),  
Mumbai - 400 051. ...Appellant

**VERSUS**

1. Maharashtra Electricity Regulatory Commission,  
13<sup>th</sup> Floor, Centre 1,  
World Trade Centre  
Cuffe Parade, Mumbai-400 005.
2. JSW Energy (Ratnagiri) Ltd  
Jindal Mansion, 5A,  
Dr. G. Deshmukh Marg,  
Mumbai – 400 026 ....Respondents

Counsel for the Appellant : Ms Deepa Chavan  
Mr Abhishek Mitra  
Mr Ravi Prakash

Counsel for the Respondent : Mr Anand Ganeshan for R-2

## **JUDGMENT**

### **PER MR. V J TALWAR TECHNICAL MEMBER**

1. The Appellant Maharashtra State Electricity Distribution Company Limited (Distribution Company) is one of the distribution licensees in the state of Maharashtra having whole of Maharashtra, except Island and Suburban Mumbai as its area of supply. Maharashtra Electricity Regulatory Commission (Commission) is the 1<sup>st</sup> Respondent herein. 2<sup>nd</sup> Respondent JSW Energy (Ratanagiri) Limited is a generation company having set up a generating station in Ratanagiri District of Maharashtra.
2. Aggrieved by the impugned order dated 26.05.2011 of the Commission the Appellant has filed this Appeal before the Tribunal.
3. The brief facts of the case are as under:
  - a. On June 10, 2005, the Memorandum of Understanding (MoU) was executed between the State Government of Maharashtra and the 2<sup>nd</sup> Respondent JSW Group in regard to the project proposed to be established in the District of Ratnagiri in State of Maharashtra.
  - b. The Appellant obtained orders of the Respondent No. 1 Commission for adopting the Tariff under Section 63 of the Electricity Act, 2003

- c. The Appellant, with due approval of the Commission, had initiated a competitive bidding process through issue of RFQ and RFP for procurement of generation capacity and purchase and supply of electricity in accordance with the Competitive Bidding Guidelines issued by the Central Government under Section 63 of the Electricity Act, 2003 (the 2003 Act).
- d. On December 26, 2006, a Clarification was notified by Appellant in respect of Clause No. 2.3.1 of the RFP and other clauses of the RFP. Clarification was specifically issued in respect of the Intra State Transmission System.
- e. On July 05, 2007 and February 11, 2008, the Request for Proposal (RFP) issued by the Appellant was revised in respect of tariff based bidding process for procurement of power on long term basis for 2000 MW.
- f. On November 13, 2007, the Respondent No. 1 passed an Order in Case No. 34 of 2007 in the matter of in principle approval to the Maharashtra State Electricity Transmission Company Ltd for development of infrastructure facility to enable evacuation of power under Clauses 45 and 85 of MERC (Term and Condition of Tariff) Regulations, 2005.
- g. On January 24, 2008, the Commission passed Order in Case No. 38 of 2007 in respect of the approval of revised bid document for long term power procurement under Case – 1 bidding.

- h. On August 5, 2008, a Joint Venture Agreement between Maharashtra State Electricity Transmission Company Ltd and JSW Energy Ltd, Respondent No. 2 to establish 400 kV D/C Jaigad-New Koyana Transmission line and 400 kV D/C Jaigad-Karad Transmission Line as a Special Purpose Vehicle was entered into.
- i. On February 08, 2009, the Respondent No. 1 Commission passed an order in case No.96/2008 whereby it was decided to grant transmission licence to Jaigad Power Transco Limited.
- j. Accordingly, on February 08, 2009, the Respondent No. 1 granted Transmission Licence bearing no. 1 of 2009 for transmission of electricity to the said Special Purpose Vehicle.
- k. On February 23, 2010, the Respondent No. 2 and Appellant entered into Power Purchase Agreement inter-alia for tariff based bidding process for procurement of power on long term basis under the Case – 1 bidding process.
- l. Sometime in June, 2010, the Respondent No. 2 approached the Appellant in connection with the synchronizing and testing of the first unit 300 MW of the power project at Ratnagiri.
- m. On June 18, 2010, a letter was addressed by the Appellant to the Respondent No. 2 stating that it is the Transmission Company which deals with synchronizing and testing of the new generating plants.

- n. On June 19, 2010, a letter was addressed by the Respondent No. 2 to the Appellant for execution of Bulk Power Transmission Agreement (BPTA) with MSETCL / JPTL for 300 MW of power procurement under Phase 1 of the long term competitive bidding process.
- o. On July 16, 2010, the MSETCL by its letter forwarded a draft copy of the Tri-partite (BPTA) agreement to be executed between Appellant, MSETCL and JPTL.
- p. On July 26, 2010, a communication was addressed by the Respondent No. 2 to the Appellant requesting to expedite the opening of Letter of Credit and the execution of related agreement as well as signing of BPTA well before commercial operation of the first unit of 300 MW so that the same is not affected.
- q. On August 16, 2010, the Appellant in response to the letter dated July 16, 2010 raised issues on the payment of the transmission charges stipulated in the draft BPTA stating that the transmission charges upto New-Koyna / Karad payable to Jaigad Power Transco Ltd., shall be to the account of Respondent No. 2.
- r. On August 26, 2010, the MSETCL addressed a letter to Respondent no. 2 with reference to the PPA between the Appellant and the Respondent No. 2 and the letter dated July 26, 2010 stating that payment of the transmission charges to Jaigad Power Transco Ltd., shall be to the account of Respondent No. 2 in terms of Schedule 7 of the PPA.

- s. On August 31, 2010, the Respondent No. 2 addressed a letter to Appellant regarding the issue of evacuation of power. The Respondent no. 2 stated that the transmission system established by the Jaigad Power Transco Ltd was a part of Intera State Transmission System (InSTS) in the State of Maharashtra and contended that in terms of the documents the transmission charges are payable by Appellant. The Respondent No. 2 also referred various orders passed by the Respondent No. 1 in regard to evacuation and transmission charges payable.
  - t. On September 01, 2010, the Appellant reiterated its contentions and conveyed inter-alia to the Respondent No. 2 that the delivery point is MSETCL sub-station at New Koyna and Karad. Hence, transmission charges that are required to be paid, will be recovered from the energy bills of Respondent No. 2.
  - u. On September 13, 2010, the BPTA was executed between Appellant and MSETCL. On October 08, 2010, the Respondent No. 2 filed a Petition being Case No. 64 of 2010 before the Commission under Section 86 (1) (f) of the Act for adjudication of dispute with Appellant.
  - v. On May 26, 2011, the Respondent no. 1 Commission disposed off the Petition in Case No. 64 of 2010. Hence this Appeal impugning the Order dated May 26, 2011 in Case No. 64 of 2010.
4. The learned Counsel for the Appellant made elaborate submissions in favour of its claim which are given below:

- i. The Impugned Order dated May 26, 2011 was passed by the Commission in complete disregard to the claim of the Appellant relating to the bid made by the Respondent no. 2 in respect of tariff proposed in the financial bid prior to the constitution of the Special Purpose Vehicle, Jaigad Power Transco Limited and is contrary to the principles enumerated in Section 63 of the Electricity Act, 2003.
- ii. The Commission ought to have considered the financial bid enclosed in the power purchase agreement (PPA) in light of the facts prevailing at the relevant time of filing of the bid by the Respondent no 2.
- iii. In the instant case, the PPA between the parties was executed on February 23, 2010. It is an admitted position that the Special Purpose Vehicle namely, Jaigad Power Transco Limited was constituted subsequent to the signing of the PPA. The Appellant had urged the Commission to interpret the term 'delivery' point as being the New Koyna / Karad Sub-station. It is necessary to consider the subsequent developments in construing the financial bid which would indubitably include the cost of transmission till from Jaigad to the delivery point at New Koyna / Karad in the bid price quoted by the Respondent no 2,.
- iv. The impugned order misconstrues the provisions of the power purchase agreement. There is nothing on record to reveal that the cost of evacuation line up to New Koyna / Karad substation was not part of the financial bid.

- v. The methodology adopted by the Respondent Commission in coming to the conclusion that there is no extra loading in the bid quoted by the Respondent no. 2 on account of the transmission system between Jaigad and New Koyna, being a part of the Intra-state Transmission System is erroneous and perfunctory.
- vi. The impugned order does not deal with and consider the issue raised by the Appellant as regards the bid price quoted by the Respondent no. 2 which would indubitably include the expense on accounts of transmission system between Jaigad and New Koyna / Karad .
- vii. The impugned order failed to appreciate that it would be against established economic principles and prudent business practices for the Respondent no. 2 to have ignored the cost of the evacuation facilities as originally contemplated during submission of bid.
- viii. The Appellant states that the impugned order is silent on the aspects urged before the Commission in regard to the loading of the financial bid with evacuation cost for the subject transmission.
- ix. The Delivery point / Interconnection Point, as mentioned, in Schedule 7 of the PPA with the Respondent no. 2, is based on the information provided in the response to RfP by the Respondent no. 2. In its Format 4 - Project summary the Respondent no. 2 had mentioned "The power evacuation system will consist of two double circuit 400 KV lines from the Respondent no. 2 switchyard to Karad and New Koyna

respectively.” Further, the proposed Delivery Point has been mentioned as “Inter Connection between Generation Switchyard and Maharashtra Intrastate Transmission Network”. The information provided in Schedule 7 of the PPA reflects the same.

- x. It was incumbent on the Respondent Commission to have considered this aspect in detail and analyzed the same particularly as the financial implication of this aspect are to the tune of many crores.
  - xi. The Order dated May 26, 2011 in Case no. 64 of 2010 in this regard, virtually signals that any issue raised by any entity should be accepted as fait accompli by the Appellant, completely disregarding the subsequent developments and financial implication arising from these subsequent developments which inter-alia also would imply that the Appellant is prohibited from protecting its own interests and interests of its consumers by non consideration of the issue in depth and detail.
5. In reply to the above grounds urged by the Appellant, Learned Counsel for the Respondent would make the following submissions:
- i. The Appellant and the Respondent have entered into a Power Purchase Agreement dated 23.2.2010 where under the Appellant has agreed to purchase from the 2<sup>nd</sup> Respondent JSWERL and the 2<sup>nd</sup> Respondent JSWERL has agreed to sell to the Appellant, the energy equivalent to the

capacity of 300 MW on the terms and conditions contained in the said agreement.

- ii. The Appellant had issued a Request For Proposal ( RFP ) which was revised on 5<sup>th</sup> July, 2007 and again on 11<sup>th</sup> 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
- iii. During the pre-bid discussion, on the request made by the bidders, the Appellant 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 the Appellant shall bear the transmission charges for the capacity contracted from the bidder as per the payment mechanism issued in the Maharashtra Commission's order dated 27.06.2006 in Case No.58 of 2005.
- iv. The Maharashtra Commission's Order dated 24.01.2008 in Case No.38 of 2007 has redefined the Delivery Point in the Bid documents at the request of the Appellant 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.*

- v. In the Case No.38 of 2007, the Appellant 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 the Appellant shall bear the transmission charges for the capacity contracted from the bidder.
  
- vi. In the bid submitted by the Respondent JSWERL for generation and sale of 300 MW of electricity under the above bidding process by the Respondent 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 the Appellant 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 the Appellant leading to the execution of a Power Purchase Agreement dated 23.2.2010.
  
- vii. 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 the Maharashtra Commission in the petition filed by the Appellant. 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. 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. 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 the 2<sup>nd</sup> Respondent JSWERL, after a lot of correspondence between JSWERL and MSETCL, both the companies formed a Joint Venture Company –Jaigad Power Transco 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 the Appellant, inter alia, provides as under which are relevant for the aspects of Delivery Point i.e. place of delivery of electricity by JSWERL to the Appellant:

*“(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 Koyana 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 Bulk Power Transmission Agreement (BPTA) has been executed between the Appellant and MSETCL & JPTL. The 2<sup>nd</sup> Respondent is not a party to the said Tripartite Agreement. Under the Tripartite Agreement, JPTL provides transmission services to the Appellant 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, the Appellant 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, the Appellant 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.
6. We have heard the Learned Counsel for both the parties on these issues and given our thoughtful consideration to their submissions. The case of the Appellant revolves around Schedule 7 of the PPA and the Appellant holds that the transmission line between Generation Switchyard and New Koyna/Karad Substation forms dedicated transmission line in terms of Section 10 of the Act and accordingly the 2<sup>nd</sup> Respondent JSWERL must have included the transmission charges for this line in its bid. On the other hand, the Respondent JSWERL, relying on the MoU signed with the State

Government and various orders of the Maharashtra Commission, contended that the line in question is not a dedicated transmission line and no cost had been added to the bid in the form of transmission charges.

7. In the light of the rival submissions, the only question arises for consideration is as to whether the transmission lines from the generating station to the New Koyna/ Karad substation of STU are dedicated lines in terms of Section 10 of the Act or forms part of Intra State Transmission System. This is the issue raised for consideration by the Tribunal. It would be desirable to set out the observations and findings of the Maharashtra Commission in the Impugned Order. The relevant extracts of the Impugned Order read as under:

*“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 take into account :-*

- a. *MSEDCL signed a PPA with JSWREL on 23. 02. 2010 for procurement of 300 MW of Power from JSWREL 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 Koyana /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	Levellised 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”.*

- l. *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."*

8. Perusal of the observations of the Maharashtra Commission reproduced above indicated that the Commission have addressed the issue in a very detailed manner and have held that the line in

question is not a dedicated line but forms a part of Intra-State Transmission System.

9. Section 10 of the Electricity Act, 2003 requires a generating company to establish, maintain and operate the Dedicated Transmission Lines. Dedicated Transmission line has been defined in Section 2(16). The Central Government in exercise of its power under Section 183 of the Act had issued Removal of Difficulties Fifth Order on 8<sup>th</sup> June 2005 permitting the any Generating Company to erect, maintain and operate dedicated transmission lines without obtaining a license from the Commission. The Removal of Difficulties Fifth order is reproduced below:

**“THE ELECTRICITY (REMOVAL OF DIFFICULTIES)  
FIFTH ORDER, 2005**

*Whereas the Electricity Act, 2003 (36 of 2003) (hereinafter referred to as the Act), came into force on the 10th June, 2003;*

*And whereas section 7 of the Act provides that any generating company may establish, operate and maintain a generating station without obtaining a licence under this Act if it complies with the technical standards relating to connectivity with the grid referred in clause (b) of section 73;*

*And whereas sub-section (1) of section 10 of the Act provides that subject to the provisions of this Act, the duties of a generating company shall be to establish, operate and maintain generating stations, tie-lines, sub-stations and dedicated transmission lines connected therewith in accordance with the provisions of this Act or the rules or regulations made thereunder;*

*And whereas sub-section (1) of section 9 of the Act provides that notwithstanding anything contained in this Act, a person*

may construct, maintain or operate a captive generating plant and dedicated transmission lines;

And whereas a dedicated transmission line in terms of sub-section (16) of section 2 of the Act is an electrical supply line for point-to-point transmission for connecting a captive generating plant or a generating station to any transmission line or sub-stations or generating stations or the load centre, as the case may be;

**And whereas such a dedicated transmission line is neither a transmission line in terms of sub-section (72) of section 2 of the Act nor it is a distribution system connecting the point of a connection to the installation of consumer in terms of sub-section (19) of section 2 of the Act;**

And whereas difficulties have arisen regarding the requirement of a transmission licence for establishing, operating or maintaining a dedicated transmission line;

Now, therefore, the Central Government in exercise of its powers conferred by section 183 of the Act hereby makes the order in respect of establishing, operating or maintaining a dedicated transmission line, not inconsistent with the provisions of the Act, to remove the difficulties, namely:—

1. Short title and commencement.—(1) This order may be called the *Electricity (Removal of Difficulty) Fifth Order, 2005*.

(2) It shall come into force on the date of publication in the *Official Gazette*.

2. Establishment, operation or maintenance of dedicated transmission lines.—**A generating company or a person setting up a captive generating plant shall not be required to obtain license under the Act for establishing, operating or maintaining a dedicated transmission line if such company or person complies with the following:—**

(a) Grid code and standards of grid connectivity;

(b) Technical standards for construction of electrical lines;

(c) System of operation of such a dedicated transmission line as per the norms of system operation the concerned State Load Despatch Centre (SLDC) or Regional Load Despatch Centre (RLDC).

(d) Directions of concerned SLDC or RLDC regarding operation of the dedicated transmission line.

10. Admittedly, a transmission license has been obtained by the Joint Venture Company JPTL for erecting, maintaining and the operation the lines in question. If it were dedicated transmission lines then there was no requirement to obtain the transmission license for establishing, maintaining and operating the said line.
11. The Appellant has submitted that while the bid for supply of 300 MW of power from the 2<sup>nd</sup> Respondent's generating station was submitted on 21.2.2008, the Joint Venture Company was formed on 5.8.2008 (i.e. after submission of the bid) and the transmission license to JVC was issued on 8.2.2009. Therefore, the Respondent JSWERL must have built in the transmission charges in the bid.
12. The above contention of the Appellant is misplaced for the reasons adequately enumerated in the Commission's findings in the Impugned Order. We would like reproduce the contents of the letter written by the 2<sup>nd</sup> Respondent Generating Company to the Principal Secretary (Energy), Government of Maharashtra dated 23<sup>rd</sup> April 2007 as below indicating that the lines in question would form part of IsSTS:

*"Subject : Power Evacuation line for 4 x 300 MW Ratnagiri Project.*

*Dear Sir,*

*As you are aware we are setting up ma 1200 MW power plant in Jaigad village, Ratnagiri District. We have made significant progress and expect to start construction shortly and complete the project within 30 months.*

*As regards the power evacuation from the above project, ... It is now decided and formally communicated to us by*

*MSETCL that the power from our project will be evacuated through the transmission network comprising of following:*

- 1. One 400 kV double circuit transmission line from Jaigad to Karad substation of MSETCL with triple conductors on both the circuits.*
- 2. One 400 kV single circuit line from Jaigad to Koyna substation of MSETCL.*

*This subject was further discussed by the undersigned during the review meeting chaired by the Hon'ble Minister of Revenue, Mr. Narayan Rane, and Hon'ble Minister of Energy, Mr. Dilip Walse Patil on 9<sup>th</sup> April wherein Mr. Ajay Mehta, Managing Director of Mahagenco was also present. **It was suggested that the above transmission lines could be built and owned by MSETCL.***

*Request you to kindly advise the concerned authorities to take up the construction of the transmission system on priority.....”*

13. The above letter was followed by another letter from the 2<sup>nd</sup> Respondent Generating Company to the Principle Secretary (Energy), Government of Maharashtra dated 5<sup>th</sup> May 2007 indicating formation of the Joint Venture Company with MSETCL for construction, maintenance and operation of the identified lines.
14. These letters along with the various orders of the Commission on the issue of Intra-state Transmission System and the Delivery Point, referred to above by the Commission in its findings would make it abundantly clear that the lines were contemplated to be established as Intra-state Transmission System and not as dedicated transmission lines. Accordingly, it cannot be assumed that the 2<sup>nd</sup> Respondent Generating Company would have built in the transmission charges for dedicated transmission lines in its Bid for supply of 300 MW power.

15. In view of the above findings, we find that the impugned order does not suffer from any infirmity and is, therefore, confirmed. Accordingly, the Appeal is dismissed being devoid of merit.
16. However, there is no order as to costs.

**(V J Talwar)**  
**Technical Member**

**(Justice P. S. Datta)**  
**Judicial Member**

Dated: 3<sup>rd</sup> October, 2012

REPORTABLE/~~NOT REPORTABLE~~