

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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Case No. 127 of 2016

Date: 16 February, 2017

CORAM: **Shri. Azeez M. Khan, Member**
 Shri. Deepak Lad, Member

In the matter of Petition filed by JSW Energy Limited (JSWEL), under Section 86 (1) (f) of the Electricity Act, 2003 for adjudication of dispute that has arisen between JSWEL and MSEDCL in respect of the charges levied by MSEDCL for start-up power supplied by it to JSWEL's generating station at Ratnagiri and MSEDCL's letters threatening disconnection of power supply to MSEDCL for alleged non-payment of bills.

JSW Energy Limited (JSWEL)	...Petitioner
V/s.	
Maharashtra State Electricity Distribution Company Ltd. (MSEDCL)	..Respondent
State Transmission Utility, MSETCL (STU)	..Impleaded Respondent No. 1
Maharashtra State Load Despatch Centre, (MSLDC)	..Impleaded Respondent No. 2

Representative for the Petitioner:	Shri. Vishwanadhan (Adv.)
Representative for the Respondent:	Smt. Deepa Chavan (Adv.)
Representative for the Impleaded Respondent No. 1:	Shri. S. B. Petkar (rep.)
Representative for the Impleaded Respondent No. 2:	Shri. E. T. Dhengle (rep.)
Authorised Consumer Representative:	Dr. Ashok Pendse

Daily Order

Advocate of JSWEL stated that it has filed the Petition to resolve three issues, i.e. Category applicable for start-up power as per Article 11.9 of the PPA, Treatment of Reactive Loss of

Reactor, and Power Factor penalty levied on JSWEL. MSEDCL has submitted its Reply to the first issue of categorization, but not to the other issues. MSEDCL has started charging Industrial Tariff for the Start up Power connection since June, 2015. Till June, 2015, it has been charged under Commercial Category.

JSWEL received the bills for the months May-June 2012, which included penalties for low Power Factor, in fact being penalized for absorbing reactive power from the grid which in turn helps the grid to control voltage.

Superintendent Engineer (Ratnagiri Circle), MSEDCL had written several letters to the Chief Engineer (Commercial), MSEDCL requesting directions and guidelines on change of tariff and billing methodology based on the Commission's Order in Case No. 51 of 2013.

As regards the second issue of reactor, he stated that MSEDCL has been billing JSWEL for reactive losses due to bus reactors installed as approved by the Competent Authority in order to help maintain stability of the grid and for low power factor resulting from absorption of reactive power from the grid. The Commission vide Order dated 3 February, 2014 in Case No. 51 of 2013 (Adani Power Maharashtra Limited v. MSEDCL) had ruled that the reactive energy drawn by such bus reactor for controlling transmission system should not be charged on the Generator, and directed MSEDCL to not to recover any charges for reactive energy drawn by the bus reactor for controlling the transmission system voltages on the instructions of the MSLDC. JSW has conveyed this Order of the Commission to MSEDCL on several occasions, but MSEDCL has continued to bill JSWEL for such reactive losses and resultant low power factor.

Advocate of MSEDCL stated that APTEL, vide Judgement dated 24 May, 2011 in Appeal No. 166 of 2010, had clarified that Generator requiring start-up power from the grid occasionally cannot be termed a Consumer. JSWEL is a Generating Company which owns and operates a 1200 MW (4 x 300 MW) Thermal Power Station at Ratnagiri and executed a PPA dated February 23, 2010 with MSEDCL for supply of 300 MW power from the first Unit of the Station. JSWEL has obtained start up power supply of 16 MVA contract demand at 400 kV voltage level for the entire Station of 1200 MW.

She further stated that JSWEL had not come to the Commission and raise these issues for many years. She quoted various Supreme Court Judgements in which Appeals have been dismissed on the ground of not satisfactorily explaining delay of many years, and also certain Judgements regarding the related aspects of "Sitting on the fence".

Both the parties agreed to sit together and to resolve the matter when specifically asked by the Commission.

Advocate of JSWEL stated that, despite the Commission's direction in the last Daily Order not to take any coercive action till further Orders, MSEDCL issued the disconnection notice to JSWEL on 31 January, 2017.

On the issue of limitations raised by MSEDCL, Advocate of JSWEL submitted that the Supreme Court vide Judgement dated 16 October, 2015 in the Appeal filed by Andhra Pradesh Power Coordination Committee and Others against Lanco Kondapalli Power Limited and Others has ruled that, by itself, the Limitation Act will not be applicable to the Commission under the Electricity Act, 2003, as the Commission is not a Court stricto sensu. As per Section 175, the provisions of the Electricity Act, 2003 cannot be stretched to infer adoption of the Limitation Act for the purpose of regulating the varied and numerous powers and functions of the authorities under the Act. In the same Judgement, the Supreme Court ruled that only for the purpose of the quasi-judicial functions of the Commission under Section 86(1)(f), it will not be possible to accept that, by virtue of Section 175 of the Act adopts the Limitation Act either explicitly or by implication. In the light of the nature of judicial powers conferred on the Commission, claims for adjudication before it cannot be entertained or allowed if they are legally not recoverable in a regular suit or any other regular proceeding such as arbitration, on account of the law of limitation.

Advocate of MSEDCL tendered an apology for the disconnection notice served to the Petitioner even after the Commission's direction in last Daily Order which was inadvertently done at the local level and may be treated as withdrawn.

The Commission asked Representative of STU whether the two reactors are connected to the Generation bus bar from the very beginning. Representative of STU stated that there is only one reactor connected to the Generation Bus bars from the time of its commissioning. The Commission asked why STU did not communicate with JSWEL after the Commission's Order in the Adani Power Maharashtra Limited's Case on the similar matter.

The Commission directed STU to conduct a study on the treatment to the reactor connected to JSWEL's Generation Plant and submit it to the Commission as the reactor connected to the Grid is a part of Transmission system meant for its stability.

Representative of MSLDC stated that the reactor is a part of the system requirement as it is connected to the Grid in order to help to maintain stability of the grid and for low Power Factor resulting from absorption of reactive power from the grid.

The Commission directed all parties to file their additional submissions or Rejoinders within a month.

Subject to filing of the above submissions, the Case is reserved for Order.

**Sd/-
(Deepak Lad)
Member**

**Sd/-
(Azeez M. Khan)
Member**