

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
World Trade Centre, Centre No.1, 13th Floor, Cuffe Parade, Mumbai 400005
Tel. 022 22163964/65/69 Fax 22163976
Email: mercindia@merc.gov.in
Website: www.mercindia.org.in / www.merc.gov.in

Case No.162 of 2016

Date: 21 March, 2017

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

Petition of Adani Transmission (India) Limited under Section 86 (1) (f) read with Section 142 of the Electricity Act 2003 against Maharashtra State Electricity Transmission Co. Ltd. seeking recovery of Delayed Payment Charges (DPC) and for initiation of proceedings for non-compliance of Commission's Order.

Adani Transmission (India) Limited, (ATIL)

----- **Petitioner**

- 1) The Chief Engineer, Sate Transmission Utility (STU).
- 2) Maharashtra State Electricity Distribution Co. Ltd.(MSEDCL)
- 3) Maharashtra State Electricity Transmission Co. Ltd.(MSETCL)
- 4) The Chief Engineer, Maharashtra State Load Dispatch Centre
- 5) The Chief Engineer Regulatory, B E S & T Undertaking
- 6) The Tata Power Co. Ltd. (Distribution)
- 7) The Tata Power Co. Ltd. (Transmission)
- 8) Reliance Infrastructure Ltd. (Distribution)
- 9) Reliance Infrastructure Ltd. (Transmission)
- 10) Jaigad Power Transco Ltd.
- 11) Mindspace Business Parks Pvt. Ltd.
- 12) The Chief Electrical Distribution Engineer Central Railway
- 13) Amravati Power Transmission Co. Ltd.
- 14) Maharashtra Eastern Grid Power Transmission Co. Ltd.
- 15) Vidarbha Industries Power Ltd. (Transmission)

----- Respondents

Appearance

For the Petitioner	: 1. Shri Harinder Toor (Adv.) 2. Ms. A.A. Mujawar (Adv.)
For the Respondent No.1	: Shri S.N. Bhopale (Chief Engineer) Shri K.Y. Jagtap (Chief Legal Adviser)
For the Respondent No. 2	: None
For the Respondent No.3	: Shri Sandeep Kalantri (Rep.)

For the Respondent No.4	: Shri E.T. Dhengle (Rep.)
For the Respondent No.5	: Shri V.K. Rokade (Rep.)
For the Respondent No.6 &7	: Ms. Swati Mehendale (Rep.)
For the Respondent No.8&9	: Shri Kishor Patil (Rep.)
For the Respondent No.10	: Shri C.P. Tated (Rep.)
For the Respondent No.11 to 15	: None
For Authorized Consumer Representative	: Dr. Ashok Pendse (Rep), TBIA

Daily Order

Heard the Representatives / Advocates of the Petitioner and Respondents.

1. The Petitioner stated that:-

(i) Petitioner has filed the Petition to :

- a) Direct Respondents to pay Delayed Payment Charges (DPC) of Rs.21.85 Crore calculated upto 31 March, 2016 to the Petitioner.
- b) Direct Respondent No. 1 (STU) to implement Payment Security Mechanism (PSM) in terms of Open Access Regulations, 2014 and Bulk Power Transmission Agreement (BPTA).
- c) Direct Respondent No.1 to encash the PSM against the payment of outstanding DPC.
- d) Initiate proceedings under Section 142 of EA, 2003 against Respondent No.1 for non-compliance of directions of the Commission in Order dated 26.06.2015 in Case No. 57 of 2015.

(ii) BPTA has been signed between MSEDCL, MSETCL and the Petitioner for use of the Intra State Transmission System (InSTS) network.

(iii) The Petitioner referred to the provisions of clause 7 of BPTA in respect of Tariff, Billing and PSM. Some Transmission System Users (TSUs) have furnished only Letter of Credit (LC) and not Bank Guarantee as envisaged under the BPTA. The provisions of Multi Year Tariff (MYT) Regulations, 2011 and 2015 regarding PSM may also be seen. It is the responsibility of the STU to issue monthly bills, collect Transmission Charges and disburse them to the Transmission Licensees.

(iv) STU is not discharging its statutory duties and functions as defined under Section 39(2) of the Electricity Act (EA), 2003.

(v) STU, being the Competent Authority, has not implemented the provisions of the BPTA and MYT Regulations in respect of PSM and recovery of DPC. The Petitioner is facing hardship

due to non- receipt of DPC. The Petitioner has approached STU from to time for recovery of the DPC, but no response has been received.

- (vi) The Commission vide its Order dated 12.12.2014 in Case No. 151 of 2014 has rejected the request of MSEDCL to waive DPC.
- (vii) Regarding recovery of DPC, the Petitioner stated that the BPTA and other require that, upon non-payment of DPC within a billing cycle, the DPC payable be included in the Monthly Transmission Charges (MTC) for the next billing cycle. Further, the payment received from TSUs should be appropriated first towards DPC and the balance payment, if any, should be adjusted towards the arrears first and thereafter towards the current monthly bills.
- (viii) MSETCL as a STU has failed in implementation of PSM and to take firm steps as required for timely payment of DPC.
- (ix) The Commission vide Order dated 26.06.2015 in Case No 57 of 2015 had directed MSETCL to approach the Commission, by way of a Petition, within 45 days with regard to payment issues , PSM and DPC . However, STU has not filed its Petition despite reminders by the Petitioner.
- (x) STU , could have made the payment of DPC to the Petitioner by encashing the LCs of TPC-D and Rinfra-D which are in place.

2. STU stated that:

- (i) It is undertaking billing, collection and disbursement of Transmission Charges as per the applicable BPTA clauses, procedures and guidelines of the Commission in the Tariff Orders.
- (ii) TSUs are making payments to the STU Pool account towards Monthly Transmission Charges (MTC) as determined by the Commission in the Tariff Order, which cannot be unilaterally adjusted against DPC. There is no recovery of DPC as TSUs have not paid towards DPC separately. Therefore, the methodology suggested by the Petitioner for adjusting the payments received in the STU Pool account against DPC cannot be implemented.
- (iii) MSEDCL's first default in payment of MTC bills was in February, 2012. MSEDCL has given LC of Rs. 182 crore valid from 19.04.12 to 21.03.2013. Thereafter, inspite of follow-up, MSEDCL has not renewed LC. Hence, the LC of MSEDCL could not encashed.
- (iv) The issue of non-payment of Transmission Charges and DPC by MSEDCL was also taken up with the Principal Secretary (Energy) by the Chairman & Managing Director (CMD) of MSETCL vide letter No. 5553 dated 24.4.2015.
- (v) The CMD, MSETCL, vide letter dated 17.2.2016, has also proposed an action plan to MSEDCL for clearing the DPC payable by MSEDCL to MSETCL and other Transmission Licensees , which is not yet considered by MSEDCL.
- (vi) At the Grid Co-ordination Committee (GCC) meetings, STU has raised the issue of renewal of LCs. As on 31 January 2017, LCs are renewed by RInfra-D, BEST and TPC-D but not MSEDCL.

- (vii) Due to large arrears of MSEDCL, MSETCL approached Maharashtra State Electricity Board Holding Co. Ltd. (MSEBHCL) for a financial solution and permission for filing Petition as per the Commission's directives. Thereafter, as per BR No. 454 of MSEBHCL, MSEDCL has credited Rs 1000 Crore to the STU Pool Account on 31.08.2015, which was disbursed to the TSUs. As of now, there is no outstanding towards Transmission Charges (excluding DPC) receivable from TSUs except MSEDCL. After August, 2015, all TSUs are paying MTC regularly. On 17.3.2017, MSEDCL has paid Rs. 500 crore towards the arrears of Transmission Charges.
- (viii) The existing PSM requires LCs to be renewed within specified time by TSUs, and recovery of arrears can be done by encashing LCs. Therefore, an alternative PSM i.e recovery through an escrow account , is proposed.
- (ix)STU has followed- up with the concerned TSUs regarding payment of arrears and DPC. The matter has also been discussed in all recent GCC meetings. MSETCL has a major share in total DPC of Rs.1115.03 Crores payable by TSUs as on 31.01.2017. Due to this, there is a financial impact on the day to day working of MSETCL.
3. The Commission directed the Petitioner and STU to submit their understanding regarding the nature of Irrevocable and Revolving Letter of Credit and the practice of banks in this regard within two weeks.
 4. Vide letter dated 17.3.2017, MSEDCL has requested two weeks' time to file its Reply.
 5. All the Respondents may file their Replies within two weeks. Thereafter, the Petitioner may submit Rejoinder, if any, within a week, with a copy to the Respondents.

Next date of hearing will be communicated by the Secretariat of the Commission.

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

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