

**Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
World Trade Centre, Centre No.1, 13th Floor, Cuffe Parade, Mumbai 400005
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Case No. 45 of 2017

Dated: 27 June, 2017

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

Petition of Hindustan Petroleum Corporation Ltd. regarding levy of Regulatory Asset Charges (RAC) and directing The Tata Power Company Ltd. to refund RAC charged.

Hindustan Petroleum Corporation Ltd. (HPCL)

...Petitioner

V/s

- 1) The Tata Power Co. Ltd. (TPC-D)
- 2) Sai Wardha Power Generation Ltd. (SWPGL)

Appearance:

Representative for HPCL:

Shri. Varun Pathak (Adv.)

Representative for TPC-D:

Shri. Amit Kapur (Adv.)

Representative for SWPGL:

Ms. Swapna Seshadri (Adv.)

Daily Order

Heard the Advocates of the Petitioner and Respondents.

1. Advocate of the Petitioner stated that:
 - (i) HPCL has entered into contract with Sai Wardha Power Generation Ltd. (SWPGL) for supply of 20 MW power through Open Access under Group Captive model for FY 2015-16. TPC-D had granted first Short Term Open Access (STOA) on 1 December, 2015 for 20 MW. Thereafter, TPC-D granted Open Access permission as per the application of HPCL for the subsequent period.
 - (ii) TPC-D is levying Regulatory Asset Charge (RAC) on the captive power consumed by HPCL supplied by the Captive Generating Plant (CPP) of SWPGL. The levy of RAC by TPC-D is completely contrary to the provisions of the

Electricity Act (EA), 2003 and is the violation of the Regulations of the Commission.

- (iii) HPCL is a OA consumer under Section 9 and not Section 42 of the EA, 2003. It is consuming power from a Captive Generator and is different from a regular OA consumer. Also, it is not purchasing any power from TPC-D. Hence, RAC is not applicable.
- (iv) The Appellate Tribunal for Electricity (ATE), in its Judgment dated 26 November, 2014 in Appeal No. 294 of 2013, has ruled that RAC is akin to Cross Subsidy Surcharge (CSS). The ATE, while dealing with the levy of RAC to the Open Access consumers, upheld that RAC was nothing but CSS.
- (v) As CSS is not applicable to captive power consumers, RAC cannot be made applicable to them either. RAC is nothing but CSS, in a different form.
- (vi) Section 9 of EA, 2003, provides that any person may construct, maintain or operate a CGP and dedicated Transmission Lines. The owner of a CGP has a right to seek Open Access for supply from the CGP to the intended destination of its use.

2. Advocate of TPC-D submitted its written Reply and stated that:

- (i) RAC is an outcome of Regulatory Assets which have been approved by the Commission from time to time to be recovered from consumers in future from tariff. The Regulatory Assets had been created to defer the recovery of unrecovered approved amounts of the previous years, in order to avoid tariff shock to the consumers.
- (ii) As per the 4th proviso to Section 42(2) of the EA, 2003, the captive users of the CGP are exempted only from payment of CSS. There is no reason or explanation as to why RAC cannot be charged to CGP. Further, CSS and RAC are different.
- (iii) ATE in its Judgment in Appeal No. 294 of 2013 has allowed the carrying cost applicable and stated that RAC is reflective of the unpaid tariff to be recovered from the consumers (which recovery has been deferred to avoid tariff shock). CSS is the charge payable by a consumer availing supply through Open Access from other than the Distribution Licensee (DL) in whose area it is situated. CSS is meant to compensate the DL for the loss of CSS that such DL would suffer by reason of the consumer taking supply from elsewhere.
- (iv) The principle for application of CSS is entirely different from the recovery of RAC. RAC is not a compensatory charge like/akin to CSS, as stated by HPCL. The payment of CSS is statutorily exempt for captive consumers.

However, the statute nowhere provides for such exemption for RAC. Therefore, HPCL is liable to pay RAC, in terms of the Orders passed by the Commission from time to time

- (v) The Commission, vide its MTR Order dated 26 June, 2015 in Case No.18 of 2015, held that consumers who are physically connected to the wires of the DL (whether availing power from that DL or not) are liable to pay, amongst other charges, RAC to the DL to whose wires they are physically connected. The rationale behind the levy of RAC is that the liability pertaining to the past period needs to be borne by consumers who are connected to the distribution system/ network. HPCL, being a Partial Open Access consumer, is connected to TPC-D's distribution network and receives supply from SWPGL. Hence, HPCL is liable to pay RAC.

3. Advocate of SWPGL stated that:

- (i) CSS is exempted for the Captive Open Access consumers
- (ii) Revised Tariff Policy, 2016 stipulates carrying cost on the Regulatory Assets.
- (iii) The exemption of RAC is not for Open Access consumers, but it should be for Open Access through CGPs.

4. On request of TPC-D, the Commission granted a weeks' time to file its additional submission.

The Case is reserved for Order.

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

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