

Before the

MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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CASE No. 137 of 2016

And

MA 46 of 2020 in Case No. 137 of 2016

Dated: 18 August, 2020

**CORAM: Shri I.M. Bohari, Member
Shri Mukesh Khullar, Member**

In the matter of

**Petition of The Tata Power Company Ltd.- Transmission Business for amendment of its
Transmission Licence and restoration of the proceedings in Case No. 137 of 2016 in
accordance with the Judgement dated 3 April, 2020 of the Hon'ble Supreme Court in
Civil Appeal No. 5049 of 2019**

And

In the matter of

**Application filed by Sai Wardha Power Generation Ltd. seeking impleadment in Case
No. 137 of 2016**

The Tata Power Co. Ltd. -Transmission BusinessPetitioner

V/s

State Transmission Utility Impleaded Respondent No. 1

Hindustan Petroleum Corporation Ltd. Impleaded Respondent No. 2

The Tata Power Co. Ltd. -Distribution Business Proposed Respondent

Sai Wardha Power Generation Ltd. Applicant for Impleadment

Appearance:

The Tata Power Co. Ltd. -Transmission Business	: Shri Anand Shrivastav (Adv.)
Hindustan Petroleum Corporation Ltd.	: Shri Varun Pathak (Adv.)
State Transmission Utility	: Shri Prasad Narnavare (Rep.)
The Tata Power Co. Ltd. – Distribution Business	: Ms. Deepa Chawan (Adv.)
Sai Wardha Power Generation Ltd.	: Shri Anand Ganeshan (Adv.)

Daily Order

1. Heard the Advocates for the Petitioner (TPC-T), Impleaded Respondent (HPCL) , Proposed Respondent (TPC-D) and the applicant for impleadment (SWPGL) on the limited issue of deciding the impleadment of TPC-D and SWPGL as Parties in the present matter in furtherance of the Daily Order dated 11 August, 2020 in the case.
2. After hearing the arguments of the Advocates of the Parties and going through their respective submissions made on the impleadment issue, the Commission has dealt with the issue as under:
3. **Impleadment of TPC-D**
 - 3.1 TPC-T, in its additional submission dated 14 August, 2020 has stated that the 110 kV HPCL Feeders (which are the subject matter of amendment) are part of TPC-D's Gross Fixed Assets (**GFA**) pursuant to the capitalization allowed by the Commission for these Feeders in TPC-D's Tariff Order dated 4 June, 2008 in Case No. 69 of 2007.
 - 3.2 Through various subsequent Tariff Orders for TPC-D, these 110 kV Feeders continued to be considered as assets of TPC-D.
 - 3.3 The documents which are essential for the adjudication of the present dispute are with TPC-D. Further, the determination of the present dispute will have a direct bearing on the rights and liabilities of TPC-D. Hence, TPC-D is a necessary and proper party to the present dispute.
 - 3.4 At the hearing, Advocate appearing for TPC-D re-iterated the aforesaid submission of TPC-T and stated that these feeders are being maintained by TPC-D. Further, these Lines are part of TPC-D's licence business, being within the area of TPC-D's Licence area.
 - 3.5 Advocate for SWPGL stated that there is no objection from SWPGL to the impleadment of TPC-D as proposed by TPC-T.

Commission's analysis and Ruling:

- 3.6 The Commission notes that it is the claim of TPC-T that these 110 kV HPCL Feeders are on the books of account of TPC-D and prima facie, the Order dated 4 June, 2008 also supports the claim. Further, there is no objection from other Parties on TPC-D's impleadment. Hence, without going into details as to why TPC-D did not participate in the earlier proceeding in 2018, the Commission allows the impleadment of TPC-D as Party Respondent in the present matter.

4. Impleadment of SWPGL:

- 4.1 In its impleadment Application, SWPGL has stated that the present Petition has been filed by TPC-T pursuant to the direction of the Hon'ble Supreme Court in its common judgement dated 3 April, 2020 in Civil Appeal Nos. 2228 of 2020 and 5049 of 2019. The above decision was passed in the Appeals filed by SWPGL and HPCL on the issue of wheeling charges being levied by TPC-D. Therefore, it is incumbent upon TPC-T to make SWPGL as a Respondent in the present Petition.
- 4.2 The issue raised and the relief sought in deciding the amendment of Licence Application would also affect SWPGL.
- 4.3 In terms of Section 18 of Electricity Act, 2003, a notice is required to be published seeking suggestions/objections on its Licence Amendment Application and anybody can participate in such proceeding. Therefore, there is no occasion for TPC-T to object impleadment of SWPGL.
- 4.4 At the hearing, Advocate for SWPGL stated that filing of TPC-T's Licence amendment Application is only to justify its levy of wheeling charges for the use of 110kV Lines on Open Access transaction between SWPGL as Generator and HPCL as Consumer. Being party to the Wheeling Charges matter, SWPGL is also the necessary Party to the present proceeding.
- 4.5 Advocate appearing for TPC-T objected to the impleadment Application of SWPGL and stated that the public consultation as required under Section 18 of Electricity Act, 2003, has already been held in the matter after due Notice publication and SWPGL did not participate in those proceedings.
- 4.6 SWPGL was a party in the wheeling charges matter in Case No. 58 of 2017 alongwith HPCL and TPC-D. However that matter is distinct from the present proceeding for amendment of TPC-T's Transmission Licence.
- 4.7 Responding to a query raised by the Commission on whether TPC-T has filed an amended licence application, TPC-T clarified that the present Petition has been filed solely for removal of 110kV feeders from its Transmission licence and additional facts/grounds are included in present submission vis-à-vis the facts/grounds made in original proceeding.
- 4.8 Advocate appearing for TPC-D also objected to SWPGL's request and further stated

that the Hon'ble Supreme Court remanded the wheeling charges matter back to the Hon'ble Appellate Tribunal for Electricity and the Commission has been directed to decide the Licence Amendment matter and not the wheeling charges matter. Since grievance raised by SWPGL is limited to wheeling charges, its impleadment is not necessitated.

- 4.9 As per the settled principles of law laid down by the Hon'ble Supreme Court, in the remand proceedings, the lower court (State Commission) is not entitled to inquire into or decide matters other than those directed by the Appellate Authority.
- 4.10 SWPGL cannot rely on provisions of Section 18 of EA as the notice publication under this provision has already been issued on 24 August 2017 seeking comments/objections on TPC-T's Petition within 30 days of the notice. SWPGL cannot raise any objection on the proposed Licence amendment as the said action at this stage is barred by the limitation law.
- 4.11 Advocate appearing for HPCL suggested that the Commission may take a holistic view and may allow impleadment of both TPC-D and SWPGL as the issues are overlapping in both the cases.

Commissions Analysis and Ruling:

- 4.12 Having heard the Parties and after going through the submissions of the Parties, the Commission takes note of the following facts:
- i. It was on the Appeal of SWPGL and HPCL, the Hon'ble Supreme Court passed the Order and present proceeding has been restored.
 - ii. While the Hon'ble Supreme Court directed the Commission to decide licence amendment matter, the Apex Court also observed that:

“.....If the application filed for amendment by TPC-T is allowed and reaches finality, the 2x110 kV lines will not form part of the transmission network. On the other hand, if the application of TPC-T for amendment of its licence is rejected, TPC-D cannot have a case for seeking inclusion of 2x110 kV lines in its distribution system for imposing wheeling charges on HPCL.....”
 - iii. Thus, it is clear that the matters of licence amendment and wheeling charges are closely coupled. Outcome of present licence amendment would impact wheeling charges matter as well, which had been agitated by SWPGL and HPCL before the Supreme Court.
 - iv. Further the decision in present proceeding would affect the Open Access transactions undertaken between HPCL and SWPGL. Hence, SWPGL would also be the affected Party on account of the outcome of the present proceeding.
 - v. It is true that SWPGL did not participate in earlier proceeding on Licence amendment. But that is true for TPC-D as well. Further, the Commission notes that

some additional grounds/pleadings have been included in its petition for licence amendment by TPC-T. Further, there is an additional prayer for impleadment of TPC-D in the present proceeding. Hence, although it is the claim of TPC-T that in terms of Order of the Hon'ble Supreme Court, earlier proceeding is required to be restored, TPC-T's Petition is no more the same.

- vi. TPC-D has referred to the ATE Judgment to state that the Commission cannot go beyond the scope of the direction given by Hon'ble Supreme Court. In this context, the Commission is of the view that while deciding the present Licence amendment matter, if appropriate Parties are impleaded, same cannot be termed as exceeding scope of the directions given by the Hon'ble Supreme Court.
- vii. Regulation 64 (b) of MERC (Conduct of Business) Regulations 2004 specifies that in case the Commission is satisfied that any Person is interested in any matter pending before the Commission, it may in public interest allow it to present his opinion or views on that matter, and to participate in the proceedings before the Commission on such terms as the Commission deems fit.
- viii. Also, in order to enable the Commission to effectively complete the proceeding as expeditiously as possible and settle the question involved in the proceedings, the Commission is of the view that it would be necessary and proper to implead SWPGL as a Party in the present proceeding.
- ix. In the light of the above circumstances, the Commission deems it fit and proper to allow SWPGL's Impleadment Application.

Hence the following order.

ORDER

- 1. The Commission allows impleadment of both SWPGL and TPC-D in Case No. 137 of 2016.**
- 2. SWPGL may file its submission on merit of the main Petition within seven days. Rejoinder may be filed within seven days thereafter.**
- 3. Accordingly, MA 46 of 2020 in Case No. 137 of 2016 stands disposed of.**
- 4. Next date for E-hearing in Case No. 137 of 2016 shall be informed by the Secretariat of the Commission.**

Sd/-
(Mukesh Khullar)
Member

Sd/-
(I. M. Bohari)
Member