

10th April, 2019
CREG/MUM/MERC/2019/67

Secretary,
Maharashtra Electricity Regulatory Commission,
13th Floor, Centre No 1, World Trade Centre,
Cuffe Parade, Colaba,
Mumbai 400 005.

Dear Sir,

Subject: Petition for applicability of wheeling Charges

- Ref: 1. MTR Order dated 12th September, 2018 in Case No. 69 of 2018
2. The Hon'ble ATE Judgment dated 18th March, 2019 in Appeal No. 84 of 2018

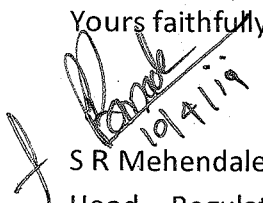
This has reference to the above mentioned Judgment dated 18th March, 2019 in Appeal No.84 of 2018 wherein the Hon'ble Appellate Tribunal for Electricity ("Hon'ble ATE") has held that EHV consumers are part of the distribution network of Tata Power-D and Wheeling Charges are payable.

In view of the above, Tata Power-D is filing the present petition enclosed as **Appendix** to this letter before this Hon'ble Commission seeking implementation of the Hon'ble ATE's Judgment dated 18th March, 2019 in Appeal No. 84 of 2018. Consequentially we also request this Hon'ble Commission to direct all EHV consumers to pay Wheeling Charges and Losses for the periods they have not paid.

We have made the payment towards the prescribed fee of Rs. 10,000 /- as per MERC (Fees & Charges) Regulations, 2017 through RTGS and the receipt for the same is enclosed.

We request the Hon'ble Commission to accept the Petition.

Thanking you,
Yours faithfully,


S R Mehendale
Head – Regulatory (WR)

Encl: **Appendix**

TATA POWER

The Tata Power Company Limited
Corporate Center 34 Sant Tukaram Road Carnac Bunder Mumbai 400 009

Tel 91 22 6717 1986

Registered Office Bombay House 24 Homi Mody Street Mumbai - 400 001
CIN : L28920MH1919PLC000567 Website : www.tatapower Email : tatapower@tatapower.com

BEFORE THE MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
WORLD TRADE CENTRE, CENTRE NO.1, 13th FLOOR,
CUFFE PARADE, MUMBAI 400005

FILING NO.

IN THE MATTER OF:

Petition for applicability of wheeling Charges

AND IN THE MATTER OF:

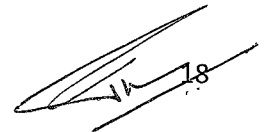
The Tata Power Company Limited,
Bombay House,
24, Homi Mody Street,
Fort, Mumbai- 400 001

AFFIDAVIT ON BEHALF OF THE PETITIONER/THE TATA POWER COMPANY LTD

I, Mr. Peyush Tandon, son of Mr. Kamleshwar Saran Tandon, aged 45 years, residing at A-404, Mahindra Splendor, LBS Marg, Bhandup (West), Mumbai 400 078 do hereby swear and say as follows:

1. I am the Chief - Regulatory of The Tata Power Company Limited (hereinafter referred to as "Tata Power"), the Petitioner in the above matter and I am duly authorised by the Petitioner to make this Affidavit.
2. I am filing this Affidavit on behalf of The Tata Power Company Limited.
3. I say that the present petition, now shown to me is based on the records of the Petitioner and information received from the concerned officers of the Petitioner and I believe the same to be true and correct.

Ms. KISHAN M. MASTER
NOTARY GENERAL BOMBAY
2403, ORCHID TOWER A
BELLASIS ROAD,
MUMBAI- 400 008.

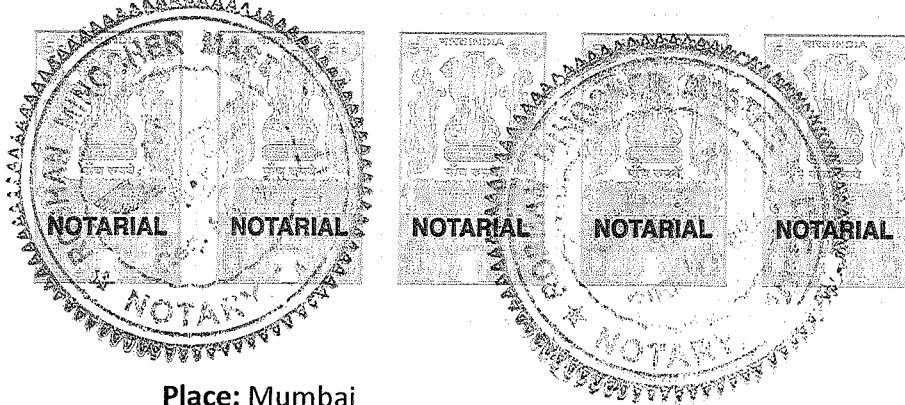


4. I say that there are no proceedings pending in any court of law/tribunal or arbitrator or any other authority, wherein the Petitioners are a party and where issues arising and / or reliefs sought are identical to the issues arising in the matter pending before the Commission.


DEPONENT

VERIFICATION


Sworn at Mumbai on this ^{de} 10th day of April, 2019 that the contents of the above Affidavit are true to my knowledge, no part of it is false and nothing material has been concealed therefrom.



Place: Mumbai

Date: 10.4.2019




DEPONENT

Before me



Ms. ROSHAN M. MASTER
NOTARY, GREATER BOMBAY
2403, ORCHID TOWER A
BELLAS'S ROAD,
MUMBAI - 400 008.

Reg. No. 404
Commission Expires
on 30.11.2021

S.no - 11/40547 2019
10.4.2019

BEFORE THE MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
WORLD TRADE CENTRE, CENTRE NO.1, 13th FLOOR,
CUFFE PARADE, MUMBAI 400005

FILING NO.

CASE NO.

IN THE MATTER OF:

Petition for applicability of wheeling Charges .

AND IN THE MATTER OF:

The Tata Power Company Limited.
Bombay House,
24, Homi Mody Street,
Fort, Mumbai – 400 001

...Petitioner

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Petition for applicability of wheeling Charges .

MOST RESPECTFULLY SHOWETH:

I. Background:

1. This Hon'ble Commission by its Order dated 12th March, 2018 in Case No. 58 of 2017 had held that Tata Power-D is not permitted to levy/ recover Wheeling Charges & Wheeling Losses from Hindustan Petroleum Corporation Ltd. ("HPCL"), on the basis that the 110 kV Trombay-HPCL Feeders 1 & 2 through which power is availed by HPCL forms part of Tata Power-T's transmission system. This Hon'ble Commission had further directed Tata Power-D to refund the amounts so collected from HPCL on this count, along with applicable interest. The relevant extract of this Hon'ble Commission's Order (attached as **Annexure 1**) dated 12th March, 2018 is reproduced hereunder:

"11.15 In any event, HPCL is connected through Lines which are, admittedly, at present a part of TPC-T's Transmission Licence and thereby a part of the Intra-State Transmission System. Till such time as that remains the case, Wheeling Charges and Losses are not payable by HPCL to TPC-D.

11.16 Considering the foregoing, the Commission concludes that TPC-D is not entitled to levy Wheeling Charges for the power supplied by it to HPCL, or Wheeling Charges and Wheeling Losses on the power sourced from SWPGL through Open Access. Accordingly, TPC-D shall refund the amounts collected from HPCL on this count, along with applicable interest, within one month if directly, or by adjustment in HPCL's energy bill for the ensuing billing cycle."

2. Aggrieved by this Hon'ble Commission's Order dated 12th March, 2018, Tata Power-D filed an Appeal (Appeal No. 84 of 2018) before the Hon'ble Appellate Tribunal for Electricity ("Hon'ble ATE") challenging the legality of the said Order and seeking a declaration that lines with voltage of 66 kV and above can be part of the distribution

system. Further Tata Power-D had also sought a relief that Tata Power-D had rightly levied Wheeling Charges for the power supplied by it to HPCL and Wheeling Charges and Losses on the power sourced by HPCL through Open Access. The prayers sought by Tata Power-D before the Hon'ble ATE is reproduced hereunder:-

- “(a) Allow the Appeal and set aside the Impugned Order dated 12.03.2018 passed by Ld. Maharashtra Commission in Case No.58 of 2017.*
- (b) Hold and declare that lines with voltage of 66 kV and above can also form part of Distribution Networks.*
- (c) Hold and declare that TPC-D has rightly levied Wheeling Charges for the power supplied by it to HPCL and Wheeling Charges and Wheeling Losses on the power sourced by HPCL through Open Access.*
- (d) Pass such other or further order(s) as this Hon'ble Tribunal may deem fit and proper in the interest of justice.”*

Along with the said Appeal, Tata Power-D had also filed an Interim Application seeking stay of this Hon'ble Commission's aforesaid Order.

3. On 12th September, 2018, during the pendency of Appeal No.84 of 2018, this Hon'ble Commission passed its Mid Term Review (Tariff) Order for Tata Power-D in Case No. 69 of 2018, determining tariff for each category of consumers for the period FY 2018-19 to FY 2019-20. While determining the Wheeling Charges, this Hon'ble Commission did not consider Tata Power-D's EHV Sales (Direct and OA) to consumers connected at EHV level (i.e., 110 kV). Accordingly, no Wheeling Charges and Losses were determined for EHV Consumers. Consequentially, Wheeling Charges for other set of consumers was increased, thereby causing tariff shock to these consumers. The said Order was passed by this Hon'ble Commission solely relying on its earlier Order dated 12th March, 2018, wherein this Hon'ble Commission had held that EHV lines would not form part of distribution system of Tata Power-D. The relevant extract of this Hon'ble Commission's MTR Order dated 12th September, 2018 is reproduced hereunder:-

“In the above said Order, the Commission ruled that HPCL, being a consumer connected to EHV Transmission network, it is not liable to pay Wheeling Charges to TPC-D. Aggrieved by this decision of the Commission, TPC-D filed an appeal before ATE in Appeal No. 84 of 2018. However, no stay has been granted by ATE on this Order.

Further, TPC-T filed a Petition before the Commission in Case No. 137 of 2016 for amendment of Transmission Licence No. 1 of 2014. In the said Petition, TPC-T submitted that 110 kV Trombay-HPCL Feeders 1 & 2 were never part of TPC-T ’ s asset and were assets of TPC-D. The Commission rejected the prayer of the Petitioner vide its Order dated 1 August, 2018 citing decision taken by the Commission in Order dated 12 March, 2018 in Case No. 58 of 2017.

In light of foregoing, the Commission is of the view that, although in MYT Order, the EHT sales were considered for computation of Wheeling Charges, the Commission in subsequent Orders has already decided on applicability of Wheeling Charges to EHV consumers. Further, the Commission in present Order has been undertaking Mid-Term Review of third Control Period and has determined the tariff for FY 2018-19 and FY 2019-20, after taking into account the developments that have happened in the first two years of the Control Period.

In view of the above, the Commission in the present Order has not considered the EHV sales for computation of Wheeling Charges. Accordingly, the Commission has reduced the sales at 110/132 kV level of 289.77 MU for FY 2018-19 and 294.42 MU for FY 2019-20 towards Direct consumers. Also, energy sales of 408.05 MU towards OA sales at 110/132kV level has not been considered for FY 2018-19 and FY 2019-20.”

[Emphasis supplied]

4. Subsequently, on 18th March, 2019, the Hon’ble ATE passed its Judgement in Appeal No. 84 of 2018, setting aside this Hon’ble Commission’s Order dated 12th March, 2018 in Case No. 58 of 2017 and holding that, the 110 kV Trombay-HPCL Feeders 1 & 2 forms part of Tata Power-D’s distribution system and are not part of the transmission system. The

Hon'ble ATE further held that, there is no embargo that the distribution network of a Distribution Licensee cannot include a line at 110 kV level which is primarily meant for distribution of electricity. The relevant extract of the Hon'ble ATE's Judgment is reproduced below:

"9.6 As held by this Tribunal in OPTCL case, there is no embargo that the distribution network of a distribution licensee cannot include a line at 110 kV level which is primarily meant for distribution of electricity. Moreover, as provided in the Act, the distribution can be undertaken at high voltage levels forming High Voltage Distribution System. We, therefore, find that the impugned order of the State Commission suffers from infirmity and perversity being passed not in accordance with the extant statute."

"11. Summary of Our Findings:-

In view of the findings and analysis brought out in the above mentioned paras, we are of the considered view that the reference 110 kV HPCL Feeders are part of the distribution network of the TPC-D. Further, to arrive at a balanced decision and evolving judicious principles for safeguarding interests of all stakeholders, the wheeling charges are required to be determined at EHT (110 kV) level also along with determination of other wheeling charges at LT/HT levels in accordance with law. Accordingly, we hold that the instant Appeal deserves to be allowed to the extent mentioned as above.

ORDER

For the foregoing reasons, we are of the considered opinion that the issues raised in the present appeal being Appeal No.84 of 2018 have merit. Hence, the Appeal is allowed and the impugned order dated 12.03.2018 passed by the Maharashtra Electricity Regulatory Commission in the Case No. 58 of 2017 is set aside to the extent, as stated in Para 11 above. The State Commission is directed to pass consequential orders as per the above findings, as expeditiously as possible within a period of three months from the receipt of a copy of the judgment."

[Emphasis supplied]

5. In view of the Hon'ble ATE's aforesaid Judgment, Wheeling Charges and Losses become applicable to all EHV Consumers, including HPCL.

6. In view of the above, Tata Power-D is filing the present Petition for seeking implementation of the Hon'ble ATE's Judgment dated 18th March, 2019 in Appeal No.84 of 2018 for seeking prayers as stated hereinabove. As is evident from the foregoing, Wheeling Charges and Losses were not made applicable to all EHV consumers from 1st September, 2018 onwards (re. MTR Order), solely on the basis of this Hon'ble Commission's Order dated 12th March, 2018 in Case No. 58 of 2017. As the said Order dated 12th March, 2018 has been set aside vide the Hon'ble ATE's Judgment dated 18th March, 2019 in Appeal No.84 of 2018 and the Hon'ble ATE has categorically held that 110 kV lines can form part of the distribution system, Wheeling Charges and Losses become applicable to all EHV consumers. It is pertinent to note that, all along the concerned EHV assets have continued to be in the GFA of the Distribution Licensee. Hence, there would be no difference in the ARR of Distribution Licensee.

7. For completion of record, it is stated that, Tata Power-D has filed an Appeal (Appeal (DFR) No. 4256 of 2018) challenging this Hon'ble Commission's MTR Order dated 12th September, 2018 in Case No, 69 of 2018 before the Hon'ble ATE. Amongst others, Tata Power-D had raised the issue of non-determination of Wheeling Charges for EHV consumers, in the said Appeal. In view of the peculiar situation, Tata Power-D is constrained to file the present Petition before this Hon'ble Commission seeking implementation of the Hon'ble ATE's Judgment dated 18th March, 2019 in terms of the directions provided therein. In the aforesaid Appeal Tata Power-D has prayed following:

“(i) It is respectfully submitted that the Appellant has proceeded to file an Appeal against such Order of the Ld. Commission vide Appeal No. 84 of 2018. The Appellant craves the leave of this Hon'ble Tribunal to refer the same, if required, during the course of hearing.”

Accordingly, Tata Power-D shall also seek liberty of the Hon'ble ATE to withdraw the issue regarding Wheeling Charges from its aforesaid pending Appeal.

II. Applicability of Wheeling Charges to EHV Consumers

8. Prior to this Hon'ble Commission's Order dated 12th March, 2018 in Case No. 58 of 2017, Wheeling Charges were being paid by all EHV consumers in terms of this Hon'ble Commission's MYT Order dated 21st October, 2016 in Case No. 47 of 2016. Pursuant thereto, this Hon'ble Commission on 12th September, 2018 passed its Mid Term Review (Tariff) Order for Tata Power-D in Case No. 69 of 2018, wherein this Hon'ble Commission while keeping the philosophy/ principles applied in the MYT Order intact did not consider EHV sales for computation of Wheeling Charges. Accordingly, Wheeling Charges were not made applicable to any EHV consumers of Tata Power-D. Table No.1 below bifurcates the rates/ applicability of Wheeling Charges and Losses based on the applicable Tariff Orders passed by this Hon'ble Commission and highlights the consumer(s) who are required to pay Wheeling Charges and Losses in terms of the Hon'ble ATE's Judgment dated 18th March, 2019.

Table 1: Wheeling Charges Status

Sr. No.	Period	Tariff Order Applicable	Applicable Wheeling Charges (Rs/kWh)	Whether Wheeling Charges and Losses paid	Remark
1	Prior to March, 2018	Case No. 47 of 2016 (MYT)	0.87	All EHV consumers paid	NA
2	March, 2018	Case No. 47 of 2016 (MYT)	0.87	All EHV consumers paid, except HPCL	Bill was being raised by Tata Power-D but claim for payment made after the Hon'ble ATE's Judgment dated 18 th March, 2019.
3	April 2018 to August 2018	Case No. 47 of 2016 (MYT)	0.88	All EHV consumers paid, except HPCL	
4	September 2018 to March 2019	Case No. 69 of 2018 (MTR)	NA	None of the EHV consumers have paid as per MTR Order	Wheeling Charges to be made applicable as per the Hon'ble ATE's Judgment dated 18 th March, 2019.
5	April 2019 to March 2020	Case No. 69 of 2018 (MTR)	NA	None of the EHV consumers have	

				paid as per Tariff Order	
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III. Wheeling Charges have been determined in the Tariff Order

9. In its MYT Order dated 21st October, 2016 in Case No.47 of 2016, this Hon'ble Commission had based on the tariff philosophy and rational employed therein, specifically considered EHV Sales as part of HT Sales while reviewing/ calculating the Wheeling Charges for Tata Power-D. This was in line with the past practice followed by this Hon'ble Commission, with which no objection had been taken by any person. In fact, the philosophy considered by this Hon'ble Commission was that, due to lower sales on Tata Power-D's wires, the LT Wheeling Charges of Tata Power-D are already on the higher side. Therefore, excluding EHT Sales would further increase the Wheeling Charges at HT and LT levels. Accordingly, this Hon'ble Commission in its MYT Order dated 21st October, 2016 for Tata Power-D, had computed the Wheeling Charges for HT (including EHV) as Rs. 0.88/kWh for FY 2018-19 and LT Wheeling Charges as Rs.1.81/kWh for FY 2018-19.
10. This Hon'ble Commission had employed the same methodology for all other Mumbai distribution licensee i.e., AEML and BEST for MYT period although for MSEDCL had determined voltage wise wheeling charges.
11. Thus, this Hon'ble Commission during the MYT proceedings in 2016, after duly considering various factors and setting out equitable rational/ fundamental principles, adopted a specific methodology while computing the Wheeling Charges for Mumbai Utilities for the period FY 2016-17 to FY 2019-20.
12. Accordingly, until this Hon'ble Commission's Order dated 12th March, 2018 in Case No. 58 of 2018, Wheeling Chagres as determined by this Hon'ble Commission (in its MYT Order) were being paid by all EHV Consumers including HPCL (evident from Sr. No.1 in Table No.1 above). Subsequent to this Hon'ble Commission's Order dated 12th March, 2018, for the periods March 2018 to August 2018 (Sr. Nos. 2 & 3 in Table No.1 above), all

EHV Consumers except, HPCL have paid the Wheeling Charges as determined by this Hon'ble Commission in its MYT Order in Case No. 47 of 2016. During the pendency of the proceedings in Appeal No. 84 of 2018 before the Hon'ble ATE, Tata Power-D had been raising monthly electricity bills, including Wheeling Charges upon HPCL, however, in line with a gentlemen's agreement between the parties before the Hon'ble ATE, payment towards Wheeling Charges was not claimed from HPCL.

13. Consequent to the Hon'ble ATE's Judgment dated 18th March, 2019, Tata Power-D, through its letter dated 1st April, 2019, has requested HPCL to pay the amount towards Wheeling Charges as per the monthly bills already raised. However, Tata Power-D is yet to receive the payment from HPCL. Considering that the amounts towards Wheeling Charges have become payable consequent to the Hon'ble ATE's aforesaid Judgment and the Wheeling Charges for that period were already determined by this Hon'ble Commission and paid by all EHV consumers except HPCL, we request this Hon'ble Commission to direct HPCL to make the necessary payments immediately along with applicable DPC and carrying costs.

IV. Period for which Wheeling Charges have not been made applicable for EHV consumers (1st September, 2018 to 31st March, 2019)

14. As stated above, this Hon'ble Commission had passed its MTR Order dated 12th September, 2018 in Case No. 69 of 2018, determining the tariff for the period FY 2018-19 to FY 2019-20. It is noteworthy that, for the period September 2018 to March 2019 (Sr. No.4 in Table No.1 above), this Hon'ble Commission had not made applicable Wheeling Charges payable by EHV Consumers after relying on its earlier Order in Case No. 58 of 2017, wherein it was held that 110 kV assets form part of the transmission system and are not distribution assets and had kept the principles of determining wheeling charges the same as MYT Order. For the said period FY 2018-19, this Hon'ble Commission had determined Wheeling Charges at the rate of Rs. 1.46/kWh for HT consumers. Since, the said period of FY 2018-19 is already over for which the rate of Rs 1.46 /kWh was approved for HT consumers, it is submitted that this Hon'ble Commission allow Tata Power-D to

recover the same from all EHV consumers as well, based on the said approved Wheeling Charges for FY 2018-19. Tata Power-D undertakes to adjust the gap / surplus at the time of truing-up for the respective years. It is pertinent to note that, post the Hon'ble ATE's Judgment dated 18th March, 2019 Wheeling Charges are applicable to EHV consumers and higher Wheeling Charges have been already paid by other consumers during this period.

15. In case Wheeling Charges other than that determined and already recovered (from HT consumers) for FY 2018-19 are made applicable to the EHV consumers, it would unfairly discriminate against the other consumers of Tata Power-D, who have already paid much higher Wheeling Charges during the said period. Hence, it may be prudent to charge Wheeling Charges for this past period in line with what has been paid by the other consumers and adjust the gap / surplus of this year on account of Wheeling Charges collected in future years, so that the same gets distributed evenly across all consumers. Accordingly, for this short past period from September, 2018 to March, 2019, we request this Hon'ble Commission to make applicable the Wheeling Charges as approved for HT consumers in the MTR Order dated 12th September, 2018 to the EHV consumers as well.

V. Wheeling Charges for FY 2019-20:

16. Similarly, for the period April 2019 to March 2020 (Sr. No.5 in Table No.1 above), this Hon'ble Commission has not determined Wheeling Charges for EHV consumers in its MTR Order dated 12th September, 2018. This Hon'ble Commission, based on its Order dated 12th March, 2018 in Case No. 58 of 2017, has computed Wheeling Charges for FY 2019-20 in its MTR Tariff Order by excluding EHV Sales. The relevant extract of the MTR Tariff Order and Wheeling Charges approved are as given below:

"In light of foregoing, the Commission is of the view that, although in MYT Order, the EHT sales were considered for computation of Wheeling Charges, the Commission in subsequent Orders has already decided on applicability of Wheeling Charges to EHV consumers. Further, the Commission in present Order has been undertaking Mid-Term Review of third Control Period and has determined the tariff

for FY 2018-19 and FY 2019-20, after taking into account the developments that have happened in the first two years of the Control Period.

Further, TPC-D's reference to the ATE Judgment to the effect that the basic tariff setting principles and methodology adopted by the Commission cannot be drastically amended at the truing up stage, is inappropriate, as the Commission has not amended the principles for the true-up period.

In view of the above, the Commission in the present Order has not considered the EHV sales for computation of Wheeling Charges. Accordingly, the Commission has reduced the sales at 110/132 kV level of 289.77 MU for FY 2018-19 and 294.42 MU for FY 2019-20 towards Direct consumers. Also, energy sales of 408.05 MU towards OA sales at 110/132kV level has not been considered for FY 2018-19 and FY 2019-20.

The Commission sought details of ratio for HT GFA and LT GFA for FY 2015-16 to FY 2017-18. TPC-D submitted the actual HT:LT ratio of GFA as 77:23 for FY 2017-18. The Commission has considered the same ratio for computation of Wheeling Charges for FY 2018-19 and FY 2019-20.

Accordingly, the Commission has approved the Wheeling Charges as shown in the Table below:

Table 8-22: Wheeling Charges for FY 2018-19 and FY 2019-20 as approved by the Commission

Particulars	FY 2018-19			FY 2019-20		
	MYT Order	MTR Petition	Approved in this Order	MYT Order	MTR Petition	Approved in this Order
Direct Sale (MU)						
HT Sale	2,310.00	2,533.27	1,746.01	2,348.00	2,621.88	1,767.49
LT Sale	920.00	1,078.15	1,044.49	985.00	1,298.77	1,165.15
Direct Sale %						
HT Sale	72%	70%	63%	70%	67%	60%
LT Sale	28%	30%	37%	30%	33%	40%
GFA %						
HT Sale	77%	77%	77%	77%	75%	77%
LT Sale	23%	23%	23%	23%	25%	23%
Wires ARR (Rs Crores)	370.00	506.86	528.38	400.00	566.66	645.25
Network Cost- HT	284.00	390.29	406.85	307.00	424.99	496.84
Network Cost- LT	86.00	116.58	121.53	93.00	141.66	148.41
Wheeling Cost HT	203.00	273.77	254.57	216.00	284.21	299.44

Wheeling Cost LT	167.00	233.09	273.81	184.00	282.45	345.80
HT wheeling Charge -Rs/kWh	0.88	1.08	1.46	0.92	1.08	1.69
LT wheeling Charge -Rs/kWh	1.81	2.16	2.62	1.87	2.17	2.97
Revenue from Open Access Consumer			60.94			70.81

The above said determined Wheeling Charges are not applicable for consumers connected at EHV level i.e., 110 / 132 kV

17. As is evident from the foregoing, Wheeling Charges were computed by this Hon'ble Commission excluding the EHV sales. The EHV sales not considered for the computation of Wheeling Charges are as given in Table No.2 below:

Table 2: EHV Sales not considered for Wheeling Charges computation for FY 2019-20

<i>Mus</i>	
EHV Sale	FY 2019-20
Direct Sale	294.42
Open Access Sale	408.05
Total	702.47

18. Since, the Tariff is for the period going forward and yet to be made applicable to the consumers, basis the Hon'ble ATE's Judgment dated 18th March, 2019 Wheeling Charges can be computed considering the EHV sales. In this regard, we wish to submit that the Hon'ble ATE in its aforesaid Judgment has opined that the Wheeling Charges are required to be determined at EHV (110 kV) level also along with determination of other Wheeling Charges at LT/ HT levels, in accordance with law.
19. In this regard, it is pertinent to highlight that, the Hon'ble ATE in its recent Judgment dated 27th March, 2019 in Appeal Nos. 311 & 315 of 2018 titled *M/s. JSW Steel Ltd. vs. MERC & Anr.*, has held that the fundamental principles/ philosophy adopted by the Commission in MYT proceedings cannot be reopened and changed at the stage of MTR proceedings. The relevant extracts are reproduced hereunder for ease of reference:-

“82. In terms of clauses 8.1 and 8.2 of the MERC Regulations 2015, it explains the purpose of Mid Term Review, which reads as under:

“8. Mid-term Review- 8.1 The Generating Company or Licensee or MSLDC shall file a Petition for Mid-term Review and Truing-up of the Aggregate Revenue Requirement and Revenue for the years 2015-16 and 2016-17, and provisional Truing-up for the year 2017-18, by November 30, 2017.

Provided that the Petition shall include information in such form as may be stipulated by the Commission, together with the Accounting Statements, extracts of books of account and such other details, including Cost Accounting Reports or extracts thereof, as it may require to assess the reasons for and extent of any difference in operational and financial performance from the approved forecast of Aggregate Revenue Requirement and expected revenue from Tariff and charges.

8.2 The scope of the Mid-term Performance Review shall be a comparison of the actual operational and financial performance vis-à-vis the approved forecast for the first two years of the Control Period; and revised forecast of Aggregate Revenue Requirement, expected revenue from existing Tariff, expected revenue gap, and proposed category-wise Tariffs for the third and fourth year of the Control Period.”

*83. The scope of Mid Term Review proceedings is understood from the above regulations. As seen from the above Regulations, the Commission cannot deviate from the principles adopted in the Multi Year Tariff order. **Fundamental principles adopted in the MYT proceedings cannot be reopened and challenged at the stage of MTR proceeding, the scope of which is very limited.***

84. Admittedly, the impugned order seems to be passed in exercise of powers under Regulations 8.1 and 8.2.

85. There is one more flaw in the manner in which the Respondent Commission proceeded with Mid-Term-Performance Review. Having come to conclusion that captive consumers are not liable to pay additional surcharge in MYT proceedings, which was implemented by MSEDCL, MERC opines in Review Proceedings that additional surcharge is payable by captive consumers of captive power plant. But this is without giving an opportunity of being heard to the Appellants. This is nothing but violation of principles of natural justice. Firstly, Mid-Term Review is nothing but a comparison between the actual operational performance (factual) vis-a-vis the

approved forecast in terms of MERC regulations of 2015. This is nothing but ignoring its own regulations.” [Emphasis supplied]

20. This aforesaid principle was also considered by the Hon’ble ATE in its Judgment dated 10th August, 2010 passed in *Meghalaya State Electricity Board v. Meghalaya State Electricity Regulatory Commission & Anr.* reported as 2010 ELR (APTEL) 0940.

21. As stated in the foregoing paragraphs, this Hon’ble Commission had based on its tariff philosophy and rationale employed in its MYT Order dated 21st October, 2016 in Case No. 47 of 2016 included the EHV Sales in HT sales while determining the Wheeling Charges for HT/EHV consumers of Tata Power-D and other Mumbai Utilities. Subsequently, in its MTR Order dated 12th September, 2019, this Hon’ble Commission has continued with the same principles for determining wheeling charges but excluded EHV sales based on the finding in the Order in Case No. 58 of 2017 that they were not distribution assets. In view of the Hon’ble ATE’s aforementioned recent Judgment, Wheeling Charges applicable for FY 2019-20 are to be recomputed in line with the fundamental principles/ philosophy set out/ considered by this Hon’ble Commission in the MYT Order dated 21st October, 2016, as set out in Table No.3 below. It is to be noted that, the determination of Wheeling Charges is just a redistribution of the already approved Wires ARR in MTR Order dated 12th September, 2018 in Case No. 69 of 2018, considering the EHV sales and does not entail redetermination of ARR:

Table 3: Wheeling Charges FY 2019-20 including EHV sales

Particulars		FY 2019-20
Direct (Mus)		
HT Sale with 15 days adjustment (Mus)	1	2470
LT Sale with 15 days adjustment (Mus)	3	1165
Total Sale (Mus)	4=1 to 3	3635
Direct Sale %		
HT Sale	5	68%
LT Sale	6	32%
GFA %		
HT GFA	7	77%
LT GFA	8	23%
Wires ARR (Rs Crores)	9	645
Network Cost- HT	10=7*9	497
Network Cost- LT	11=9-10	148
Wheeling Cost HT	12=5*10	338
Wheeling Cost LT	13=9-12	308
HT wheeling Charge -Rs/kWh	14=12/((1+2)*10)	1.37
LT wheeling Charge -Rs/kWh	15=13/3*10	2.64

22. As can be seen from the above, the revised Wheeling Charges reduces the burden on the consumers considerably. Hence, we request this Hon'ble Commission to re-compute the Wheeling Charges for FY 2019-20 considering the EHV sales.

VI. Prayers

23. It is most respectfully prayed that this Hon'ble Commission may be pleased to:
- Allow Tata Power-D to recover the Wheeling Charges and Wheeling Losses for the past period (i.e., March 2018 to March 2019) from the EHV consumers as specified in the paras above.

- b) Recompute Wheeling Charges for FY 2019-20 considering EHV sales and accordingly make them applicable for all consumers.
- c) Pass such other order(s) as this Hon'ble Commission may deem fit and proper in the facts and circumstances of the case.
- d) Condone any inadvertent omissions/ errors / rounding off differences / shortcomings and permit Tata Power- D to add / change / modify / alter this filing and make further submissions as may be required at a future date.

Date: 10th April, 2019

Place: Mumbai

For and on behalf of the Petitioner

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
E-mail: mercindia@merc.gov.in
Website: www.mercindia.org.in / www.merc.gov.in

Case No. 58 of 2017

In the matter of

Petition of Hindustan Petroleum Corporation Ltd. for refund of Wheeling Charges and Losses wrongly levied by Tata Power Co. Ltd. (Distribution)

Coram

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

Hindustan Petroleum Corporation Ltd.Petitioner

V/s

1) The Tata Power Co. Ltd. (Distribution)
2) Sai Wardha Power Generation Ltd.
3) Maharashtra State Load Despatch CentreRespondents

Appearance:

For Petitioner	Shri. Varun Pathak (Adv.)
For Respondent 1	Shri. Amit Kapur (Adv.)
For Respondent 2	Shri. Anand K. Ganeshan (Adv.)
For Respondent 3	Shri. A. P. Revagad
For Authorised Consumer Representative	Dr. Ashok Pendse, TBIA

ORDER

Dated: 12 March, 2018

Hindustan Petroleum Corporation Ltd. (HPCL), Mumbai Refinery, B.D Patil Marg, Mahul, Chembur, Mumbai, has filed a Petition, citing Sections 42(2) and 86 and other applicable provisions of the Electricity Act (EA), 2003 and the Regulations of the Commission on 13 April, 2017 seeking refund of Wheeling Charges and Losses wrongfully levied by Tata Power Co. Ltd. (Distribution) (TPC-D).

2. HPCL's prayers are as follows:

- (a) *“Hold and direct that Tata Power is not entitled to levy and collect the wheeling charges and the wheeling losses on the supply of electricity through open access and wheeling charges through retail, to HPCL which is directly connected to the 110 KV transmission line of Tata Power;*
- (b) *Direct Tata Power to refund to the Petitioner the entire amount of Rs. 103.87 Crores (Rupees one hundred and three crores and eighty-seven lakhs only) (quantified till -February 28, 2017) and thereafter the entire amount illegally levied and collected as wheeling charges and wheeling losses from the Petitioner post -February 28, 2017;*
- (c) *Direct Tata Power to pay interest at the rate of 18% per annum on the amounts wrongfully recovered from the Petitioner from the date of such recovery till the date of refund;*
- (d) *Restrain Tata Power from billing and recovering further wheeling charges and wheeling losses from the Petitioner for the captive supply of electricity made by SWPGL to HPCL by means of open access;*
- (e) *Pass an ex-parte ad-interim order in terms of prayer (d) above and confirm the same after notice to the Respondents;*
- (f) *Award costs of the present petition;”*

3. The Petition states as follows:

- 3.1 HPCL is a Government of India Undertaking engaged in the refining and marketing of petroleum products. HPCL has its industrial premises at B.D. Patil Marg, Mahul, Mumbai, in the distribution area of TPC-D. HPCL is presently maintaining a Contract Demand of 17500 kVA with TPC-D. In addition, HPCL has been taking captive power through Open Access from Sai Wardha Power Generation Ltd. (SWPGL) since December, 2015.
- 3.2 HPCL uses the Transmission Lines of TPC-T for procuring electricity through Open Access for captive consumption from SWPGL and also for retail purchase from TPC-D, for which the Wheeling Charges which are levied by TPC-D are not payable as HPCL is connected to the Transmission Network of Tata Power Co. Ltd. (Transmission) (TPC-T) which holds Transmission Licence No. 1 of 2014.
- 3.3 The Transmission Licence issued by the Commission notes at sub-point 77 at page 7 that the 110 kV Trombay Feeders are directly connected to HPCL. As such, HPCL draws power directly from the network of the Transmission Licensee TPC-T. However, TPC-D is levying both Wheeling Charges for its Distribution Network and Transmission Charges for the Transmission Network when in reality no part of the Distribution Network is being used by HPCL.

- 3.4 SWPGL is a Generating Company with a Generating Plant of capacity of 540 MW, located at Warora, Distt. Chandrapur, Maharashtra. The 540 MW is set up as four Units of 135 MW each with 2 Units of 135 MW each being in the form of Captive Generating Plant (CGP) primarily for supplying power to shareholders of SWPGL, being industrial consumers.
- 3.5 HPCL had initiated a competitive bidding process through issue of Request for Proposal (RfP) for procurement of power through the captive route on Short Term/Medium Term basis by HPCL, Mumbai refinery during April, 2016. SWPGL was selected as the successful bidder for supply of Open Access power on a captive model basis with contracted power of 40 MW, and accordingly a Letter of Intent (LOI) dated 27 June, 2016 was issued. To effectuate the captive model, HPCL and SWPGL executed a Power Purchase Agreement (PPA) on 8 July, 2016 for facilitating supply of 40 MW of Open Access power effective 1 August, 2016.
- 3.6 TPC-D has been levying Wheeling Charges to the retail power being supplied by it to HPCL, and also levying Wheeling Charge as well as Wheeling Loss to Open Access power being supplied to HPCL by SWPGL despite the fact that HPCL is connected to the Transmission Network of TPC-T. As per the documents filed by TPC-T for grant of Transmission Licensee, HPCL is connected to the Transmission Network and is not using any part of the Distribution Network of TPC.
- 3.7 As per the Transmission Licence, it is evident that HPCL is connected to the 110 kV Feeder directly, and as such HPCL draws power directly from the network of the Transmission Licensee, whereas TPC is levying both Wheeling Charges for its Distribution Network and Transmission Charges for the Transmission Network when in reality no part of the Distribution Network is being used by HPCL.
- 3.8 HPCL has taken up the issue of Wheeling Charges and Wheeling Losses with TPC-D time and again but it has not been resolved. HPCL in various meetings and by written communications dated 27 January and 7 March, 2016 and 31 January, 2017 has raised the above issues with TPC-D. However, TPC-D by its communications dated 28 July, 2016 and 9 February, 2017 has insisted on the applicability of Wheeling Charges and Wheeling Losses for its Distribution Network to the captive power supplied at 110 kV to HPCL and has also reiterated the levy of Regulatory Asset Charge (RAC) on the captive power being supplied thereto. The Commission, vide Order dated 28 June, 2013 in Case No. 179 of 2011, has clearly observed that there are no Wheeling Losses in supply to EHV consumers who are taking supply at 66 kV and above. In fact, this principle has also been recognized by various other Commissions. Hence, the Wheeling Charges and Wheeling Losses for Distribution Network of TPC should not be applied to 110 kV supply to HPCL.
- 3.9 Even the Maharashtra State Load Despatch Centre (MSLDC), vide its e-mail dated 11 December, 2015, has stated that, as HPCL is connected at 110 kV level, no Wheeling Losses are applicable.

- 3.10 In the present case, the Transmission Lines of the State Transmission Utility (STU) and that of TPC-T are used for supply of electricity by SWPGL to HPCL, for which the Transmission Charges are payable. Further, being a captive consumer, the levy of Cross Subsidy Surcharge (CSS) is exempted under Section 42(2) of the EA, 2003. HPCL has also been duly paying the applicable Transmission Charges for the use of the network in Maharashtra.
- 3.11 TPC has separate Licences for Transmission and Distribution of electricity, and the Transmission Network Lines of TPC are separately classified and licensed by the Commission. HPCL is connected to 110 kV Transmission Lines of TPC-T, from which the supply of electricity, both retail and Open Access, to HPCL is effected. No part of the Distribution Network of TPC-D is used in the supply of electricity to HPCL.
- 3.12 The network of TPC has been divided into transmission and Distribution Network. The high voltage Lines of 110 kV and above are under the Transmission Licensee, and it is only the voltage levels of 33 kV, 22 kV, 11 kV and lower voltages which are part of the Distribution Network of TPC-D.
- 3.13 In the Petition filed by TPC-D for approval of the revised Network Roll-out Plan before the Commission, it is admitted by TPC-D that its existing Distribution Network is only 33 kV. It is clear that the 110 kV Lines, and particularly the 110 kV Lines of TPC connected to HPCL, is a part of the transmission assets of TPC-T and does not form part of the Distribution Network.
- 3.14 Till date, i.e. 28 February, 2017, TPC-D has applied Wheeling Charges and Losses to Open Access power and Wheeling Charges to retail power, which has resulted in a financial impact of Rs. 103.87 crore.
- 3.15 The definition of ‘wheeling’ under Section 2(76) of the EA, 2003 requires the use of the Distribution System, which is absent in the present case. When the Distribution System itself is not used, the question of levying Wheeling Charges and Wheeling Losses does not apply. Despite the above, TPC-D has been levying and collecting the Wheeling Charges and Wheeling Losses.
- 3.16 The Appellate Tribunal for Electricity (APTEL), vide its Judgment dated 12 September, 2014 in Appeal No. 245, 176, 237 and 191 of 2012 (Steel Furnace Association of India v. Punjab State Electricity Regulatory Commission & Ors), has ruled that:

“34. The scheme of open access and levy of the charges for the same under the Electricity Act, 2003, National Electricity Policy and Tariff Policy is as under:

(i) The Act enables competing generating companies and licensees other than the area distribution licensee besides the area distribution licensee to sell electricity to consumers when such open access is introduced by the State Commission.

(ii) Wheeling is use of distribution system and associated facilities of transmission licensee or distribution licensee, as the case may be, for conveyance of electricity on payment of charges.

(iii) *Open Access is provision for use of transmission lines or distribution system by any licensee or consumer or generator in accordance with the Regulations specified by the Appropriate Commission.*

(iv) *CTU, STU and transmission licensees have to provide non-discriminatory open access on their transmission system to a licensee or a generating company or a consumer when such open access is provided by the State Commission for that category of consumer, on payment of transmission charges as specified by the Appropriate Commission and subsidy, as specified by the State Commission. The subsidy collected by the CTU, STU or transmission licensee from a consumer has to be passed on to the distribution licensee in whose area the consumer is located for meeting the current level of cross subsidy of the distribution licensee.*

(v) *The State Commission has to introduce non-discriminatory open access to the consumers with load of more than 1 MW by Regulations by 26.1.2009 on payment of surcharge and wheeling charges. There is also a provision of levy of additional surcharge to be specified by the State Commission to meet the fixed cost (stranded cost) of the distribution licensee arising out of his obligation to supply.*

(vi) *The State Commission has to determine tariff for wheeling of electricity. While determining the tariff the State Commission shall be guided by various factors which encourage competition, following commercial principles and tariff progressively should be reflecting cost of supply.*

(vii) *The Tariff Policy envisages that the Commission shall be guided by the objective that the tariff progressively reflects the efficient and prudent cost of supply of electricity.*

(viii) *As per Tariff Policy, wheeling charges should be determined on the same principles as laid down for intra-State transmission charges and in addition would include average distribution loss compensation corresponding to the relevant voltage level. Thus, if open access is obtained by a consumer at 33 kV level loss corresponding to 33 kV would be included and not the loss for entire distribution system.*

(ix) *According to the Tariff Policy, the national transmission framework to be introduced by 1.4.2006 should be sensitive to distance, direction and quantum of flow. The ultimate objective of transmission charges is that the users share the charges in proportion to their actual utilization of the transmission system.*

(x) *Similar approach is to be adopted by the State Commission for intra-State transmission system duly considering the factors like voltage, distance, direction and quantum of flow.*

(xi) *Surcharge from consumers seeking open access can be collected by the distribution licensee or transmission licensee depending upon whose facilities*

are being used by the consumer availing the supply. However, in all cases the surcharge is to be passed on to the area distribution licensee.

35. Thus, according to above principles, the wheeling charges should be based on the use of the system for conveyance of electricity to the consumer taking power under open access.

36. In 2007 ELR (APTEL) 985, Kalyani Steels Limited vs. Karnataka Power Transmission Corporation Limited, this Tribunal held as under:

“On careful analysis, it is clear that liability to pay wheeling charges arises only when distribution system and associated facilities of a transmission licensee or distribution licensee are used by another person for the conveyance of electricity on payment of charges to be determined under Section 62 and not when the consumer uses its dedicated lines of its own.

40. In the present case and on the admitted facts, no part of the distribution system and associated facilities of the first Respondent transmission licensee or the second Respondent distribution licensee is sought to be used by the appellant for the transmission of power from Grid Corporation, from injecting point (sub-station) to appellant’s plant. Therefore, the definition as it stands, the appellant is not liable to pay wheeling charges and additional surcharge for the Open Access in respect of which it has applied for. In terms of Sub-section (4) of Section 42, the payment of additional surcharge on the charges of wheeling may not arise at all. Yet the appellant is liable to pay surcharge, whether he is liable to charges for wheeling or not and on the second point we hold that the appellant is liable to pay surcharge and not additional surcharge which may be fixed by the third Respondent, State Regulatory Commission”.

37. In Kalyani Steel case, it was seen that the consumer was an EHT consumer directly connected to the transmission system for availing power supply. Even though it was a consumer of the distribution licensee it was physically not using the distribution system of the Distribution Licensee. The Tribunal held that the consumer was not liable to pay wheeling charges when it was availing power through open access. However, the consumer was liable to pay surcharge as determined by the State Commission as per Section 42(2) of the Electricity Act, 2003.”

3.17 TPC-D has wrongfully levied and collected Wheeling Charges and Wheeling Losses for the use of the Transmission Network of TPC-T in the supply of electricity, both Open Access and retail power, to HPCL, and TPC-D is liable to refund such Charges and Losses wrongfully collected together with applicable interest, and ought to be restrained from collecting them in future.

4. During the hearing held on 27 June, 2017, TPC-D submitted its Reply. On the request of HPCL, the Commission gave it two weeks to file its Rejoinder.

5. In its Reply dated 27 June, 2017, TPC-D stated that :

- 5.1 Since 1956, HPCL has been receiving power supply from TPC-D at 22 kV level through four 22 kV Feeders, viz. HPCL-1, HPCL-2, LUBE-1 and LUBE-2 emanating from the TPC (Generation) (TPC-G) Trombay Generating Station's 22 kV Switchyard-A to feed HPCL's fuel and lube refinery loads respectively. The Contract Demand of HPCL was 32 MVA at that time.
- 5.2 In 2005, HPCL augmented its Oil Refinery facility by installing additional Units. In light of the augmentation, HPCL had requested TPC-D for additional power supply to feed its additional load requirement of 70 MW on 100% redundancy basis. In light of the augmentation, the load required to be fed to HPCL was approximately 70 MW. Supplying that load at 22 kV would have been uneconomical due to high currents (approx.1500 amp). It was, therefore, deemed necessary to supply power at 110 kV, with higher reliability and redundancy.
- 5.3 On 20 October, 2005, a Power Supply Agreement was executed between TPC-D and HPCL for providing 110 kV power supply to HPCL's expansion project at Trombay.
- 5.4 On 22 December, 2006, TPC submitted a letter along with a Detailed Project Report (DPR) for supply of power to HPCL at 110 kV level to the Commission for its approval. On 16 October, 2007, the Commission granted in-principle approval to TPC scheme of power supply to HPCL at 110 kV level subject to the following condition:

“From subsequent clarification furnished by TPC, it is noted that the 110 kV cable being laid for releasing additional load to HPCL, can be used to cater the load of other consumers in nearby area in future.”

- 5.5 Since 2007, HPCL has been getting supply in terms of the above arrangement at 110 kV level.
- 5.6 On 23 May, 2014, TPC-T submitted an application to the Commission for grant of a Transmission Licence. On instruction from the Commission, on 12 August, 2014, TPC-T re-submitted Annexures 7 & 7A annexed to the Application with certain modifications. By way of that letter, TPC-T provided a break-up of the existing Lines, under the element titled “110 kV direct consumer feeders” (Annexure 7A). The break-up, inadvertently, depicted the two 110 kV Trombay-HPCL Lines/ Feeders 1 and 2, as part of the Transmission System.
- 5.7 On 14 August, 2014, the Commission granted Transmission Licence No.1 of 2014 to TPC-T. The relevant para. of the Licence is reproduced as below:-

“Annexure I Transmission schemes approved under the Licence

Existing Transmission Lines:

77. 110 kV feeders to Direct Consumers (10.91 km):

*...e. 110 kV Trombay – HPCL 1 feeder (1.90 km)
f. 110 kV Trombay – HPCL 2 feeder (1.90 km)”*

In this regard, for the first time the Transmission Licence was granted specific to the Lines in operation and under consideration / construction rather than specific to the area.

- 5.8 On 4 November, 2015, HPCL applied to TPC-D for availing 21.02 MW Short Term Open Access (STOA) for getting supply of power as a Group Captive User from SWPGL from 6 December to 31 December, 2015. On 1 December, 2015, TPC-D granted its approval/ NoC for availing partial STOA to HPCL. The injection point is connected at SWPGL’s GT interface and the drawal point is at HPCL’s switchgear at its premises, which is connected to TPC’s system via the generation bus-bar at Trombay 110 kV station switchyard ‘A’. The details of the Open Access Applications made by HPCL and NoC’s granted by TPC-D are tabulated as below:

<u>Sr. No.</u>	<u>Date of Receipt of Application</u>	<u>OA Quantum</u>	<u>OA Start Date</u>	<u>OA End Date</u>	<u>Date of Issuance of NOC</u>
1	04.11.2015	21.02 MW	06.12.2015	31.12.2015	01.12.2015
2	08.12.2015	21.02 MW	01.01.2016	31.01.2016	15.12.2015
3	05.01.2016	21.02 MW	01.02.2016	29.02.2016	09.01.2016
4	08.02.2016	21.02 MW	01.03.2016	31.03.2016	23.02.2016
5	05.03.2016	20 MW	01.04.2016	30.04.2016	23.03.2016
6	11.04.2016	20 MW	01.05.2016	31.05.2016	18.04.2016
7	10.05.2016	20 MW	01.06.2016	30.06.2016	20.05.2016
8	09.06.2016	20 MW	01.07.2016	31.07.2016	23.06.2016
9	11.07.2016	40 MW	01.08.2016	31.08.2016	29.07.2016
10	10.08.2016	40 MW	01.09.2016	30.09.2016	29.08.2016
11	08.09.2016	40 MW	01.10.2016	31.10.2016	12.09.2016
12	07.10.2016	40 MW	01.11.2016	30.11.2016	14.10.2016
13	03.11.2016	40 MW	01.12.2016	31.12.2016	22.11.2016
14	02.12.2016	40 MW	01.01.2017	31.01.2017	14.12.2016
15	03.01.2017	40 MW	01.02.2017	28.02.2017	16.01.2017
16	02.02.2017	40 MW	01.03.2017	31.03.2017	18.02.2017
17	10.03.2017	40 MW	01.04.2017	30.04.2017	27.03.2017

<u>Sr. No.</u>	<u>Date of Receipt of Application</u>	<u>OA Quantum</u>	<u>OA Start Date</u>	<u>OA End Date</u>	<u>Date of Issuance of NOC</u>
18	06.04.2017	40 MW	01.05.2017	31.05.2018	17.04.2017
19	09.05.2017	40 MW	01.06.2017	30.06.2017	23.05.2017

- 5.9 On 11 December, 2015, MSLDC sent an e-mail to SWPGL stating that, since HPCL was connected on 110 kV, i.e., EHV level, Distribution Loss would not be applicable and only Transmission Loss would be applicable.
- 5.10 On 5 January, 2016, TPC-D sent an e-mail to HPCL forwarding the Bill for December, 2015, along with calculations of Open Access Charges. On even date, HPCL vide its e-mail, *inter alia*, raised certain objections to these calculations and stated that, as per MSLDC, considering HPCL is connected on the 110 kV EHV network, only Transmission Losses are applicable and Wheeling Losses should not be considered. HPCL therefore requested TPC-D to revise its invoice accordingly.
- 5.11 On 07 January, 2016, TPC-D sent an e-mail to HPCL in response to HPCL with regard to the issue of Transmission Losses. On 08 January, 2016, TPC-D sent another e-mail to HPCL stating that the percentage of Wheeling Charges and Transmission Losses were 1.02% and 3.89%, respectively.
- 5.12 On 08 January, 2016, HPCL sent an e-mail to SWPGL forwarding TPC-D's e-mail and requested SWPGL to schedule power .
- 5.13 On 08 January, 2016, SWPGL sent an e-mail to MSLDC stating that, in the STOA Application for HPCL, it had requested NOC from TPC-D for 20.80 MW, which was duly granted on 26 December, 2015. However, TPC-D had levied Wheeling Loss of 1.02% on HPCL and had adjusted the units accordingly. In light of the same, SWPGL submitted a revised STOA application for January, 2016 (12.01.2016 to 31.01.2016) for the quantum of 21.03 MW, after grossing-up Transmission Loss of 3.89% and Wheeling Loss of 1.02 %.
- 5.14 On 11 January, 2016, MSLDC sent an e-mail to SWPGL highlighting that HPCL is connected on 110 kV, i.e., EHV level, and hence Distribution Loss will not be applicable and only Transmission Loss would be applicable.
- 5.15 On 11 January, 2016, SWPGL sent an e-mail to HPCL stating that MSLDC had once again rejected the revised application for STOA and intimated that Distribution/ Wheeling Loss was not applicable as HPCL is connected at EHV level. In light of the same, HPCL was requested to take-up the matter with TPC-D and request it to provide credit for the difference of energy for the month of December, 2015.

- 5.16 On 2 January, 2016, HPCL informed TPC-D that MSLDC had refused to grant NOC for grossed-up Open Access quantum stating that HPCL's requirement at drawal point (i.e., 110 kV TPC's Trombay Switchyard) was 20 MW and that MSLDC would only issue NOC for 20.8 MW, considering applicable Transmission Losses only. On 7 March, 2016, HPCL requested TPC-D to refund the charges paid towards Wheeling Losses.
- 5.17 On 10 October, 2016, TPC-T applied to the Commission, inter alia, under Section 18 of the EA, 2003 seeking an amendment of its Transmission Licence. By that application, TPC-T, inter alia, sought removal of the two 110 kV Trombay-HPCL Feeders 1 & 2 from the Transmission Licence on the ground that the same were established by TPC-D and, accordingly, the assets were capitalized in the books of TPC-D's Distribution Business. However, being 110 kV Lines, these were inadvertently considered under the Transmission Licence.
- 5.18 On 9 February, 2017, a Technical Validation Session (TVS) was conducted by the Commission qua TPC-T's application for amendment of the Transmission Licence, during which various queries were raised by the Commission. On 26 April, 2017, TPC-T provided its detailed response to the queries raised by the Commission during the TVS.
- 5.19 As on date, TPC-T's Application seeking amendment of its Transmission Licence (Case No.137 of 2016) is pending adjudication before the Commission.
- 5.20 HPCL's contention that it is connected to TPC-T 110 kV Transmission Network (i.e. that no part of TPC-D's Distribution Network is used in supply of electricity to HPCL) is wrong and denied. HPCL's contention that TPC-D has illegally levied and collected Wheeling Charges and Wheeling Losses for the supply of both Open Access as well as retail power to HPCL, while using TPC-T's Transmission Network, is also wrong and denied.
- 5.21 The two 110 kV Trombay-HPCL Feeders 1 & 2 (from which HPCL receives supply of retail as well as Open Access power) were established by TPC-D cater to HPCL's additional load requirement, as also the load of other consumers in nearby areas in the future. Accordingly, the said assets have been accounted for and capitalized in TPC-D's books of accounts, besides being reflected in TPC-D's ARR. This treatment is consistent with the scheme of the EA, 2003 and norms of power sector where the connectivity of a Generating Plant to a local client/ consumer is deemed to have a distribution interface.
- 5.22 In 2014, there was a shift from granting an area-specific Transmission Licence to Line(s)-specific Transmission Licence. In light thereof, the 110 kV Trombay-HPCL Feeders 1 & 2 were inadvertently considered under the Transmission Licence No.1 of 2014. On 12 October, 2016 TPC-T has initiated necessary proceedings by filing an Amendment Application (Case No.137 of 2016) before the Commission, *inter alia*,

seeking removal of these Lines/ Feeders from its Transmission Licence. The Amendment Application is pending adjudication before the Commission.

5.23 HPCL has neither applied to TPC-T nor applied under the MERC (Transmission Open Access) Regulations ('TOA Regulations') seeking Open Access since, according to HPCL, the said 110 kV Lines are part of TPC-T's Transmission Network. HPCL, which is admittedly a consumer of TPC-D, has, since December, 2015, made monthly STOA Applications to TPC-D under the Commission's Distribution Open Access (DOA) Regulations for availing power supply from SWPGL. TPC-D has accordingly granted NOC/ approval for the said STOA. It is therefore wrong of HPCL to now contend that it is connected to the Transmission System and is therefore not liable to pay Wheeling Charges and Wheeling Losses.

5.24 The Lines/ Feeders which are the subject of dispute connect TPC-G's Generating Station and HPCL. It is settled law that a Line connecting a consumer's premises and the Transmission Network of a Transmission Licensee or a Generating Station which is primarily used for distribution of electricity to such consumer is a part of the Distribution System of the Distribution Licensee. In this regard, the definition of Distribution System in Section 2(19) of the EA, 2003 and Rule 4 of the Electricity Rules, 2005 may be seen.

5.25 Section 2(72) of the EA, 2003 stipulates that "transmission lines"

"means all high pressure cables and overhead lines (not being an essential part of the distribution system of a Licensee) transmitting electricity from a Generating Station to another Generating Station or a Sub-Station, together with any step-up and step-down transformers, switch-gears and other works necessary to and used for the control of such cables or overhead lines, and such buildings or part thereof as may be required to accommodate such transformers, switch-gear and other works."

5.26 Rule 4 of the Electricity Rules, 2005 defines "distribution system" as follows:

"Distribution system. - The distribution system of a distribution licensee in terms of sub-section (19) of Section 2 of the Act shall also include electric line, sub-station and electrical plant that are primarily maintained for the purpose of distributing electricity in the area of supply of such distribution licensee notwithstanding that such line, sub-station or electrical plant are high pressure cables or overhead lines or associated with such high pressure cables or overhead lines; or used incidentally for the purposes of transmitting electricity for others."

5.27 It is evident from these statutory provisions that the Distribution System/ Network is a system of wires between the delivery point on the Transmission Lines or Generating Station and point of connection to the consumer's installation. It also includes the electric Lines, sub-stations and electric plant that are primarily maintained for the purpose of distributing electricity, notwithstanding that such Lines are high pressure cables or

overhead Lines. Admittedly, the 110 kV Trombay-HPCL Feeders 1 & 2 have been established for distribution of electricity to HPCL as also other consumers in the future.

- 5.28 On perusal of Section 2(18) and 2(72) of the EA, 2003, the definition of Transmission Line is a limited definition which does not cover elements of a Distribution System. Evidently, all high pressure cables and overhead Lines which are not an essential part of the Distribution System of a Licensee are Transmission Lines. As submitted above, the 110 kV Trombay-HPCL Feeders 1 & 2 are an essential part of TPC-D's Distribution System and, therefore, cannot be said to be Transmission Lines, as sought by HPCL. Furthermore, another requirement for a Line to be a Transmission Line is that such Line must be transmitting electricity. The question that arises is, whether supply to a consumer be treated as transmission of electricity? The answer is 'no', since supply of electricity to a consumer is the Universal Service Obligation (USO) cast upon a Distribution Licensee under Section 43 of the EA, 2003. Accordingly, supply to a consumer is tantamount to distribution and cannot be termed as transmission of electricity. Therefore, HPCL's contention that no part of TPC-D's Distribution System is used in the supply of power (both retail and Open Access) to HPCL is wrong and misplaced.
- 5.29 The above legal proposition is settled by the APTEL in its Judgment dated 14 December, 2012 in Appeal No. 30 of 2012 (Orissa Power Transmission Corp. Ltd. vs. Orissa Electricity Regulatory Commission & Ors).
- 5.30 Regulation 14.6 of the DOA Regulations, 2016 provides that an Open Access Consumer, Generating Station or Licensee, as the case may be, using a Distribution System shall pay to the Distribution Licensee such Wheeling Charges, on the basis of actual energy drawal at the consumption end, as may be determined under the Regulations of the Commission governing Multi-Year Tariff (MYT).
- 5.31 The Regulation provides exemption from payment of Wheeling Charges only in case a Consumer or Generating Station is connected to the Transmission System directly or using dedicated Lines owned by it. As stated above, the 110 kV Feeders are part of TPC-D's Distribution System.
- 5.32 The Commission in its MYT Order dated 21 October, 2016 in Case No. 47 of 2016 has held that the Wheeling Charges determined by the Commission are payable by all consumers (i.e., direct consumers and Open Access consumers) who are using TPC-D's wires for procuring electricity. Therefore, HPCL being a partial Open Access Consumer, is liable to pay Wheeling Charges for the retail power procured by it from TPC-D as well as the power procured from SWPGL through Open Access.
- 5.33 HPCL's contention that High Voltage Lines of 110 kV and above are under TPC-T's Transmission Network and only the Lines with voltage levels of 33 kV, 22 kV, 11 kV and lower form part of TPC-D's network, is wrong and denied. There is no bifurcation of

network between TPC-D and TPC-T on the basis of voltage level of the Lines. The classification of Lines into distribution or transmission is not as per their voltage level but as per their purpose and intent, which is evident from the provisions of the EA, 2003.

5.34 HPCL has wrongly relied on the Commission’s Order dated 28 June, 2013 in Case No. 179 of 2011 to contend that the Commission has observed that there are no Wheeling Losses in supply of power to EHV consumers at 66 kV and above levels. In this regard, the Commission at pages 237-238 had in fact approved the Wheeling Loss trajectory applicable to both HT and LT category of consumers for FY 2012-13 to FY 2015-16:

“6.3 WHEELING CHARGES AND LOSS COMPENSATION APPROVED BY THE COMMISSION

... The Commission has approved the distribution loss trajectory for the Control Period, as elaborated in Section 5 of this Order. Given the low loss levels in TPC-D’s distribution system, due to historical reasons such as HT: LT ratio and smaller distribution network, the Commission has not considered any existence of commercial losses within the approved trajectory of distribution losses. Also, given the low loss levels and higher proportion of HT sales as well as HT network, and lack of any data in this regard, the Commission has not apportioned the distribution losses between HT level and LT level. Accordingly, the wheeling losses approved by the Commission for the Control Period for Open Access transactions using TPC-D’s wires are shown in the Table below:

Table: Wheeling Loss Trajectory approved by the Commission (%)

<i>Particulars</i>	<i>FY 2012-13</i>	<i>FY 2013-14</i>	<i>FY 2014-15</i>	<i>FY 2015-16</i>
<i>Wheeling Loss</i>	<i>1.02%</i>	<i>1.12%</i>	<i>1.22%</i>	<i>1.32%</i>

5.35 It is evident that, even as per the Order relied upon by HPCL, Wheeling Charges and Wheeling Losses are applicable to it. The Commission vide Order dated 21 October, 2016 in Case No.47 of 2016 determined Distribution Loss/ Wheeling Loss for the 3rd Control Period (FY 2016-17 to FY 2019-20).

6. In its Rejoinder dated 13 July, 2017, HPCL stated that:

6.1 In its Reply, TPC-D has admitted that HPCL is connected to the Transmission Lines which form part of Transmission Licence No. 1 of 2014 and the apparent justification sought to be given is that the said Lines were included as part of the Transmission Licence inadvertently and that, consequently, TPC has sought amendment of the Transmission Licence by filing a Amendment Petition, i.e. Case No. 137 of 2016, before the Commission.

6.2 The Transmission Licence was issued to TPC-T on 14 August, 2014. This is a relevant fact and is also important for the adjudication of this Petition. Admittedly, pursuant to the

Transmission Licence, TPC, which is both a Transmission Licensee and Distribution Licensee, for supplying power to HPCL, both Wheeling Charges and Transmission Charges are being levied. This is despite the fact that HPCL is connected directly by 110 kV Trombay Feeders. Under the Transmission Licence, TPC-T was under an obligation to file an Allocation Statement for each of the separate business of the Transmission Licensee. Further, as the Licence was restricted to specified Transmission Lines only, such as those connecting HPCL for supply of electricity, TPC-T was under an obligation to enter into Connection Agreements with other Licensees regarding the interconnection points defining and documenting the details of the boundaries and interface points with respect to each Transmission Line. The term of the Transmission Licence is 25 years and TPC-T was also under an obligation to report to the Commission all such circumstances which would affect its ability to perform its obligations.

6.3 TPC-T has filed its application for amendment of the Transmission Licence on 10 October, 2016. The application for amendment of the Transmission Licence was filed after a period of 2 years and 2 months from the date of its grant. Firstly, the application made for amendment of the Transmission Licence seeking deletion of the 110 kV Trombay Feeders, specified at point 77 of the Transmission Licence, is misplaced. This is so as an application for amendment of a Licence can only be made in public interest. Further, the excuse of inadvertence cannot be accepted at this belated stage because the application for amendment was only filed after HPCL and SWPGL protested on the levy of Wheeling Charges and Wheeling Losses.

6.4 HPCL has taken up the issue of Wheeling Charges and Wheeling Losses with TPC-D time and again but the same has not been resolved till date. In fact, TPC, after the issue of the 110 kV Transmission Lines and applicability of Wheeling Charges and Losses was pointed out by HPCL, has filed Case No. 137 of 2016 seeking an amendment of its Transmission Licence.

6.5 Further, the application for amendment has been filed after HPCL, by its various meetings and written communications dated 27 January and 7 March, 2016, and 12 January and 31 January, 2017, had raised the above issues with TPC. Despite the raising of these issues by HPCL, TPC-D, by its communications dated 28 July, 2016 and 9 February, 2017 has insisted on the applicability of Wheeling Charges and Wheeling Losses for its Distribution Network to the captive power supplied at 110 kV to HPCL. When communication dated 28 July, 2016 was issued by TPC-D, there was no application for amendment of Transmission Licence, and the fact that an application for amendment of Transmission Licence has been filed by TPC-T tantamounts to an admission of the wrongdoing on the part of TPC-D. This is so because an amendment will only be required if there wrongdoing on part of TPC-D. Further, even if it is assumed that the Transmission Licence is amended by the Commission, even then, for the past period for which duration the Transmission Licence was unamended, the charging of Wheeling Charges and Losses would be without any legal and factual basis.

- 6.6 The network of TPC has been divided into transmission and Distribution Network. The High Voltage Lines of 110 kV and above are under the transmission division and it is only the voltage levels of 33 kV, 22 kV, 11 kV and lower voltages which are part of the Distribution Network of TPC-D.
- 6.7 The 110 kV Lines, and particularly the 110 kV Lines of TPC connected to HPCL, are a part of the Transmission Licence of TPC-T and do not form part of the Distribution Network.
- 6.8 Even otherwise, even on merits there is no justification for seeking to place 110 kV Lines as a part of the Distribution Network and not part of the Transmission Network. Placing such high pressure Lines as a part of the Distribution Network is unheard of. Merely because TPC-D seeks to collect higher charges is no ground for changing the very nature of the 110 kV High Tension Lines from being part of the Transmission Network to being part of the Distribution Network.
- 6.9 The factum of supply prior to grant of Transmission Licence is not in dispute and as such nothing turns on it. Further, the Power Supply Agreement dated 20 October, 2005 being relied upon by TPC-D is of no assistance to it as, even though HPCL may be a consumer of TPC-D, the fact is that it is connected to the Transmission Network of TPC-T and, therefore, both Wheeling Charges and Transmission Charges would not be payable as HPCL, being connected to the 110 kV Transmission Lines of TPC-T, is not using any part of the Distribution Network. This fact is clearly established on the basis of the factum of TPC-T seeking amendment of the Transmission Licence in Case No. 137 of 2016 and the pleadings filed by it thereof.
- 6.10 The 110 kV Transmission Lines allegedly created by TPC-D were known to TPC-T, both Licensees being the same corporate entity, when it sought the Transmission Licence and also when its filed various pleadings. Therefore, now the plea of inadvertence cannot be permitted to TPC at this stage. Even otherwise, the plea and ground of inadvertence is not available as a ground for seeking amendment.
- 6.11 The factum of seeking Open Access and no-objection from TPC-D cannot and ought not to cloud over the fact that TPC is illegally levying both Wheeling and Transmission Charges from HPCL. Even assuming otherwise that Open Access has been wrongly sought from TPC-D instead of from TPC-T and the fact that it has been granted thereto by TPC-D, the same will not create any estoppel as there is no estoppel against law and as such there is no negative equality. Thus, an illegality cannot be allowed to be perpetuated on the pretext of a mistake.
- 6.12 The APTEL Judgment in Appeal No. 30 of 2012 does not support TPC-D, and as such is being relied upon erroneously. Further, direct connectivity of HPCL at 110 kV with the Transmission Licensee cannot be read to justify the illegal levy of Wheeling Charges and Wheeling Losses by TPC-D.

7. At the hearing held on 5 October, 2017:

7.1 HPCL stated that:

- (i) HPCL is a partial Open Access consumer of TPC-D connected at 110 kV Transmission System and sourcing power under Open Access from SWPGL.
- (ii) TPC-D has been levying Wheeling Charges on power being supplied by it to HPCL, and also levying Wheeling Charges and Wheeling Losses on Open Access power being supplied by SWPGL.
- (iii) Transmission Licence No. 1 of 2014 dated 14 August, 2014 granted to TPC-T shows that the 110 kV Trombay – HPCL Lines are a part of the Transmission System. HPCL is directly connected to the Transmission System and not to the Distribution Network.
- (iv) TPC-D has also admitted that HPCL is connected to the 110 kV Lines which are part of Transmission Licence No. 1 of 2014 of TPC-T, and that these Lines were included as part of the Transmission Licence inadvertently. TPC-T has sought amendment of the Transmission Licence after a lapse of two years, which is pending before the Commission.
- (v) MSLDC in its e-mail dated 11 December, 2015 has stated that HPCL is connected at 110 kV level and hence no Wheeling Losses are applicable to it.
- (vi) TPC-D in its revised Network Roll-out Plan submission had stated that the existing Distribution Network of TPC-D is only up to 33 KV. This clearly indicates that the 110 kV Lines connected to HPCL are a part of the Transmission Licence and not a part of the Distribution Network of TPC-D.
- (vii) TPC-D has wrongfully levied and collected the Wheeling Charges and Wheeling Losses for the use of the Transmission Network for Open Access and retail power to HPCL, and hence it is liable to refund such charges.

7.2 SWPGL stated that:

- (i) The 110 kV Transmission Network of HPCL is a part of the Transmission Licence of TPC-T, and consumers may be connected to the Transmission Network also.
- (ii) The in-principle capex approval for the 110 kV Transmission Network to HPCL is only for construction of Lines and does not mention whether these are Transmission or Distribution Lines.

- (iii) In Appeal No. 28 of 2005 (Kalyani Steels Limited versus Karnataka Power Transmission Corporation Limited), APTEL has held that Wheeling Charges are not applicable if a consumer is connected to the Transmission Network.
- (iv) To a query of the Commission, SWPGL stated that, if the 110 kV Lines are merged in the Distribution Network, the Commission is required to determine the Wheeling Charges at 110 kV voltage level. TPC-D cannot recover the Wheeling Charges for the past period in such case.

7.3 TPC-D stated that:

- (i) HPCL had been receiving power supply from TPC-D at 22 kV level since 1956. It sought load extension of 70 MW in 2005, and hence the power supply was given on 110 kV.
- (ii) The Commission granted in-principle approval to TPC's scheme to supply power to HPCL at 110 kV level stating that the 110 kV cable being laid for releasing additional load to HPCL can be used to cater to the load of other consumers in the nearby area in future. This shows that the Lines are of the Distribution Licensee because a Transmission Licensee cannot have consumers.
- (iii) The 110 kV Trombay to HPCL Lines do not fit in the definition of Transmission Lines as per Section 2 (72) of the EA, 2003, but qualify as Distribution Lines as per Section 2 (19).
- (iv) Inadvertently, TPC had included the Lines in the Transmission Licence proposal, which was subsequently granted by the Commission. Now, TPC-T has sought an amendment for removing these Lines from the Licence.
- (v) This inadvertent mistake does not change the nature of the asset. TPC-D has booked these Lines in the books of the Distribution Licensee and has been considering it as its distribution asset while filing its Tariff Petition before the Commission.
- (vi) The APTEL Judgment in Appeal No. 30 of 2012 has held that it would be the duty of the Distribution Licensee to erect, operate and maintain the EHV Lines as a part of the Distribution Network
- (vii) To a query of the Commission, TPC-D stated that it would submit the details and treatment given to all such other consumers connected on EHV Lines within two weeks.

- (viii) The Roll-out Plan submitted by TPC-D does not include the EHV Lines because it is a broad base plan for consumers who are connected and likely to be connected at or below the 33 kV level.
- (ix) To a query of the Commission, TPC-D replied that the entire EHV Sub-station at the Trombay Generation Plant is a generation asset. However, two Bays for Bhabha Atomic Research Centre (BARC) are on the Transmission Licensee (TPC-T)'s assets. The Commission directed TPC-D to explain this deviation.

7.4 On the request of SWPGL, the Commission allowed it to make its additional submission limited to the issue within a week. The Commission directed TPC-D to make its submissions on the issues raised during the hearing within two weeks.

8. In its submission dated 16 October, 2017, SWPGL stated that:

8.1 The Wheeling Charges are levied by TPC on the assumption that the Lines are part of the Distribution Network and part of the Distribution Licence of TPC-D.

8.2 The factual position is that the Lines are a part of the Transmission Network of TPC. It is not in dispute that the Lines are part of the Transmission Licence of TPC-T, which were included in the application for Transmission Licence sought for and issued by the Commission. Despite the above, TPC-D has been levying Wheeling Charges assuming the Line to be part of the Distribution Network, which is erroneous.

8.3 The network was divided by TPC for the purposes of the transmission and Distribution Network based on the voltage levels of the Lines. TPCD itself stated in its Petition at Page 276 as below:

“Existing Network of Tata Power- D

3.4.1 Tata Power-D has been a distribution licensee prior to the grant of a fresh distribution license to it under sections 14 and 15 of the Electricity Act, 2003. The existing distribution network of Tata Power-D comprises of an HT network at 33 kV, 22,kV, 11 KV and to a small extent of 6.6 kV has been developed under the constraints of the above scenarios during its previous Licence tenures and subsequent orders of Hon’ble Commission, Hon’ble ATE & Supreme Court as detailed in Section 1 and emanates from the transmission outlets provided by the Transmission licensee after sanction from the State Transmission Utility. The LT network, on the other hand comprises of LT network, feeder and sub feeder pillars...”

8.4 Therefore, the EHT network of 110 kV or above has consciously been kept out of the Distribution Network, and is part of the Transmission Network.

- 8.5 It is only after the present dispute that TPC-T has sought amendment of its Licence to include the 110 kV Lines in question as part of the Distribution Network. This application, apart from being misconceived, does not change the position as on date that the Lines in question are not part of the Distribution Network but of the Transmission Licensee.
- 8.6 The Tariff Orders of the Commission only determine the Wheeling Charges for the HT and LT network and not for the EHT Network. The charges for the EHT network are already being paid in the form of Transmission Charges which are levied in the monthly bills by TPC.
- 8.7 The contention of TPC-D that the Transmission Charges are for the use of the Maharashtra State Electricity Transmission Co. Ltd. (MSETCL) system and not that of TPC-T is also misconceived. The Transmission Charges are paid for the use of the Transmission Network of all the Transmission Licensees and the charges go into the Transmission Charges pool and are then apportioned to the Transmission Licensees. In any event, it is for TPC to provide the accounts of the same. Further, whether the charges are remitted or accounted by TPC to the transmission division or not would not change the legal position as these are internal actions of TPC and cannot affect third party rights.
- 8.8 The contention sought to be raised by TPC-D that the supply of electricity to HPCL being by TPC-D and that, therefore, the Lines in question are part of the Distribution Network is misconceived. 'Supply' is the sale of electricity, which is defined in Section 2(70) of the EA, 2003. The Transmission Licensee cannot supply electricity, but only owns, operates and maintains the network.
- 8.9 Therefore, the terms of the PPA with regard to supply of electricity by TPC-D to HPCL in no manner supports the case of TPC-D.
- 8.10 Further, the reliance of TPC-D on the definition of Distribution System for connecting to the premises of a consumer and also Rule 4 of the Electricity Rules on the explanation to the term 'distribution system' to contend that the 110 kV Lines are part of the Distribution Network is also misconceived.
- 8.11 The 'distribution system' would be the meter installed by TPC-D as a Distribution Licensee, which is within the control of the Distribution Licensee. This is because the consumer, though connected to EHT Lines, is a consumer of the Distribution Licensee and takes supply from it. However, that would not result in the EHT Lines of 110 kV being part of the Distribution Network.
- 8.12 The metering to the consumer is always a part of the Distribution Licensee's asset and it is only to the extent of the metering equipment that the Distribution Licensees have physical control over the equipment.

8.13 There are numerous consumers both in Maharashtra and all over the country who are connected at 110 kV, 220 kV and even 400 kV, and are consumers of the Distribution Licensee. The Lines of 110 kV, 220 kV and 400 kV are owned, operated and maintained by the Transmission Licensee but the metering equipment is installed by the Distribution Licensee for supply to the consumers. It would not mean that the consumer is connected to the Distribution Network.

8.14 The definition of consumer in Section 2(15) of the EA, 2003 reads as under:

2(15) "consumer" means any person who is supplied with electricity for his own use by a licensee or the Government or by any other person engaged in the business of supplying electricity to the public under this Act or any other law for the time being in force and includes any person whose premises are for the time being connected for the purpose of receiving electricity with the works of a licensee, the Government or such other person, as-the-case may be;"

8.15 In terms of the above definition, the consumer is to be connected to the works of a Licensee and not necessarily only a Distribution Licensee. The contention of TPC-D, if accepted, would result in incorporating the term 'Distribution Licensee' instead of the term 'Licensee' in the very definition of a consumer, which is not permissible.

8.16 The APTEL, in its Judgment dated 12 September, 2014 in Appeal No. 245, 176, 237 and 191 of 2012 (Steel Furnace Association of India v Punjab State Electricity Regulatory Commission & Ors) has ruled that :

"54. Thus, we find that the levy of wheeling charges on consumers not using the distribution system for conveyance of electricity in Open Access is contrary to the scheme of the Electricity Act, 2003, Tariff Policy and the dictum laid by this Tribunal. A consumer directly connected to the transmission system can avail open access by payment of transmission charges and surcharge (as determined by the State Commission). However, the surcharge has to be passed on to the distribution licensee for meeting the current level of cross subsidy. The levy of wheeling charges for such consumers connected to the transmission licensee (220 kV and 132 kV in the present case) is also in contravention with Regulation 25(1) and Regulation 15. The Amended Regulation 25(5) enable the State Commission to determine the wheeling charges applicable to open Access customers in the Tariff Order. The State Commission should have determined the wheeling charges in conformity to the Scheme of the Electricity Act, National Electricity Policy, Tariff Policy and various Sections of its Regulations (Regulation 15 and 25 (1)). The Open Access customers have to bear the surcharge as determined by the State Commission to meet the requirement of current level of cross subsidy. They cannot be made to pay wheeling charges for the distribution system which has not been used by them in conveyance of electricity under Open Access. If the existing consumers of the distribution licensee seeking Open Access are resulting in stranded costs to the distribution licensee due to its obligation to supply, then the remedy lies in levy of additional surcharge as provided for in the Electricity Act.

55. Even if it is assumed that the 220 kV and 132 kV transmission line through which the consumer is directly connected with the transmission system of the transmission licensee is considered as a part of the distribution system, the cost of the 220 kV or 132 kV feeder supplying power to the consumer is borne by the consumer as per the Regulations of the State Commission. Therefore, charges for use of the 220/132 kV feeder by which the consumer is directly connected and which supplies power to the consumer for conveyance of electricity, cost of which is borne by the consumer, cannot be charged as wheeling charges when the consumer avails power under open access.”

- 8.17 The only distinction sought to be raised by TPC-D in the above case of Punjab the Transmission Licensee and Distribution Licensee are two separate legal entities, whereas in the case of TPC, the transmission and distribution are separate Licensees of the same legal entity. This distinction is irrelevant and misconceived. The issue is whether the consumer connected to the Transmission Licensee’s Lines can be levied Wheeling Charges or not, which is the issue at hand in the present case.
- 8.18 Even on first principles, the claim made by TPC-D is wholly misconceived. An Open Access consumer or, for that matter, any consumer is required to pay the charges of the network which is used by such consumer. In the present case, the 110 kV Lines are part of the Transmission Network and Transmission Charges are being levied by TPC-T. HPCL is liable to pay only the Transmission Charges.
- 8.19 The Distribution Wheeling Charges are determined for use of the HT and LT network, which networks are not being used by HPCL. Therefore, the question of payment of Wheeling Charges for use of HT/LT networks does not arise as such networks are not being used by HPCL at all.
- 8.20 Even assuming that the 110 kV Lines are in future included in the Distribution Network, obviously the charges for use of such 110 kV network (EHT network) would be determined by the Commission separately. In such an event, the Transmission Charges would not be levied, but only the charges for the 110 kV Lines now owned and operated by the Distribution Licensee.
- 8.21 The cost for using the 110 kV EHT network would be the same, notwithstanding the nomenclature used, whether it is termed as Transmission Charges or Wheeling Charges. The charges are based on the cost required to own, operate and maintain the EHT network and not based on the nomenclature.
- 8.22 The contention that no consumer can be physically connected directly to the works of the Transmission Licensee is misconceived and contrary to the provisions of the EA, 2003 and also the factual position of innumerable consumers all over the country connected directly to the Lines of the Transmission Licensee.

8.23 In fact, even the DOA Regulations, 2016 specifically provide for a situation wherein the Open Access consumer does not use the network of the Distribution Licensee. Regulation 1.2 of the DOA Regulations, 2016 reads as under:

“1.2 These Regulations shall apply for Open Access to and use of the distribution system of Distribution Licensees in the State of Maharashtra, and where the network of the Distribution Licensee is not being used but supply to an Open Access Consumer is being provided within the distribution area of the Licensee.”

8.24 Regulation 2.1(y) of the State Grid Code, 2006 also provides as under:

(y) “User” means persons, including in-State Generating Stations, Distribution Licensees Consumers of the Distribution Licensees directly connected to intra State transmission system and persons availing of Open Access, who are connected to and/or use the intra-State transmission system:”

8.25 The contention of TPC-D, if accepted, would render the above provisions redundant. Therefore, the contention that no consumer can be connected directly to the network of the Transmission Licensee is misconceived and is liable to be rejected.

8.26 TPC had correctly understood and classified the EHT Lines are a part of the Transmission Network of the Transmission Licensee. Merely because it is now commercially more convenient for TPC-D to levy Wheeling Charges of the HT/LT level for the use of the 110 kV EHT Lines, the contention is being raised that these EHT Lines should be treated as a part of the Distribution Network.

8.27 The contention that the 110 kV Lines were inadvertently considered under the Transmission Licensee is misconceived. It is not understood how TPC-T can now be permitted to claim that it had applied for and obtained the Transmission Licence for these Lines erroneously.

8.28 Further, there is no merit in contending that the EHT Lines should be part of the Distribution Network of the Distribution Licensee. That contention, if accepted, would mean that every EHT Line of, say, even 220 kV or 400 kV to which a consumer is connected would be part of the Distribution Licence and Distribution Network for levy of Wheeling Charges.

8.29 In any event, the fact is that the Lines are presently a part of the Transmission Licence and, therefore, the levy of Wheeling Charges as of now is illegal. The reliance on the Tariff filings by TPC-D are also misconceived. Firstly, it is not clear as to the manner in which the costs are being accounted for by TPC in its Tariff filings. In any event, such filings made by TPC-D would not change the position that the Lines at issue are part of the Transmission Licence and Transmission Network.

9. The Commission had directed TPC-D to make its submissions on the issues raised during the hearing within two weeks. However, TPC-D has stated as follows:

9.1 HPCL has filed the Petition on the basis of an incorrect fact that the 110 kV Feeders connecting from TPC-G's Trombay Generating Station to HPCL's premises are Transmission Lines. It is evident from Sections 2(19), 2(72) and 43 of the EA, 2003, read with Rule 4 of the Electricity Rules, 2005, that the present arrangement for supply of power can only be part of a Distribution asset and never part of a Transmission asset.

9.2 SWPGL is not an affected party: The Petition has been filed by HPCL in its capacity as a Partial Open Access consumer of TPC-D. Therefore, the alleged dispute, if any, is between an Open Access consumer and the Distribution Licensee. On the other hand, SWPGL is a Generating Company catering to HPCL's partial load through Open Access through a Group Captive structure. SWPGL has no contractual relationship with TPC-D.

9.3 SWPGL has failed to demonstrate any injury or harm being caused to it as a result of TPC-D's actions under challenge, so as to be called an aggrieved party. A person is said to be aggrieved by an action only when it is to his detriment, pecuniary or otherwise, or causes him some prejudice in some form or another. Unless the person is prejudicially or adversely affected, he cannot be considered as an aggrieved person/ party.

9.4 The words 'person aggrieved' does not mean a man who is merely disappointed of a benefit which he may have received if some other order had been passed. A 'person aggrieved' means a person who has suffered a legal grievance, a person against whom a decision has been pronounced which has wrongly deprived him of something or wrongfully refused him something or wrongly affected his title to something. Thus, without demonstrating a legal injury, a person cannot claim to be "a person aggrieved". Furthermore, when a person has not been deprived of a legal right, is not subject to a legal wrong or has not suffered any legal grievance or has no legal peg for a justifiable claim to hang on, he cannot claim that he is a person aggrieved. In this regard, reliance is placed on the following Judgments:

- (a) Bar Council of Maharashtra v. M.V. Dabholkar & Others, reported as (1975) 2 SCC 702 (7 Judge Bench) (Paras 21-25, 27-28).
- (b) Jasbhai Motibhai Desai v. Roshan Kumar, reported as (1976) 1 SCC 671 (Para 47).
- (c) Northern Plastics Limited v. Hindustan Photo Films Mfg. co. Ltd. reported as (1997) 4 SCC 452 (Paras 8-11).
- (d) BSES Rajdhani Power Ltd. v. Delhi Electricity Regulatory Commission & Ors. reported as 2010 ELR (APTEL) 0404 (Paras 10-13).
- (e) Pushpendra Surana v. Central Electricity Regulatory Commission & Ors. reported as 2014 ELR (APTEL) 820 (Paras 13-21 and 28).

Even otherwise, SWPGL has been knowingly made a proforma Respondent in the present matter and not a Co-Petitioner, as it cannot be said to be an aggrieved party. Evidently, neither is SWPGL an aggrieved party nor a necessary party in the present dispute.

9.5 The submissions made by SWPGL during the hearing held on 5 October, 2017 and in the Written Note for Arguments dated 16 October, 2017 raising various unsubstantiated allegations against TPC-D cannot and ought not be considered by the Commission.

9.6 SWPGL has erred in stating that Wheeling Charges have been levied by TPC-D on the assumption that the Lines are a part of its Distribution Network. It is reiterated that, since 2007, the two 110 kV Trombay-HPCL Feeders 1 & 2 from which HPCL receives supply of retail as well as Open Access power:

(a) were established by TPC-D with the Commission's permission to cater to HPCL's additional load requirement, and were also available to serve the load of other consumers in nearby areas in the future. This can be further substantiated with the half-yearly Capex Report submitted by TPC-D to the Commission on 28 November, 2008.

(b) are accounted for and capitalized in TPC-D's books of accounts, besides being reflected in its Aggregate Revenue Requirement (ARR). This treatment is consistent with the scheme of the EA, 2003 and the regulatory framework and norms of power sector, where the connectivity of a Generating Plant to a local client/ consumer is deemed to have a distribution interface. Hence, except for one anomaly/ inadvertent error, it is evident that the 110 kV Feeder was always a part of TPC-D's Distribution system.

9.7 On 23 May, 2014, TPC-T had submitted an application to the Commission for grant of an area-specific Transmission Licence. Inadvertently, the two 110 kV Trombay-HPCL Lines/ Feeders 1 & 2 were depicted as a part of TPC's Transmission System. Accordingly, these Feeders were mentioned in the Transmission Licence granted by the Commission on 14 August, 2014.

9.8 On 10 October, 2016 (i.e., 6 months before HPCL filed the present Petition), TPC-T filed an Amendment Application (Case No. 137 of 2016), inter alia, seeking removal of the aforesaid Lines/ Feeders from its Transmission Licence.

9.9 A consumer cannot be directly connected to the Transmission System for the purpose of receiving supply of electricity, in terms of the statutory provisions. This position has been upheld by the APTEL in its Judgment dated 14 December, 2012 in Appeal No.30 of 2012 (Orissa Power Transmission Corp. Ltd. vs. Orissa Electricity Regulatory Commission & Ors. [Paras 11(III), 31, 34-42 @ Pgs.311, 318 and 320-324, V2 of the Reply).

9.10 The classification of Lines under the provisions of the EA, 2003 into Distribution or Transmission is not as per its voltage level, but as per its purpose and intent.

9.11 The Network Roll-out plan submitted by TPC-D is qua the broad base of consumers, who are generally connected at 33 kV and lower voltage levels. When a consumer like HPCL approaches a Distribution Licensee to avail a large quantum of power at higher voltage levels, the Distribution Licensee is required to fulfil its USO (under Section 43) and create the necessary infrastructure, such as the 110 kV network in the present case, to supply the required quantum of power to such consumer. Being few and sporadic loads, it was not necessary at present for TPC-D to include High Voltage Lines as part of its Network Roll-out Plan, where the focus was on last mile connectivity and consumer choice for the residents of Mumbai city.

9.12 SWPGL has erred in contending that the Commission has not determined Wheeling Charges for EHT network in its Tariff Orders since the same are already being paid in the form of Transmission Charges. The Commission in its MYT Order for TPC-D dated 21 October, 2016 in Case No. 47 of 2016 has categorically determined Wheeling Charges for HT and LT categories. The Commission in that Order has also categorically held that:

“This Commission has not excluded the EHT Sales from the HT sales while calculating the Wheeling Charges, in line with the past practice with which no issue has been taken. Further, due to the lower sales on its wires, the LT Wheeling Charges of TPC-D are already on the higher side, and excluding the EHT sales will further increase the Wheeling Charges at HT and LT levels.”

9.13 TPC-D is levying Transmission Charges upon HPCL for the quantum of power availed by it through Open Access. The DOA Regulations, 2016 provide that a Partial Open Access Consumer shall pay the Transmission Charges to the Distribution Licensee instead of the Transmission Licensee for using a Transmission Network.

9.14 SWPGL’s Generating Station is situated in Nagpur District, from where the power is transmitted using the Transmission System of Maharashtra (MSETCL) upto TPC-G’s Tata Power’s Trombay Generating Station and thereafter, from the Trombay Station, the power is supplied to HPCL through TPC-D’s 110 kV Lines. Therefore, TPC-D recovers Transmission Charges from HPCL for the quantum of power procured by it through Open Access in terms of the Regulations.

9.15 SWPGL’s reliance on the decision of the APTEL dated 12 September, 2014 in the case of Steel Furnace Association of India vs. PSERC & Ors. is erroneous and misconceived. TPC-D has not distinguished the Judgment on the ground that, in that case, the Transmission and Distribution Licensees were two separate legal entities whereas, in the present case, the Transmission and Distribution Licensees are separate divisions of the same legal entity, as wrongly alleged by SWPGL. In the Steel Furnace Case, the consumer had borne the entire cost of the Line on which it was connected, as per the Regulations of the State Commission therein. Considering the specific facts of that case, the APTEL had held that the consumer, who was directly connected through 220/132 kV

Feeders (the entire cost of which was borne by it), could not be charged Wheeling Charges when it availed power under Open Access, since no part of the Distribution Licensee's network was being utilized. However, in the present facts, it is demonstrated beyond doubt that the 110 kV Feeders were set up by and capitalized by TPC-D for supply of power to HPCL and other consumers in the vicinity and, as such, are an integral part of TPC-D's Distribution System.

9.16 SWPGL has wrongly relied on Regulation 1.2 of the DOA Regulations, 2016 and the State Grid Code to contend that there are situations where Open Access consumers are directly connected to Transmission Lines and do not use the network of the Distribution Licensee. Regulation 1.2 has to be read in conjunction with Regulation 2.1(37) which defines "Supplier":

"2.1 (37) "Supplier" means a Generating Company, Power Exchange or Licensee, as the case may be, giving supply of electricity to a Consumer or a person situated in the area of supply of another Distribution Licensee by using the Distribution System of such other Distribution Licensee pursuant to an Open Access Agreement, or giving supply through dedicated Transmission or Distribution lines;"

9.17 The secondary situation provided under Regulation 1.2 of the DOA Regulations, 2016 deals with a scenario where supply of power is to be provided through dedicated Transmission or Distribution Lines. As is evident from the facts of the present case, which are undisputed, the 110 kV Feeders are neither dedicated Distribution nor Transmission Lines. Even otherwise, it is evident from the DOA Regulations, 2016 that the Drawal Points in all cases of Open Access is the Distribution System within Maharashtra. Evidently, a consumer cannot be directly connected to the Transmission System.

9.18 A consumer is considered to be directly connected to the Transmission System only when the connecting network is owned by the consumer itself and is dedicated for that consumer's use alone i.e., is a Dedicated Line. There is no bar on a 220 kV Line or a Line with higher voltage being part of the Distribution Network, if it is necessitated by the Licensee for supplying power to its consumer as per its needs. In such event, such consumer being supplied at 220 kV or higher level will said to be a part of the Distribution Network and, accordingly, all statutory charges/ levies will be applicable.

9.19 As regards the queries raised by the Commission during the hearing, TPC-D has separately provided all the necessary data/details in the proceedings pending adjudication before the Commission in Case No.137 of 2016. TPC-D assures the Commission that it shall give the same treatment (as given to HPCL) to all such other consumers connected on EHV Lines.

Commission's Analysis and Ruling:

10. At the hearing held on 5 October, 2017, the Commission had asked TPC-D for its response on the following within 2 weeks:
- a) What is the treatment given by TPC-D to all other consumers connected on EHV Lines?
 - b) When the EHV sub-station at the Trombay Generating Station is included in TPC-G's assets, why are only the two Bays and associated Lines at this sub-station meant for supply to BARC, a consumer of TPC-D, considered as in TPC-T's assets whereas HPCL's EHV Lines and Bays are claimed as a part of TPC-D's assets?

The Commission notes that, as is evident from para. 9 above, in its belated submission of 12 December, 2017, TPC-D has not avoided responding to these points, and instead elaborated on some of its earlier submissions and questioned the locus of SWPGL as a Party.

11. The analysis and findings of the Commission on the issues raised by HPCL regarding levy of Wheeling Charges and Losses are as follows:
- 11.1 Admittedly, Transmission Licence No. 1 of 2014 dated 14 August, 2014 granted to TPC-T shows that the 110 kV Trombay – HPCL Lines are a part of its Transmission System. That being the case, till these Lines remain in that Transmission Licence, TPC-D as a Distribution Licensee cannot claim Wheeling Charges or Losses for its use from HPCL as the consumer.
 - 11.2 HPCL is a partial Open Access consumer of TPC-D directly connected to the 110 kV Transmission System in terms of TPC-T's Transmission Licence and not to the Distribution Network of TPC-D, and is sourcing power under Open Access from SWPGL.
 - 11.3 The Commission notes the e-mail of MSLDC dated 11 December, 2015 addressed to SWPGL which states that, HPCL being a consumer connected at 110 kV level, no Wheeling Losses are applicable.
 - 11.4 While admitting that the Transmission Licence No. 1 of 2014 of TPC-T includes the 110 kV Lines on which HPCL is connected, TPC-D has stated that this inclusion was on account of an inadvertent error on the part of TPC. The Commission notes that TPC-T has separately sought amendment of the Transmission Licence in this regard after more than 2 years, and its Petition is pending before the Commission.
 - 11.5 Mere filing of a Petition by TPC-T for amendment of its Transmission Licence does not entitle TPC-D to levy Wheeling Charges on HPCL while these Lines

remain in TPC-T's Transmission Licence. The Commission also notes HPCL's allegation that it was only after it questioned the levy of Wheeling Charges and Losses by TPC-D that the amendment of the Transmission Licence to exclude the 110 kV Lines in question claiming that they are a part of the Distribution Network has been sought.

- 11.6 TPC-D has not satisfactorily shown why the 110 kV Lines should be considered as its distribution assets more than 2 years after their inclusion in TPC-T's Licence and in the face of the practice in many States, including Maharashtra, of treating the EHV network of 66 kV and above as part of the Transmission Network.
- 11.7 TPC-D, TPC-T and TPC-G are all constituents of a single corporate entity, which is TPC. The Commission notes the submission of TPC-D in Case No. 47 of 2016 that the assets of TPC-D do not include any part of TPC's Transmission Network. The relevant extract of the MYT Order dated 21 October, 2016 in that Case reads as follows:

“ 3.6 Depreciation

...Commission's Analysis and Ruling

The Commission asked for the detailed calculation of asset-wise Depreciation in MS Excel format in accordance with the MYT Regulations, 2011. It observed that TPC-D has included assets under 'Transmission lines' under Depreciation for the Distribution Wires Business, and asked TPC-D to justify this.

TPC-D stated that, although the nomenclature is 'Transmission Lines', the assets actually belong to the Distribution Business. This label has continued historically, since TPC was an integrated business and these assets are mostly underground cables and associated accessories.”

- 11.8 For all Distribution Licensees, including TPC-D, the Commission has separately determined Wheeling Charges for LT and HT (11/22/33 kV), apart from other charges. However, it has not determined or even recognized any 66 /110/220/400/765 kV levels for Wheeling Charges in the respective Tariff Orders. This is in line with the principle and practice of segregation between HT and EHT levels in Maharashtra. Even assuming that such EHV Lines are considered as distribution assets, no Wheeling Charges are determined for 110 kV Lines in the MYT Order in respect of TPC-D.
- 11.9 The Commission notes that, in its revised Network Roll-out Plan in Case No. 182 of 2014, TPC-D had stated that its existing Distribution Network is only up to 33

kV, meaning thereby that the network of voltages above 33 kV is not a part of its Distribution Network.

11.10 The Commission also notes SWPGL's submission that there are many consumers of Distribution Licensees in Maharashtra and elsewhere in the country who are connected at 110 kV, 220 kV and even 400 kV. The 110 kV, 220 kV and 400 kV Lines are owned, operated and maintained by the Transmission Licensees, but the metering equipment is installed by the Distribution Licensees for supply to their consumers. That does not amount to such consumers being connected to the Distribution Networks.

11.11 Moreover, the supply voltage of a consumer is determined on the basis of its load requirement. If a consumer is given supply at a voltage level of 66 kV and above, that does not by itself imply that such network is a distribution asset. This is an established principle and practice in the power sector in India, barring a few exceptions. Strictly speaking, a Transmission Line of voltage of 66 kV and above may be transmitting power to a consumer of the Distribution Licensee and could be termed as a Distribution Line as a matter of convenience, but it has to be understood in the proper perspective. In fact, this is the argument of TPC-D. For example, if a consumer with a demand which technically entitles it to draw power on a 400 kV Transmission Line and that Line is included in the Distribution Business, then the Distribution Licensee will not only have to maintain that 400 kV Line and associated Switchgear, EHV testing equipment, etc., but also have to maintain the inventories required in case of breakdowns and shutdowns and the required expertise in the field of EHV. This cannot be lost sight of as it has larger Grid security implications. It is a different matter that TPC, being a single corporate entity encompassing distribution, transmission and generation, may not find it difficult to deal with such situations, but that cannot justify disturbing the well-established principles and the practices set accordingly in Maharashtra.

11.12 TPC-D has cited the APTEL Judgment in Appeal No. 30 of 2012, para. 41 of which concludes that a Line between the Transmission System and the consumer's premises is a part of the Distribution System. In the Commission's view, the purport of this ruling is that, under Section 42 read with Section 43 of the EA, 2003, a Distribution Licensee cannot escape from its USO of providing supply to a consumer requiring a higher voltage of 66/ 110/220/400/765 kV only on the ground that it deals with voltages up to 33 kV (wherever applicable). The Distribution Licensee is required to supply all consumers requiring power irrespective of their voltage level. A literal and restricted interpretation of this ruling independently of this context would imply merging all EHV Lines feeding EHV consumers independently, into the Distribution Business. The Commission is of the view that this is not the import or intention of the APTEL ruling.

11.13 The provisions of the EA, 2003, the Central Electricity Authority (CEA) (Technical Standards for Construction of Electrical Plants and Electric Lines) Regulations, 2010 ('CEA Technical Standards Regulations'), the CEA (Manual on Transmission Planning Criteria), 2013 ('CEA Manual') and the Commission's Open Access Regulations are also relevant in this context.

(i) The relevant definitions in Section 2 of the EA, 2003 read as follows:

"(72) "transmission lines" means all high pressure cables and overhead lines (not being an essential part of the distribution system of a licensee) transmitting electricity from a generating station to another generating station or a sub-station, together with any step-up and step-down transformers, switch-gear and other works necessary to and used for the control of such cables or overhead lines, and such buildings or part thereof as may be required;

...2(74) "transmit" means conveyance of electricity by means of transmission lines and the expression "transmission" shall be construed accordingly;

...2(76) "wheeling" means the operation whereby the distribution system and associated facilities of a transmission licensee or distribution licensee, as the case may be, are used by another person for the conveyance of electricity on payment of charges to be determined under section 62;"

The EHV Feeders emanating from the Trombay Generating Station's EHV sub-station is connected through 110 kV Lines to the EHV sub-station of HPCL. Thus, these Lines fall squarely within the definition of 'transmission lines' in Section 2 (72) of the EA, 2003 quoted above.

(ii) The CEA Technical Standards Regulations provide as follows:

"DISTRIBUTION SUB-STATIONS (DSS)

74. General. (1) The system shall conform to design parameters indicated in table below:

Table 15

<i>Parameter</i>	<i>33 kV</i>	<i>22 kV</i>	<i>11 kV</i>	<i>0.415 kV</i>
<i>Nominal System Voltage(kV)</i>	<i>33</i>	<i>22</i>	<i>11</i>	<i>0.415</i>
<i>Highest system Voltage (kV)</i>	<i>36</i>	<i>24</i>	<i>12</i>	<i>0.450</i>
<i>System earthing</i>	<i>Solidly earthed system</i>	<i>Solidly earthed system</i>	<i>Solidly earthed system</i>	<i>Solidly earthed system</i>

<i>Frequency (Hz)</i>	<i>50</i>	<i>50</i>	<i>50</i>	<i>50</i>
<i>Lightning Impulse withstand Voltage</i>	<i>170</i>	<i>125</i>	<i>75</i>	<i>-</i>
<i>Power Frequency withstand voltage (kVrms)</i>	<i>70</i>	<i>50</i>	<i>28</i>	<i>3</i>

...85. The Technical Standards & for construction of Electric Lines are covered in following two parts:

Part - A: Electric Lines (66 kV and above)

Part - B: Electric Lines (33 kV and below)

86. *General- (1) Whenever a new transmission line is planned and constructed, the Owner shall ensure that the proposed new installation is compatible with the existing power system and is suitable for becoming, on commissioning, a natural and integral part of the power system. The overall performance and output as well as detailed operating characteristics and specifications of the installation shall conform to the rest of the power system i.e. the design and construction features shall be compatible with the system to which the new installation will be connected.*

... 89. *Design and Construction of Transmission Lines*

1) Salient technical particulars and requirements of transmission lines

(a) Electrical Design Parameters of the Transmission Lines

(i) The electrical design parameters of the transmission lines for altitude upto 1000 m above mean sea level (MSL) shall be as indicated in Table 16 below:

Table 16

<i>Parameter</i>	<i>66 kV</i>	<i>132 kV</i>	<i>220 kV</i>	<i>400 kV</i>	<i>765 kV</i>	<i>500 kV</i>
	<i>AC</i>	<i>AC</i>	<i>AC</i>	<i>AC</i>	<i>AC</i>	<i>DC</i>
<i>Nominal voltage (kV)</i>	<i>66</i>	<i>132</i>	<i>220</i>	<i>400</i>	<i>765</i>	<i>500</i>
<i>Highest system voltage (kV)</i>	<i>72.5</i>	<i>145</i>	<i>245</i>	<i>420</i>	<i>800</i>	<i>525</i>
<i>Full wave impulse withstand voltage (1.2/50 micro sec.) (kVpeak)</i>	<i>325</i>	<i>650</i>	<i>1050</i>	<i>1550</i>	<i>2400</i>	<i>1800</i>
<i>Power frequency withstand voltage under dry condition (kV_{ms})</i>	<i>140</i>	<i>275</i>	<i>460</i>	<i>680</i>	<i>830</i>	<i>-</i>
<i>Switching surge withstand voltage under wet condition</i>	<i>-</i>	<i>-</i>	<i>-</i>	<i>1050</i>	<i>1550</i>	<i>1000</i>

<i>Minimum corona extinction voltage under dry condition (kV_{rms} phase to</i>	-	-	<i>156</i>	<i>320</i>	<i>510</i>	<i>550</i>
<i>Maximum radio interference voltage (micro volts) at 1 MHz for phase to earth voltage of ... kV under dry condition</i>	-	-	<i>1000 at 156kV</i>	<i>1000 at 267kV</i>	<i>1000 at 510kV</i>	<i>1000 at 22kV/cm conductor surface gradient</i>

Thus, the CEA Regulations demarcate distribution and transmission boundaries on the basis of voltage levels. Voltage levels from 0.415 kV to 33 kV are included under the distribution head, and 66 kV to 765 kV AC and 500 kV DC voltage levels in transmission.

(iii) The CEA Manual defines the voltage limits for transmission as follows:

“5.3 Voltage limits

a) *The steady-state voltage limits are given below. However, at the planning stage a margin as specified at Paragraph: 13.4 may be kept in the voltage limits.*

<i>Voltages (kVrms)</i>				
	<i>Normal rating</i>		<i>Emergency rating</i>	
<i>Nominal</i>	<i>Maximum</i>	<i>Minimum</i>	<i>Maximum</i>	<i>Minimum</i>
<i>765</i>	<i>800</i>	<i>728</i>	<i>800</i>	<i>713</i>
<i>400</i>	<i>420</i>	<i>380</i>	<i>420</i>	<i>372</i>
<i>230</i>	<i>245</i>	<i>207</i>	<i>245</i>	<i>202</i>
<i>220</i>	<i>245</i>	<i>198</i>	<i>245</i>	<i>194</i>
<i>132</i>	<i>145</i>	<i>122</i>	<i>145</i>	<i>119</i>
<i>110</i>	<i>123</i>	<i>99</i>	<i>123</i>	<i>97</i>
<i>66</i>	<i>72.5</i>	<i>60</i>	<i>72.5</i>	<i>59</i>

Thus, in the CEA Manual for Transmission Planning Criteria, voltages from 66 kV to 765 kV are considered under the transmission head.

(iv) The TOA Regulations, 2016 specify that:

“5.1. ...Provided also that such connecting feeder above 33 KV would be a part of the transmission lines as defined in Section 2(72) of the Act.”

(v) The DOA Regulations, 2016 also provide that:

“14.6 ...b. Wheeling Charges shall not be applicable in case a Consumer or Generating Station is connected to the Transmission System directly or using dedicated lines owned by the Consumer or Generating Station.”

Thus, the Open Access Regulations of the Commission also demarcate and distinguish between the transmission and distribution boundaries.

11.14 The Commission notes that the EA, 2003 recognizes transmission and wheeling as two distinct activities pertaining to utilization of transmission and distribution assets, respectively, as will be seen from the definitions quoted above. The CEA Technical Standards Regulations and Planning Criteria Manual also make a distinction between the transmission and distribution voltage levels, as do the Commission’s Open Access Regulations.

11.15 In any event, HPCL is connected through Lines which are, admittedly, at present a part of TPC-T’s Transmission Licence and thereby a part of the Intra-State Transmission System. Till such time as that remains the case, Wheeling Charges and Losses are not payable by HPCL to TPC-D.

11.16 Considering the foregoing, the Commission concludes that TPC-D is not entitled to levy Wheeling Charges for the power supplied by it to HPCL, or Wheeling Charges and Wheeling Losses on the power sourced from SWPGL through Open Access. Accordingly, TPC-D shall refund the amounts collected from HPCL on this count, along with applicable interest, within one month if directly, or by adjustment in HPCL’s energy bill for the ensuing billing cycle.

The Petition of Hindustan Petroleum Corporation Ltd. in Case No. 58 of 2017 stands disposed of accordingly.

Sd/-
(Deepak Lad)
Member

Sd/-
(Azeez M. Khan)
Member


(Ashwani Kumar Sinha)
Secretary

