

Appellate Tribunal for Electricity
(Appellate Jurisdiction)

Appeal No. 85 of 2011

Dated: 02nd Dec, 2011

**Present: Hon'ble Mr. Justice M. Karpaga Vinayagam,
Chairperson
Hon'ble Mr. V J Talwar, Technical Member,**

In The Matter Of

**M/S. Wardha Power Company Limited,
8-2-293/82/A/431/A,
Road No.22, Jubilee Hills,
Hyderabad-500 033**

... Appellant

Versus

**1. Maharashtra State Transmission Company Ltd.,
C-19 E-Block, MSETCL,
Prakashganga, Bandra Kurla Complex,
Bandra (East) Mumbai-400 051**

**2. Maharashtra State Load Despatch Center
Thane-Belapur Road, PO Airoli,
Navi Mumbai-400 708**

**3. Maharashtra Electricity Regulatory Commission,
13th Floor, World Trade Centre No. 1,
Cuffee Parade,
Colaba, Mumbai-400 005**

....Respondents

**Counsel for Appellant(s): Ms. Shikha Ohri
Mr. Sunil Kumar Sharma
Ms. Surbhi Sharma
Mr. Sanjay Sen**

Counsel for Respondent(s): Mr. M Y Deshmukh for R-1 & R-2
Mr. Shrikant Deshmukh for R-1 & R-2
Mr. A V Deo (Rep) for MSETCL
Mr. Buddy Ranganathan for R-3
Ms. Richa Bhardwaja for R-3

JUDGMENT

PER HON'BLE MR. JUSTICE M. KARPAGA VINAYAGAM,
CHAIRPERSON

1. M/s. Wardha Power Company Limited, Hyderabad is the Appellant herein.
2. Aggrieved by the Maharashtra Electricity Regulatory Commission's the impugned order dated 1.6.2011, directing the Appellant to make the payment of transmission charges for the period of 101 days amounting to Rs.9,04,06,120.10(Nine crores and odd) to the Maharashtra State Transmission Company Ltd(R1). with interest, the Appellant has presented this Appeal.
3. The facts of the case are as follows:
 - a) The Appellant Company is a generating Company. The first Respondent, Maharashtra State Transmission Company Limited is a Transmission licensee in the State of Maharashtra. The Appellant

Company has set-up a captive power plant at Warora of 540 MW in two stages of 270 MW each.

- b) In the first stage, the Appellant was required to supply 270 MW to its own captive consumer M/s. Viraj Profiles Limited. In the second stage, the Appellant was required to supply the remaining power to other consumers under open access.
- c) Therefore, on 14.5.2007, the Appellant applied for a Long Term Open Access for the use of transmission network of Transmission Company (R-1) between 220 kV Warora Substation to 220 kV Boisar Substation for evacuation of its power from stage I to supply power to its captive consumer M/s. Viraj Profiles.
- d) In pursuance of its request, the Long Term Open Access transmission capacity rights for transmission system between 220 kV Warora Substation and 220 kV Boisar Substation for transmission of power from Appellant's generating station to M/s Viraj Profile at Boisar were sanctioned by the Transmission Company (R-1) to the Appellant on 21.5.2008. In pursuance of the same on 12.6.2008, the Bulk Power Transmission Agreement (Transmission Agreement) between the Appellant and the Transmission Company(R1) for granting Long Term Open Access

transmission capacity rights for transmission of power from the 220 kV Warora Substation to 220 kV Boisar Substation over 1st Respondent's transmission network was entered into.

- e) M/s Viraj Profile was the consumer for the power from Stage-I of the Appellant's generating station. Some arrangement was required to be carried out to draw this power from 220 kV Boisar Substation to premises of M/s Viraj Profile. Accordingly, the Transmission Company(R-1) by its letter dated 3.10.2009 reminding the Appellant that they had not submitted the status regarding the drawal arrangement for supply of power to M/S. Viraj Profiles from existing 220 KV Boisar substation of the Transmission Company and asking them to send required status report. There was no reply to this letter.
- f) On 9.11.2009, in accordance with Clause 10 of Transmission Agreement, a Connection Agreement was also executed between the Transmission Company(R1) and the Appellant for inter connection of their stage-I generation at 220 KV Warora sub station of the Transmission Company.
- g) Consequent upon execution of the Connection Agreement the Appellant informed to Transmission

Company(R1) on 5.12.2009 that erection of 220 KV D/C line from their generating plant to the existing 220 KV Warora sub station had been completed and requested for charging the same.

- h) On 19.12.2009, the 220 KV D/C line from generating plant of the Appellant to 220 KV Warora sub station was finally charged for facilitating drawal 20 MVA start-up power by the Appellant.
- i) As stated above, although the letter dated 3.10.2009 from the Transmission Company (R-1) reminding the Appellant about non-submission of the status report regarding the drawal arrangement at 220 kV Boisar Substation and asking them to submit the same remained unanswered.
- j) Having been silent for a long time despite receipt of the letter dated 3.10.2009, the Appellant through its letter dated 23.2.2010 informed the Transmission Company (R-1) that the Appellant wishes to cancel the Transmission Agreement citing inability of M/s. Viraj Profiles for availing stage-I power of the Appellant's generating station at Warora. It also informed through the said letter that the Appellant wanted to sell the power to the Maharashtra Distribution Company on short term basis. Admittedly,

till 23.2.2010, the Appellant had not informed the Transmission Company regarding the status of drawal arrangement at 220 kV Boisar substation for M/s. Viraj Profiles.

- k) On receipt of this letter dated 23.2.2010, the Transmission Company by the letter dated 18.3.2010 intimated to the Appellant that they would be required to pay the requisite transmission charges w.e.f. 19.12.2009 i.e. from the date of readiness of evacuation arrangements before the cancellation of the transmission agreement. In reply to the said letter dated 18.3.2010, the Appellant sent a reply through its letter dated 22.3.2010 stating that Transmission Charges were not payable since the term of the transmission agreement cannot result in any financial liability as the said agreement had not become effective.
- l) The Transmission Company having not agreed with the stand of the Appellant, proceeded to issue the letter dated 30.3.2010 demanding the Transmission Charges of Rs.9,04,06,120.10 Paise. Aggrieved by this letter, the Appellant filed a petition before the State Commission on 9.6.2010 seeking for setting aside the said letter dated 30.3.2010.

- m) The State Commission after hearing the parties, dismissed the said Petition through the impugned order dated 1.6.2011 holding that the Appellant is liable to pay the transmission charges to the Respondent for 101 days from the period between 19.12.2009 and 30.3.2010 to the tune of Rs.9,04,06,120.10 along with the interest.
4. Challenging the said impugned Order dated 1.6.2011 the Appellant has filed this Appeal.
5. The Learned Counsel for the Appellant has urged the following grounds, assailing the impugned order:
- a) Having come to the conclusion that the Transmission Company erred in not sending the intimation to the Appellant with regard to the readiness of the transmission system as required under Section 2 of the Bulk Power Transmission Agreement, the State Commission ought not to have directed the Appellant to pay the Transmission Charges to the Transmission Company.
- b) As per clause 31.2 of the Bulk Power Transmission Agreement, a new Bulk Power Transmission Agreement was required to be signed on approval of final draft of the said agreement by the State Commission. However, the Appellant had never been

asked to sign a new Bulk Power Transmission Agreement. Under Regulation 9.2 of the MERC (Transmission Open Access) Regulations 2005, a transmission system user may surrender whole or any part of transmission capacity rights to the transmission licensee. The Regulation does not provide for payment of any transmission charges or any other charges in relation to the surrendered capacity. Since Bulk Power Transmission Agreement has not been approved by the Commission, it cannot be said to be binding; as such it cannot be used for recovery of Transmission charges.

- c) It is a well settled law that damages may be claimed only when there is a loss which is determinable in nature. In the present case, no actual loss had been incurred by the Transmission Company because in the present case only the drawal point has been changed but injection point of power remains the same.
- d) The State Commission failed to take note of the fact that though the evacuation of power for the purpose of injection into the grid was ready, the drawal point was not ready. Even assuming that the Bulk Power Transmission Agreement was not cancelled, the power could not have been evacuated since it was not

capable of being drawn by M/s Viraj Profiles. The cancellation of Bulk Power Transmission Agreement does not change the circumstances of the readiness of the transmission system by use both by generators and captive consumers. Hence, the impugned order is liable to be set-aside.

6. In reply to the above grounds urged by the Learned Counsel for the Appellant, the Learned Counsel for the Respondents has made the following submissions:
 - a) By way of executing Bulk Power Transmission Agreement with the Appellant, the Transmission Company (R-1) granted Long Term Open Access transmission capacity rights to the Appellant for the evacuation of power from Stage-I of its generation plant from 220 KV Warora substation to 220 KV Boisar substation of the Transmission Company (R-1) for a period of 30 years. As such, the Appellant became the Long Term Open Access customer of the Transmission Company (R-1).
 - b) M/s Viraj Profile, the captive consumer of the Appellant was already connected to the 220 kV Boisar substation of Transmission Company (R-1) at 132 kV and 33 kV level.

- c) Responsibility of laying any additional drawal arrangement from 220 kV Boisar Substation for M/s. Viraj Profiles, a captive consumer of the Appellant, was that of the Appellant. The Transmission Company (R-1) through their letter dated 3.10.2009 reminded the Appellant to submit the status report regarding the drawal arrangements. Despite receipt of this letter, the Appellant never bothered to reply. Thus, it is evident that the Appellant was aware of the inability of M/s Viraj Profiles to avail from Stage-I of generation plant of the Appellant but preferred not to respond to the said letter dated 3.10.2009.
- d) On 19.12.2009, the Double Circuit Line from 220 KV of the Appellant's generating station to 220 KV substation of the Transmission Company (R-1) was charged to facilitate the Appellant to avail the start-up power. As such the evacuation system for stage-I generation of the Appellant through 220 KV substation of the Transmission Company became ready from 19.12.2009 itself. Accordingly the Transmission Agreement became effective from 19.12.2009. Therefore, it cannot be contended that the Appellant was unaware of the readiness of the evacuation system.

- e) Merely because the Transmission Company did not raise the bills for transmission charges and did not demand the letter of credit from 19.12.2009 to 23.2.2010 on which date the Appellant wrote a letter requesting to cancel the agreement does not absolve the Appellant from payment of due transmission charges. As a matter of fact, the Appellant never raised any question regarding the validity of the Transmission Agreement.
- f) There is no dispute in the fact that Connection Agreement as envisaged in the Transmission Agreement, which was already executed between the Appellant and the Transmission Company (R-1), was entered into on 9.11.2009 between them. Thus, the Transmission Agreement was agreed upon and acted upon by both the parties. The issue of legality of the Transmission Agreement was raised by the Appellant only when the transmission charges were demanded from the Appellant in response to the Appellant's request for cancellation of the Transmission agreement.
- g) In fact, the model Transmission Agreement was approved by the State Commission through their approval letter dated 23.6.2008 without any modification as such the executed Transmission

agreement is a valid agreement binding upon the both the parties. As per the Open Access Regulation, 2005, the transmission licensee has only to put the format of its transmission agreement on its internet website within 90 days of its agreement.

h) As per clause 9 of the MERC Open Access Regulations and as per the clause 5, 6 and 7 of the Transmission Agreement, Long Term Open Access customer is liable to pay Transmission Charges for one year even if the long term transmission capacity rights allocated to him remains unutilized during that year. Therefore, the order impugned is valid and Appeal is liable to be dismissed.

7. In the light of the rival contentions referred to above, the question which arises for consideration is as follows:

“Whether the Appellant is liable to make the payment of due transmission charges to the Respondent Transmission Company on account of long term open access capacity rights granted for the period of 30 years even when the Long Term Transmission Capacity Rights remain unutilized ?”

8. The main points raised by the Appellant are as follows:

- a) In terms of clause 31.1 the Transmission Agreement was to become effective from the date of commissioning of power plant or date of readiness of transmission system for evacuation of generated power whichever is earlier. Thus the Transmission Agreement has not become effective because the drawal arrangements of M/s. Viraj Profiles from 220 KV Boisar sub Station of Transmission Company was not ready.
- b) In terms of clause 2 of Transmission Agreement the Transmission Company was required to inform the Appellant in change in its network and commencement of commercial operation of new assets. The Transmission Company, however, did not intimate the Appellant about the readiness of the evacuation system for the Appellant's Stage-I generation.
- c) It is a settled law that damages may be claimed only when there was a loss which is determinable in nature. In the present case, no actual loss had been incurred by the Transmission Company because in the present case only the drawal point has been changed but injection point of power remains the same.

- d) The Transmission Company did not raise the billing for transmission charges nor demanded the letter of credit prior to the request from the Appellant for cancellation of the transmission agreement.
9. We have heard the submissions made by the Learned Counsel for both the parties on these points and given our careful consideration.
10. The **main issue** in the present Appeal is with reference to the liability of the Appellant to make the payment of Transmission charges to the Transmission Company on account of long term open access capacity rights granted to the Appellant for a period of 30 years.
11. As narrated above, A Transmission Agreement was executed between the Appellant and 1st Respondent on 12.06.2008. As per this Agreement, the Appellant was granted long term open access capacity rights for a period of 30 years for transmission of power from its first stage power station between two inter-connecting points i.e. 220 kV Warora substation and 220 kV Boisar substation of the Transmission Company (R-1). The Appellant's case is that this Transmission Agreement had not become effective as transmission system for evacuating power was not ready in terms of clause 31 of the Transmission Agreement. According to the Appellant the drawal arrangement at 220

kV Boisar substation for M/s Viraj Profile forms part of transmission system for evacuation of power from Stage-I of its generating station. Non-availability of this arrangement renders Transmission Agreement ineffective. This contention of the Appellant is not tenable in view of the reason explained below:

- a) The Appellant has mainly relied upon Clause 31 of the Transmission Agreement. Clause 31 of this agreement is reproduced below:

“31 EFFECTIVE DATE AND DURATION OF AGREEMENT.

*31.1 The Agreement shall come into force from the date of commissioning of power plant or date of **readiness of transmission system for evacuation of power**, which ever is earlier, and shall remain valid for the period of 30 years.”*

- b) Perusal of the clause 31 of Transmission Agreement would indicate that one of the essential ingredients of this clause is the readiness of transmission system for evacuation of power. According to the Appellant the arrangement for drawal of power from 220 kV Boisar Substation to M/s Viraj Profile was not ready and therefore, the Transmission Agreement had not become effective. The natural question arises as to whether a line from 220 kV Boisar Substation to premises of consumer M/s Viraj Profile can be termed

as transmission system? Any arrangement for drawal power from 220 kV Boisar substation (delivery point on transmission) to premises of Captive Consumer M/s Viraj Profile is a distribution system in view the definition of distribution system provided in Section 2(19) of the Act read with Rule 4 of Electricity Rule 2005. Section 2(19) of 2003 Act read as under:

“(19) “distribution system” means the system of wires and associated facilities between the delivery points on the transmission lines or the generating station connection and the point of connection to the installation of the consumers;”

c) Rule 4 of Electricity Rules 2005 is reproduced below:

“4. 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.”

d) Thus, the so called arrangement connecting premises of M/s Viraj Profile (a consumer) to the 220 kV Boisar Substation fits into the definition of ‘Distribution System’. Its Voltage level of 220 kV would not alter its

character and convert it into a transmission line in the light of Rule 4 of Electricity Rules 2005. Accordingly non-availability of this distribution system cannot make Transmission Agreement ineffective.

e) Next question arises as to what constitutes transmission system for evacuation of power? The Appellant vide its letter dated 12th September 2009 had informed the Transmission Company (R-1) that 220 kV Double circuit line from power plant to existing 220 kV Warora Substation with AL59 conductor would be adequate for evacuating 540 MW from all the four units. Thus the Appellant had itself expressed that evacuation system is restricted to 220 kV Double Circuit line from its power station to 220 kV Warora Substation. This line was ready and charged on 19.12.2010 and the Appellant had drawn 20 MW of startup power. Therefore the Transmission Agreement had become effective from 19.12.2010 when evacuation line from generating station to 220 kV Warora Substation was charged.

12. The Ld. Counsel for the Appellant submitted that the Transmission Company was required to inform the Appellant in the change in its network and commencement of commercial operation of new assets in terms of clause 2 of Transmission Agreement, but the Transmission Company,

did not inform the Appellant about the readiness of the evacuation system for Stage-I of its generating station and that therefore, the Transmission Agreement had not become effective. To examine this contention urged by the Appellant, let us examine Clause 2 of Transmission Agreement which is reproduced below:

“ 2 MSETCL TRANSMISSION SYSTEM

MSETCL transmission system consists of entire transmission system owned and operated by MSETCL used for intra-State transmission of electricity in the State of Maharashtra...

MSETCL shall duly inform and coordinate with WPCPL, regarding all changes in transmission lines/ substations/ assets ownership, commissioning and commencement of commercial operation of new assets and any other relevant development/ changes as also the consequent changes in transmission charges payable to MSETCL”

13. The plain reading of above clause would reveal that the purpose of this clause is to keep the Appellant informed about the changes in transmission charges payable by it to the Transmission Company (R-1). Any change in transmission system would be reflected in change the transmission charges payable by the transmission network user to Transmission Company. As concluded above line between 220 kV Boisar Substation to Premises of consumer M/s Viraj profile do not form a part of transmission system. It is to be noted that transmission

system between 220 kV Warora substation and 220 kV Boisar substation was already existing and no augmentation was envisaged to strengthen this system to transmit the Appellant's power to M/s Viraj Profile. Therefore, the transmission system involved for evacuation of power is the 200 kV line between the Appellant's generating station and 220 kV Warora substation.

14. The Appellant's argument that the Transmission Company(R1) did not inform it about commissioning of this 200 kV D/C line is baseless. The line was constructed by the Appellant itself and had drawn startup power over this line from 19.12.2009. Hence, the Appellant cannot now claim that it was not informed about the availability of this line. Never the less as pointed out above, the very purpose of clause 2 is to inform the Appellant about any changes in transmission charges. The only impact of not informing any change in transmission system to the Appellant is that the Transmission Company would not be entitled for claiming any variation in transmission charges from the Appellant. It cannot result in Transmission Agreement becoming ineffective.
15. Further, various correspondence between the Appellant and the Transmission Company in the matter of charging the double circuit line from the generating bus to the 220 KV Warora substation of the Transmission Company would

clearly indicate that the Appellant knew about the readiness of the evacuation system. As a matter of fact, the Appellant itself wrote a letter on 17.12.2009 expressing gratefulness for its charging of the said double circuit line. Therefore, the contention of the Appellant that they were not informed about the readiness of the evacuation system in spite of the fact that they were availing the start-up power from the same system is untenable.

16. The Ld. Counsel for the Appellant further contended that as per Clause 31.2 the Transmission Agreement which read as “This Transmission Agreement shall be substituted by a new Bulk Power Transmission Agreement on approval of final draft of Transmission Agreement by the Commission”, the new Transmission Agreement was required to be signed by both the parties, but the Appellant had never been asked to sign new Transmission Agreement and that since the State Commission had not approved the Transmission Agreement, it is not binding on the parties.
17. This contention of the Appellant is also misconceived. Clause 10 of the Transmission Agreement provide for execution of a “Connection Agreement” between the Appellant the Transmission Company. In pursuant to this clause, a Connection Agreement had been executed on 9.11.2009. By virtue of this Connection Agreement, the Appellant obtained connection of 220 kV line from its power station

with transmission network of Transmission Company (R-1) at 220 kV Warora Substation. Only upon getting connection with transmission network at 220 kV Warora Substation, the Appellant could get startup power from the distribution licensee. In a nutshell, it is to be stated that it is because of Transmission Agreement that was executed on 23.06.2008, a Connection Agreement was executed by the parties and consequent upon signing of the said Connection Agreement, the Appellant got connectivity with the grid and obtained startup power for commissioning of stage-I of its generating station. Having obtained benefit out of the said Transmission Agreement, the Appellant cannot be allowed to question its validity at this stage.

18. Even, according to the Appellant's own submission before State Commission, the Appellant has stated that "*we have never been asked to sign new Transmission Agreement though MERC have approved the draft of new Transmission Agreement effective from 12th January 2009*". Ld counsel for the Respondents submitted that the draft Transmission Agreement was approved by the State Commission without any change through an approval letter dated 23.6.2008. As such there was no need to get fresh Transmission Agreement executed. In view of above, this plea of the Appellant is liable to be rejected. Consequently, it is to be concluded that the executed

Transmission Agreement is a valid Agreement binding on both the parties.

19. Merely because the Transmission Company did not raise the bill for transmission charges and did not demand the letter of credit from 19.12.2009 it would absolve the Appellant from payment of due transmission charges.
20. Ld. Counsel for the Appellant further pleaded that it is a well settled law that damages may be claimed only when there was a loss which is determinable in nature and in the present case, no actual loss had been incurred by the Transmission company because its transmission network was utilized by other users and the Transmission Company could not demonstrate and the capacity in question remain unutilized.
21. In order to analyse this plea of the Appellant, we shall understand the philosophy of transmission charges payable to the Transmission Company. It is a well established rule that State Commission determine the Annual Revenue Requirement (ARR) of the Transmission Licensee for a particular year. The ARR so determined is recovered from the users of transmission system in proportion to capacity utilization/blocked on per day bases (on MW/day basis). Even in the case a user did not utilize its blocked capacity, he will be liable to pay transmission charges because full ARR

of Transmission Licensee has to be met with. If some user is relieved of payment of due transmission charges, the burden of such charges would fall upon other users of transmission system. In present case if the Appellant is relieved from payment of transmission charges for 101 days, the burden would be shifted to other user viz., the distribution licensee and consequently upon the consumers of electricity. Full ARR of Transmission Licensee has to be met with irrespective of whether it system had been utilized by the user(s) or not.

22. That apart, as per clause 5 of Transmission Agreement read with Regulation 9 of the MERC Open Access Regulations, the Long Term Open Access customer is liable to pay transmission charges for one year, even though the long term transmission capacity rights allocated to the Appellant remains unutilized during that year.
23. It is true that the Appellant is supplying its power from stage-I and Phase-II under Short Term Open Access to the Maharashtra Distribution Company but this aspect would not absolve the Appellant from its liability to pay the transmission charges when the Long Term Open Access transmission capacity rights were granted to the Appellant for 30 years.

24. As mentioned earlier, as per clause 5 of the executed transmission agreement and as per clause 9 of the MERC (transmission of Open Access) Regulation 2005, the Appellant is liable to pay unutilized transmission capacity which is booked by him under long term open access for a period of 30 years. As per MERC Tariff order issued from time to time the long term open access customers and short term open access customers in the State are required to pay for the transmission charges.
25. As mentioned earlier, the Transmission Agreement which was executed between the Appellant and the Transmission Company was approved by the State Commission on 23.6.2008. Even in the letter dated 23.2.2010 intimating its inability of drawal of power for Viraj Profile, the Appellant did not challenge the legality of the Transmission Agreement nor questioned its correctness. The very fact that the letter had been sent on 23.2.2010 by the Appellant to the Transmission Company requesting to cancel the transmission agreement due to inability to draw the power by the captive consumers would clearly show that the Appellant was solely responsible for their default and that the Transmission Agreement which was sought to be cancelled through this letter was actually in force on the date of issuance of the letter dated 23. 2.2010.

26. Thus, it is evident that the question of cancellation of the Transmission Agreement would not arise unless the agreement is full-fledged legal and valid. In this context, it is appropriate to refer to the findings rendered by the State Commission in the impugned order dated 1.6.2011 which are as under:

“That the Petitioner was aware of the fact that M/S. Viraj Profile will not draw power as it stated that additional strengthening on 220 kV side at Boisar-II was not carried out as M/s. Viraj Profile was not ready to draw power. Therefore, the formal request made by the Petitioner for cancellation of Transmission Agreement and LTOA few weeks before the CoD does not hold ground as it appears to be an afterthought. The application for cancellation of Transmission Agreement should have been made immediately after M/s. WPCL became aware of M/s. Viraj profile status instead of waiting till February, 23, 2010 in item 9 of the petition WPCL states that the delay in setting up the industrial facility of captive user is on account of global recession, it still does not state that when they became aware of the delay”.

“The Commission is inclined to accept the contention of Respondents MSETCL & STU that the evacuation arrangements were in place on December 19, 2009 due to the following reasons:

(a) The WPCL signed a connection agreement dated 11.11.2009 with MSETCL for evacuation of its stage-I power (2x135 MW) through 220 KV Warora sub stations via 220 KV Double Circuit Line from WPCL Bus.

(b) Chief Engineer (Comn), MSEDCL sanctioned 20 MW start up Power to WPCL vide letter dated

November 12, 2009 vide letter dated December 5, 2009, WPCL informed MSETCL about the readiness of 220 KV Double Circuit Line and substations bays for charging and requested MSETCL to charge the line. The line was test charged on December 5, 2009 and finally charged on December 19, 2009 and information given vide letter dated March 12, 2010 from Chief Engineer/MSETCL/Nagpur Zone. Thus, as per clause 31.1 of Transmission Agreement, (The Agreement comes into force from the Commissioning of Power plant or date of readiness of the transmission system for evacuation of generated power whichever is earlier December 19, 2009 became the effective date of Transmission Agreement. From December 19, 2009, WPCL started drawing start-up power using this circuit. The COD of the Power Plant was achieved on March 30, 2010. Thus, WPCL is liable to pay LTOA charges to MSETCL for 101 days (from December 19, 2009 upto March 30, 2010).

27. The above findings would clearly reveal that the State Commission has passed the impugned order dated 1.6.2011, dismissing the petition only after due consideration of the Transmission Agreement as well as the Transmission Open Access Regulations 2005 and the Electricity Act, 2003. This conclusion by the State Commission in this impugned order, in our view, does not suffer from any infirmity and as such it is legal and valid.

28. Summary of Our Findings

- a) Perusal of the clause 31 of Transmission Agreement would indicate that one of the essential ingredients**

of this clause is readiness of transmission system for evacuation of power. According to the Appellant arrangement for drawal of power from 220 kV Boisar Substation to M/s Viraj Profile was not ready, therefore, the Transmission Agreement had not been effective. The natural question arises as to whether a line from 220 kV Boisar Substation to premises of consumer M/s Viraj Profile can be termed as transmission system? The arrangement connecting the premises of M/s Viraj Profile (a consumer) to the 220 kV Boisar Substation and fits into the definition of distribution system as provided in section 2(19) of the 2003 Act. Its Voltage level of 220 kV would not convert it into a transmission line in the light of Rule 4 of Electricity Rules 2005. Accordingly non-availability of this line cannot make Transmission Agreement ineffective.

- b) The plain reading of clause 2 of Transmission Agreement would reveal that the purpose of this clause is to keep the Appellant informed about the changes in transmission charges payable by it to the Transmission Company (R-1). Any change in transmission system would be reflected in change the transmission charges payable by the transmission network user to the Transmission**

Company. The Appellant's argument that the Transmission Company did not inform it about commissioning of 200 kV D/C line between its power station to 220 kV Warora Substation is not tenable. The line was constructed by the Appellant itself and has drawn startup power over this line from 19.12.2009, so, it cannot now claim that it was not informed about the availability of this line. Of course, as pointed out above, the very purpose of clause 2 is to inform the Appellant about any changes in transmission charges. Mere failure to inform any change in transmission system to the Appellant, would not result in Transmission Agreement becoming ineffective.

c) Clause 10 of the Transmission Agreement provide for execution of a "Connection Agreement" between the Appellant and Transmission Company. In pursuant this clause a Connection Agreement had been executed on 9.11.2009. By virtue of this Connection Agreement the Appellant obtained connection for its 220 kV line from power station with transmission network of Transmission

Company at 220 kV Warora Substation. Only upon getting connection with transmission network at 220 kV Warora Substation, the Appellant could get startup power from the distribution licensee for the purpose of commissioning its generation plant. In short, it is to be stated that it is because of Transmission Agreement executed on 23.06.2008, a Connection Agreement was executed by the parties and consequent upon signing of connection agreement the Appellant got connectivity with the grid and obtained startup power for commissioning of stage-I of its generating station. Having obtained benefit out of the said Transmission Agreement, the Appellant cannot be allowed to question its validity of Transmission Agreement at this stage.

d) It is clear that the Transmission Agreement dated 12.6.2008 was agreed upon and acted upon by both the parties. The various correspondence between the Appellant and the Transmission Company in the matter of charging the double circuit line from the generating bus to the 220 KV Warora substation of the Transmission Company would clearly indicate that the Appellant knew about the readiness of the evacuation system. As a matter of fact, the Appellant itself wrote a letter on 17.12.2009 expressing

gratefulness for its charging of the said double circuit line.

- e) Merely because the Transmission Company did not raise the bill for transmission charges and did not demand the letter of credit from 19.12.2009 it would not absolve the Appellant from payment of due transmission charges.**
- f) In present case if the Appellant is relieved from payment of transmission charges for 101 days, the burden would be shifted to other user(s) of transmission system viz., the distribution licensee and further on the consumers of electricity in the state of Maharashtra. Full ARR of Transmission Licensee has to be met with irrespective of whether it system had been utilized by the user(s) or not. That apart, as per clause 5 of Transmission agreement read with Regulation 9 of the MERC Open Access Regulations, the Long Term Open Access customer is liable to pay transmission charges for one year, even though the long term transmission**

capacity rights allocated to the Appellant remains unutilized during that year.

29. In view of the above, we are of the opinion that there is no merit in the Appeal. The Appeal is dismissed.

30. However, there is no order as to costs.

(V J Talwar)
Technical Member

(Justice M. Karpaga Vinayagam)
Chairperson

Dated: 02nd December, 2011

REPORTABLE/~~NON-REPORTABLE~~