

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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Case No. 15 of 2006

In the matter of
Petition filed by M/s. Reliance Energy Limited (“REL”) seeking directions upon
M/s Tata Power Company Limited (“TPC”) to supply additional outlets to
REL at certain specified Receiving Stations of TPC.

Dr. Pramod Deo, Chairman
Shri A. Velayutham, Member

ORDER

Dated: September 14, 2006

In Case No. 4 of 2003 before the Commission, Reliance Energy Ltd. (REL) had *inter alia* prayed that Tata Power Company Ltd. (TPC) be directed to afford to REL such additional outlets at such locations as may be specified by REL from time to time within 30 days and without any insistence by TPC upon any precondition and/or agreement for the same. Citing the existing practice of buying power from TPC at 8 points of supply where at each of the points there are multiple outlets, accepted position to provide a new outlet for every 10 or 15 MVA increase in load, REL had contended that since the time REL became a generator in 1996, resulting in lower power requirement from TPC, TPC declined to provide additional outlets unless REL agreed to comply with previous preconditions. REL had submitted that TPC must ensure availability of adequate outlets at 22 kV to facilitate supply to REL, for REL to meet its statutory obligations to effect supply on demand being made, within 30 days to any consumer issuing a requisition for the same. Considering submissions made by REL and TPC and comments/views of the Central Electricity Authority and MSEB in its capacity as State Transmission Utility, the Commission had, while disposing of Case No. 4 of 2003 by its Order dated 9th December 2005, stipulated that a suitable consultant would be engaged by it to evolve a methodology / criteria for determining the basis of providing additional outlets.

2. REL by filing the present Petition on 17th April 2006, has submitted that the growing demand of energy especially during the summer season, coupled with the insufficient capacity of the existing outlets of REL to meet the growing demand,



necessitates supply of additional outlets by TPC even pending the result of the study conducted by the Indian Institute of Technology, Mumbai (“IIT”), i.e., the consultant appointed pursuant to the Order dated 9th December 2005 passed by the Commission in Case No. 4 of 2003. In support of its contentions, REL has submitted that in view of the increased demand there is hardly any margin in the neighbouring transformer in a particular pocket so as to draw power in the event of a break down of any transformer in order to restore supply. In such an eventuality in case of failure of any single transformer, consumers connected to that particular transformer will remain without electricity supply till such transformer is either repaired or replaced. REL has submitted a list where it requires TPC to supply additional outlets to it, pending submission of report by IIT and pending hearing and final disposal of the present Petition.

3. TPC has opposed the Petition filed by REL by filing its Affidavit-in-reply on 4th July 2006. TPC’s contentions are summarised as under:

(i) REL’s Petition having been filed under Section 94 of the Electricity Act, 2003 (“EA 2003”) and Regulation 85 of the MERC (Conduct of Business) Regulations, 2004, is in the nature of a Review Petition. REL’s Petition would not be maintainable as REL has not made out any grounds for review of the said Order dated 9th December 2005 as sought for by them. Further, REL cannot seek the supply of additional outlets while seeking a review of the Order dated 9th December, 2005 in Case No. 4 of 2003 in the same motion.

(ii) Despite specific directions issued by the Commission under paragraph 52 of its Order dated 9th December 2005 in Case No. 4 of 2003 requiring REL and TPC to enter into an agreement within three months of the said Order to ensure long-term availability of power to Mumbai consumers, REL has not entered into such an agreement with TPC. Unless REL complies with the said directions, REL cannot be heard further in these proceedings. In the absence of such an agreement, TPC cannot be asked to invest huge amounts and create infrastructure for supply of power to REL. As per the EA, 2003, any new infrastructure created by licensees will have to be as per the transmission plan developed and approved by the State Transmission Utility. REL is therefore not entitled to seek any direction under Section 23 of the EA, 2003.

(iii) With respect to REL’s request that additional outlets be provided at TPC’s receiving stations at Borivali, Versova, Malad and Saki, TPC is facing severe space constraints in its receiving stations at Versova, Malad and Dharavi and consequently, it is not in a position to release any additional outlets at these receiving stations. Furthermore, on the basis of the load forecast given by REL for the year 2006-2007, TPC on an analysis of the same, is of the view that the outlets provided by TPC are adequate and there is no requirement for additional outlets. Furthermore, existing outlets provided to REL at 22/33 kV sub-stations have enough margins for REL to take additional load.

(iv) REL’s reference to Standards of Performance Regulations specified by the Commission and the probable impact on the law and order situation is uncalled for. TPC cannot be held responsible for the same. REL has to make arrangements for procurement



of power and the development of distribution network in a timely manner by entering into suitable agreements with the concerned parties. REL should enter into a long-term agreement for procurement of power and for the use of TPC's transmission network.

4. An admissibility hearing was held in the matter on 4th July, 2006. Smt. Chandurkar, Counsel for REL clarified that Section 94 of the EA, 2003 and Regulation 85 of the MERC (Conduct of Business) Regulations, 2004 were inadvertently mentioned in the cause title of the Petition and the Petition is not meant to be a Review Petition. Counsel further clarified that REL has prayed for directions under Section 23 of the EA, 2003 for the limited purpose of availing additional outlets. She further submitted that representatives of REL and TPC have held meetings in order to formulate an agreement as directed by the Commission in its said Order dated 9th December, 2005 in Case No. 4 of 2003. Since certain major issues incidental to the supply of additional outlets are to be covered in the said comprehensive agreement, its finalisation may take some time as a genuine requirement. However, the current situation requires REL to be supplied immediately with a minimum of eight additional outlets in the specified Receiving Stations of TPC.

5. During the said hearing, the Commission had observed that since IIT has been conducting study that also covers the adequacy of the transmission network of TPC and the said study having not being concluded, coupled with the absence of any standing agreement between REL and TPC, the present Petition may not be allowed. Since TPC is a transmission company and REL is a distribution licensee, they have separate areas of operation, which requires to be first demarcated so as to ensure the geographical limits within which TPC as a transmission company can transmit the required power and REL as a distribution licensee can avail such power for distribution. The formulation of an agreement being primary and indispensable, the Commission may be approached only on occurrence of any violation or non-observance of any clause/ clauses therein. The Commission had directed both REL and TPC to expedite the finalisation of the said agreement. It was observed that, REL must consider its own submissions that the law and order situation may be adversely affected should TPC fail to provide additional outlets, and in turn make all possible efforts to expedite execution of the agreement with TPC.

6. Having heard the parties and after considering the material placed on record, the Commission is of the view that it would be essential to consider certain statutory provisions as under:

(i) The functions that are required to be discharged by the Commission are provided in Section 86 of the EA 2003. Two of the functions therein are to:

- (a) facilitate intra-state transmission and wheeling of electricity as provided in clause (c) of sub-section (1) of Section 86; and
- (b) specify State Grid Code as provided in clause (h) of sub-section (1) of Section 86.



(ii) In exercise of powers conferred by the said clause (h) of sub-section (1) of Section 86 read with the powers under Section 181, the Commission has notified Regulations specifying the State Grid Code which has come into force with effect from 1st April, 2006. As per the State Grid Code, REL is a User connected to the Intra-State Transmission System. Intra-State Transmission System (“InSTS”) means any system for conveyance of electricity by transmission lines within the area of the State and includes all transmission lines, sub-stations and associated equipment of transmission licensees in the State. As per the State Grid Code, the State Transmission Utility (“STU”) is required to prepare the transmission plan for the InSTS. Primary responsibility is cast on distribution licensees to develop long term load forecast for their respective licence areas. The STU is also required to carry out planning studies for reactive power compensation of the InSTS.

(iii) In terms of the State Grid Code, REL being a User of the InSTS is required to submit application to the STU for connection to the InSTS in the manner provided therein. The STU is required to notify its acceptance of such application after taking it up with TPC (being the transmission licensee under the first proviso to Section 14 of the EA, 2003) in whose system the connection is being sought and with the State Load Despatch Centre (“SLDC”). On acceptance, the applicant, i.e., REL and TPC (in whose system the connection is being sought) would be required to finalise a Connection Agreement setting out the terms relating to connection to and/or use of the intra-State transmission system, with copies being forwarded to the STU and SLDC. Upon completion of the aforesaid process, the STU is required to notify the User, i.e., REL, regarding its connection to TPC’s transmission system where the connection is being sought.

(iv) The Commission has by way of its Order dated 27 June, 2006 in Case No. 58 of 2005 determined the ‘Transmission Pricing Framework within Maharashtra’ which is applicable for all Transmission System Users including distribution licensees and open access users and for all transactions involving use of ‘Intra-State Transmission System’. Besides envisaging clear demarcation of boundary (or interface points) between various transmission licensees and transmission licensee to distribution licensees, as per paragraph 4.2.12 of the ‘Transmission Pricing Framework’, the said Order further requires that each distribution licensee and transmission open access user (TSU) having connection with the “intra-State Transmission system” is required to enter into Bulk Power Transmission Agreement (Intra-State) (BPTA-IS) with the concerned transmission licensee.

7. During the admissibility hearing held in the matter, REL admitted that the present Petition has been filed by mistake under the provisions of Section 94 of EA, 2003 read with Regulation 85 of the MERC (Conduct of Business) Regulations, 2004 and it is not their intention to seek a review of the Order dated 9th December 2005. Therefore, no prayers in terms of the Review Petition are granted herein since no grounds for review of the said Order dated 9th December, 2005 has been made out by REL. However, in the Petition, REL had sought for directions upon TPC to supply additional outlets to REL under the provisions of Section 23 of the EA, 2003. The summer season having gone by, and REL having been able to meet its demand, it would appear to the Commission that



the ground, as brought about by REL while filing the present Petition, does not exist. The Commission is of the view that it would not, therefore, be appropriate to pass an Order under Section 23 directing TPC to provide to REL certain specific additional outlets as prayed for by them and as either suggested, for being denied or sanctioned, based on technical adequacy, by IIT who have recently submitted their project report to the Commission as fulfillment of its engagement in Case No. 4 of 2003. On the other hand, to pass such an Order under Section 23 and granting relief to REL in terms of its Petition dehors the aforesaid requirements of the State Grid Code being fulfilled, would be to circumvent the regulatory processes specified therein.

8. The EA, 2003 has recognized 'transmission' as a distinct 'licensed business' activity to be undertaken by 'transmission licensee' in accordance with its license conditions and regulations to be formulated by the Commission in this regard. In Maharashtra, there already exist few private licensees, who own and operate 'transmission assets' within the State. TPC is one such 'deemed licensee'. In order to connect to TPC's transmission system, REL being a distribution licensee and a User of the InSTS, would be required to:

- (a) develop long term load forecast for its respective licence area for furnishing requisite information to the STU, as provided in Regulation 8.5 of the State Grid Code;
- (b) submit application to the STU for connection to TPC in whose system the connection is being sought, as provided in Regulation 13 of the State Grid Code;
- (c) execute a Connection Agreement with TPC setting out the terms relating to connection to and/or use of the intra-State transmission system, as provided in Regulation 13.8 of the State Grid Code;
- (d) enter into Bulk Power Transmission Agreement (Intra-State) (BPTA-IS) with TPC, as provided in the Order dated 27th June 2006;
- (e) pay transmission tariff in accordance with the Transmission Pricing Framework determined by the Commission in its Order dated 27th June 2006 in Case No. 58 of 2005 for use of TPC's transmission system.

9. In Case No. 4 of 2003, the Central Electricity Authority had opined that the criteria or methodology for determining the additional outlets for supply to REL may be studied by STU who may, *inter alia*, consider the load growth in various pockets, generation additions, etc. To facilitate this process, the Commission is of the view that it will be appropriate for the Commission to forward the project report submitted by the IIT to the STU as the same would be of considerable help to it while considering the application which REL is required to submit to it for connection to TPC in whose system the connection is being sought.



10. In view of the foregoing, unless the aforesaid provisions of the State Grid Code are fulfilled and the STU examines the requirement of additional outlets for supply to REL considering the load growth in various pockets, generation additions, etc., there would be no justification for the Commission to issue any directions under Section 23 of the EA, 2003 and accordingly, no directions as prayed for by REL is issued herein.

With the aforesaid observations the Commission disposes of this Petition.

Sd/-
(A. Velayutham)
Member

Sd/-
(Dr Pramod Deo)
Chairman



(Ms. Malini Shankar)
Secretary, MERC