

Before the  
**MAHARASHTRA ELECTRICITY REGULATORY COMMISSION**

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**Case No. 20 of 2004 read with Case Nos. 17(3), 3, 4 and 5 of 2002**

In the matter of  
**Clarifications sought by BF Utilities Ltd. for various provisions of Order  
dated 24.11.2003 on Procurement of Wind Energy.**

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

**CLARIFICATORY ORDER**

**Dated: 31<sup>st</sup> January, 2005.**

Under Application dated 8<sup>th</sup> September 2004, M/s. BF Utilities Ltd. (BFUL), Pune have sought clarifications on various clauses of the Commission's Order dated 24<sup>th</sup> November 2003 regarding procurement of wind energy relating to Transmission & Distribution (T&D) and Reactive Energy (kVARH) charges and other issues in view of differences in interpretation between BFUL and the Maharashtra State Electricity Board (MSEB).

2. According to the Application, BFUL incorporated by Bharat Forge Ltd., is a flagship Company of the Kalyani Group, one of the largest forge shops in the world and exclusively deals in power generation by use of wind power. BFUL has so far set up 18.33 MW Wind Power Projects starting from June 1998 at Thoseghar, Satara District. The Application states further that the Commission, vide its Order dated 24<sup>th</sup> November 2003, has classified the wind power projects into three Groups. As per this classification, one BFUL Project falls under the Group I category, and three Projects fall under Group II category.

3. The issues in respect of Group I and II are taken up separately in the Application. In respect of Group I, the Application submits that according to Clause 1.4.3.1 (Page 14) of the Order, the issues related to Group I should be dealt with as per the Govt. of Maharashtra (GoM) policies. Therefore, the T&D charges for Group I projects should also be as per the GoM policy throughout their project life, and should not attract 10% or 5% charge after the year 2003 as presently considered by MSEB.

4. With respect to Group II Projects, Clause 1.5.2.2 (Page 17) stipulates that, for the period ending 31<sup>st</sup> March, 2003, credit shall be given as per the policy of GoM/MSEB in force as on 27<sup>th</sup> December, 1999. BFUL submitted that, for the period before April 2003, MSEB have proposed T&D charges on a distance slab basis, and sought clarification as to whether this can be so.

5. With respect to Reactive Energy (kVARH) consumption, the Application submits that a charge of 25 paise per kVARH with 5% annual escalation for reactive energy consumed upto 10% of active energy delivered is reasonable, but for kVARH consumed in excess of 10%, clarification is required regarding what is meant by the 'prevailing rate'.



6. MSEB's Reply dated 5<sup>th</sup> October, 2004 sets out their position on these issues, which has been summarised by MSEB representative in their responses in the course of the subsequent hearing.

7. At the hearing on 16<sup>th</sup> November 2004, Shri. A. S. Karanth, CEO, BFUL submitted that BFUL has set up 2.07 MW wind power project under Group 1 category, and 16.26 MW wind power projects under the Group II category. He submitted that one of the purposes of the Application was to expedite the reconciliation of accounts required from MSEB in connection with withholding of 15% amount as per the earlier interim Order, etc. There was no problem after 2004. To the Commission's query as to whether the projects were all Captive Power Projects, Shri. Karanth explained that BFUL has so far set up 18.33 MW wind power projects for third-party sale to Bharat Forge. Bharat Forge's self-consumption is 4.2 MW. He explained that, therefore, BFUL projects are a combination of both.

8. Shri. Karanth circulated a brief note and tabular statement highlighting the various points on which clarification was required from the Commission. He submitted that Group I Projects were initiated under the GoM policy before the Commission came into existence. He stated that the Commission has very clearly mentioned in its Order dated 24<sup>th</sup> November 2003 that all the issues related to Group I should be dealt with as per the GoM Policies. However, with reference to the same, in the Commission's subsequent Clarificatory Order dated 30<sup>th</sup> September, 2004, the words "unless stipulated otherwise" have been added. He submitted that MSEB's proposed Energy Wheeling Agreement (EWA) mandates 8 years term for the Group I category. Thus, taking advantage of the words "unless stipulated otherwise", MSEB are trying to restrict the term to 8 years, whereas the GoM policy states that the term should be 20 years. Therefore, a clarification is required as to whether the EWA term should be 8 years or 20 years for Group I Projects.

9. The Commission observed that GoM's policy clearly states that the EWA term in such cases is 20 years. The Commission's own Order is also clear in this regard. Thus, there is no scope for considering any different period. Shri Sunnapwar, Technical Director and other representatives of MSEB also accepted that no clarification is required on this by MSEB, and acknowledged that the term for Group I projects was 20 years in the light of GoM policy and the Commission's Order.

10. Shri. Karanth further submitted that the T&D charges for Group I projects should also be as per the GoM policy. He submitted that the GoM policy states that these charges would be nil for the first three years, and 1% from the fourth year plus 2% billing charges till the end of the EWA term. Representatives of MSEB submitted that, as per MSEB's proposed EWA, which was already circulated, T&D charges would be nil for the first three years and 1% thereafter, plus 2% billing charges. Subsequently, from 1<sup>st</sup> April 2003, the T&D charges would be 5% plus 2% wheeling charges. Shri. Karanth sought clarification as to whether the T&D charges from April 2003 should be 1% or 5%.

11. With regard to T&D charges for Group II projects, Shri Karanth submitted that the GoM policy states that T&D charges would be nil for the first three years and 1% thereafter. However, as per MSEB's proposed EWA, the T&D charges upto March 2003 would be nil for the first three years, and thereafter the charges would be 1% or 10% when the distance is more than 200 kms. From 1<sup>st</sup> April 2003 the T&D charges would be 5%. Shri. Karanth submitted that, for the period before April 2003, MSEB have proposed T&D charges on a distance slab basis, and clarification is required as to whether this can be legitimately applied.

12. Representatives of MSEB explained that, upto 200 kms, the T&D charges would be nil and when the distance is more than 200 kms., the charges would be 10%. To the Commission's query as to the basis for this, he referred to Para 23 of the Clarificatory Order which states that "the GoM policy takes precedence and prevails over MSEB's policy, unless stipulated otherwise." The Commission observed that by the words "unless stipulated otherwise" it had obviously meant 'unless stipulated otherwise by the Commission itself', and not by MSEB, or also stipulating the dispensation would have become pointless.



13. MSEB representatives referred to Clause 1.6.11 of the Commission's Order, and also to Para 1.5.1.2 which refers to two periods, i.e. before and after 1<sup>st</sup> April 2003 and post 1<sup>st</sup> April 2003. They submitted that prior to 1<sup>st</sup> April, 2003, there is no deviation from GoM policy. However, even after 1<sup>st</sup> April 2003, BFUL is assuming that MSEB have to charge as per the GoM policy. Shri. Karanth submitted that MSEB have suddenly brought in the distance clause in the proposed EWA. MSEB representatives stated that MSEB's Circular No.640 dated 3<sup>rd</sup> April, 2000 stipulated that T&D charges would be as per the GoM policy, and the same was to be followed upto 31<sup>st</sup> March 2003. Shri. Karanth pointed out that, after an elaborate public process, the Commission had decided through its Order that 5% + 2% (transmission loss and wheeling charges respectively) were to be continued after March, 2003. He further contended that if MSEB are charging as per distance from the fourth year, then the same should also continue from April 2003. But from 1<sup>st</sup> April 2003, the T&D charges are levied at the rate of 5%. Therefore, he submitted that the T&D charges do not have any connection with the location of the plant or to distance, and hence clarification is required as to the appropriateness and validity of the distance clause.

14. The Commission observed that it is very clear from the plain wording of both the principal Order and the relevant Clarificatory Order that the question of distance does not arise, unless it is stipulated by the Commission itself and not by MSEB, and the MSEB representatives noted the Commission's observation.

15. The Commission's observations and principles set out at Paras 9, 12 and 14 above are hereby reiterated as a matter of clarification. The issue of Reactive Energy charges raised by BFUL has already been settled by an earlier Clarificatory Order.

Sd/-  
(A. Velayutham)  
Member

Sd/-  
(Dr. Pramod Deo)  
Member



(A.M. Khan)  
Secretary, MERC.