

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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Case No. 38 of 2005

In the matter of
Reliance Energy Limited's [REL] application for Review of Order dated 9th December 2005
in Case No 3 of 2003.

Dr Pramod Deo, Chairman
Shri A. Velayutham, Member
Shri S.B. Kulkarni, Member

ORDER

Dated: 15th December, 2006

Reliance Energy Limited (REL) filed a Review Petition dated January 3, 2006 and sought review of the Commission's Order dated December 9, 2005 in Case No. 3 of 2003.

2. REL in its Petition made the following prayers:

- “ (a) *this Hon'ble Commission may be pleased to review the said Order dated 9th December 2005 passed and thereafter modify the said direction to the extent as more particularly set out hereinabove (in the Petition)*
- (b) *that pending the hearing and final disposal of this Petition Hon'ble Commission may be pleased to stay the Order dated 9th December 2005 to the extent that it directs the Petitioner to refund to TPC the amount on account of Reverse flow of power*
- (c) *that pending the hearing and final disposal this Petition this Hon'ble Commission be pleased to stay the Order dated 9th December 2005 to the extent that it requires the Petitioners to follow the principle laid down in the order and not to draw power at 220 kV interconnection under normal conditions*
- (d) *ad-interim relief in terms of prayer (b) & (c) above*
- (e) *such further and other orders and reliefs as the nature and circumstances of the case may require and as may be considered necessary by this Hon'ble Commission.”*

3. M/s Tata Power Company (TPC) opposed the Review Petition filed by REL vide its submission dated January 24, 2006. The submissions made by TPC are summarized as under:

- (a) REL has continued to draw energy at 220 kV interconnection under normal circumstances despite the directions of the Commission in the Tariff Order dated June 11, 2004 and paragraph 76 of Order dated December 9, 2005, in Case No. 3 of 2003.



- (b) The drawal of energy at 220 kV interconnection was to avoid payment of Maximum Demand Charges
- (c) TPC denies REL's allegation that non-drawal of energy at 220 kV under normal circumstances will result in curtailment of supply to 4 lakh consumers, as REL can draw the same power at 22/33 kV from existing outlets
- (d) REL cannot absolve itself from the liability to refund the amount which is unlawfully and unilaterally deducted by it for the reverse flow of the energy

4. An admissibility hearing was held in the matter on January 25, 2006. Ms. Anjali Chandurkar, Counsel for REL, submitted that Case No. 3 of 2003 was filed by TPC on January 15, 2003 for a direction restraining REL from drawing power under normal conditions at 220 kV, as 220 kV interconnection was provided only for standby drawal of power. On February 28, 2003, REL filed Case No. 4 of 2003 inter alia seeking a direction to TPC to provide additional outlets to REL, and stating that till additional outlets are provided by TPC to REL at 22/33 kV, REL is compelled to draw power at 220 kV as existing outlets are not available to meet the growing demand of energy of its consumers. REL also filed a Reply in Case No. 3 of 2003, wherein REL once again contended that REL is forced to draw power at the 220 kV interconnection in order to meet the demand due to insufficient outlets at 33/22 kV. Counsel submitted that the Commission referred the said matter to CEA, and CEA opined that the State Transmission Utility (STU) should also be consulted on the issue of criterion or methodology for determining the outlets. Counsel added that the Commission consulted the STU and the STU was of the view that a Task Force has to be appointed to determine the methodology for additional outlets for supply to REL. Counsel referred to paragraph nos. 44 and 48 of the Order dated December 9, 2005, in Case No. 4 of 2003 which states as follows:

- “44. *The issues in this case before the Commission are as follows:*
- (i) *Whether there is any contractual arrangement between TPC and REL for interconnection and establishment of outlets.*
 - (ii) *Criteria for determination of requirement of additional outlets for flow of energy from TPC to REL.”*
- “48. *The Commission has also noted the CEA opinion that the criteria or methodology for determining the additional outlets for supply to REL may be studied by State Transmission Utility (STU) who may, inter alia, consider the load growth in various pockets, generation additions, etc. MSEB as STU has opined that a Task Group comprising of representatives from the Utilities should be constituted to determine the adequacy of existing TPC network and future expansion requirement to cater to increased load. The Commission will, therefore, engage a suitable consultant to evolve a methodology / criteria for determining the basis of providing additional outlets. The cost of this study will be shared equally by TPC and REL.”*

5. Ms. Chandurkar drew the attention of the Commission to its Order dated December 9, 2005 passed in Case No.3 of 2003 and quoted the operative part of the Order, i.e., paragraphs 75 and 80 as under:



“75. The Commission has gone through all the written submissions and oral arguments put forth by the Parties as well as the various documents submitted by them. The Commission has also noted the CEA’s advice.”

“80. The Electricity Act 2003 defines ‘Intra-State Transmission System’ as follows:
“Intra-State transmission system means any system for transmission of electricity other than an inter-state transmission system”

In view of the above, the Commission is of the opinion that all transmission assets, including 220 kV Borivali interconnection should be treated as a part of intra-State transmission system. Further, the Commission has been mandated under Section 86 (c) to facilitate intra-State transmission and wheeling of energy. The Commission is of the opinion that it is essential to optimize the utilization of transmission and distribution assets in the State and therefore, there is a need to review the utility of the asset as a mere ‘standby asset’. The Commission is of the view that, free flow of power over the intra-State transmission system should be permitted and thus, approves “in-principle” the concept of free flow of power on 220 kV TPC interconnection. However, till such time as the relevant Regulations are notified and the Commission approves the commercial and pricing framework for transactions at 220 kV interconnection, the issue of drawal of active power by REL, drawal of reactive energy by REL and reverse flow of energy from REL to TPC at 220 kV interconnection shall be governed by the provisions of PoA.”

6. Counsel for REL submitted that there is a need to appoint the Task Force to determine whether the additional outlets are required. Counsel submitted that a specific Petition was made by REL to the Commission (Case 4 or 2003) stating that REL is compelled to draw power at 220 kV as REL is unable to meet their power requirement by drawing power at the outlets which are presently available. Counsel further mentioned that REL has sought Review of the Commission’s Order in Case No.3 of 2003, under Regulation 85 of the MERC (Conduct of Business) Regulations, 2004 which states that the Commission has wide powers to review its Orders when there is an error apparent on the face of the record or when there is any other sufficient reason. REL requested the Commission to permit REL to draw power from 220 kV interconnection till such time as the additional outlets are made available. REL is drawing 180 MW power from 220 kV interconnection as REL is unable to meet the demand of its consumers from the 22/33 kV outlets that are currently available with REL.

7. The Commission opined that the technical issues have been considered in its Order in Case No. 3 of 2003, which held that under normal circumstances, REL should not draw power from the 220 kV interconnection. However, in case of emergency, the 220 kV interconnection can be utilized by REL for drawal of power. The Commission expressed that there is no new technical fact as REL is arguing on technical grounds, which have been deliberated in the Commission’s earlier Orders.

8. Regarding the issue of refund of the amount deducted by REL for reverse flow of energy to TPC, the Commission vide its Order dated December 9, 2005, in Case No.3 of 2003, directed REL to refund the amounts so deducted with interest. REL stated that there is a need for the Commission to reconsider its ruling in paragraph 77 of the said Order, which states:



“77. *Going by the fact that other than Principles of Agreement, there is no document governing contractual relationship between the parties, the Commission is of the view that the reverse flow of power is not expected to be a normal feature and that TPC is not liable to make any payment on that account. Even in the inadvertent or emergency condition, the Principles of Agreement does not provide for any rate or amount for payment on account of power flow from REL to TPC. The Principles of Agreement however provides that parties may agree for payment for energy flow in inadvertent or emergent situation and as such, the Commission advises parties to address this issue mutually either through a separate agreement or amending the Principles of Agreement or any other contractual manner. The Commission therefore directs REL to refund the amount deducted on this account, within one month of the issue of this Order, with interest at the SBI PLR rate.*”

9. REL also referred to paragraph no. 78 of the said Order -

“78. *The Commission directs TPC to confirm that the amount of deduction made by REL has been considered as a part of total revenue in the submissions made with respect to determination of Annual Revenue Requirement (ARR) and tariffs. The Commission also directs the REL to confirm that the amount of deduction made by REL has not been considered as part of power purchase expenses in the submissions made with respect to determination of Annual Revenue Requirement (ARR) and tariffs.*”

10. REL stated that TPC has already earned the reasonable return. Also, the amount of deduction made by REL has not been considered as a part of the total revenue by TPC. REL submitted that in view of this and paragraph 78 of Order dated December 9, 2005, in Case No.3 of 2003, the Commission's directions to REL to refund the amount deducted needs to be reviewed.

11. Mr. S. Doijode, Counsel for TPC, submitted that REL has referred to paragraphs 76 and 80 of the said Order but failed to read paragraph 77 and 78. Paragraph 77 relates to refund of the amount and Paragraph 78 is the direction given by the Commission. Counsel for TPC added that even if the amount is not provided in the present ARR, it will be considered in the next ARR. Moreover, this does not mean that REL can retain the amount which is payable to TPC legally. Counsel submitted that if it amounts to excess reasonable return earned by TPC, the Commission will consider how to deal with the same in the next ARR.

12. Counsel for TPC submitted that REL's Petition does not fall within the purview of Regulation 85 of the MERC (Conduct of Business) Regulations, 2004, and the issues raised are similar to those which were raised in the original Petition. Counsel submitted that even after the Order was passed on December 9, 2005, REL has continued to draw power at the 220 kV interconnection, even under normal circumstances. Counsel submitted that firstly REL is in violation of the Commission's Order despite specific directions of the Commission. Secondly, there is no need for REL to approach the Commission for seeking review of the Commission's direction to refund the amount within one month of the Order. He pointed out that despite passage of one month, REL have not refunded the amount as stipulated in the Order. In respect of REL's contention that additional outlets are required to be given, TPC stated that there is no such finding in the Commission's Order in Case No. 4 of 2003



13. REL requested the Commission for interim relief to permit REL to draw power under normal circumstances at 220 kV interconnection. Also, with reference to the refund of amount deducted by REL on account of reverse flow of power to TPC, Counsel for REL stated that the Commission will determine independently and at a later stage, whether TPC is entitled to retain the said amount or is liable to pass through the amount to all its consumers with interest.

14. In reply to the Commission's directions specified in paragraph no. 78 of Order dated December 9, 2005, in Case No. 3 of 2003, TPC vide letter dated January 25, 2006, submitted that the amounts deducted by REL towards reverse flow of energy during any year have not been included by TPC as their revenue for computation of clear profit. REL also submitted vide letter dated January 30, 2006, that the amount of deduction made by REL has not been considered as a part of power purchase expenses in the submissions made with respect to determination of Annual Revenue Requirement and tariffs.

15. Subsequently, REL filed a Petition on May 10, 2006 (Case No. 14 of 2006) seeking directions to TPC under the provisions of Section 23 of the EA 2003, to restore outlets previously surrendered by REL at certain specified Receiving Stations of TPC. The Commission, in its Order dated September 14, 2006, in Case No. 14 of 2006 opined that as REL had been able to meet consumer demand in the summer season gone by, the grounds brought out by REL while filing the Petition did not exist. The Commission, in its Order, stated that the EA 2003 has recognized transmission as a distinct licensed 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 was required to:

- (a) Develop long-term load forecast for its respective license area for furnishing 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 related 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 June 27, 2006 in Case No. 58 of 2005 ;
- (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.

16. The Commission in its Order dated September 14, 2006 in Case No. 14 of 2006 directed that *"unless the aforesaid provisions of the State Grid Code are fulfilled, 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 by REL is issued herein"*

17. REL filed a Petition on April 17, 2006 (Case No. 15 of 2006) seeking directions to TPC to supply additional outlets to REL at certain specified Receiving Stations of TPC. The Commission in its Order dated September 14, 2006 in Case No. 15 of 2006, stated that when the



matter was referred to Central Electricity Authority in Case No. 4 of 2003, it 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. The Commission expressed its views that *“it will be appropriate 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”*.

18. The Commission in its Order dated September 14, 2006 in Case No. 15 of 2006 directed that *“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 by REL is issued herein”*.

19. In view of the above, the Commission is of the view that though REL had submitted a Review Petition on Order in Case No. 3 of 2003, under the provisions of Regulation 85 of the Maharashtra Electricity Regulatory Commission (Conduct of Business) Regulations, 2004 under the grounds of any other sufficient reason, the technical aspect raised by REL in its Review Petition with respect to inadequate outlets have already been deliberated in the Commission's Orders in Case No. 3 and 4 of 2003. Thus REL's Petition does not qualify for Review under Regulation 85 of Commission's Conduct of Business Regulations, 2004. Further, the technical aspect raised by REL in its Review Petition with respect to inadequate outlets at 22/33 kV for drawal of power have also been deliberated in detail in the Commission's Orders dated September 14, 2006 in Case No. 14 and Case No.15 of 2006. The Commission expresses its displeasure at REL's non-compliance of the Commission's Order in this regard, and directs REL to refund the said amount to TPC within 2 weeks of issue of this Order. As this amount has not been considered as revenue by TPC in its earlier submission of ARR & Tariff, the same should be properly reflected and accounted by TPC in the subsequent tariff filings. Also, as REL has confirmed that this amount has not been considered as an expense in its earlier submissions of ARR & Tariff, the same may be considered by REL in the subsequent tariff filings.


With the aforesaid observations, the Commission disposes of REL Petition's in Case No. 38 of 2005.

Sd/-
(S B Kulkarni)
Member

Sd/-
(A Velayutham)
Member

Sd/-
(Dr Pramod Deo)
Chairman




(Ms Malini Shankar)
Secretary, MERC