

**RECORD OF PROCEEDINGS**

DATE OF HEARING : September 11, 2007 at 11.00 hrs  
CASE No. : 34 of 2007  
PETITIONERS : Maharashtra State Electricity Transmission  
Company Limited (“**MSETCL**”)  
RESPONDENTS : None  
MATTER : Petition filed by MSETCL seeking in-principle  
approval for development of transmission  
infrastructure facilities to facilitate the evacuation of  
power in the State of Maharashtra, including the  
development of dedicated transmission lines and  
associated facilities  
CORAM : Chairman, Members.

MSEDCL filed a Petition on July 24, 2007 seeking in-principle approval for development of transmission infrastructure facilities to facilitate the evacuation of power in the State of Maharashtra, including the development of dedicated transmission lines and associated facilities. The Commission scheduled the hearing in the matter for September 11, 2007 in the presence of four consumer representatives authorized on a standing basis under the Electricity Act, 2003 (“**EA 2003**”). Notices were issued accordingly.

2. At the hearing held in the matter on September 11, 2007 Shri. Shailesh Joshi, M/s. Feedback Ventures, consultant to MSETCL, made a power-point presentation in support of which oral submissions were advanced. Shri. Joshi submitted that MSETCL needs to upgrade the Intra-State Transmission System (“**In-STS**”), in view of the large-scale capacity addition projects that are being undertaken all over the State of Maharashtra from three different sectors – (i) the Maharashtra State Power Generation Company Limited (“**MSPGCL**”); (ii) various private developers under the CBG route; (iii) developers of merchant plants. Reference was drawn in this regard to the provisions under Sections 9 and 10 of the EA 2003, under which provisions the generating company which is required to establish, operate and maintain captive generating plants and/or generating stations, tie-lines, sub-stations and dedicated transmission lines connected therewith, for sale of power to a licensee. Shri. Joshi further referred to the amendment provided to Section 9 of the EA 2003 vide the Electricity (Amendment) Act, 2007, and further submitted that no transmission license is required for supply of energy generated from a captive generation plant to licensees. It was submitted that a prudent interpretation of the provisions in the said sections would hold that development /establishment of transmission infrastructure for evacuation of power is the responsibility of the generating company.

3. Shri. Joshi submitted that in such event, should MSETCL be required to augment transmission infrastructure, a consensus to that effect may first be achieved by all licensees that would be beneficially affected. Further, the same necessitates approval of the expected financial investment that MSETCL requires to make on the expenditure vis-à-vis re-determination of tariff, under the procedure laid down in MERC (Terms and Conditions of Tariff) Regulations, 2005 (“**Tariff Regulations**”). Reference was further drawn to the provisions of Regulation 85 of the Tariff Regulations, whereunder, the Commission may, by general or specific order, remove any difficulty that arise in the implementation of the said regulations.

4. It was submitted by Shri. Joshi that prior to the trifurcation of the erstwhile Maharashtra State Electricity Board (“**MSEB**”), the transmission arm of MSEB was responsible for the establishment, operation and maintenance of their transmission system. The work force of the said transmission arm of MSEB has been inducted in MSETCL. It is, therefore, MSETCL which is vested with required expertise, skill and capability to cause technological augmentation of the transmission network. Further, as the State Transmission Utility (“**STU**”) of Maharashtra, MSETCL is further responsible for integration of the transmission network in the State of Maharashtra, in accordance with Section 39(2)(c) of the EA 2003.

5. Shri. Joshi referred to the generation augmentation project plans of the Maharashtra State Power Generation Company Limited (“**MSPGCL**”), the Maharashtra State Electricity Distribution Company Limited (“**MSEDCL**”) and merchant plant developers. The implementation of the said projects requires technological augmentation in the In-STS. It was submitted that the generation projects of MSPGCL at Paras, Parli, Khaparkheda and Bhusawal and the merchant plant projects of M/s. JSW Energy, require completion of NIT for evacuation system within FY 2007-08. It was further submitted that in view of the stipulation under the Competitive Bidding Guidelines issued by the Ministry of Power, Government of India, the transmission link between the generation project and the load centre need to be established 210 days prior to the commissioning of the generation projects. These factors necessitate immediate in-principle approval of the financial investments that are required to be made by MSETCL to establish evacuation lines.

6. It was submitted by Shri. Joshi that prior to MSETCL initiating the present proceedings, various joint discussions were convened by MSETCL, MSPGCL and MSEDCL. In the aforesaid discussions, MSPGCL and MSEDCL were *ad idem* that MSETCL is best equipped to undertake core business activities involved with transmission projects and implement/execute power evacuation schemes. The Commission observed that the assessment of the expertise of MSETCL by MSEDCL and MSPGCL is not the proper justification for MSETCL to implement power evacuation projects. The functions of MSETCL as an STU and a transmission licensee are clearly specified under the EA 2003 and the State Grid Code. MSETCL is required to perform as per the requirements specified therein.

7. The Commission enquired of MSETCL as to whether the present power evacuation schemes, for which in-principle approval is being sought for, are part and parcel of the schemes submitted under approval for the three-year rolling capital investment plan and the five-year capex plan.

8. Shri. Subrato Ratho, Managing Director-MSETCL submitted that under Section 39(2)(c) of the EA 2003, it is the duty of the STU to “*ensure the development of an efficient, co-ordinated and economical system of intra-State transmission lines for smooth flow of electricity from generating stations to the load centres*”. However, in contradiction, Section 10(1) of the EA 2003 vests the duty of the establishment of dedicated transmission lines upon a generating company. Referring to the generation augmentation projects undertaken by MSEDCL at Dhopave, and the merchant plants being set up by M/s. JSW Energy, it was submitted that there is no certainty as to whether the dedicated transmission lines for the said projects need to be established by respective project developers (i.e., either MSEDCL or M/s. JSW Energy, etc.) or MSETCL.

9. Shri. Subrato Ratho further submitted that the power evacuation schemes for which in-principle approval is being presently sought for, are part of the schemes submitted under approval for the three-year rolling capital investment plan and the five-year capex plan. However, the issue that needs to be addressed is whether or not MSETCL is the appropriate authority to establish dedicated transmission lines, between generating stations and load centres, post the trifurcation of MSEB, in view of the apparent disparity in Section 39(2)(c) read with Section 10(1) of the EA 2003. It was further submitted that once MSETCL initiates upon causing evacuation of power, no interested party, in a later point of time, should raise objections contending that MSETCL should have employed reasonable due diligence inasmuch as to ascertain whether establishing evacuation facilities is the duty of MSETCL. Further, should it be concluded that MSETCL is indeed the appropriate authority, prior in-principle approval of the estimated financial investments need to be further obtained. It was further submitted by Shri. Subrato Ratho that MSETCL also needs to be assured of whether establishment of dedicated transmission lines is their sole responsibility, since the same would have an enormous impact in their annual revenue requirement (“**ARR**”). In this regard, it was further submitted that the position is not clear as to whether expenditures towards establishing evacuation facilities should be separately categorized as expenses undertaken on behalf of generation companies, while submitting petition for approval of ARR.

10. The Commission observed that establishment of dedicated transmission lines as referred under Section 9 or Section 10 are intended for point to point transmission and typically do not form part of the In-STS but constitute part of the transmission infrastructure that is required by a generating company. In this regard, establishment of such dedicated transmission lines for evacuation of power by MSETCL may be considered to be as activities undertaken on behalf of generating companies or developers of merchant plants. However, what is referred to by MSETCL is actually entire ‘evacuation infrastructure including transmission lines’ for evacuation of power from generating station which should form part of InSTS irrespective of ownership of

generating station and independent of contracting arrangement for off-take of power from such generating station. Shri. Subrato Ratho referred to the definition of 'dedicated transmission lines' as provided under Section 2(16) of the EA 2003 and submitted that it cannot be ascertained as to whether a particular dedicated transmission line shall be the transmission infrastructure of a particular generating plant solely, or whether the same may technically constitute a part of the In-STS also. The said statutory definition does not provide adequate clarity on the subject and defines a dedicated transmission line as *any* electric supply-line for point-to-point transmission required for the purpose of connecting electric lines or electric plants of a captive generating plant or generating station to any transmission lines or sub-stations or generating stations, or the load centre. An innovative approach needs to be adopted in this regard instead of abiding by the strict wording employed in the said statutory definition.

11. The Commission observed that whether a particular dedicated transmission line constitutes technological infrastructure of a particular generating plant, or the In-STS, should need to be technically analysed on a case-to-case basis. A hard and fast rule in this regard should not be adopted. Only a technical analysis of the actual impact of a particular dedicated transmission line should reveal its effect on the In-STS, or otherwise. MSETCL should be able to technically define the geographical limits of the In-STS as separated from the transmission infrastructure of a generating station. Shri. Subrato Ratho submitted that the difficulty in this regard arises in the EA 2003 being silent on the definition of the term 'network'.

12. The Commission observed that so far as the generation projects of MSPGCL, MSEDCL and private developers under the CBG route are concerned, the approach adopted while determining the transmission pricing framework for Maharashtra in respect of evacuation arrangement and transmission lines for the generation projects of M/s. Reliance Energy Limited at Dahanu, should be adopted in the present matter. The Commission observed that the evacuation arrangement including transmission lines for such project forms part of InSTS network, the rationale for which has already been elaborated under Commission's Transmission Pricing Framework Order. In this regard, the Commission further clarified that being part of InSTS, the expenditure incurred for development of such transmission infrastructure shall form part of total transmission system cost of InSTS independent of who develops such transmission infrastructure. The same shall be recovered in accordance with principles outlined under Transmission Pricing Framework Order. Accordingly, in case MSETCL undertakes to develop such evacuation infrastructure, the expenditure made by MSETCL shall form part of their ARR.

13. The Commission further observed that so far as merchant generating plants are concerned, the approach that has been adopted in the case of development of ultra-mega power projects shall be required to be considered. It was observed that MSETCL should execute a bulk power transmission agreement ("**BPTA**") with merchant plant developers. The said BPTA should address the rights and obligations of parties, in the event a

merchant plant developer desires to sell a part of total quantum of power outside Maharashtra, using the transmission lines established by MSETCL

14. The Commission invited the opinion of Shri. Ajit Pandit, a regulatory expert of the Commission. Shri. Pandit submitted that under the Transmission Pricing Framework Order, the Commission has already addressed the concern of MSETCL and the existing transmission pricing framework provides for mechanism for recovery of transmission costs from generators for injection of power if the state transmission network is being used for purposes of wheeling of power outside the State. He further clarified that the transmission tariff shall be applicable to generators for injection of power to the extent of power wheeled outside the State and the such recovery of transmission cost from Merchant Generators shall be adjusted against Total Transmission System Cost (“TTSC”) for InSTS to be recovered from Transmission System Users within State.

15. Shri Ratho submitted that the Commission may clarify through its Order following aspects (a) whether transmission/evacuation arrangement for generating stations of State generating company, independent power producers and merchant generator be treated uniformly? (b) What should be the nature of commercial arrangement between transmission licensee and generating company? (c) Whether MSETCL has freedom to incorporate suitable clauses/commercial conditions such as security requirements under the commercial arrangements with generating companies to safeguard its interests on case to case basis?

The hearing in the matter concluded thereafter.

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**List of Persons present at the hearing on September 11, 2007**

1. Shri. Amitabh Saha, Consultant, PwC
2. Shri Deepak Krishna, Consultant, PwC
3. Shri D. Mishra, Partner, PwC.
4. Shri. Shailesh Joshi, Consultant, M/s. Feedback Ventures.
5. Shri. Anand Dhavale, Consultant, M/s. Feedback Ventures.
6. Shri Subrato Ratho, MD, MSETCL.
7. Shri. A.K. Deshmukh, ED, MSETCL.
8. Shri. P.G. Khandalwar, Director (Finance), MSETCL
9. Shri V.T. Phirke, EE (RC), MSETCL.
10. Shri. M.R. Khadgi, CE, MSETCL.
11. Shri. C.P. Tated, AGM (F&A) & CS, JSW Energy.
12. Shri. G.S. Limaye, ED (Operations), MSETCL.
13. Shri. S.V. Bedekar, JE (Gen.), MSPGCL.
14. Shri. R.R. Kulkarni, JE (Gen.), MSPGCL.
15. Shri Ganesh B, Sr. Officer, REL.
16. Shri Vikas Sonar, Sr. Manager, REL.
17. Shri Shreyans Naved, P.G.E.T., REL.
18. Shri. S.A. Nikhalje, SE (Gen.), MSPGCL.
19. Shri. V.T. Bapat, Director (Operations), MSPGCL.
20. Shri. G.J. Shirase, Director (Finance), MSPGCL.
21. Shri. W.R. Aswar, Consultant to MSPGCL.
22. Shri. S.A. Narkhede, CGM, MSPGCL.
23. Shri. J. Srinivasan, CGM (Finance), MSPGCL.
24. Shri. S.J. Jadav, MSPGCL.
25. Shri. N.P. Sahar, Sr. Manager, NTPC Ltd.
26. Shri. G.S. Trimukhe, CE (PP), MSEDCL.