

**Before the Jammu & Kashmir State Electricity Regulatory Commission at  
Jammu.**

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**Petition No. 22/2010**

M/S Magpie Hydel Construction Operation Industries Pvt. Ltd; 301, Baba Building, Residency Road, Srinagar, through its Director, namely Mudassir Mir S/o Nazir Ahmad Mir, R/O Hari Watnoo, Tangmarg.

Petitioner

V e r s u s

1. State of Jammu and Kashmir through Commissioner/ Secretary to the Government, Power Dev. Department, Civil Sectt. Jammu.
2. Development Commissioner (Power), Power Development Department, Government of J&K, Civil Sectt. Jammu.
3. Chief Engineer, Commercial and Survey Wing, Power Development Department, Bemina, Srinagar.
4. Financial Advisor and Chief Accounts Officer, Power Development Department, Civil Sectt. Jammu.

Respondents

**Petition for adjudication of dispute by the Commission as adjudicator**

**ORDER**

**No. : JKSERC/68 of 2012**

**Dated: -29.06.2012**

1. Brief facts giving rise to the present proceedings are that the Petitioner Company has set up a 2x5 MW Hydro Electric Project at Athwato, Bandipora for supply of energy to consumers outside the State. Water from Madumati Nallah is used by the said company for generation of power at the project;

2. That in order to transmit the power generated from the said project to the consumer outside the state through the transmission network system already established by the respondents, the parties have entered into an agreement known as “Bulk Power Transmission agreement” dated 29<sup>th</sup> July, 2009;
3. That on 11<sup>th</sup> January 2010, a letter was sent by FA & CAO, Power Development Department to Development Commissioner, Power, J&K asking the Chief Engineer, Commercial and Survey Wing of J&K PDD to levy 10% of net energy on account of transmission and distribution losses to the network system of the department from the petitioner and also to claim wheeling charges from the petitioner under Clause 7 of the agreement for wheeling the generated energy to a third party consumer outside the State. A copy of the said letter was forwarded by FA& CAO to the petitioner as well;
4. That aggrieved by the said letter containing the directions, the petitioner company moved a petition before this Commission raising a number of disputes requesting the Commission to settle them acting as an Arbitrator;
5. That however, the Commission was of the opinion that it will not act as an arbitrator but act only as a regulator in accordance with the provisions of the J&K State Electricity Regulatory Commission Act, 2000 read with Jammu & Kashmir Electricity Act, Smvt 1997 (1940)/ the Jammu & Kashmir Electricity Act, 2010 in force at the relevant time and directed the petitioner to amend the petition so as to bring it within the statutory jurisdiction of the Commission;
6. That the petitioner accordingly filed an amended petition seeking adjudication in respect of those disputes which fell within the jurisdiction of the Commission as a Regulator, including the dispute that the petitioner was not liable to pay wheeling charges and distribution losses to the PDD, while transmitting the generated energy through the transmission network system of the Respondents as the petitioner does not distribute energy within the State;
7. The brief case of the petitioner in the amended petition is as under:-

- a) that the communication from Financial Advisor and Chief Accounts Officer, Power Development Department, bearing No.: PDD/H/AC/157/2009 dated 11.01.2010 is illegal, unsustainable and contrary to law/regulations framed by the State Electricity Regulatory Commission and other statutory provisions governing the field.
- b) that Clause 7 of the Agreement “Bulk Power Transmission” dated 29.07.2009 is illegal. It is contrary to the provisions of Jammu & Kashmir State Electricity Act and the Regulations framed by SERC.

It is submitted that the agreement between the parties was drawn up when SERC had already framed regulations governing “wheeling charges”. Regulations called “Jammu & Kashmir State Electricity Regulatory Commission (Open Access in Intra-State Transmission and Distribution) Regulations, 2006” were enforced with effect from 25.01.2006.

- c) that it commissioned electricity generation from 29.06.2009. The facility of ‘wheeling’ was not utilized by the company till the respondents entered into the agreement dated 29.07.2009 with the petitioner company. The wheeling was resorted to only after the execution of the agreement.
- d) that in terms of Notification No.: 13 dated December 18, 2009 issued by the J&K State Electricity Regulatory Commission, the transmission/distribution (wheeling) charges came to be prescribed as follows:
  - i) For transmission – Rs. 455.0/MW/Day

Having regard to the power of the Regulator, regulations framed by the Regulator and the Notification issued by the Regulator and also having regard to the over riding effect of Jammu & Kashmir State Electricity Act. Smvt 1997 (1940), Clause 7 of the agreement being contrary to law is clearly unenforceable. It is further stated that in 2010 from

29.04.2010 Jammu & Kashmir State Electricity Act, 2010 became applicable. Clause 7 being contrary to the said statute as well is clearly unenforceable. The petitioner company, therefore, submits that the respondents cannot charge or claim from the petitioner company 'wheeling charges' different from the one prescribed by law. To clarify it further, the provision of clause 7 providing for wheeling charge to be 10% of net energy supplied at inter connection point is patently illegal, contrary to law and unenforceable.

- e) That Annexure-A appended to the Agreement dated 29.07.2009 makes provision for losses which occur in transmission system. It provides that losses in transmission system would be shared as per the methodology decided by the Power Development Department or in line with the guidelines issued by SERC from time to time.
- f) That SERC vide Notification No.: 1 dated 08.12.2008 prescribed transmission losses to be 5%- to be considered for "open access users". The said percentage has continued for the subsequent years as well.
- g) That as against it the respondents have vide impugned letter No.: PDD/II/AC/157/2009 dated 11.01.2010 instructed Financial Advisor and C.A.O., Power Development Department to levy "10% net energy on account of transmission and distribution losses to the net work system of Power Development Department ..." from the petitioner company. In other words in terms of the said communication the petitioner company is to reimburse the alleged transmission and distribution loss nearly of 10% of the net energy on the entire net work system of Power Development Department which is spread throughout the length and breadth of the State of Jammu & Kashmir. It is patently illegal. The petitioner company cannot under any law or agreement be asked to bear total losses of transmission and distribution to the extent of 10%.

- h) That SERC vide Notification referred to above has clearly provided, which also is the intention of the SERC, that “open access users” will be liable for losses in transmission only to the extent of 5% of the power generated by generation company. Open access users or the generating companies cannot be held responsible for the losses of any other generating company or suffered by the respondents while importing electricity in the system or in the distribution. Since the impugned communication proceeds on totally incorrect basis and is contrary to law, the petitioner company States that it cannot be asked to bear more than 5% loss on power generated by it.
- i) That the respondents have totally failed in maintaining transmission system in accordance with the prescribed standards and norms. Resultantly, it adversely affects the generating company in transmission of the power for which SERC has not provided any provision in any of the regulations. To illustrate the dispute, the petitioner company states that as from 29.07.2009 the petitioner company has been generating electrical energy but the ‘transmission system’ maintained by the respondents does not have the same voltage of 33000 volts resulting in loss of electric energy by the petitioner company. The petitioner company addressed several communications to the respondents asking them to maintain voltage of 33000 kV on its transmission lines with plus minus 12.5% (as prescribed by law) but the respondents have failed to maintain the said voltage on their transmission system. As against it the respondents have maintained voltage on an average between 15000 kV to 28000 kV. During winter months the voltage many a times goes lower than 15000 volts. Obviously the system voltage maintained by the petitioner company cannot synchronize with the low voltage on the transmission lines of the respondent. Resultantly, to synchronize the two systems, the petitioner company has to reduce its voltage from 33000 to the

minimum of 21000 volts below which the whole generating station gets shut down. According to the Electricity laws, there is a direct relationship between current and the generated voltage. Low voltage, loads high current in the generating system according to the formula  $P=v \times i$ . The petitioner company, because of the failure of the respondents to maintain 33000 volts on transmission system has to generate electrical energy less than its generating capacity, resulting in at least 30-40% loss in generation. This loss is in the nature of transformation loss and is because of the difference in the voltage maintained on the 'transmission system' by the respondents. Furthermore, it poses a high risk to the Electro-mechanical machinery. The action of the respondents is patently violative of the terms and conditions of the agreement.

That on the aforesaid premises the petitioner company is entitled to recover losses from the respondents. Having regard to the nature of dispute and the limited jurisdiction of SERC, the petitioner company reserves its right to claim the damages/losses it has suffered. In the present proceedings the petitioner company submits that SERC during the adjudication of the disputes may pass appropriate directions to the respondents so that no further loss is suffered by the petitioner company.

8. The respondents have filed their objections resisting the petition by taking the following preliminary objections as well as on facts of the case. In their preliminary objections the Respondents have pleaded.
  - a) That the Petitioner company is guilty of active concealment and suppression of material facts. It has not come before this Hon'ble Forum with clean hands. It is so, as the petitioner company has not brought before this Hon'ble Forum the following facts based on record:

- i) That the petitioner company has filed a petition U/S 9 of J&K Arbitration and Conciliation Act 1997, before Ld. District Judge Srinagar and obtained an ex-parte order on 21.04.2010, a copy of which is enclosed herewith as Annexure R-1. Copy of petition filed by the petitioner company along with its annexure is enclosed as Annexure R-2. Prior to filing of the petition U/S 9 of J&K Arbitration and Conciliation Act 1997, before Ld. District judge Srinagar, he had filed a petition before this Hon'ble Commission which came to be disposed off on 13.05.2011.
- ii) That the petitioner company has not disclosed this vital fact in the amended petition which is pending before this Hon'ble Commission. Petition U/S 9 of J&K Arbitration and Conciliation Act 1997, referred above, before Ld. District Judge Srinagar is also pending disposal.
- iii) That a perusal of petition U/S 9 of J&K Arbitration and Conciliation Act 1997 referred above filed by the petitioner, its earlier petition or in the amended petition which is pending before this Hon'ble Commission shall reveal that in essence, the challenge/alleged grievance of the petitioner is identical. It is the communication dated PDD/H/AC/157/2009 dated 11.01.2010 which is the subject matter of petition before Ld. District Judge Srinagar and before this Commission. In the amended petition the petitioner has stated the alleged disputes which fall within the jurisdiction of the 'Regulator'. At page 4, petitioner has stated which is reproduced herein below:

That the communication from Financial Advisor and Chief Accounts Officer, Power Development Department, bearing No.: PDD/H/AC/157/2009 dated 11.01.2010 is illegal, unsustainable and contrary to law/regulations framed by State Electricity Regulatory Commission and other statutory provisions governing the field.

That Clause 7 of the Agreement “Bulk power Transmission” dated 29.07.2009 is illegal. It is contrary to the provisions of Jammu & Kashmir State Electricity Act and the Regulations framed by SERC.

Paragraphs 12 and 13 of the earlier petition contained the same averments, in essence. In the amended petition petitioner has only reduced the number of words and has used some different words, however, there is no difference between the two petitions in substance.

- iv) That there is no dispute of any kind as alleged by the petitioner or otherwise petitioner is indulging in frivolous litigation solely with the object of escaping its contractual and lawful obligations.
- v) That petitioner is seeking parallel adjudication from two Forums for the same issue between same parties, which is impermissible in law. The petitioner continues to deprive the State exchequer of its legitimate dues by filing misconceived petitions as such continued public loss without any legal justification.
- vi) That the aforesaid petition is misconceived and is without any cause of action against the answering respondents as such deserves to be dismissed outrightly. Petitioner has no cause to seek adjudication as mentioned and asked by him in the present petition.
- vii) That the present petition is beyond the scope of Clause 11(2) of Bulk Power Transmission Agreement as there is no dispute within the meaning of clause 11(2) which can be adjudicated by this Hon’ble Commission more so in view of parallel legal proceedings initiated by the petitioner on same subject matter. The dispute which appears to be raised by the petitioner in the present petition is that the petitioner company set up a Hydel Project Athwatoor of 2 x 5 MW. The answering respondents under the agreement are required to maintain

and operate transmission system as of per agreed guidelines. The petitioner appears to be aggrieved by the communication of Financial Advisor & Chief Accounts officer JKPDD conveyed to the Chief Engineer Commercial to levy 10% charges on account of transmission and distribution losses to the network system of Power Development Department from the petitioner company and as such the petitioner has disputed the communication dated 11.01.2010 and seeks the adjudication. As per Clause 7 of the Bulk Power Transmission Agreement the infrastructure and facilities of JKPDD will be made available to the IPP Athwato for wheeling the generated energy. Wheeling charges for wheeling the generated energy to third party consumers or outside the State will be as determined by the JKPDD/JKSERC. However, for those projects which are bid out prior to the determination of this rate by JKPDD/JKSERC, the wheeling charge would be 10% of the net energy supplied at the inter connection point. No wheeling charges are applicable in cases of sales to JKPDD or to local grids within Jammu and Kashmir. It is the admitted case of the petitioner that the energy is being transmitted out side the State, the wheeling charge are not applicable in case of supply to Jammu and Kashmir Power Development Department or to Local Grids within the Jammu and Kashmir State as per the Clause 7 but in case of transmission of power out side the state the petitioner is liable to pay 10% of net energy supplied at inter connection point. Thus this Clause of the agreement being the essence therefore, is binding on the parties as such there is no dispute within the meaning of section 11(2) which required to be adjudicated by the Hon'ble Commission. Therefore the petition deserves to be dismissed out rightly.

- viii) That in terms of clause 7 of the BPT agreement as mentioned above the present petition is otherwise also beyond the jurisdiction of J&K SERC Open Access in Intra State Transmission and Distribution Regulations 2006, in view of the fact that the project was bid out to the

petitioner in January 2004 whereas the above regulations were issued after about two years as such these regulations are not applicable to the dispute pertaining to 2004 thus the petition deserves to be dismissed out rightly.

- ix) That the bulk power transmission agreement is in consonance and conformity with State policy for the development of small Hydro Power in Jammu & Kashmir issued by virtue of Govt. order No.: 211/PDD of 2003. Wheeling charges as per Clause 7.2 of the policy or wheeling the generated energy to third party consumer or out side the State will be determined by the J&KPDD/JKSERC. However, for those projects which are bid out prior to determination of this rate by JKPDD/SERC the wheeling charges shall be 10% of net energy supplied at inter connection point. Therefore the present petition deserved to be dismissed out rightly being against the Government policy and administrative decision in which the Hon'ble Commission cannot sit as a Court of Appeal.
- x) That the Hon'ble Commission lacks jurisdiction to entertain the present petition.
- xi) That the petitioner has filed a wrong and misleading affidavit with its amended petition.

9. On facts the Respondent have submitted as under:

- i) That there is no dispute of any kind as alleged by the petitioner or otherwise. A perusal of petition U/S 9 of J&K Arbitration and Conciliation Act 1997 referred above filed by the petitioner, its earlier petition or in the amended petition which is pending before this Hon'ble Commission shall reveal that in essence, the challenge/alleged grievance of the petitioner is identical. It is the

communication dated PDD/H/AC/157/2009 dated 11.01.2010 which was/is subject of all these petitions.

- ii) That the instructions conveyed by Administrative Department by way of letter dated 11.01.2010 regarding levying of T&D losses are in accordance with Clause A-3 to the Bulk Power Transmission agreement assigned with the IPP and SERC Regulation No.: 15 of JKSERC (Open Access in Intra State Transmission and Distribution) Regulation 2006 wherein the transmission losses have been specified as 5% and distribution losses as 5% and the instructions regarding levying of wheeling charges are in accordance to clause 7 of the agreement which is binding upon parties.
- iii) That in accordance to the clause 8.1 of State Hydel Policy for Small Hydro Electric Projects the IPP shall be responsible for laying lines for connectivity to the nearest Grid Station. In case of the petitioner the nearest Grid Substation is 132/33 KV grid Substation Amargrah. However, the petitioner has constructed his line upon 33/11KV Ajar Sub-station only so his contention is untenable.
- iv) That besides inter-state transmission system the petitioner is using 'Distribution System' i.e. 33KV Line operated and maintained by distribution wing i.e. EM&RE Wing Kashmir of the respondents Utility from 33/11KV Sub-station Ajar and 132 KV and 220 KV sub-stations and transmission lines operated and maintained by transmission wing of the respondent Utility i.e. System and Operation Wing Kashmir.
- v) That there are two different clauses governing the wheeling charges and transmission losses. The wheeling charges are governed by clause 7 of the BPT agreement. As per clause 7 of the BPT agreement the infrastructure and facilities of JKPDD will be made available to the

IPP for wheeling the generated energy. Wheeling charges for wheeling the generated energy to third party consumers or outside the State will be determined by the JKPDD/JKSERC. However, for those projects which are bid out prior to the determination of this rate by JKPDD/JKSERC the wheeling charges would be 10% of net energy supplied at the inter connection point. While the transmission losses are governed by clause A -3 of General conditions which provides that “The losses in transmission system would be shared as per methodology decided by PDD or in line with guide lines issued by SERC from time to time.”

- vi) That as agreed by both the parties, the infrastructure and facilities of respondents utility shall be made available to the petitioner for wheeling the generated energy to third party consumer and the IPP will pay to JKPDD for transmitting the generated energy to third party in accordance with clause 5 and clause 7 of BPT agreement and clause A-3 of the Annexure-A of General conditions of the agreement. The infrastructure and facilities of JKPDD maintained to its best possible is being made available to the IPP for wheeling the generated energy to third party consumer, however, in terms of clause-4 of the agreement for occurrences and situation beyond its control, the respondents utility shall not be held responsible. It is pertinent to mention that the petitioner has wheeled about 20 MU of generated energy to third party till date without any problem.
  
- vii) That the petitioner is liable to pay 10% of energy on account of transmission and distribution losses in accordance to clause A-3 of General Conditions of the Agreements and SERC Regulation No.: 15 of JKSERC (Open Access in Intra State Transmission losses have been specified as 5% and distribution losses as 5% as the petitioner is utilizing the distribution and transmission network of JKPDD for

wheeling the generated energy to third party. Further the wheeling charges of 10% are leviable as mentioned above.

- viii) That in case of respondents utility owned network where the petitioner's 33 KV line is connected to the delivery point on transmission of the respondents utility for consumers is 33 KV bus bar of 132/33KV Grid Sub-station Amargarh. The 33KV line interconnecting the 132/33KV Amargarh Grid Sub-station with 33/11KV Ajar Sub-station being used by the petitioner for wheeling of power is a distribution line operated and maintained by the distribution wing of the respondent utility i.e. EM&RE Wing Kashmir. The consumers of the utility who are being fed by this distribution line are connected to the delivery point of transmission through system of lines and substations at voltage levels of LT, 1KV and 33 KV. The petitioner has thus confused the interconnection point appearing in the BPT agreement which in the case of petitioner owned Power House is Ajar Sub-station as the delivery point. The petitioner is thus utilizing the infrastructure, distribution, transformation and transmission and services of JKPDD for wheeling the generated energy to third party consumer outside the state and is liable for wheeling charges of 10% under clause 7 of Bulk Power Transmission Agreement as agreed by both parties.
- ix) That the petitioner in accordance to clause 4 of the Bulk Power transmission agreement the JKPDD shall endeavor for best possible power transmission system to IPP however for occurrences and situations beyond its control JKPDD shall not be held responsible. JKPDD is providing its infrastructure and facilities to the petitioner for wheeling the generated energy to third party to best of its capability but 33 KV is an ideal voltage and its variation is a technical phenomena especially during winters when the local generation falls drastically the Kashmir Valley system being the tail end for Northern Grid. The

system voltage drops the effects are more in far flung areas like Athwato. The two No. 6.3/33KV Power Transformers at the power house have voltage rating at highest tap equal 30.5 KV against typical rating of 28.05 KV of PDD transformers in the area which means a difference of about 2.5 KV. Further the average generated power factor since commissioning of the power house is 0.986 against rated power factor of 0.9 of the generators which means that the IPP is not injecting sufficient reactive power into the system to maintain the voltage profile at the interconnection point. The petitioner is therefore, generating more active power at the cost of the reactive power and as such he is also responsible for the poor voltage at the interconnection point. It is also evident that the basic system parameters of the respondents utility system have not been taken into cognizance while designing the power house. Further the petitioner need to install voltage boosters and auto synchronizing panel to make his generators compatible with the respondent Utility system . The respondents utility is also capable to absorb the full generation of the petitioner in isolation mode under low voltage or faulty conditions but the petitioner is unable to run his powerhouse in isolation mode. The petitioner has thus failed to take these ground realities to consideration while designing his power house.

- x) That it is technically incorrect to say that during low voltage conditions in synchronized mode, in winter the petitioner fails to generate to the full capacity of the powerhouse. The generation during winter is limited by the low river discharge and not otherwise under low voltage conditions it is correct that the petitioner has to generate more current for the same power as compared to the current at normal voltage but there is sufficient spare generating capacity available with the petitioner during the winter due to low river discharge so as to compensate for the loss of generation on account of low voltage for which he alone is responsible.

xi) That the JKPDD load is always available with the IPP Athwatoos at 33/11KV Sub-station Ajar, hence tripping of 33KV Amargarh Bandipora line should not affect the power plant in case of outage/failure of the said line the plant should be capable of generating energy in isolating mode and supply to the local network. It is evident that the design of Athwatoos power House is not compatible to the JKPDD system or the staff responsible for operation either inadequate or not capable to operate the Power House especially in isolating mode and petitioner can not throw its blame on respondents.

10. The Learned Counsel for the parties were heard. Written arguments have also been submitted by the Learned Counsel for the Parties.

The Commission has gone through the records of the case including the documents filed by the petitioner as well as the respondents and written arguments submitted by the learned Counsel for the parties.

The issues that emerge from the arguments made by the Learned Counsel for the parties before the Commission for adjudication are as under:-

- i) Whether the Petition is maintainable when parallel proceedings are pending before the Learned District Judge or on any other court.
- ii) Whether the Respondents could levy from the Applicant 10% of net energy as transmission and distribution losses for using the network system of the Respondents.
- iii) Whether the Respondents are right in claiming charges for wheeling the generated energy to a Third Party consumer outside the State under

clause 7 of the Bulk Power Transmission Agreement entered into between the Respondents and the Petitioner.

With regard to the first issue, it was submitted by the learned counsel for the respondents that this Commission has no jurisdiction to entertain this dispute raised by the petitioner and according to him this is so because the arbitration proceeding with regard to the present dispute are pending with the Principal District Session Judge, Srinagar.

On the other hand, the learned counsel for the petitioner submitted that dispute raised by the petitioner in his amended petition is entertainable and can be adjudicated by this Commission.

In this regard, this controversy has already been settled by the Hon'ble Apex Court by taking a view in the case of Gujarat Urja Vikas Nigam Ltd. V/s Essar Power Ltd. reported at (2008) 4 Supreme Court Cases page 755 that whenever there is a dispute between a licensee and the generating companies under the Electricity Act, only the State Commission or the Central Commission, (as the case may be) or arbitrator(or arbitrators) nominated by the Commission can resolve such a dispute. So the Commission is of the opinion that the present proceedings are maintainable before the Commission.

Even otherwise, the Commission has already settled the issue by its order dated 9<sup>th</sup> January, 2012. The Commission has held that after the amended petition for adjudication has been filed by the Petitioner, no arbitration proceedings are pending before the Commission, but only adjudication proceedings.

With regard to the second issue it was argued by the learned counsel for the petitioner that the petitioner is liable to bear only 5% losses caused on account of transmission of energy.

On the other hand, the learned counsel for the respondents submitted that the petitioner has been using both the systems i.e. the transmission system as well as distribution system of the respondents for transmitting the energy from his generating station to out side the State.

With regard to this issue, the position is that in accordance with the State Hydel Policy of 2003, the Petitioner is responsible for laying lines for connectivity to the nearest Grid Sub-station at the appropriate voltage which will normally be 132 kV or 33 kV depending on the capacity of the station and the distance from the power station to the Grid station. The nearest Grid Sub-station is the Grid Sub-station at Amargarh for injecting the power generated by the power house of the petitioner. However, the Petitioner with the consent of the Respondents is injecting electricity generated at his power house at the interconnection point at Ajar, which is 33 kV Distribution network of the Respondents. There is a long distance between the 33 kV Sub-station Ajar and 132 kV/33kV Grid-station, Amargarh. Had the Petitioner taken the inter-connection point for injection of the generated power at the transmission network system of Respondents at Amargarh Grid Sub-station under the System and Operation Wing of the Respondents, the Petitioner was to pay to the Respondents only transmission loss to the extent of 5% in which case no section of the distribution system of the Respondents would have been used by the petitioner. That would have also been in accordance with the State Hydel Policy of 2003 and Annexure-3 of the Bulk Power Transmission Agreement between the Petitioner and the Respondents. In such an event, the Petitioner would have borne the energy loss from his power house to the interconnection point at Grid Sub-station Amargarh. In other words, the injection of energy at interconnection point at Amargarh would have been lesser compared to the power presently being injected at interconnection point at Ajar because of the power losses on the Petitioner's transmission lines. On the other hand, in deviation of the State

Hydel Policy, the Petitioner is injecting power at the distribution network of the Respondents which is under the EM&RE Wing of the Respondents.

The Distribution system has been defined under the J&K State Electricity Regulatory Commission (Open Access in Intra-State Transmission and Distribution) Regulations, 2006 as “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 consumer.” In J&K, a distribution line at HV includes 33 kV as well as 11 kV. Though the Petitioner is not distributing energy within the State, since he is using the Distribution network system of the Respondents at 33 kV level, which is in deviation of the State Hydel Policy and the Bulk Power Transmission agreement, he is liable to pay for the distribution losses. As per the notification 13 of 18<sup>th</sup> December, 2009 issued under Regulations 12, 13, 15 and 16 of the J&K State Electricity Regulatory Commission (Open Access in Intra-state Transmission and Distribution) Regulation, 2006 energy losses allocable and to be considered for Open Access Users is

Transmission Losses (EHV)	5%
Distribution s Losses (HV)	5%

Since the Petitioner is using the 33 kV Distribution network and the transmission network of the Respondents, the Petitioner is liable to pay on account of transmission and distribution losses. Without using 33 kV network of Respondents, the petitioner would not have been able to supply energy in the manner he has chosen. The Commission finds that the Respondents have correctly enforced levy of transmission and distribution losses at a total of 10% (distribution loss 5% and transmission loss 5%).

Regarding the third issue it was submitted by Shri. Z.A Shah, learned counsel for the petitioner that the petitioner is liable to bear the wheeling charges to the extent of carrying the electrical energy on the transmission

system alone and not liable to pay the charges for the distribution system because the petitioner is not distributing the energy within the state.

On the other hand, it was argued by the learned counsel for the respondents that petitioner is liable to bear the wheeling charges for using the distribution network. According to him the petitioner is using both the systems for carrying his energy from his generating station to his customer out side the State.

Considered the arguments of the Learned Counsel for the parties. It has already been held under issue No.:1 that the petitioner has been using both the systems i.e. transmission as well as distribution systems. In such a situation he has to pay charges on wheeling energy through the distribution system and transmission charges for using the transmission system of the respondents. However, the said charges are governed by J&K SERC (Open Access in Intra-State. Transmission and Distribution) Regulation 2006. This fact is also fortified by Clause 16.01 of the State Hydel Policy issued on 08.04.2003 which provides that “aspects of this policy that require regulatory approvals from the concerned Regulator would be subject to such approvals being given and would apply in the manner approved by the Regulator.” Wheeling charges are aspects which require regulatory approvals as per the statute. Therefore, the wheeling charges for wheeling of energy through the network system of the JKPDD are required to be regulated by the State Electricity Regulatory Commission in accordance with the provisions of the J&K State Electricity Regulatory Commission Act 2000/ J&K Electricity Act, 2010.

Had the petitioner been supplying energy for distribution within the State, he is required to pay neither the wheeling charges nor the transmission charges.

The net result is that the communication dated; 11.01.2010 which has given rise to the present Petition, is correctly based that both transmission and distribution losses at the rate of 5% each, totaling 10% losses in the energy is to be borne by the Petitioner, as the Petitioner is using not only the transmission but distribution lines/infrastructure of the Respondents and that the petitioner is also liable to pay the Respondents the wheeling charges for using distribution system and transmission charges for using transmission system.

However, the wheeling charges and the transmission charges shall be borne by the Petitioner in terms of the notifications issued by the Commission from time to time

The dispute is settled accordingly.

**Sd/-**  
**(G.M.Khan)**  
**Member**

**Sd/-**  
**(D.S.Pawar)**  
**Member**

**Sd/-**  
**(S.M.Desalphine)**  
**Chairperson**