



ORDER
OF THE
WEST BENGAL ELECTRICITY REGULATORY COMMISSION
IN CASE NO. OA-341/20-21

IN REGARD TO THE PETITION SUBMITTED BY PHILLIPS CARBON BLACK LIMITED UNDER SECTION 86(1)(A) READ WITH SECTION 86(1)(F) OF THE ELECTRICITY ACT, 2003 FOR ADJUDICATION OF DISPUTES BETWEEN PHILLIPS CARBON BLACK LIMITED AND WEST BENGAL STATE ELECTRICITY DISTRIBUTION COMPANY LIMITED AND WEST BENGAL STATE TRANSMISSION COMPANY LIMITED FOR DIRECTIONS PURSUANT TO UNBUNDLING OF ERSTWHILE DURGAPUR PROJECTS LIMITED.

PRESENT:

DR MALLELA VENKATESWARA RAO, CHAIRPERSON
SRI PULAK KUMAR TEWARI, MEMBER

DATE: 12.06.2024



In regard to the petition under Section 86(1)(a) read with Section 86(1)(f) of the Electricity Act, 2003 for adjudication of disputes between Phillips Carbon Black Limited and West Bengal State Electricity Distribution Company Limited and West Bengal State Transmission Company Limited for directions pursuant to unbundling of erstwhile Durgapur Projects Limited.



FACTS IN BRIEF

- 1.0 IM/s Phillips Carbon Black Limited (PCBL) has submitted a petition on 20.07.2020 under section 86(1)(f) read with section 86(1)(a) of the Electricity Act, 2003 for adjudication of disputes between the petitioner and West Bengal State Electricity Distribution Company Limited (WBSEDCL) and West Bengal State Electricity Transmission Company Limited (WBSETCL) regarding determination/adoption of charges payable by the Petitioner to WBSEDCL, if any, for conveyance of surplus power from Petitioner's co-generation plant through open access pursuant to the restructuring of erstwhile Durgapur Projects Limited (DPL). The Commission admitted the Petition and registered it in Case No. OA – 341/20-21.
- 2.0 PCBL, in its petition inter-alia submitted that, it has a co-generating plant at its premises in Durgapur, District Burdwan, West Bengal and is selling 24 MW power to CESC through RPG Trading Company Limited (RPTCL) via Open Access. PCBL also submitted that, its co-generation plant is connected through **132 kV PCBL Line** to the AB zone sub-station of DPL. PCBL's power used to be wheeled through DPL's network, then through WBSETCL network and finally received at CESC system. PCBL had entered into open access agreement with DPL dated 17.10.2008 for six (06) years and the wheeling agreement dated 31.07.2014 (**Wheeling Agreement 2014**) for 15 years. Accordingly, PCBL was paying wheeling charge of 22.56 paisa/kwh to DPL and transmission charge to WBSETCL. Subsequent to restructuring of DPL, in terms of the Notification No. 328/PO/O/C-IV/IE-60/13 ("**Restructuring Notification**") dated 26.12.2018, with effect from 01.01.2019 entire distribution business and activities of erstwhile DPL were transferred to WBSEDCL and the entire transmission business and activities of erstwhile DPL were transferred to WBSETCL. Accordingly, PCBL was directed to enter into a fresh wheeling agreement with WBSEDCL to continue its open access. In the **proposed** agreement, the 132 kV PCBL line has been considered as service line and PCBL is required to pay wheeling charge to WBSEDCL at a rate of 105.05 paisa/kwh, as determined by the Commission. PCBL submitted that, the 132-kV line is not a "**service line**" but a "**dedicated transmission line**" in terms of the definition of the Electricity Act 2003. Further, after restructuring of DPL, the AB Zone sub-station falls under WBSETCL and PCBL is no longer using any distribution system of WBSEDCL and hence not liable to pay any wheeling charge to WBSEDCL. But to continue with their open access, they



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were constrained to execute the Wheeling Agreement with WBSEDCL in 2019 (**Wheeling Agreement 2019**) and the tripartite connection agreement with WBSETCL and WBSEDCL. In terms of clause 10(1) of the Wheeling Agreement 2019, PCBL may approach WBERC for determination of wheeling charge.

Accordingly, PCBL has submitted this petition with the following **prayers**:

- a) Declare that, the 1.4 km PCBL line from petitioner's co-generation unit to AB Zone substation, is owned, operated and maintained by the petitioner.
 - b) Declare that no wheeling charges are payable by the petitioner pursuant to restructuring of erstwhile DPL for supplying of power by the petitioner to CESC limited by use of assets of respondent no 2 (WBSETCL) as well as its own asset.
 - c) Declare that the 2019 Wheeling Agreement and 2019 Tripartite Connection Agreement dated 31.12.2019 entered into by the petitioner on insistence of Respondent No 1 (WBSEDCL) and Respondent No. 2 (WBSETCL) are null and void in so far as they relate to payment of wheeling charges by the petitioner and **consequential charges made payable in the said agreement.**
 - d) Alternatively direct that the petitioner is only liable to make payment to the charges to Respondent No 1 (WBSEDCL) not exceeding the wheeling charges which was earlier being paid by it to erstwhile DPL prior to restructuring, i.e at the rate of 22.65 paisa/kwh.
- 3.0 The Commission vide letter No. WBERC/ OA-341/20-21/134-135 dated 18.01.2021 directed WBSEDCL (Respondent No.1) and WBSETCL (Respondent No.2) to submit paragraph wise reply to the petition within 15 days. WBSEDCL prayed for time extension, which was granted. On submission of reply by WBSEDCL dated 02.03.2021, the petitioner sought time for submission of rejoinder. Petitioner submitted its rejoinder on 06.09.2021. The matter was heard on 07.09.2021. As the rejoinder was submitted by petitioner just day before the date of hearing and was not received by the respondents, WBSEDCL (Respondent No.1) requested opportunity to go through the rejoinder and make their comments thereon. Accordingly, the Commission on 07.09.2021 directed to



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serve the copy of rejoinder to Respondent No 1 and 2 and intimate the Commission. On the next hearing held on 17.01.2022 after hearing the arguments of Ld. Advocate Shri M.G.Ramachandran on behalf of PCBL and Ld. Advocate Shri Vishrov Mukherjee on behalf of WBSEDCL, the Commission provided opportunity to the PCBL and WBSEDCL to sit together to come to an amicable resolution of the disputed issue. The Commission further directed that, if they are unable to come to an amicable settlement, they shall submit their further arguments **in affidavit and may submit reply/ rejoinder to other's argument**. Subsequently, PCBL and WBSEDCL submitted their arguments on 03.02.2022 and 23.02.2022 respectively. WBSEDCL on 15.03.2022 submitted its reply to the arguments made by PCBL dated 23.02.2022. On the next hearing on 06.05.2022, only representative of PCBL was present. No representative of WBSEDCL or WBSETCL appeared in the hearing. The Commission directed to maintain the status quo in respect of the payment of wheeling charge as was being paid by PCBL to the erstwhile DPL as per the rate prevalent as on 31.12.2018 (i.e. prior to restructuring of DPL). Subsequently, a hearing was held on 07.02.2023, where representative from PCBL (petitioner), WBSEDCL (Respondent No.1), WBSETCL (Respondent No.2) and DPL (Respondent No.3) attended. During deliberation representative of WBSEDCL sought one more hearing before finalization of the issue, as their advocate was not able to appear. The Commission admitted the prayer and directed to continue with the status-quo. The final hearing on the issue was held on 16.08.2023. In the final hearing representatives from PCBL (petitioner), WBSEDCL (Respondent No.1), WBSETCL (Respondent No.2), DPL (Respondent No.3), WBSLDC (Respondent No.4) and RPG Power Trading Company (Respondent No.5) were present. During the hearing counsels for PCBL and WBSEDCL presented their arguments before the Commission. It is also informed by both the Counsels that necessary submissions in writing had already been made by them before the Commission.

OBSERVATIONS OF THE COMMISSION

- 4.0 Going through the submissions of the petitioner and the respondent no. 1, the Commission noted that, the following issues are the epicentre on which the result of the dispute hinges:



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- (A) Whether the 132 kV line from PCBL Co-generation plant to AB zone sub-station of erstwhile DPL is a “dedicated transmission line” or a “service line”;
- (B) Whether PCBL (petitioner) has to pay any wheeling charge to WBSEDCL (Respondent No.1) after restructuring of erstwhile DPL; and
- (C) If, wheeling charge is payable, what is the rate of applicable wheeling charge.

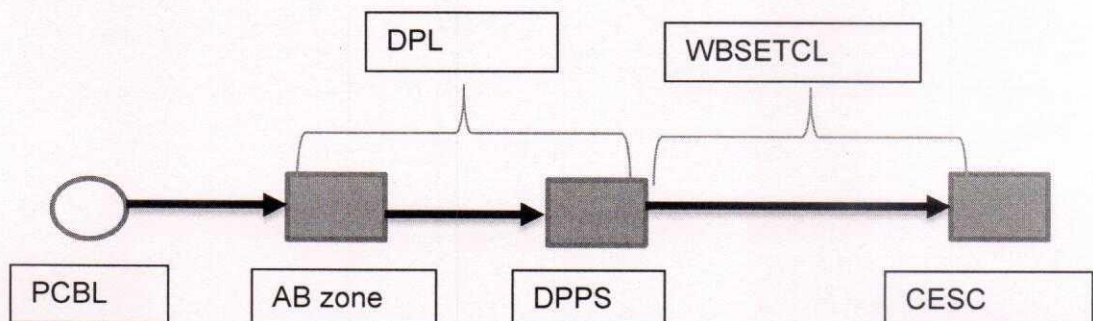
5.0 The issues are analysed in the subsequent paragraphs:

A. Whether the 132 kV line from PCBL Co-generation plant to AB zone sub-station of erstwhile DPL is a “dedicated transmission line” or a “service line”

SUBMISSION OF PCBL:

6.0 PCBL submitted that, it has constructed the 132 kV transmission line (**PCBL Line**) from its premises to the AB zone substation of DPL to evacuate the power from its co-generation plant. It is submitted that, the cost of the said transmission line was borne by PCBL. PCBL submitted copy of purchase order in support of their submission. It is further submitted that, the line is maintained and operated by PCBL and also reflected in the Asset Register of PCBL.

7.0 It submitted that during open access, electricity got transmitted (i) from PCBL system to DPL system through 1.4 km 132 kV PCBL – AB Zone line, then (ii) from DPL's AB-zone sub-station to DPL's DPPS sub-station through 1.9 km 132 kV line of DPL, (iii) DPL's DPPS sub-station to WBSETCL transmission system and (iv) finally transmitted to CESC Ltd through the transmission network of WBSETCL.





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- 8.0 It submitted that, in addition to supplying power, PCBL also wanted to draw some power from DPL. So, in the open access agreement dated 17.10.2008, under clause 2, a provision was made for supply of 2 MVA power at 132 kV by DPL for industrial purpose to PCBL at consumer mode. Accordingly, the 132 kV line constructed for evacuation of power from co-generation plant was also utilized for supply of 2 MVA power at consumer mode. Relevant extracts from the agreement are as below:

“Clause 2

..... the quantum of power to be delivered to PCBL does not require 132000 volts system but since 132000 volts line is to be used for open access of the power from PCBL to CESC it will be utilized for supply of power to Consumer on consumer mode.

.....

Clause 5:

The point of supply shall be at 132 kV Gantry of DPL since the same meter will be utilized for open access purpose and for consumer mode. T&D loss of the line shall be borne by PCBL as there is no scope to provide main meter at PCBL premises.

.....”

- 9.0 PCBL submitted that, the initial open access agreement dated 17.10.2008 was valid for a period of six (06) years. Subsequently, PCBL and DPL entered into an agreement dated 31.07.2014 (“**2014 Agreement**”) for sale of 24 MW power from PCBL to CESC through RPTCL under Open Access using 132 kV PCBL- AB zone line, 132 kV DPL network and WBSETCL’s network for a period of 15 years. **Said Agreement** also has similar clauses as in clause 2 and 5 of 2008 Agreement. It is submitted that to get supply of 5 MVA power from DPL, when plant is not in operation, PCBL entered into a “**Supply Agreement**” with erstwhile DPL in consumer mode. In the Supply Agreement reference to the term “service line” came into existence for first time, where it is mentioned that



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though the cost for service line is paid by consumer (here PCBL) but remain the property of and be maintained by DPL. In this connection PCBL submitted that, said line was never formally taken over by DPL and the operation, maintenance and ownership of the said line remained with PCBL only. PCBL argued that, though the term "Service line" was introduced in the Supply Agreement, it does not fall within the definition of "Service Line" mentioned in section 2(1)(61) of the Electricity Act 2003 read with section 2(1)(18) of the Electricity Act 2003, as the line is not connecting PCBL unit with any distribution main.

- 10.0 PCBL further submitted that, on 31.12.2019, PCBL was constrained to execute the 2019 Wheeling Agreement with WBSEDCL (**Wheeling Agreement 2019**) and the tripartite connection agreement with WBSETCL and WBSEDCL as it had failed to reason with the said utilities on the basis of records, practices, historical facts, etc., a fact which is evident by (i) the threat of denial of open access, (ii) refusal to respond to the detailed representation dated 21.10.2019 sent to both the utilities, (iii) denial to even consider the revision proposed by the petitioner and (iv) insistence to sign the 2019 Wheeling Agreement and Tripartite Connection Agreement in a pre-set format.

SUBMISSION OF WBSEDCL:

- 11.0 WBSEDCL (Respondent No.1) in its arguments relied upon the Wheeling Agreement 2019 between PCBL and WBSEDCL and Supply Agreement 2014 between PCBL and DPL. WBSEDCL submitted that, on 31.12.2019 PCBL entered into the said Wheeling Agreement 2019 with WBSEDCL in its free will and in the agreement PCBL agreed to consider the 132 kV PCBL to AB Zone line as service line. WBSEDCL further submitted that, in terms of Supply Agreement 2014 PCBL agreed to purchase power from erstwhile DPL in consumer mode. Thus, the line supplying to consumer from a distribution licensee (erstwhile DPL) is a "service line" though its cost is borne by the consumer. WBSEDCL has referred to regulation 13 of the West Bengal Electricity regulatory Commission (Recovery of expenditure) Regulations 2013, as below:

"13. Ownership of the assets:

Irrespective of bearing of the costs of the extended portion of the distribution mains, electrical lines, electrical plants, etc. incurred for the purpose of giving new connections to new consumers either in full or in part, the assets so



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created shall be under the ownership of the distribution licensee, who shall bear all expenditures for their maintenance and replacement.”

- 12.0 WBSEDCL further submitted that, in terms of **Wheeling Agreement 2014**, PCBL was paying wheeling charge to DPL for usage of its distribution network. So, it is an admitted fact that, the 132 kV PCBL to AB zone line is part of DPL's distribution system. Now in terms of "**Restructuring Notification**" dated 26.12.2018, with effect from 01.01.2019 entire distribution business and activities of erstwhile DPL were transferred to WBSEDCL, hence PCBL has to pay wheeling charges to WBSEDCL. WBSEDCL also mentioned that, the meter was installed at DPL end (AB-zone sub-station) as there was no scope to provide main meter at PCBL premises.
- 13.0 Contradicting the claim of PCBL, WBSEDCL submitted that, in terms of the **Wheeling Agreement 2014** dated 31.07.2014, PCBL and DPL agreed for wheeling of 24 MW power from the co-generation plant of PCBL to CESC by using the service line between PCBL premises to AB Zone sub-station and other associated assets of DPL. WBSEDCL submitted that, clause (3) of the said wheeling agreement 2014, where it is mentioned that, 132 kV line will be maintained by Open Access Customer, on which PCBL is relying upon, possibly written erroneously, as the same is inconsistent with the **Supply Agreement** between PCBL and DPL dated 31.07.2014. The submissions made by the rest of the respondents are more or less in the same line with WBSEDCL and as such redundant to elaborate.

OBSERVATION OF THE COMMISSION:

- 14.0 From the submissions made by PCBL and WBSEDCL there is an apparent contradiction while interpreting the provisions of **Wheeling Agreement dated 31.07.2014 and Supply Agreement dated 31.07.2014 entered between PCBL and DPL by the petitioner and respondent no. 1**. Thus, the Commission decides to analyze the agreements, communications between PCBL and erstwhile DPL and the provisions of Electricity Act 2003 and regulations made under the Act.
- 15.0 In terms of sub-section (16) of section (2) of the Electricity Act 2003, electric supply line for the purpose of connecting electric plants of a generating station is a dedicated



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transmission line. In terms of section (10) of the Act, a generating station may construct, maintain and operate dedicated transmission line. Whereas a service line is any electric supply line through which electricity is supplied to a single or group of consumers from a distribution main. Relevant sections are reproduced below:

"2(16) 'dedicated transmission lines' means any electric supply-line for point to point transmission which are required for the purpose of connecting electric lines or electric plants of a captive generating plant referred to in section 9 or generating station referred to in section 10 to any transmission lines or sub-stations or generating stations, or the load centre, as the case may be;"

"2 (61) 'service-line' means any electric supply-line through which electricity is, or is intended to be, supplied –

- a) to a single consumer either from a distributing main or immediately from the Distribution Licensee's premises; or*
- b) from a distributing main to a group of consumers on the same premises or on contiguous premises supplied from the same point of the distributing main;"*

16.0 From the letter dated 06.11.2007 of DPL vide No. DPL/ED/TD/16P/5-1/176, it is observed that, the 132 kV line from PCBL premises to DPL AB Zone sub-station is primarily for connectivity of the generating station of PCBL to DPL's system. In paragraph 1 it is mentioned that one circuit will be utilized for connectivity of PCBL while other circuit will be utilized by DPL's prospective consumer. In paragraph 6 of the said letter, it is inter-alia mentioned that, if the 2nd circuit of the line between PCBL and AB-zone sub-station is used for supply to any prospective consumer, proportionate cost may be refunded to PCBL. It is noted that, no second circuit has been constructed yet. PCBL submitted that, entire cost has been paid by them and WBSEDCL has not contradicted the claim. PCBL also submitted that no reimbursement has been made by erstwhile DPL.

17.0 From the Wheeling Agreement 2014 as well as the Supply Agreement 2014 it is revealed that, the 132 kV line from PCBL to AB zone sub-station is constructed for connectivity of



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PCBL plant and the same line will be used for supply in consumer mode. Relevant extracts from the preambles are as below:

2nd paragraph of Wheeling Agreement dt 31.07.2014:

"WHEREAS Consumer has constructed Co-generation plant at their premises and desires to sell upto 24 MW power to M/s CESC Limited through RPG Power Trading Company (RPTCL) with effect from 01.08.2014 to 31.07.2029 for a period of 15 (Fifteen) years by open access utilizing DPL's and WEST BENGAL STATE ELECTRICITY TRANSMISSION COMPANY LIMITED 132 KV network. Connectivity at 132 kV PCBL will be at Gantry of Supplier's / Licensee's DURGAPUR PROJECTS AB zone grid sub-station. The supplier / Licensee will also provide 5 MVA power for use in PCBL premises through the same 132 kV transmission line as consumer mode through a separate power supply agreement containing relevant terms and conditions."

2nd paragraph of Supply Agreement dt 31.07.2014

"WHEREAS Consumer has constructed Co-generation plant at their premises and desires to sell upto 24 MW power to M/s CESC Limited through RPG Power Trading Company (RPTCL) with effect from 01.08.2014 to 31.07.2029 for a period of 15 years by open access utilizing DPL's and WEST BENGAL STATE ELECTRICITY TRANSMISSION COMPANY LIMITED 132 KV network. Connectivity at 132 kV PCBL will be at Gantry of Supplier's / Licensee's DURGAPUR PROJECTS AB zone grid sub-station. The supplier / Licensee will also provide 5 MVA power for use in PCBL premises through the same 132 kV transmission line as consumer mode through a separate power supply agreement containing relevant terms and conditions."

18.0 From clause (2) of the Supply agreement 2014 it is further clear that, the 132 kV line is not required for supplying 5 MVA power in consumer mode, but the same is utilised as the line is already in use for open access. Relevant extract is given below:

" The quantum of power to be delivered to Consumer does not require 132000 volts system but since the 132000 volts line is to be used for



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open access of the power from PCBL to CESC Limited through RPG Power Trading Company (RPTCL), it will be utilized for supply of power to Consumer on consumer mode.....”

Similar provision is mentioned in the Wheeling Agreement 2014 under clause (1).

- 19.0 From the submission of PCBL, it is observed that PCBL had a bulk supply agreement with DPL since 19.09.1984 wherein it used to take supply from DPL as a consumer through a 11 kV service line. From the above-mentioned references and subsequent Wheeling Agreement and Supply Agreement, it appears that, with construction of 132 kV PCBL to AB zone line, the 132 kV line is now utilised for supply under consumer mode.
- 20.0 While considering the claim of asset as service line by WBSEDCL, the Commission observes that, in terms of West Bengal Electricity Regulatory Commission (Recovery of Expenditure) Regulations 2013, if any service line is constructed for the purpose of supply of consumer, such assets needs to be maintained by the licensee, which is not in this case as observed from the submissions and documents made available before the Commission. Moreover, from close reading of clauses 5(1)(i) and 5(1)(ii) it appears that, they are standard clauses and applicable to consumers if any assets are created for supply to the consumer. In the present case the 132 kV line was already in existence prior to the date of execution of the supply agreement, so there is no question of asset creation for supply or **requirement of way leave**. Relevant extracts are given below:

“ (i) *The DPL shall liable to realize payment from the Consumer(s), towards the cost of High Voltage line, equipments, etc. (hereinafter collectively referred to as Service Line) and Apparatus necessary to lay down or place for the purpose of giving supply at the point mentioned hereof and the Consumer(s) shall pay to the DPL such cost when called upon to do so in terms of West Bengal Electricity Regulatory Commission (Recovery of Expenditure for Providing New Connections) Regulation, 2005 and ii's amendment time to time.*

(ii) Whenever necessary the DPL may require the Consumer(s) to arrange for requisite way leaves at his/its/their own cost and pay the DPL the cost of



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diversion of the service line, if the owner(s) of the land through which the existing service line passes ask the DPL to withdraw the service line at any point of time.”

- 21.0 In view of the above, the Commission finds the 1.4 km 132 kV line from PCBL to DPL's AB zone substation was primarily constructed for the purpose of evacuation of its co-generating plant and the line is owned, operated and maintained by the petitioner is a "deemed transmission line" in terms of sub-section (16) of section (2) of the Electricity Act 2003. Though the same line is utilised for supply in consumer, when PCBL plant is not in operation, but this cannot alter the very essence of construction of the line. The Commission also noted that, about 97% to 98% of time the line is used for export from PCBL i.e. evacuating power from PCBL plant and only about 2% to 3% time it is used to get supply by PCBL as consumer. Thus, it is amply clear that, the line is meant for evacuation of the cogenerating plant and is a dedicated transmission line as per the definition referred in the Act. The mere mention of 132kV line as 'service line' in the supply line agreement 2014 between PCBL and DPL is believed to be a misnomer. Said line cannot be termed as 'service line' instead of 'dedicated transmission line' in strict interpretation of relevant provisions of law as defined above.

It is further held that the terminologies and words used in the agreement must bear same meaning to the parties of the covenant. According to the petitioner in the pleading that the agreement they entered into with WBSEDCL called wheeling agreement 2019 is alleged to have been done under duress and by practising undue influence. Said agreement according to the view of the commission is not legally enforceable because the agreement is found to be one sided and does have sanction of applicable laws. 'Dedicated transmission line' and 'service line' are defined in section 2 sub-section (16) and Section 2 sub-section (61) respectively of the Electricity Act 2003. With the touch stone of the said provisions, the line through which the power of PCBL is transmitted to DPL system cannot be said to be service line. A restraint can only be justified if it is reasonable in the interest of the contracting parties. More so, an agreement cannot be said to be reasonable unless it is designed to protect the legitimate interest of respective parties entered into such agreement. Reasonableness is a basic test of a valid agreement. It is reiterated that the disputed line is constructed and maintained by PCBL and it is shown in property register of the said utility. The agreement between PCBL and



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WBSEDCL cannot be banked upon claiming the same as admission on the part of PCBL since it is trite that an admission contrary to law is not admissible.

B) Whether PCBL (petitioner) has to pay any wheeling charge to WBSEDCL (Respondent No.1) after restructuring of erstwhile DPL

SUBMISSION OF PCBL:

- 22.0 PCBL submitted that, in terms of clause (2) of Schedule 4 of the WBERC (Terms and Conditions of Tariff) Regulations, 2011, distribution wheeling charge of the distribution licensee shall provide for recovery of the gross aggregate revenue requirement relating to core business of distribution licensee reduced by the non-tariff income, etc. It is submitted that, the gross aggregate revenue requirement includes components such as O&M expenses, return on equity, income-tax, financing cost, depreciation, etc. In terms of clause 8.2 of Schedule 4 of the said regulation specifies that, distribution wheeling charge is for “use” of distribution system or associated facilities of distribution licensee.
- 23.0 PCBL submitted that, as in the process of open access, the 132 kV transmission network from AB zone sub-station to WBSETCL system was used. Accordingly, PCBL was paying wheeling charge of 22.65 paisa/kwh to DPL. But the claim of WBSEDCL to pay wheeling charge of 105.05 paisa/kwh, which covers the distribution assets of WBSEDCL are not applicable for PCBL as they are not using any facility / network of WBSEDCL.
- 24.0 PCBL further submitted that, in terms of the Notification No. 328/PO/O/C-IV/IE-60/13 (“**Restructuring Notification**”) dated 26.12.2018 issued by the Department of Power and Non-Conventional Energy Sources, Government of West Bengal, with effect from 01.01.2019 entire distribution business and activities of erstwhile DPL were transferred to WBSEDCL and the entire transmission business and activities of erstwhile DPL were transferred to WBSETCL. Thus, the 132 kV AB zone sub-station became part of WBSETCL’s transmission network and PCBL is only liable to pay Transmission charges and no wheeling charges are payable to WBSEDCL.
- 25.0 **PCBL also submitted that, the Restructuring notification directs to maintain the similar status as of immediately before the date of transfer. Thus, if any charge at**



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all to be paid by PCBL shall not be more than 22.65 paisa/kwh. Relevant portion is extracted below:

“On such transfer and except as other-wise provided, the respective Transferee shall be responsible for all functions, contracts, rights, deeds, schemes, bonds, agreements and other instruments of whatever nature relating to the respective Undertakings transferred to it to which DPL was a party, subsisting or having effect on the date of transfer, in the same manner as DPL was liable immediately before the date of transfer, and the same shall be in force and effective against or in favour of the respective Transferee and may be enforced effectively as if the respective Transferee had been a party thereto instead of DPL.”

SUBMISSION OF WBSEDCL:

- 26.0 WBSEDCL argued that, as PCBL was paying wheeling charges to erstwhile DPL, it is clear that, PCBL was using the distribution network of erstwhile DPL. Now after restructuring, since 01.01.2019 entire distribution business and activities of erstwhile DPL has been transferred to WBSEDCL. Accordingly, PCBL has to pay wheeling charges to WBSEDCL as per the rate determined by the Commission from time to time.
- 27.0 In its argument, WBSEDCL relied on the fact that, 132 kV PCBL to AB zone substation line is a service line and a part of distribution asset of erstwhile DPL, which is now transferred to WBSEDCL by way of restructuring of DPL. WBSEDCL reiterated, that PCBL shall pay applicable wheeling charge for using the said service line.

OBSERVATION OF THE COMMISSION:

- 28.0 Under sub-section (76) of section (2) of the Electricity Act 2003 the term wheeling is defined as, the operation whereby the distribution system and associated facilities of a transmission licensee or distribution licensee, as the case may be, are used by another person for the conveyance of electricity on payment of charges to be determined under section 62.



सत्यमेव जयते

In regard to the petition under Section 86(1)(a) read with Section 86(1)(f) of the Electricity Act, 2003 for adjudication of disputes between Phillips Carbon Black Limited and West Bengal State Electricity Distribution Company Limited and West Bengal State Transmission Company Limited for directions pursuant to unbundling of erstwhile Durgapur Projects Limited.



- 29.0 Accordingly, the Commission determines the distribution wheeling charge payable by any open access customer or any co-generating plant for usage of distribution network and associated facility of any distribution licensee.
- 30.0 During the foregoing analysis, it is clear that, the 132 kV transmission line emanating from PCBL switchyard to AB zone sub-station of erstwhile DPL is a dedicated transmission line in terms of section 2(16) of the Electricity Act 2003. The line has been constructed, maintained and operated by PCBL.
- 31.0 From the **Restructuring Notification** dated 26.12.2018 it is observed that, the 132 kV AB zone sub-station and other 132 kV transmission lines of erstwhile DPL has been transferred to WBSETCL since 01.01.2019. Thus, since 01.01.2019, PCBL co-generating plant becomes effectively connected with the transmission network of WBSETCL.
- 32.0 The argument put forward by WBSEDCL that prior to restructuring, PCBL was paying wheeling charge for distribution assets of DPL and thus, it shall pay wheeling charge to WBSEDCL is not proper. The Commission observes that, there is no voltage wise segregation of distribution assets and transmission assets under the Electricity Act 2003 or any regulations notified by the Commission. Thus, erstwhile DPL being a distribution licensee, its 132 kV network and sub-stations were considered as distribution assets for the purpose of computing distribution wheeling charge of DPL. Accordingly, PCBL paid wheeling charge to DPL for use of its 132 kV AB zone sub-station and other 132 kV networks used for wheeling of energy through DPL system. But after restructuring of DPL the 132 kV AB zone sub-station and the 132 kV transmission lines of erstwhile DPL has been transferred to WBSETCL. So, while computing transmission charge of WBSETCL payable by any open access customer, since 01.01.2019, the said 132 kV assets of erstwhile DPL are already included. The assets whose usage charge has been recovered through transmission charge cannot be again recovered under any wheeling charge. Otherwise it would lead to double charging for the use of same asset.
- 33.0 The Commission further noted that, even for a service line, a consumer availing open access is required to pay distribution wheeling charge, as the expenses regarding repair & maintenance of the service line is undertaken by the distribution licensee. Distribution licensee is supposed to recover those expenses from the open access consumer through



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wheeling charges. But this is not the case here, particularly the line in question is a dedicated transmission line and no expenses towards its repair & maintenance is done by WBSEDCL.

- 34.0 As PCBL (the petitioner) is not using any distribution asset of WBSEDCL and is already paying the usage charge of 132 kV AB zone sub-station and subsequent transmission network as "transmission charge" to WBSETCL, no distribution wheeling charge is payable by PCBL to WBSEDCL under the open access transaction from PCBL to CESC Ltd.

C) If, wheeling charge is payable, what is the rate of applicable wheeling charge.

- 35.0 As the answer of issue (B) is decided as negative, hence determination of wheeling charge does not arise.

ORDER

- 36.0 In view of above analysis, the Commission declares that, the 1.4 km PCBL line from petitioner's co-generation unit to AB Zone substation of erstwhile DPL, is a dedicated transmission line in terms of sub-section (16) of section (2) of the Electricity Act 2003. No wheeling charge is payable by the petitioner to WBSEDCL for transmitting electricity from its co-generating plant to CESC Limited under open access by using its 'dedicated transmission line' and 132 kV network and associated system presently owned by WBSETCL. However, the petitioner has to pay applicable transmission charge to WBSETCL for using its Transmission system and associated facilities, in terms of the prevalent open access regulations and any amendments thereof.
- 37.0 All interim orders stand vacated.
- 38.0 PCBL, WBSEDCL and WBSETCL are directed to modify their agreements accordingly.
- 39.0 The petitioner and all the respondents shall take note of the above order.
- 40.0 The petition is thus disposed of.



In regard to the petition under Section 86(1)(a) read with Section 86(1)(f) of the Electricity Act, 2003 for adjudication of disputes between Phillips Carbon Black Limited and West Bengal State Electricity Distribution Company Limited and West Bengal State Transmission Company Limited for directions pursuant to unbundling of erstwhile Durgapur Projects Limited.



- 41.0 A copy of the order shall be posted in the website of the Commission.
- 42.0 PCBL, WBSEDCL, WBSETCL, WBSLDC and RPG Power Trading Company shall download the copy of the order from the website of the Commission and act on it. Certified copy of the order, if applied for, be given to the parties on compliance of formalities laid down in the West Bengal Electricity regulatory Commission (Conduct of Business) Regulations, 2013, as amended and on submission of necessary fees.

Sd/-
(PULAK KUMAR TEWARI)
MEMBER

Sd/-
(MALLELA VENKATESWARA RAO)
CHAIRPERSON

Dated: 12.06.2024

Sd/-
SECRETARY