

WEST BENGAL ELECTRICITY REGULATORY COMMISSION

WEST BENGAL

Petition No. OA-341/20-21

Date of hearing: 17th January, 2022

Time of hearing: 14.30 hours

Quorum:

Shri Sutirtha Bhattacharya, Chairperson

Shri Durgadas Goswami, Member

Shri Pulak Kumar Tewari, Member

In the matter of

Application 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 [PCBL (Petitioner)] and West Bengal State Electricity Distribution Company Limited [WBSEDCL (Respondent no. 1)] and West Bengal State Electricity Transmission Company Limited [WBSETCL (Respondent no. 2)] in regard to determination/adoption of charges payable by the Petitioner to the Respondent no. 1, 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).

And

In the matter of

**Phillips Carbon Black Limited
3rd Floor, Duncan House
31 Netaji Subhas Road
Kolkata 700 071.**

..... Petitioner

And

**West Bengal State Electricity Distribution Company Limited
Vidyut Bhavan
Block DJ, Sector – II
Salt Lake City
Kolkata 700 091.**

..... Respondent

And

West Bengal State Electricity Transmission Company Limited
Vidyut Bhavan
Block DJ, Sector – II
Salt Lake City
Kolkata 700 091

..... Respondent

Representatives attended:

Phillips Carbon Black Limited [Petitioner]

1. Sri M. G. Ramachandran, Sr. Advocate,
2. Smt. Divya Chaturvedi, Advocate.

West Bengal State Electricity Distribution Company Limited (WBSEDCL)

[Respondent]

1. Sri Vishrov Mukherjee, Partner, J Sagar Associates,
2. Sri Rajeev Nandan Sinha, Addl. CE.

West Bengal State Electricity Transmission Company Limited (WBSETCL)

[Respondent]

1. Sri Sukanta Biswas, CE, CPD,
2. Sri Chinmoy Kumar Halder, CE (SLDC).

CASE IN BRIEF

- 1.1 Phillips Carbon Black Limited (PCBL) has submitted a petition praying before the Commission for determination/adoption of charges payable by the petitioner to respondent no. 1 for conveyance of surplus power from petitioner's co-generation plant through open access pursuant to the restructuring of erstwhile Durgapur Projects Limited. The contention of PCBL is that the petitioner is not liable to make any payment of wheeling charges to the respondent no. 1. However, even if the petitioner is liable to pay any charge to respondent no. 1, the same cannot be in excess of what was earlier being paid by the petitioner to erstwhile DPL, before restructuring and transfer of erstwhile DPL's business and assets to the respondent no. 1, i.e., at the rate of 22.65 paise per kWh, since there was no change in the assets being used by the petitioner for supply of power through open access to its consumer.

1.2 A wheeling agreement called "2019 Wheeling Agreement" has been entered into by and between the petitioner and the respondent no. 1 on 31.12.2019 and a "Tripartite Connection Agreement" by and between the petitioner and the respondents no. 1 & 2 as well. In terms of clause 10(1) of the 2019 Wheeling Agreement, PCBL is required to approach the Commission for determination of wheeling charges, if any.

2.1 Upon receipt of the application an e-hearing was held on 7th September, 2021 when representatives from all the parties were present. Further hearing was held on 17th January 2022 on compliance of certain directions of the commission.

SUBMISSIONS DURING HEARING

3.0 Ld. Advocate Sri M. G. Ramachandran submitted on behalf of PCBL that –

- a) The imposition of such high wheeling charges will be in contravention of the promotion of cogeneration of electricity, PCBL's right to adequate returns on its investment and violation of Section 42(3) of the Electricity Act.
- b) In view of the aforesaid, PCBL in its petition has alternatively prayed for limiting the levy of wheeling charges to Rs. 22.65 paise/kWh. In this context, the contention raised by WBSEDCL in its Sur-Rejoinder that PCBL is raising mutually destructive pleas is completely misplaced as PCBL is merely seeking an alternate prayer as per law.

4.0 Ld. Advocate Sri Vishrov Mukherjee submitted on behalf of WBSEDCL that –

- a) As per clause 10 (1) of the 2019 Wheeling Agreement provides that PCBL would pay WBSEDCL wheeling charges as fixed/approved by this Hon'ble Commission. In the interim, PCBL would pay Wheeling Charges as on 31.12.2018 as being paid to DPL.
- b) In this regard, this Commission has issued Tariff Order for 2018-19 and 2019-20 on 25.08.2021 in case no: TP-84/19-20, inter-alia, detailing the Wheeling Charges determined in Chapter 9 (Order on Wheeling Charge for 2018-19 and 2019-20) of the said order considering distribution assets of DPL. In terms of the said Order, the Wheeling Charges for the period from

01.01.2019 to 31.03.2019 comes to @ 97.77 paisa/kWh and @ 105.09 paisa/kWh for 2019-20. PCBL, cannot be allowed to avoid its obligations and responsibilities of remitting the Wheeling Charges as provided under the express terms of the 2019 Wheeling Agreement executed by and between PCBL and WBSEDCL

OBSERVATIONS OF THE COMMISSION

- 5.1 It appears that the existing arrangement is sought by WBSEDCL to be amended to the effect that there should be a specific wheeling charge to be paid to WBSEDCL instead of frozen charge as prevalent under the Commission's order dated 31st December, 2018 issued pursuant to the direction of the Government of West Bengal vide dated 31st December, 2018.
- 5.2 Another point arose is that as per contention of the petitioner, the 132 kV line was a dedicated transmission line and not a service line. The service line was 11 kV line which was being used by erstwhile DPL for supply of power to PCBL. It is DPL who approached PCBL to use the second circuit of the 132 kV line for supply of power to PCBL for the convenience of DPL and not the PCBL.
- 5.3 The Ld. Advocate of both WBSEDCL and PCBL may sit together to come to an amicable resolution of the issue. The Commission desires to leave the matter to the thoughts of the Ld. Counsels for settlement of the issue when there is an alternative prayer of the petitioner.

ORDER

Upon hearing the parties present and based on the observations made by the Commission, the Commission directs the following:

- a) Both WBSEDCL and PCBL may sit together to come to an amicable resolution of the issue and come to the Commission with the proposal.
- b) If they do not come to an amicable resolution, both the parties shall submit their further arguments in the form of affidavit within 2 weeks with a copy to each other. However, if any party wants to submit reply/rejoinder to other's arguments, the

same shall be submitted to the Commission within another two weeks' time.

sd/-
(PULAK KUMAR TEWARI)
MEMBER

sd/-
(DURGADAS GOSWAMI)
MEMBER

sd/-
(SUTIRTHA BHATTACHARYA)
CHAIRPERSON

DATE: 12.02.2022

sd/-
SECRETARY