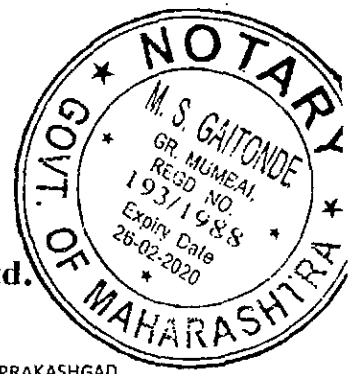




Maharashtra State Electricity Distribution Co. Ltd.
(A Govt. of Maharashtra Undertaking)
CIN : U40109MH20005SGC153645



PHONE No. 26474753 (P)/26474211 (O)
FAX No. 26472366
Email: cecomm@mahadiscom.in
Website: www.mahadiscom.in

PLOT No. G-9, PRAKASHGAD
Prof. ANANT KANEKAR MARG
BANDRA (East)
MUMBAI-400051

No. Comm/Petition / SWPGL/

Date:

No 09149

23 APR 2018

To,
The Secretary,
Maharashtra Electricity Regulatory Commission,
Mumbai

Sub: Filing of Petition for Review of Corrigendum order and main order in Case No. 77 of 2015.

Ref: 1. MERC order dated 09.02.2018 in case no. 77 of 2015.
2. MERC Corrigendum order dated 12.03.2018 in case no. 77 of 2015.

Dear Sir,

Please find enclosed herewith the MSEDCL's petition, seeking review of Corrigendum order and main order in Case No. 77 of 2015.

The requisite fee is submitted herewith in the form of demand draft no. 634942 dated 11.04.2018.

Thanking You,

Yours faithfully,

[Signature]
Chief Engineer (Commercial)

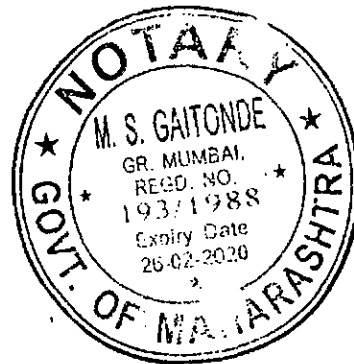
Copy S.w.r. to:-

- 1) The Director, (Commercial), MSEDCL, Mumbai.

Copy to:

- 1) M/s Sai Wardha Power Generation Ltd., 8-2-293/82/A/431/A, Road No.22, Jubilee Hills, Hyderabad-500033.
- 2) Maharashtra Energy Development Agency, II Floor, MHADA Complex, Tridal Nagar, Pune-411006.
- 3) Prayas (Energy Group), Amrita Clinic, Athawale Corner, Deccan Gymkhana Karve Road, Pune 411 004.
- 4) Mumbai Grahak Panchayat, Grahak Bhavan, Behind Cooper Hospital, Vile Parle (West), Mumbai 400 056.
- 5) The General Secretary, Thane Belapur Industries Association, Robale Village, Post Ghansoli, Navi Mumbai 400 701.
- 6) Vidarbha Industries Association, 1st Floor, Udyog Bhavan, Civil Line, Nagpur 440 001.

- 7) Chamber of Marathwada Industries & Agriculture, Bajaj Bhavan, P-2, MIDC Industrial Area, Railway Station Road, Aurangabad – 431005
- 8) Maharashtra Chamber of Commerce, Industries & Agriculture, Oricon House, 6th Floor, 12 K, Dubash Marg, Fort, Mumbai – 400001.
- 9) Tata Power Company Limited, Bombay House, 24, Homi Mody Street, Fort, Mumbai 400 001.
- 10) Reliance Infrastructure Limited H-Block, 1st floor, Dhirubhai Ambani Knowledge City (DAKC), Navi Mumbai - 400 710
- 11) M/s. Mahindra & Mahindra Limited, Igatpuri Plant, Mouje Talegaon Igatpuri, Talegaon.
- 12) M/s. Mahindra & Mahindra Limited, Automotive Division, PB No.89, MIDC Satpur, Nashik.
- 13) M/s. Mahindra & Mahindra Limited, Plot No. F1/F2, MIDC Hingana, Nagpur 440015.
- 14) M/s.Navyug Special Steel Pvt. Ltd. (Formerly M/s Mahindra Ugine Steel Company Ltd), Khopoli, Khalapur, Raigad, Khopoli 410216.
- 15) M/s. Mahindra Forgings Ltd, 557-860 Chakan Ambethan Road Talkhed, Dist. Pune Vill. Chakan 410501.
- 16) M/s. Mahindra Vehicle Manufacturers Limited, P No. A-1, Phase IV, Ckakan MIDC, Village Nighoje, Talkhed, Dist. Pune.
- 17) M/s. Mahindra Hinoday Industries Limited, (formerly DGP Hinoday Ind. Limited) GAT No.318, Urse Gaon, Tal-Maval, Pune.
- 18) M/s Mahindra CIE Automotive Ltd., Bhosari Ind. Estate, Bhosari, Pune – 411026.
- 19) M/s Pudumjee Paper Product Ltd., Thergaon, Pune – 411033.
- 20) M/s Viraj Profiles Ltd. Unit III, Plot No.G 23, Tarapur MIDC, Boisar, Dist. Thane.
- 21) M/s Viraj Profiles Ltd. Unit I, Plot No.G 75, MIDC Tarapur, Boisar, Dist. Thane.
- 22) M/s Viraj Profiles Ltd. Unit II, Plot No.G 2, MIDC Tarapur, Boisar, Dist. Thane.
- 23) M/s Viraj Profiles Ltd. Unit I, Survey No.140/1, Saravli, Boisar, Dist Thane.
- 24) M/s Viraj Profiles Ltd. Unit V, Survey No.114, At Mahagaon, Boisar (R), Dist. Thane
- 25) M/s Viraj Profiles Ltd. Unit II, Plot No.G-1/3, MIDC Tarapur, Boisar, Dist. Thane
- 26) M/s Bebitz Flanges Works (P) Ltd. Survey No.140/2, Saravali, Boisar, Dist. Thane
- 27) M/s. R L Steel Pvt Ltd, GAT.NO.81 Pangra Sivar Chite, Paithan Road, Paithan, Aurangabad 431 000.
- 28) M/s Sona Alloys Pvt Ltd. Plot No C-1, MIDC Gno 399/402, 407 to 417, 421 to 425, Lonad, MIDC Dist Satara, Maharashtra – 412801.
- 29) M/s India Steel Works Limited, C 53, MIDC Estate, Turbhe.
- 30) M/s Mahalaxmi TMT Pvt. Ltd., Plot No- C 2, oli Growth Centre, Deoli MIDC, Deoli, Dist - Wardha, Maharashtra – 442101.
- 31) M/s Sona Alloys Pvt Ltd. Plot No C-1, MIDC Gno 399/402, 407 to 417, 421 to 425, Lonad, MIDC Dist Satara, Maharashtra – 412801.
- 32) M/s India Steel Works Limited, C 53, MIDC Estate, Turbhe.
- 33) M/s Mahalaxmi TMT Pvt. Ltd., Plot No- C 2, oli Growth Centre, Deoli MIDC, Deoli, Dist - Wardha, Maharashtra – 442101.





महाराष्ट्र स्टेट बैंक
OR ORDER PAYEE

जाने पर प्राप्त राशि के निमित्त

00164--MUMBAI BANDRA EAST

~~MAHARASHTRA ELECTRICITY REGULATORY~~

की या उनके आदेश पर/OR ORDER

रुपये
RUPEES

COMMISSION*****

Ten Thousand only.

अदा करें FOR VALUE RECEIVED

*****10,000.00

एने बैंक ऑफ महाराष्ट्र FOR BANK OF MAHARASHTRA

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बैंक ऑफ महाराष्ट्र **BANK OF MAHARASHTRA**

~~OPERATIONAL SERVICE BRANCH~~

प्राधिकृत अधिकारी/AUTHORISED OFFICIAL/S

Please sign above

MJL-2015

⑆634942⑆ 000014000⑆

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DDMMYY/2018
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BEFORE THE HON'BLE MAHARASHTRA ELECTRICITY

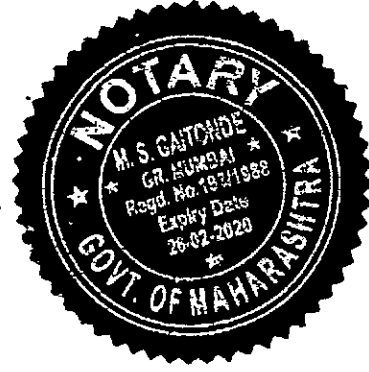
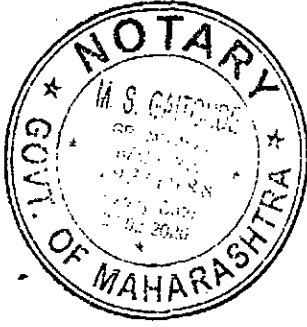
REGULATORY COMMISSION

AT MUMBAI

REVIEW CASE NO: _____ OF 2018

IN

CASE NO: 77 OF 2015



IN THE MATTER OF:

REVIEW PETITION UNDER REGULATION 85 OF MAHARASHTRA
ELECTRICITY REGULATORY COMMISSION (CONDUCT OF BUSINESS)
REGULATIONS, 2004 READ WITH SECTION 94 (1) (F) OF THE
ELECTRICITY ACT, 2003.

AND

IN THE MATTER OF:

REVIEW OF ORDER DATED 09.02.2018 AND CORRIGENDUM ORDER
DATED 12.03.2018 IN CASE NO. 77 OF 2015 PASSED BY THE
HON'BLE COMMISSION.

AND

IN THE MATTER OF:

PETITION OF SAI WARDHA POWER LTD. SEEKING DECLARATION OF
THE CAPTIVE GENERATION STATUS OF ITS GENERATING UNITS 3
AND 4 FOR FY 2014-15

AND

IN THE MATTER OF:

Maharashtra State Electricity Distribution Co. Ltd
Through its The Chief Engineer (Power Purchase)
5th Floor, Plot No G-9, Station Road,
Prakashgad, Bandra (East), Mumbai- 400051

....**Review Petitioner/Applicant**

Versus

1. Sai Wardha Power Generation Limited
8-2-293/82/A/431/A Road No.22
Jubilee Hills, Hyderabad-500033
Email: - sreekanth_a@ksk.co.in
2. Tata Power Company Limited
Bombay House, 24, Homi Mody Street,
Fort, Mumbai 400 001.
E-mail: bhaskar.sarkar@tatapower.com
3. Reliance Infrastructure Limited
W.E Highway Dindoshi, Goregaon (East)
Mumbai-400 097
E-mail: - kapil.sharma@relianceada.com
4. Maharashtra State Load Dispatch Centre, Kalwa,
Thane - Belapur Road, Airoli,
Navi Mumbai - 400 708
E-mail: cesldc@mahasldc.in

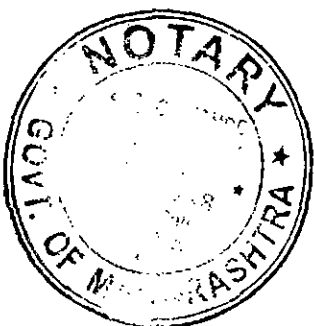
....**Respondents**

MOST RESPECTFULLY SHOWETH:

1. DESCRIPITON OF PARTIES:

PETITIONER:

- (i) Maharashtra State Electricity Distribution Company Limited (*hereinafter referred to as "MSEDCL" or "The Petitioner"*) is a Company constituted under the provisions of Government of Maharashtra General Resolution No. PLA – 1003 / C. R. 8588 dated 25th



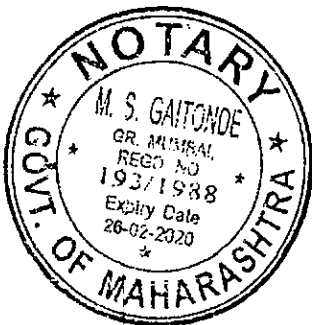
January 2005 and is duly registered with the Registrar of Companies, Mumbai on 31st May 2005.

RESPONDENTS:

(ii) Sai Wardha Power Limited (*hereinafter referred to as "SWPL" or "Respondent No. 1"*) has a Generating Plant at Warora, Dist. Chandrapur with a capacity of 540 MW consisting of four Units of 135 MW each, of which two Units (3 and 4) have been identified for captive generation for Captive Users. SWPL through its Petition No. 77 of 2015 sought declaration of the captive status of these two Units for FY 2014-15.

(iii) Respondent No. 2 & 3 are the Distribution Licensees in Mumbai. Respondent No. 2 is Tata Power Company Limited (*hereinafter referred to as "TPC" or "Respondent No. 2"*) and Respondent No. 3 is Reliance Infrastructure Limited (*hereinafter referred to as "RInfra" or "Respondent No. 3"*)

(iv) Maharashtra State Load Dispatch Centre (*hereinafter referred to as "MSLDC" or "Respondent No. 2"*) is the apex body for integrated operation of electricity grid in the State of Maharashtra and constituted under Section 31 of the Electricity Act, 2003.



2. PROVISIONS FOR REVIEW:

- Regulation 85 of the Maharashtra Electricity Regulatory Commission (Conduct of Business) Regulations, 2004:

85. Review of decisions, directions, and orders:

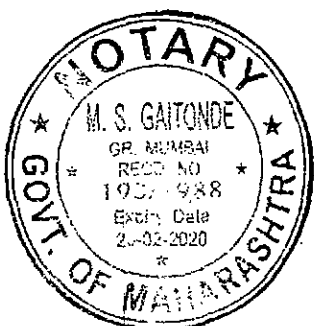
Annexed hereto as Annexure A.

- **Section 94 (1) (f) of Electricity Act, 2003:**

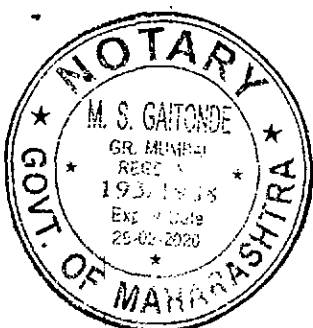
Annexed hereto as Annexure B.

3. ISSUES RAISED IN REVIEW (WITHOUT PREJUDICE TO ONE ANOTHER):

- (a) Erroneously considering/forming basis on the data provided by SLDC vide email dated 17.01.2018 which was never part of the proceeding and till date is not made available to the Petitioner. (Para 25)
- (b) Basing an order on probability when law mandates clear establishment of ownership vis a vis shareholding. (Para 18.8). Onus of proof on the CPP holder as per law. (Case No. 117 of 2012)
- (c) No SEM data for 15 minutes time block available as per admission of SWPL and MSLDC. (Para 21).



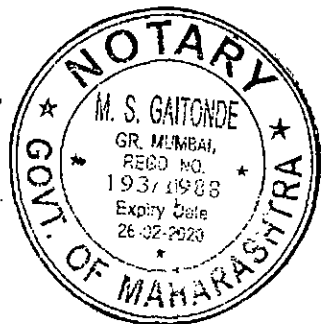
- (d) Error apparent as the Commission has taken computation of energy on monthly basis and not on 15 minute block basis.
- (e) Reduction of IPP units in proportionality incorrect as 15 minute settlement data may reveal an absolutely contrary case.
- (f) Admission of SWPL for injection of power from Unit 1 & 2 (Non CPP Units) in CPP unit 3 & 4. (Para 24) (Table 12, date 15.10.2014)
- (g) Even after accepting that SWPL has injected power from IPP units, the Commission has erroneously let it non-penalized without even holding as to how many units were injected from IPP units.
- (h) Error apparent as order against the established principles/mandate of CPP and the mandate put under the Act on the CPP for its fulfillment. Can't inject from IPP in CPP matrix without valid permission.
- (i) Error apparent as a Petition has to stand on its own legs and not on presumptions and assumptions. (Case No. 117 of 2012)
- (j) Error apparent as power injected from IPP units in CPP matrix against the mandate of law and without a valid open access permission.



- (k) Error apparent as MSLDC vide its own admission stated that it does not have GT wise data to ascertain GT wise generation. (Para 21).
- (l) Data and analysis based on glaring deficiencies cannot form the basis of ascertaining the CPP status. (Para 34) (Case No. 117 of 2012)
- (m) Corrigendum order clearly establishes that Sona Alloys has failed to meet the proportionate consumption criteria till 10.12.2014. Hence in view of Sona Alloys failing the whole CPP status fails. (Para 30).
- (n) When generation and consumption is considered on actual basis for CPP fulfillment then why shareholding considered on weighted average. (Case No. 117 of 2012)
- (o) Non-inclusion/Exclusion of Cosmo Films from CPP matrix against the mandate of Electricity Act, 2003 (Para 18.7)
- (p) Failing of one consumer vitiates/fails the entire CPP matrix, hence same cannot be ignored once a consumer is given equity.

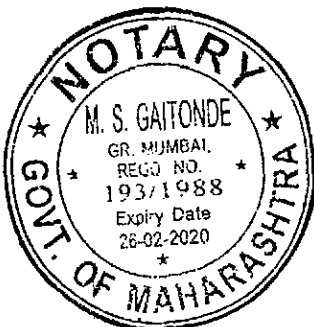
4. GROUNDS (WITHOUT PREJUDICE TO ONE ANOTHER):

- (i) That the Hon'ble Commission's order is vitiated by error apparent as the Hon'ble Commission has based its entire order on the data provided by

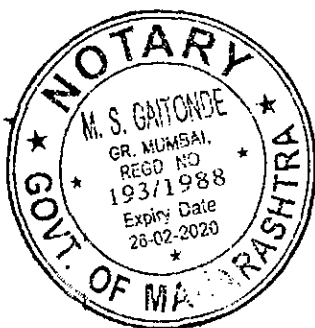


MSLDC vide its email dated 17.01.2018 without appreciating that such data was neither a part of the proceeding nor was ever shared with any of the parties.

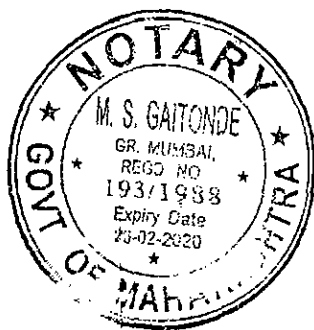
- (ii) That the Hon'ble Commission's order is vitiated by error apparent as the Hon'ble Commission has based its order on the data provided by MSLDC vide its email dated 17.01.2018 without appreciating that the whole basis of determination of CPP status is based on analysis of data and the Respondents had all the right to analyze the data and make appropriate submissions which were never allowed by the Hon'ble Commission.
- (iii) That the Hon'ble Commission's order is vitiated by error apparent as the Hon'ble Commission has failed to appreciate that under the law, a mandatory obligation is casted upon the SWPL to prove that he is a CPP which SWPL has failed to demonstrate in view of the anomalies and data gaps. However the Hon'ble Commission has erroneously not considered the said fact and still held that SWPL is a CPP.



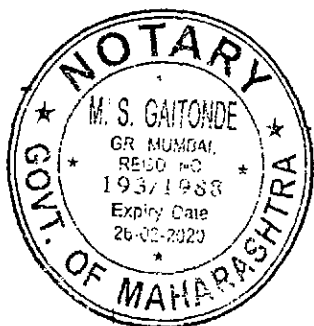
- (iv) That the Hon'ble Commission's order is vitiated by error apparent as the Hon'ble Commission even after appreciating that there are no 15 Minute SEM's available to establish the generation as well as commensurate consumption, has held that SWPL is a CPP. Having a 15 Minute SEM is a precondition to establish the generation and consumption. Moreover SEM is vital to establish real time generation and consumption which is missing.
- (v) That the Hon'ble Commission's order is vitiated by error apparent as the Hon'ble Commission even after appreciating that SWPL admittedly has injected power from IPP units has failed to hold that in view of no valid permission to inject power from IPP units into CPP units, the whole CPP matrix falls.
- (vi) That the Hon'ble Commission's order is vitiated by error apparent as the Hon'ble Commission even after appreciating that SWPL admittedly has injected power from IPP units has failed to quantify the quantum of such units injected from IPP units.



- (vii) That the Hon'ble Commission's order is vitiated by error apparent as the Hon'ble Commission even after appreciating that SWPL admittedly has injected power from IPP units has not considered the binding dictum of law that CPP units have to be identified well in advance meaning thereby that any willing deviation from the same has to be accordingly penalized.
- (viii) That the Hon'ble Commission's order is vitiated by error apparent as the Hon'ble Commission even after holding that the data provided by SWPL was glaringly deficient, still held that SWPL is a CPP that too after the establishment of fact that SWPL injected power from its IPP units without valid permission/intimation or knowledge to any of the parties.
- (ix) That the Hon'ble Commission's order is vitiated by error apparent as the Hon'ble Commission has failed to appreciate that non-availability of 15 minute SEM, no data available generating station wise and the fact of injection of IPP units into CPP matrix makes it impossible to ascertain the CPP matrix. All these facts have erroneously not been considered by the Hon'ble Commission.



- (x) That the Hon'ble Commission's order is vitiated by error apparent as the Hon'ble Commission has put the onus of defaults on all the parties without appreciating that the mandate of law puts the onus entirely on the CPP holder to prove that he is a CPP and not on any other party.
- (xi) That the Hon'ble Commission's order is vitiated by error apparent as the Hon'ble Commission has erroneously computed the energy (consumption & generation) on monthly basis and not on 15 minute time block settlement. When energy settlement happens on 15 minute time block basis then there can be no question of considering the same on monthly basis. Moreover injection of power from IPP units on 15 minute time block completely defeats the CPP matrix.
- (xii) That the Hon'ble Commission's order is vitiated by error apparent as the Hon'ble Commission has erroneously reduced the IPP units from the CPP matrix in uniform proportionality against each equity holder. Such an analogy is contrary to real time scenario, consumption via a vis generation as in real time it may happen that one entity can



consume more and other may consumer less or consumer not at all.

(xiii) That the Hon'ble Commission's order is vitiated by error apparent as the Hon'ble Commission has failed to appreciate that a Petition has to stand on its own legs that too a petition which is mandated by law to prove on its own. However the Hon'ble Commission has erroneously allowed the petition even after glaring deficiencies. By no means SWPL has established actual generation vis a vis actual consumption.

(xiv) That the Hon'ble Commission's order is vitiated by error apparent as the Hon'ble Commission has based its entire order on presumptions and assumptions which is contrary to the law governing CPP establishment.

(xv) That the Hon'ble Commission's order is vitiated by error apparent as the Hon'ble Commission has not appreciated that one of the equity holder namely Sona Alloys failed till 10.12.2014 as is evident from the corrigendum order. Hence failing of Sona Alloys brings down the equity of the entire CPP below 26% meaning thereby that the whole CPP fails for the entire period.

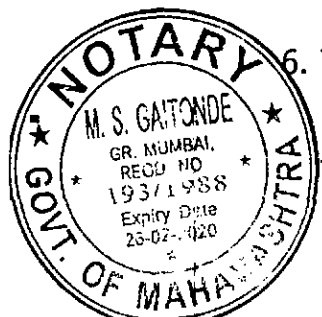


(xvi) That the Hon'ble Commission's order is vitiated by error apparent as the Hon'ble Commission ignored its earlier order and has erroneously considered the shareholding on weighted average basis for the entire year while the consumption and generation is considered on actual basis. The Hon'ble Commissions has erroneously neither considered the uniformity in approach that needs to be adopted in matter of CPP establishment nor has it provided any reasonable reasons for taking the weighted average of shareholding for the entire year.

(xvii) That the Hon'ble Commissions order is based entirely on assumptions/presumptions that cannot be allowed. Moreover the Hon'ble Commissions order leads to absurdity has it is against the mandate set by the Hon'ble Commission vide its earlier order.

5. Left with no other efficacious remedy, the Petitioner is constrained to approach this Hon'ble Commission vide the present Petition.

6. The Petitioner states that this Hon'ble Commission has the jurisdiction to adjudicate the present dispute.



7. The Petitioner states that there is no delay in filing the review petition and the same is filed well within limitation.

8. The Petitioner craves leave of this Hon'ble Commission to add/amend/substitute the present petition with the prior permission of this Hon'ble Commission.

PRAYER

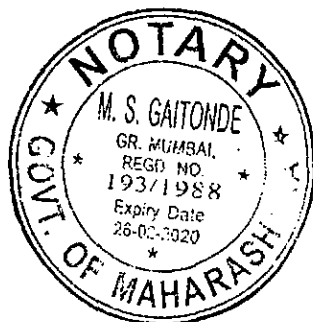
In view of the above, it is therefore most respectfully prayed that this Hon'ble Commission may graciously be pleased to:

- a) Review the order dated 09.02.2018 and corrigendum order dated 12.03.2018 in case no. 77 of 2015 by allowing the present review petition.
- b) Declare the quantum of units injected from IPP units.
- c) Hold and declare that SWPL has failed to prove that he is a CPP for the financial year- 2014-2015.
- d) Pass such further orders as this Hon'ble Commission deems fit and proper in the interest of justice and good conscience.

It is prayed accordingly.

Date: 23-4-2018

Place: Mumbai



MSEDCL

BEFORE THE HON'BLE MAHARASHTRA ELECTRICITY

REGULATORY COMMISSION

AT MUMBAI

REVIEW CASE NO: _____ OF 2018

IN

CASE NO: 77 OF 2015

IN THE MATTER OF:

REVIEW PETITION UNDER REGULATION 85 OF MAHARASHTRA ELECTRICITY REGULATORY COMMISSION (CONDUCT OF BUSINESS) REGULATIONS, 2004 READ WITH SECTION 94 (1) (F) OF THE ELECTRICITY ACT, 2003.

AND

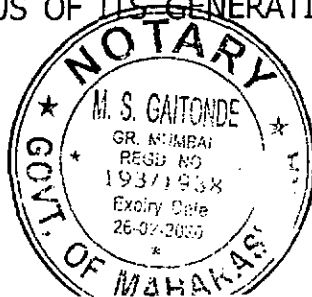
IN THE MATTER OF:

REVIEW OF ORDER DATED 09.02.2018 AND CORRIGENDUM ORDER DATED 12.03.2018 IN CASE NO. 77 OF 2015 PASSED BY THE HON'BLE COMMISSION.

AND

IN THE MATTER OF:

PETITION OF SAI WARDHA POWER LTD. SEEKING DECLARATION OF THE CAPTIVE GENERATION STATUS OF ITS GENERATING UNITS 3 AND 4 FOR FY 2014-15



AND

IN THE MATTER OF:

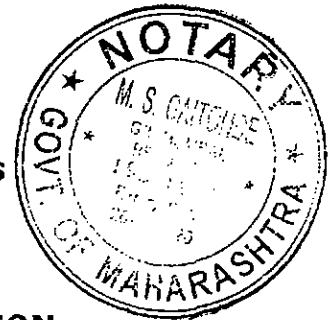
Maharashtra State Electricity Distribution Co. Ltd
Through its The Chief Engineer (Power Purchase)
5th Floor, Plot No G-9, Station Road,
Prakashgad, Bandra (East), Mumbai- 400051

....Review Petitioner/Applicant

Versus

1. Sai Wardha Power Generation Limited
8-2-293/82/A/431/A Road No.22
Jubilee Hills, Hyderabad-500033
Email: - sreekanth_a@ksk.co.in
2. Tata Power Company Limited
Bombay House, 24, Homi Mody Street,
Fort, Mumbai 400 001.
E-mail: bhaskar.sarkar@tatapower.com
3. Reliance Infrastructure Limited
W.E Highway Dindoshi, Goregaon (East)
Mumbai-400 097
E-mail: - kapil.sharma@relianceada.com
4. Maharashtra State Load Dispatch Centre, Kalwa,
Thane - Belapur Road, Airoli,
Navi Mumbai - 400 708
E-mail: cesldc@mahasldc.in

....Respondents



AFFIDAVIT VERIFYING THE REVIEW PETITION

I, Anil Mahajan Wasudeo Mahajan, age 50 years, having office at MSEDCL, Prakashgad, Plot No.G-9, Anant Kanekar Marg, Bandra (East), Mumbai 400 051 do solemnly affirm and say as follows:

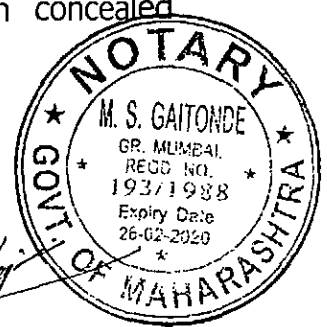
- 1 I am Superintending Engineer (II), Commercial Section, of Maharashtra State Electricity Distribution Co. Ltd., the Review

Petitioner in the above matter and am duly authorized by the said Petitioner to make this affidavit.

2 The statements made in paragraphs 1 to 8 of the petition are true to my knowledge and belief and are based on information and I believe them to be true. That the statements made in Para 3 to 7 are legal submissions based on the advice of my advocate.

3 I say that there are no proceedings pending in any court of law/ tribunal or arbitrator or any other authority, wherein the Applicant are a party and where issues arising and/or reliefs sought are identical or similar to the issues arising in the matter pending before the Commission.

Solemnly affirm at Mumbai on this 23rd day of April, 2018 that the contents of the above affidavit are true to my knowledge, no part of it is false and nothing material has been concealed therefrom.



BEFORE ME

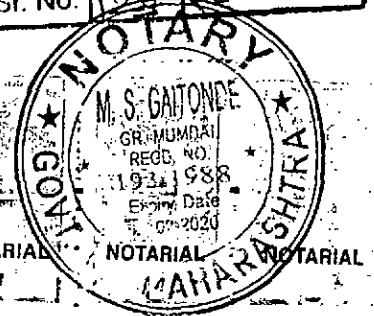
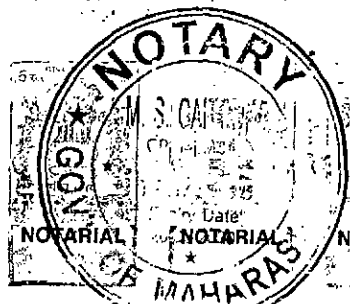
Identified before me M. S. GAITONDE
NOTARY B.A.L.L.M.
GREATER MUMBAI
GOVT OF MAHARASHTRA
Mumbai

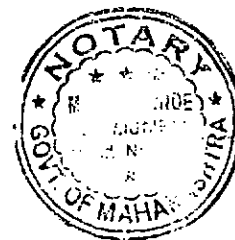
[Signature]
Deponent

NOTED REGISTER
BEFORE ME
Sr. No. 127 23-4-2018

Dated: 23-4-2018 2018.

Identified by me
AKHILESH TRIPATHI
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**Maharashtra Electricity Regulatory Commission
(Conduct of Business) Regulations, 2004**

ELECTRICITY ACT, 2003

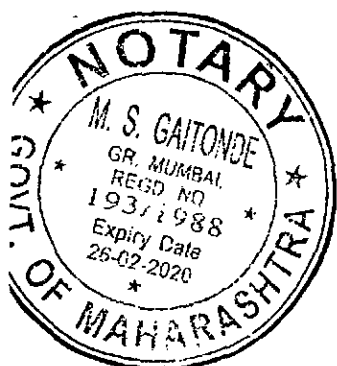
No. MERC/Legal/111/2004/1084 In exercise of the powers conferred on it by section 181 of the Electricity Act 2003 (Act No.36, of 2003) and all powers enabling it in that behalf, the Maharashtra Electricity Regulatory Commission hereby makes the following Regulations. Save as otherwise provided in these Regulations, these Regulations supersede the "Maharashtra Electricity Regulatory Commission (Conduct of Business) Regulations, 1999" and the "Maharashtra Electricity Regulatory Commission (State Advisory Committee) Regulations, 2000".

Short Title, Object, Commencement and Extent:

1. (a) These regulations may be called the Maharashtra Electricity Regulatory Commission (Conduct of Business) Regulations, 2004.
- (b) The object of these Regulations is to establish procedures for conduct of business of the Commission.
- (c) These Regulations shall come into force on the date of their notification in the Official Gazette.
- (d) These Regulations shall apply in relation to all matters falling within the jurisdiction of the Commission.

Definitions

2. (a) In these Regulations, unless the context otherwise requires:-
 - (i) "Act" means the Electricity Act, 2003 (36 of 2003) as amended from time to time;
 - (ii) "Adjudication" means the process of arriving at decisions on Petitions submitted to the Commission;
 - (iii) "Chairperson" means the Chairperson of the Commission;
 - (iv) "Commission" means the Maharashtra Electricity Regulatory Commission;
 - (v) "Consultant" includes any person not in the employment of the Commission who may be appointed as such to assist the Commission on any matter required to be dealt with by the Commission under the Act;
 - (vi) "Member" means a member of the Commission;



(f) The Commission may direct such incidental, consequential and supplemental matters to be attended to which may be considered relevant in connection with the above.

83. If the report or information obtained in accordance with Regulation 82 above or any part thereof is proposed to be relied upon by the Commission for forming its opinion or view in any proceedings, the parties to the proceedings shall be given a reasonable opportunity for filing objections and making submissions on such report or information.

Confidentiality:

84. (a) The Commission shall appraise and determine whether any document or evidence provided to it by any party and claimed by that party to be of a confidential nature merits being withheld from disclosure to other parties as being confidential and shall provide brief reasons in writing for arriving at its conclusion.

(b) If the Commission is of the view that the claim for confidentiality is justified the Commission may direct that the same be not provided to such parties as the Commission may deem fit. However, the party claiming the confidentiality shall provide a brief non-confidential summary of the substance of the documents found to be confidential and the import of the same.

(c) Notwithstanding the above, it shall be open to the Commission to take into consideration the contents of the documents found to be confidential in arriving at its decision.

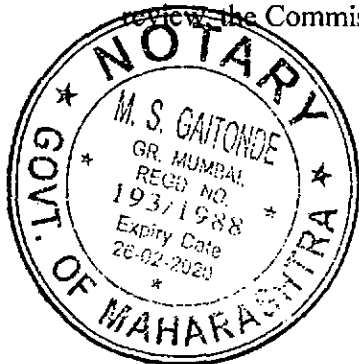
Review of decisions, directions, and orders:

85. (a) Any person aggrieved by a direction, decision or order of the Commission, from which (i) no appeal has been preferred or (ii) from which no appeal is allowed, may, upon the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the direction, decision or order was passed or on account of some *mistake or error apparent from the face of the record, or for any other sufficient reasons*, may apply for a review of such order, within forty-five (45) days of the date of the direction, decision or order, as the case may be, to the Commission.

(b) An application for such review shall be filed in the same manner as a Petition under these Regulations.

(c) The Commission, shall for the purposes of any proceedings for review of its decisions, directions and orders be vested with the same powers as are vested in a civil court under the Code of Civil Procedure, 1908.

(d) When it appears to the Commission that there is no sufficient ground for ~~review~~ the Commission shall reject such review application.



(e) When the Commission is of the opinion that the review application should be granted, it shall grant the same provided that no such application will be granted without previous notice to the opposite side or party to enable him to appear and to be heard in support of the decision or order, the review of which is applied for.

Continuance of Proceedings after death, etc:

86. (a) Where in a proceeding, any of the parties to the proceeding dies or is adjudicated as an insolvent or in the case of a company under liquidation / winding up, the proceeding shall continue with the successors-in-interest, the executor, administrator, receiver, liquidator or other legal representative of the party concerned, as the case may be:

(b) The Commission may, for reasons to be recorded, treat the proceedings as abated in case the Commission so directs and dispense with the need to bring the successors-in-interest on the record of the case.

(c) In case any person wishes to bring on record the successors-in-interest, etc., the application for the purpose shall be filed within ninety (90) days from the event requiring the successors-in-interest to be brought on record. The Commission may condone the delay, if any, for sufficient reasons.

Proceedings to be open to public:

87. The proceedings before the Commission shall be open to the public.

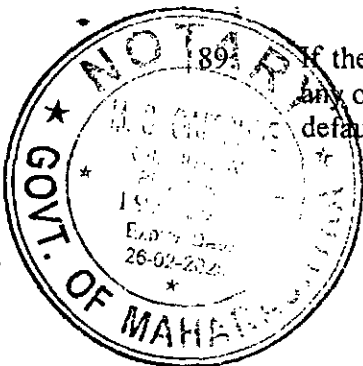
Provided that admission to the place of hearing shall be subject to availability of sitting accommodation.

Provided further that the Commission may, if it thinks fit, and for reasons to be recorded in writing, order that the proceedings of any particular case shall not be open to the public or any particular person or group of persons.

88. (a) In accordance with Section 228 of the Indian Penal Code, 1860, who ever intentionally offers any insult or causes any interruption in any of the proceedings of the Commission, shall be punishable with simple imprisonment for a term which may extend to six months or with fine which may extend to Rs.1,000/-, or with both.

(b) In accordance with Section 345 of the Code of Criminal Procedure, 1973, where any one intentionally offers insult or causes any interruption in the presence of the Commission, the Commission may cause the offender to be detained in custody and may, at any time before the raising of the bench on the same day take cognisance of the offence and after giving the offender a reasonable opportunity of showing cause why he should not be punished under this section, sentence the offender to fine not exceeding Rs.200/- and in default of payment of fine, simple imprisonment for a term which may extend to one month unless such fine is sooner paid.

If the Commission, in any case as referred to it, considers that a person accused of any of the offences referred to these Regulations, should be imprisoned on account of default of payment of fine, it may forward the case to a Magistrate having



विद्युत सेक्टर-33004/2003

REGISTERED NO. DL-33004/2003



भारत का राजपत्र The Gazette of India.

असाधारण
EXTRAORDINARY
भाग II — खण्ड 1
PART II — Section 1
प्रधिकार से प्रकाशित
PUBLISHED BY AUTHORITY

से 39] नई दिल्ली, सोमवार, जून 2, 2003 / ज्यैष्ठ 12, 1925
No: 39] NEW DELHI, MONDAY, JUNE 2, 2003 / JYAISTHA 12, 1925

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation.

MINISTRY OF LAW AND JUSTICE
(Legislative Department)

New Delhi, the 2nd June, 2003/Jyaistha 12, 1925 (Saka)

The following Act of Parliament received the assent of the President on the 26th May, 2003, and is hereby published for general information :—

THE ELECTRICITY ACT, 2003

[No. 36 of 2003]

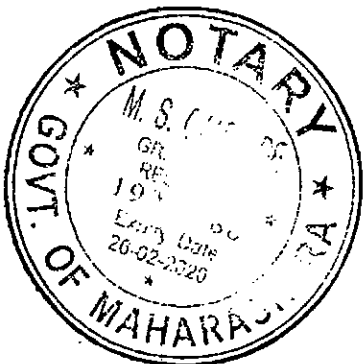
[26th May, 2003]

An Act to consolidate the laws relating to generation, transmission, distribution, trading and use of electricity and generally for taking measures conducive to development of electricity industry, promoting competition therein, protecting interest of consumers and supply of electricity to all areas, rationalisation of electricity tariff, ensuring transparent policies regarding subsidies, promotion of efficient and environmentally benign policies, constitution of Central Electricity Authority, Regulatory Commissions and establishment of Appellate Tribunal and for matters connected therewith or incidental thereto.

THE ELECTRICITY ACT, 2003

[No. 36 OF 2003]

An Act to consolidate the laws relating to generation, transmission, distribution, trading and use of electricity and generally for taking measures conducive to development of electricity industry, promoting competition therein, protecting interest of consumers and supply of electricity to all areas, rationalisation of electricity tariff, ensuring transparent policies regarding subsidies, promotion of efficient and environmentally benign policies constitution of Central Electricity Authority, Regulatory Commissions and establishment of Appellate Tribunal



employees of
Appropriate
Commission.

such powers and perform such duties as may be specified.

5 of 1908

(2) The Appropriate Commission may, with the approval of the Appropriate Government, specify the numbers, nature and categories of other officers and employees.

(3) The salaries and allowances payable to, and other term and conditions of service of, the Secretary, officers and other employees shall be such as may be specified with the approval of the Appropriate Government.

(4) The Appropriate Commission may appoint consultants required to assist that Commission in the discharge of its functions on the terms and conditions as may be specified.

Proceedings of
Appropriate
Commission.

92. (1) The Appropriate Commission shall meet at the head office or any other place at such time as the Chairperson may direct, and shall observe such rules of procedure in regard to the transaction of business at its meetings (including the quorum at its meetings) as it may specify.

(2) The Chairperson, or if he is unable to attend a meeting of the Appropriate Commission, any other Member nominated by the Chairperson in this behalf and, in the absence of such nomination or where there is no Chairperson, any Member chosen by the Members present from among themselves, shall preside at the meeting.

(3) All questions which come up before any meeting of the Appropriate Commission shall be decided by a majority of votes of the Members present and voting, and in the event of an equality of votes, the Chairperson or in his absence, the person presiding shall have a second or casting vote.

(4) Save as otherwise provided in sub-section (3), every Member shall have one vote.

(5) All orders and decisions of the Appropriate Commission shall be authenticated by its Secretary or any other officer of the Commission duly authorised by the Chairperson in this behalf.

Vacancies, etc.,
not to invalidate
proceedings.

93. No act or proceedings of the Appropriate Commission shall be questioned or shall be invalidated merely on the ground of existence of any vacancy or defect in the constitution of the Appropriate Commission.

Powers of
Appropriate
Commission.

94. (1) The Appropriate Commission shall, for the purposes of any inquiry or proceedings under this Act, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 in respect of the following matters, namely: -

5 of 1908.

(a) summoning and enforcing the attendance of any person and examining him on oath;

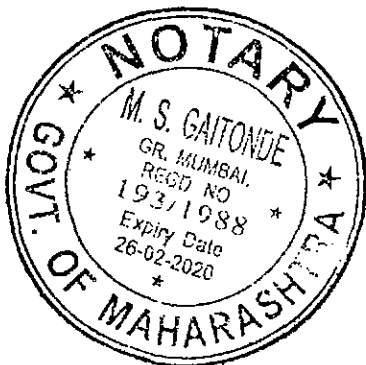
(b) discovery and production of any document or other material object producible as evidence;

(c) receiving evidence on affidavits;

(d) requisitioning of any public record;

(e) issuing commission for the examination of witnesses;

(f) reviewing its decisions, directions and orders;



(g) any other matter which may be prescribed.

(2) The Appropriate Commission shall have the powers to pass such interim order in any proceeding, hearing or matter before the Appropriate Commission, as that Commission may consider appropriate.

(3) The Appropriate Commission may authorise any person, as it deems fit, to represent the interest of the consumers in the proceedings before it.

Proceedings before Commission.

45 of 1860. 2 of 1974.

Powers of entry and seizure.

2 of 1974

95. All proceedings before the Appropriate Commission shall be deemed to be judicial proceedings within the meaning of sections 193 and 228 of the Indian Penal Code and the Appropriate Commission shall be deemed to be a civil court for the purposes of sections 345 and 346 of the Code of Criminal Procedure, 1973.

96. The Appropriate Commission or any officer, not below the rank of a Gazetted Officer specially authorised in this behalf by the Commission, may enter any building or place where the Commission has reason to believe that any document relating to the subject matter of the inquiry may be found, and may seize any such document or take extracts or copies therefrom subject to the provisions of section 100 of the Code of Criminal Procedure, 1973, insofar as it may be applicable.

Delegation.

97. The Appropriate Commission may, by general or special order in writing, delegate to any Member, Secretary officer of the Appropriate Commission or any other person subject to such conditions, if any, as may be specified in the order, such of its powers and functions under this Act (except the powers to adjudicate disputes under Section 79 and Section 86 and the powers to make regulations under section 178 or section 181) as it may deem necessary.

Grants, Fund, Accounts, Audit and Report

Grants and loans by Central Government

98. The Central Government may, after due appropriation made by Parliament in this behalf, make to the Central Commission grants and loans of such sums of money as that Government may consider necessary.

Establishment of Fund by Central Government

99. (1) There shall be constituted a Fund to be called the Central Electricity Regulatory Commission Fund and there shall be credited thereto-

- (a) any grants and loans made to the Central Commission by the Central Government under section 98;
- (b) all fees received by the Central Commission under this Act;
- (c) all sums received by the Central Commission from such other sources as may be decided upon by the Central Government.

(2) The Fund shall be applied for meeting -

- (a) the salary, allowances and other remuneration of Chairperson, Members, Secretary, officers and other employees of the Central Commission;
- (b) the expenses of the Central Commission in discharge of its function under section 79;
- (c) the expenses on objects and for purposes authorised by this Act.

(3) The Central Government may, in consultation with the Comptroller and Auditor-General of India, prescribe the manner of applying the Fund for meeting the expenses specified in clause (b) or clause (c) of sub-section (2).



Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
 World Trade Centre, Centre No.1, 13th Floor, Cuffe Parade, Mumbai 400005
 Tel. 022 22163964/65/69 Fax 22163976
 E-mail: mercindia@merc.gov.in
 Website: www.mercindia.org.in / www.merc.gov.in

CASE No.77 of 2015

In the matter of

Petition of Sai Wardha Power Ltd. seeking declaration of the Captive Generation status of
 its Generating Units 3 and 4 for FY 2014-15

Miscellaneous Application No. 2 of 2016

Application of Tata Power Company Ltd. (Distribution) seeking intervention in Case No.
 77 of 2015

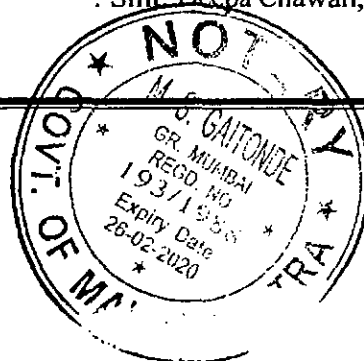
Coram

Shri Azeez M. Khan, Member
 Shri Deepak Lad, Member

M/s Sai Wardha Power Limited.	: Petitioner
Vs.	
Maharashtra State Electricity Distribution Co. Ltd.	: Respondent
Tata Power Co. Ltd. - Distribution	: Intervener
Maharashtra State Load Despatch Centre	: Impleaded Party

Appearance

For the Petitioner	: Ms. Sushmita Heta, Advocate : Smt. Swapna Seshadri, Advocate
For the Respondent	: Shri Ashish Singh, Advocate
For the Intervener	: Smt. Deepa Chawan, Counsel



Date: 9 February, 2018

Order

M/s. Sai Wardha Power Limited (SWPL), Jubilee Hills, Hyderabad, has filed a Petition on 25 May, 2015, under Section 42 of the Electricity Act (EA), 2003 and Rule 3 of the Electricity Rules, 2005, for declaration of compliance of Captive Generating Plant (CGP) obligations in respect of its Units 3 and 4 (2×135 MW) for FY 2014-15.

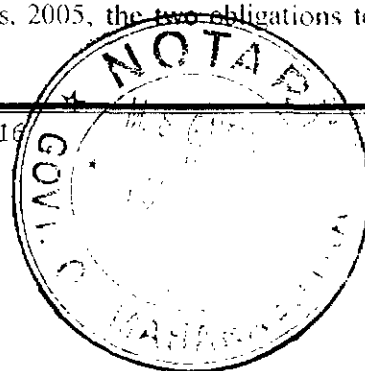
2. SWPL's prayers are as follows:

"a) Hold and declare the Captive generating units (2×135 MW being Unit No. 3 and 4) of the Petitioner have complied with the obligations attached to captive generating units for the financial year 2014-2015.

b) Hold and declare that the Petitioner and its captive consumers are entitled to all the benefits of captive power plant and captive consumption including exemption from payment of Cross Subsidy Surcharge..."

3. The Petition states that:

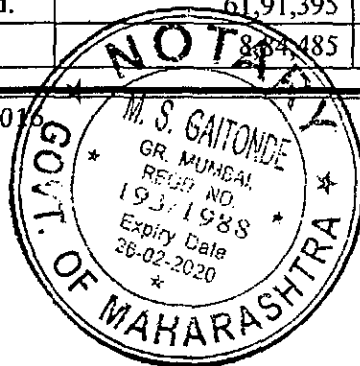
- 3.1. SWPL has a Generating Plant at Warora, Dist. Chandrapur with a capacity of 540 MW consisting of four Units of 135 MW each, of which two Units (3 and 4) have been identified for captive generation for Captive Users. SWPL is seeking declaration of the captive status of these two Units for FY 2014-15.
- 3.2. The power to 11 Captive Consumers of SWPL is supplied by obtaining Open Access (OA) on the Transmission System of Maharashtra State Electricity Transmission Co. Ltd. (MSETCL), and 'No Objection' to supply these consumers is taken from Maharashtra State Electricity Distribution Co. Ltd. (MSEDCL).
- 3.3. However, on account of various issues, including acts of commission and omission on the part of MSEDCL, the OA was effectively made available to SWPL only from March, 2012. Under the EA, 2003 and Electricity Rules, 2005, the compliance of the obligation by a CGP has to be determined at the end of the financial year after considering the particulars of the generation and supply of electricity.
- 3.4. Under Rule 3 of the Electricity Rules, 2005, the two obligations to be fulfilled by a CGP are:-



- a. The Captive Consumers should hold not less than 26% equity in the captive Unit or Units.
- b. The Captive Consumers should consume not less than 51 % of the electricity generated from the Captive Generating Unit (s), to be determined on an annual basis.
- 3.5. The Commission vide its Order dated 28 August, 2013 in Case No. 117 of 2012 has categorically held that the CGP status is to be determined on an annual and not on a monthly basis.
- 3.6. Since FY 2014-15 is over and the compliance of the obligations by the Captive Consumers of SWPL for that year is to be determined by the Commission, SWPL has filed this Petition.
- 3.7. In FY 2014-15, the shareholding of SWPL with regard to Captive Consumers as on 1 April, 2014 and the consumption of electricity by them is summarized as below:-
- Total generation from Unit 3 and 4 in FY 2014-15 is 991.93 MU
 - Total Consumption of the Captive Consumers in FY 2014-15 is 768.82 MU
 - % of Consumption by Captive Consumers in FY 2014-15 is 77.51%
- 3.8. SWPL has submitted the audited shareholding certificate with list of 11 Captive Consumers and their respective shares in the equity shareholding as on 1 April, 2014, below:

Table 1: Audited Shareholding of Captive Users as on 1.4.2014 in FY 2014-15 as submitted by SWPL

<u>Sr. No</u>	<u>Name of Shareholder</u>	<u>No. of Equity Shares of Rs. 10/each</u>	<u>% to Total Equity</u>
Captive Users			
1.	Viraj Profiles Ltd.	2,32,98,938	6.34
2.	Sona Alloys Private Ltd.	26,53,455	0.72
3.	RL Steels and Energy Ltd.	26,53,455	0.72
4.	Mahindra Hinoday Industries Ltd.	17,68,970	0.48
5.	Mahindra and Mahindra Ltd.	19,45,867	0.53
6.	Mahindra Vehicle Manufacturers Ltd.	12,38,279	0.34
7.	Mahindra Sanyo Special Steels Ltd.	61,91,395	1.69
8.	Mahindra Forgings Ltd.	884,485	0.24



Sr. No	Name of Shareholder	No. of Equity Shares of Rs. 10/each	% to Total Equity
9.	Bebitz Flanges Works Private Ltd.	2,65,346	0.07
10.	Mahalaxmi TMT Private Ltd.	78,87,669	2.15
11.	India Steel Works Ltd.	10,61,382	0.29
Total		4,98,49,241	13.57*

**Note: - Out of total capacity of 540 MW (4x135MW), 270 MW is dedicated for Group Captive Users. Therefore, 26% being the proportionate to CGP of 270 MW.*

3.9. SWPL has also submitted the audited shareholding certificate which includes a list of 11 Captive Consumers with their respective shares in the equity shareholding of SWPL as on 11 December, 2014 as below:

Table 2: Audited Shareholding of Captive Users as on 11.12.2014 in FY 2014-15 as submitted by SWPL.

Sr. No	Name of Shareholder	No of Equity Shares of Rs. 10/each	% to Total Equity
Captive Users			
1.	Viraj Profiles Ltd.	2,32,98,938	6.34
2.	Sona Alloys Private Ltd.	14,15,176	0.39
3.	RL Steels and Energy Ltd.	26,53,455	0.72
4.	Mahindra Hinoday Industries Ltd.	17,68,970	0.48
5.	Mahindra and Mahindra Ltd.	19,45,867	0.53
6.	Mahindra Vehicle Manufacturers Ltd.	12,38,279	0.34
7.	Mahindra Sanyo Special Steels Ltd.	61,91,395	1.69
8.	Mahindra Forgings Ltd.	8,84,485	0.24
9.	Bebitz Flanges Works Private Ltd.	2,65,346	0.07
10.	Mahalaxmi TMT Private Ltd.	78,87,669	2.15
11.	India Steel Works Ltd.	10,61,382	0.29
Total		4,86,10,962	13.24*

**Note: - Out of total capacity of 540 MW (4x135MW), 270 MW is dedicated for Group Captive Users. Therefore, 26% being the proportionate to CGP of 270 MW.*

3.10. SWPL has also submitted the audited shareholding certificate which includes a list of 12 Captive Consumers with their respective shares in the equity shareholding of SWPL as on 15 December, 2014:

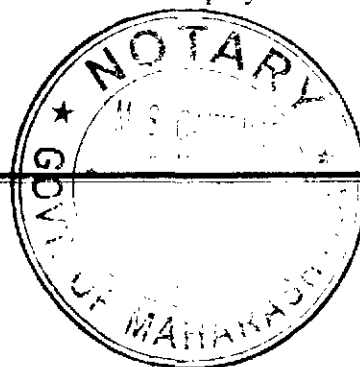
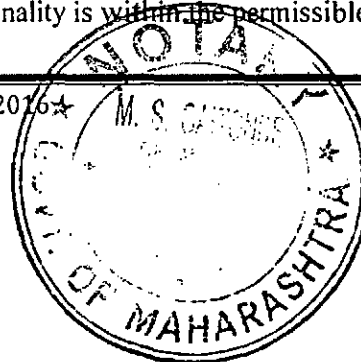


Table 3: Audited Shareholding of Captive Users as on 15.12.2014 in FY 2014-15 as submitted by SWPL

Sr. No	Name of Shareholder	No of Equity Shares of Rs 10/each	% to Total Equity
Captive Users			
1.	Viraj Profiles Ltd.	2,32,98,938	6.34
2.	Sona Alloys Private Ltd.	14,15,176	0.39
3.	RL Steels and Energy Ltd.	26,53,455	0.72
4.	Mahindra Hinoday Industries Ltd.	17,68,970	0.48
5.	Mahindra and Mahindra Ltd.	19,45,867	0.53
6.	Mahindra Vehicle Manufacturers Ltd.	12,38,279	0.34
7.	Mahindra Sanyo Special Steels Ltd.	61,91,395	1.69
8.	Mahindra Forgings Ltd.	8,84,485	0.24
9.	Bebitz Flanges Works Private Ltd.	2,65,346	0.07
10.	Mahalaxmi TMT Private Ltd.	78,87,669	2.15
11.	India Steel Works Ltd.	10,61,382	0.29
12.	Cosmo Films Ltd.	22,99,661	0.63
Total		5,09,10,623	13.86*

**Note: - Out of total capacity of 540 MW (4×135MW), 270 MW is dedicated for Group Captive Users. Therefore, 26% being the proportionate to CGP of 270 MW*

- 3.11. Both the conditions, cited above, with regard to shareholding and consumption are only the minimum level and there is no restriction on shareholding being above 26% or the consumption being over 51%, and SWPL has fulfilled the captive status requirements for its Generating Company and for the supply of electricity to its Captive Consumers.
- 3.12. In FY 2014-15, the Captive Consumers held more than 26% of the shareholding of the Generating Units in question. This translates to 13% shareholding for the Generating Units of SWPL as a whole as only two Units, Unit 3 and 4, have been identified as Captive Units. The Commission in its Order dated 23 August, 2013 has also recognised the shareholding as fulfilling the requirement of Rule 3 of the Electricity Rules, 2005.
- 3.13. In terms of the above, for FY 2014-15, SWPL has fulfilled the captive status in respect of its Generating Units 3 and 4 and for the supply of electricity to its Captive Consumers. In terms of Rule 3 of the Electricity Rules, 2005, the shareholding is to be not less than 26% and consumption not less than 51% of annual generation. The compliance with regard to proportionality is within the permissible limit of +10%.



3.14. SWPL has adopted the same methodology as was adopted by the Commission in its Orders for the purpose of calculation of the captive status of SWPL and its consumers for previous years.

3.15. The details of the month-wise generation from the CGP Units 3 and 4 and the corresponding captive consumption is at Annexure B to the Petition, and are reproduced in the Table below:

Table 4: Generation of Captive Units 3 and 4 and Captive Consumption as submitted by SWPL

Month	FY 2014-15 Net Generation		Captive Consumption
	Unit #3	Unit #4	
April	-	-	-
May	82,942,000	-	78,415,449
June	23,834,020	-	22,073,055
July	68,401,412	43,034,867	66,011,140
August	75,281,409	73,970,160	76,235,506
September	69,213,654	44,853,726	76,295,275
October	39,524,659	74,245,676	73,215,306
November	78,655,620	12,000	75,013,810
December	65,125,305	16,627,455	77,564,096
January	15,542,760	62,990,420	74,855,382
February	55,447,627	21,353,593	73,081,824
March	36,827,773	44,045,907	76,059,638
TOTAL	610,796,239	381,133,804	768,820,481

Total Generation 991,930,043 kWh

Total Annual Generation (MU) 991.93

Total Captive Consumption (MU) 768.82

Total Annual Generation (MU) 77.51%

3.16. SWPL has submitted the calculation of shareholding and consumption details to establish the fulfilment of captive status for FY 2014-15. The calculation is in terms of Rule 3 of the Electricity Rules, 2005 taking into account the minimum shareholding of 26% and minimum consumption of 51%. SWPL has submitted the generation and consumption of energy considering 13% shares ownership in the Company as shown in Table 4 below.

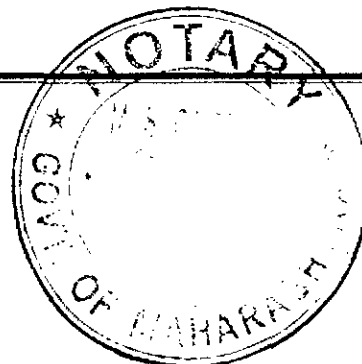
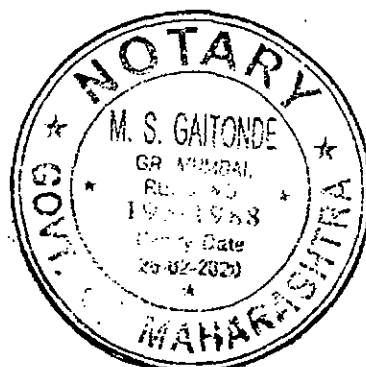


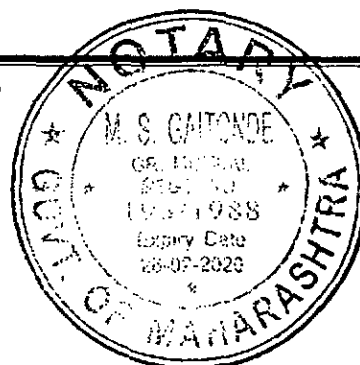
Table 5: Generation and consumption by Captive Users in FY 2014-15 considering 13% of shares in ownership as submitted by SWPL

Sr. No.	Name of the Shareholder	No. of Class A-Equity Shares of Rs. 10/- each		% of consumption to be done by Captive User for meeting 51% consumption criterion	Gross Generation considered for 51% Calculation	Permissible Range for shareholding pattern for 51% consumption criterion			Actual Consumption	Consumption permissible as per Shareholding
		As per share certificates	% of shares in Ownership			Variation				
						0%	-10%	+10%		
						MU a	MU b	MU c		
					MU d	MU e=(7b>d,d/Mf N(c,d))				
1	Viraj Profiles Ltd	23298938	6.34%	24.87%	991.93	246.74	222.07	271.41	279.67	271.41
2	Bebitz Flanges Works Private Ltd	265346	0.07%	0.28%	991.93	2.81	2.53	3.09	8.52	3.09
3	Mahindra and Mahindra Ltd	1945867	0.53%	2.08%	991.93	20.61	18.55	22.67	55.89	22.67
4	Mahindra Vehicle Manufacturers Ltd	1238279	0.34%	1.32%	991.93	13.11	11.80	14.42	27.96	14.42
5	Mahindra CIE Automotive Ltd (Formerly Mahindra Forgings Ltd)	884485	0.24%	0.94%	991.93	9.37	8.43	10.30	21.96	10.30
6	Mahindra Hinoday Industries Ltd	1768970	0.48%	1.89%	991.93	18.73	16.86	20.61	43.87	20.61
7	Mahindra Sanyo Special Steels Ltd	6191395	1.69%	6.61%	991.93	65.57	59.01	72.12	96.00	72.12
8	RL Steels and Energy Ltd	2653455	0.72%	2.83%	991.93	28.10	25.29	30.91	46.72	30.91
9	India Steel Works Ltd	561382	0.15%	0.60%	991.93	5.95	5.35	6.54	15.70	6.54
10	Sona Alloys Private Ltd	1073455	0.29%	1.15%	991.93	11.37	10.23	12.50	24.20	12.50
11	Mahalaxmi TMT Private Ltd	7887669	2.15%	8.42%	991.93	83.53	75.18	92.03	148.33	91.88
	Total	47769241	13.00%	51.00%		505.88	455.30	556.47	768.82	556.47

3.17. In any event, even considering the total shareholding of the Captive Consumers of SWPL who had consumed power during FY 2014-15, the conditions for captive consumption are fulfilled and SWPL has submitted the generation and consumption of energy considering 13.47% shares ownership as shown in Table 6 below:



- 3.18. During FY 2014-15, there was a change in the shareholding of SWPL. This was duly intimated to MSEDCL, and the calculation of the equity ownership of the Captive Consumers has been made taking into account such change in the shareholding for part of the year.
- 3.19. It is clear that all the conditions for the consumption by the shareholders of SWPL to the extent of 13 % (which translates to 26% for the two Units of 135 MW each) are fulfilled. In the circumstances, SWPL and its Captive Consumers are entitled to all the benefits available, including exemption from payment of Cross-Subsidy Surcharge (CSS) as provided in Section 42(2) of EA, 2003.
- 3.20. Under the EA, 2003, the Commission is vested with the jurisdiction for determination of the captive status and for ancillary issues with regard to the compliance of the obligations by a Captive Generator. The jurisdiction of the Commission has also been upheld by Appellate Tribunal of Electricity (APTEL) in the case of Chhattisgarh Power Distribution Company Ltd vs Hira Ferro Alloys Ltd and others (Judgment dated 18 May, 2010).
- 3.21. SWPL had filed a similar Petition for determining its captive status for FY 2013-14. The Commission vide Order dated 20 August, 2014 held that the SWPL Units have fulfilled the criteria under the Electricity Rules, 2005.
4. In its Reply dated 1 February, 2016, MSEDCL stated that:
- 4.1. The EA, 2003 and the Electricity Rules, 2005 are silent on how many times there can be changes in equity shareholding by Captive Users. However, there should be some restriction on such practice.
- 4.2. In this case, change in equity by Captive Users has taken place 3 times in FY 2014-15, and thus some 'adjustment' may have been done to fit into the criteria specified under the EA, 2003 or the Electricity Rules, 2005.
- 4.3. As per the submission of SWPL, the equity stake of India Steel Works Ltd. is shown as 0.15%, whereas its equity share capital is shown as 0.29% in the Auditor's Certificate as on 1 April, 11 December and 15 December, 2014. Similarly, discrepancies are observed in respect of Sona Alloys Pvt. Ltd.
- 4.4. The calculations of percentage of consumption by a Captive User for meeting the 51% consumption criterion, the consumption permissible as per the shareholding, etc. have been wrongly worked out. Hence, the Commission should direct SWPL to submit the correct details and their workings.



5.5. It is a settled legal principle that that, in the absence of a specific provision relating to a particular procedural aspect in the applicable statute, reference and reliance can be placed on the settled legal principles of civil law. In this regard, in its Judgment in the case of Competition Commission of India v. SAIL ((2010) 10 SCC 744 (paras 108-111)), the Supreme Court has stated that the concept of necessary and proper parties is an accepted norm of civil law and the principles relating to it can be applied to the proceedings before the appropriate forum:

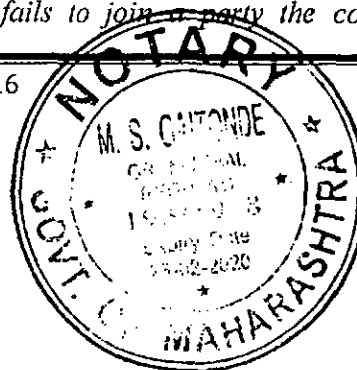
"108. In light of the above statutory provisions, let us examine the scheme under the general principles as well. The provisions of Order 1 Rule 10 of the Code of Civil Procedure control the proceedings and their addition or deletion thereof. Wide discretion is vested in the court/ appropriate forum in regard to impleadment of necessary and proper parties to the proceedings. Of course, such discretion has to be exercised in accordance with provision of law and the principles enunciated by various judicial pronouncements. The consideration before the court, while determining such a question, is whether the said party is a necessary or a proper party and its presence before the court is essential for complete and effective adjudication of the subject-matter, inter alia, it should also be kept in mind that multiplicity of litigation is to be avoided and that the necessary or proper party should not be left out from the proceedings, particularly, before the tribunal or the forum.

109. These principles were stated by this Court in Udit Narain Singh Malpaharia v. Board of Revenue, AIR 1963 SC 786 wherein this Court has held as under: (AIR p. 788, para 7)

"7. To answer the question raised it would be convenient at the outset to ascertain who are necessary or proper parties in a proceeding. The law on the subject is well settled: it is enough if we state the principle. A necessary party is one without whom no order can be made effectively; a proper party is one in whose absence an effective order can be made but whose presence is necessary for a complete and final decision on the question involved in the proceeding."

110. Another way to examine the matter is that if the proceedings cannot be concluded completely and effectively in absence of a party, that party should be normally impleaded as a party before the court, of course, subject to other restrictions in law. While non-joinder of necessary parties may prove fatal, the non-joinder of proper parties may not be fatal to the proceedings, but would certainly adversely affect interest of justice and complete adjudication of the proceedings before the appropriate forum.

111. As a normal rule, the applicant informant is dominus litis and has the right to control the proceedings, but at the same time, such applicant is required to notify all other parties against whom the applicant wishes to proceed. Even if an applicant fails to join a party the court has the



discretion to direct joining of such party as the question of impleadment has to be decided on the touchstone of Order I Rule 10 which provides that a necessary or proper party may be added. (Ramesh Hirachand Kundanmal v. Municipal Corpn. of Greater Bombay. (1992) 2 SCC 524)

5.6. Further, the provisions of Order I Rule 10 (2) of the Code of Civil Procedure, 1908 illustrate the above position:-

"Order I- Parties to Suit

10(2). Court may strike out or add parties- The court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as a plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added."

5.7. The issue raised by SWPL cannot be effectually and completely settled without impleading TPC-D as a party to the Petition. In fact, the outcome of the Petition will directly impact TPC-D's legal rights. In this regard, the Judgment of the Supreme Court in the matter of Ramesh Hiranand Kundanmal v. Municipal Corporation of Greater Bombay and Ors. ((1992) 2 SCC 524) is noteworthy.

6. TPC-D's prayers are as follows:

"(a) Allow the present Application:

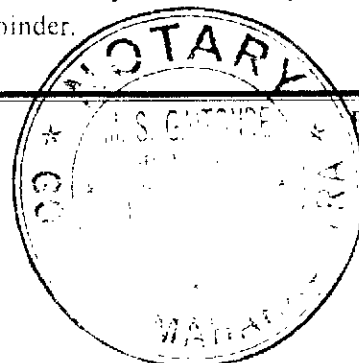
(b) Direct the Petitioner to implead the Applicant (The Tata Power Company Limited) as a party Respondent to the present Petition and thereafter accordingly amend the Memo of Parties to the present Petition;

(c) Direct the Petitioner to supply a copy of the amended Petition along with all submissions made by it, and pleadings if any filed in the Petition, to the Applicant (The Tata Power Company Limited);

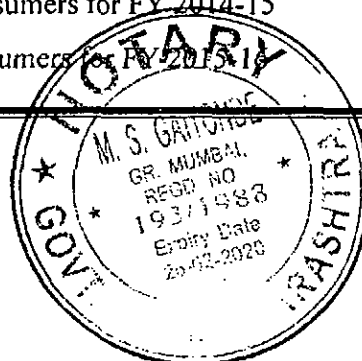
(d) Permit the Applicant (The Tata Power Company Limited) to make its submissions in the present Petition on merits: ...

7. At the hearing held on 3 February, 2016:

7.1. SWPL stated that MSEDCL's Reply was received only on 2 February, 2016 and hence it requires two weeks' time to submit its Rejoinder.



- 7.2. TPC-D stated that some of its consumers are in SWPL's Group Captive OA arrangement, and hence that it be allowed to intervene in the matter.
- 7.3. The Commission enquired as to whether the EA, 2003 and Electricity Rules, 2005 regarding the requirement for a CGP provide for the Commission to declare/certify its captive status every year.
- 7.4. The Commission also enquired why SWPL had not approached the Distribution Licensees (MSEDCL and TPC-D) first before filing this Petition, and then approached the Commission if there was a dispute. SWPL agreed to approach the Distribution Licensees.
- 7.5. The Commission directed SWPL to undertake this exercise within a month, and to submit the outcome within a week thereafter.
8. Vide another purported Miscellaneous Application dated 21 February, 2017, TPC-D stated that:
- 8.1. Vide letter dated 15 February, 2016, TPC-D requested SWPL to provide the following documents/information necessary for validation and reconciliation with TPC-D's records:-
- i) The scheduling of power to consumers of TPC-D availing OA through Group Captive route from SWPL.
 - ii) Metering data to show the entire generation from Captive and Independent Power Producer (IPP) Units of SWPL during FY 2014-15
 - iii) Outage details of Captive Units during FY 2014-15
 - iv) Reconciliation of the entire generation from Captive Units vs. scheduling of power to Captive Consumers during FY 2014-15.
- 8.2. On 17 February, 2016, SWPL served a copy of its Petition on TPC-D. On 10 March, 2016, TPC-D wrote to SWPL stating that it had not only failed to provide the details sought but also failed to approach TPC-D for discussion as per the directives in the Commission's Daily Order. Vide e-mail dated 17 March, 2016, SWPL forwarded the following documents:
- i) Scheduling details for TPC-D OA Consumers for FY 2014-15
 - ii) Revision details for TPC-D's OA Consumers for FY 2015-16



- iii) Reconciliation of Net Generation, MRI data vs. Captive Consumption for FY 2015-16
- iv) Copy of letter dated 25 May, 2015 to MSEDCL qua submission details of FY 2014-15
- v) E-mail dated 30 May, 2015 sent by M&M to TPC-D on submission of details of FY 2014-15
- vi) SWPL letter dated 16 March, 2016 to Maharashtra State Load Despatch Centre (MSLDC) requesting it to validate/ certify the details/ information provided, for submission to TPC-D.

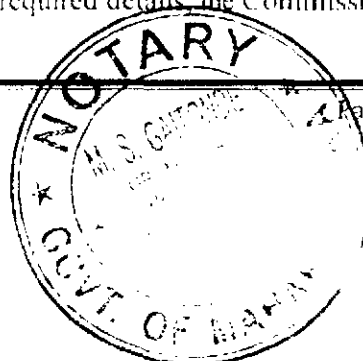
8.3. Vide letter dated 5 April, 2016, TPC-D informed SWPL that its e-mail dated 17 March, 2016 only provided some of the documents /details/data. Further, SWPL's letter dated 16 March, 2016 to MSLDC with a copy to TPC-D did not contain the attachments referred to. TPC-D requested SWPL to provide the required documents/information and to engage with it, in terms of Daily Order dated 3 February, 2016, in order to assess its status as a Group CGP for FY 2014-15. TPC-D also stated that the following information sought vide its letter dated 15 February and 10 March, 2016 is yet to be received:

- a. Metering data certified by MSLDC to show distinctly the entire generation from captive and IPP Units of SWPL during FY 2014-15.
- b. MSLDC-certified date-wise revision of schedules on 15 minute basis of TPC-D Consumers availing OA through Group Captive route from SWPL during FY 2014-15.
- c. Reconciliation statement of the Net Generation from Captive Units vs. scheduling of power to Captive Consumers during FY 2014-15.

8.4. On 22 April, 2016, TPC-D again reminded SWPL. Despite express directions of the Commission and repeated requests/ reminders by TPC-D, SWPL failed to provide complete documents/information and engage with TPC-D to enable it to assess SWPL's captive status for FY 2014-15.

8.5. The Commission may also direct SWPL to provide its shareholding/purchase Agreements and Charter documents which will also assist in assessing the Captive Users' shareholding patterns in SWPL and its captive status.

8.6. In view of the failure of SWPL to provide the required details, the Commission may



- a. Direct SWPL to produce all the documents /information sought by TPC-D
 - b. Order an investigation into the affairs of SWPL so as to assess the compliance/non-compliance of the provisions of the EA, 2003 and the Rules and Regulations made thereunder qua its Group Captive status for FY 2014-15.
- 8.7. The EA, 2003 confers power under Section 42 on the State Commission to usher in OA in the State and to ensure compliance with the provisions of the statute. Any action circumventing the provisions of EA, 2003 ought to be scrutinized by the State Commission. If the circumstances relating to grant of OA to a CGP results in flouting of the spirit of the statutory provisions, the Commission is bound to consider the issues and problems associated therewith as *parens pateriae*.
- 8.8. The Group Captive Consumers/Users of SWPL are located within the Licence area of MSEDCL, TPC-D and RInfra-D. These Group Captive Consumers have been enjoying the benefits of OA from their respective Distribution Licensees without payment of CSS on account of the fact that SWPL claims GCP, thereby denying CSS to the consumers of TPC-D and other Distribution Licensees.
- 8.9. The Petition has been filed by SWPL, seeking declaration/ certification of its GCP status for FY 2014-15. In order to accurately assess its status, it is essential that all consumption and scheduling data be collectively verified and validated by the Commission. In this regard, it may be just, necessary and proper to implead Reliance Infrastructure Ltd. (Distribution) (RInfra-D) and MSLDC as Parties to the present Petition so as to enable the Commission to justly adjudicate it. It is settled law that necessary or proper parties should not be left out from the proceedings. The Commission may also direct RInfra-D and MSLDC to provide all relevant information and assist the Commission to assess SWPL's GCP status for FY 2014-15.
9. Vide its letter dated 17 March, 2016 (referred to at para. 8.3 above), SWPL submitted the month-wise generation details for all the Units of its Generating Plant for FY 2014-15 as follows:

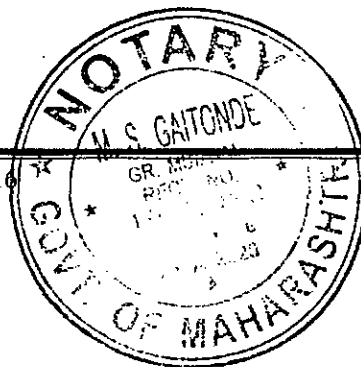


Table 7: Generation data for FY 2014-15 as submitted by SWPL

Month	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	TOTAL
Gross Generation (kWh)													
Unit-1	-	-	-	-	-	-	55,512,000	-	-	-	-	-	55,512,000
Unit - 2	-	-	-	-	-	-	-	-	-	-	-	-	-
Unit-3	18,000	92,525,000	26,871,000	76,815,000	84,069,000	72,714,000	44,457,000	87,977,000	72,38,000	17,509,000	11,452,000	17,177,000	583,804,000
Unit - 4	5,008,000	-	-	49,252,000	82,714,000	50,817,000	83,063,000	12,000	18,581,000	79,401,000	27,52,000	11,510,000	443,200,000
Total Generation (kWh)	5,026,000	92,525,000	26,871,000	126,067,000	166,783,000	128,531,000	183,018,000	87,989,000	91,210,000	87,803,000	85,672,000	90,896,000	1,172,530,000
Import from Grid (kWh)													
Unit-1	-	-	-	-	-	-	-	-	-	-	-	-	-
Unit - 2	-	-	-	-	-	-	-	-	-	-	-	-	-
Unit - 3	-	15,000	634,340	-	-	-	-	-	34,740	164,500	-	23,970	1,524,320
Unit - 4	651,770	-	-	-	-	-	-	-	-	-	-	-	651,770
Total Import	651,770	15,000	634,340	-	-	-	-	-	34,740	164,500	-	23,970	1,524,320
Aux. Consumption (kWh)													
Unit - 1	-	-	-	-	-	-	5,971,905	-	-	-	-	-	5,971,905
Unit - 2	-	-	-	-	-	-	-	-	-	-	-	-	-
Unit - 3	4,753	9,598,000	3,671,320	8,413,588	8,787,591	8,500,346	4,928,841	9,321,300	7,647,475	1,869,800	6,901,773	4,571,197	73,719,824
Unit - 4	1,322,517	-	-	6,217,133	8,743,840	5,963,274	8,837,324	-	1,953,545	7,564,820	2,866,407	5,473,063	44,541,000
Total Aux. Consumption	1,327,270	9,598,000	3,671,320	14,630,721	17,531,431	14,463,620	19,737,660	9,321,300	9,600,980	9,434,320	9,870,780	10,046,290	128,233,777
NET EXPORT (kWh)													
Unit - 1	-	-	-	-	-	-	49,540,095	-	-	-	-	-	49,540,095
Unit - 2	-	-	-	-	-	-	-	-	-	-	-	-	-
Unit - 3	13,247	82,942,000	23,834,020	68,401,413	75,281,409	69,213,654	39,524,659	78,655,620	65,125,365	15,542,790	55,447,627	76,827,773	1,00,809,488
Unit - 4	4,337,253	-	-	43,014,868	71,970,160	44,851,726	74,245,676	12,000	16,627,455	62,990,420	21,551,563	44,945,967	3,54,710,658
Total Net Export	4,350,500	82,942,000	23,834,020	111,436,279	149,251,569	114,067,380	163,310,340	78,667,620	81,752,760	78,533,180	76,801,220	80,873,680	1,04,582,548
Total Net Export (MU)	4.35	82.94	23.83	111.44	149.25	114.07	163.31	78.67	81.75	78.53	76.80	80.87	1,045.82



10. The Commission notes that, vide its letter dated 30 September, 2016 addressed to MSEDCL (with reference to a letter dated 23 June, 2016 from SWPL), a copy of which was endorsed to the Commission and to TPC-D, RInfrac-D stated as follows:

10.1. SWPL is supplying power from its CGP (Units 3 and 4) to its Group Captive Consumers in Maharashtra. One of RInfrac-D's consumers, M&M, is also availing supply from Units 3 and 4.

10.2. Based on the MLDC website data, the following points need to be considered:

- a) Whether Units 3 or 4 were under outage, the schedules were revised downwards or power to Captive Consumers was scheduled from other Units (1 and 2).
- b) Whenever both the captive Units were under outage, whether the power was scheduled to Captive Consumers from other Units.

10.3. No request for change of source was made in accordance with the Regulations; also, the supply from these other Units will not qualify as captive power.

11.-At the hearing held on 23 February, 2017:

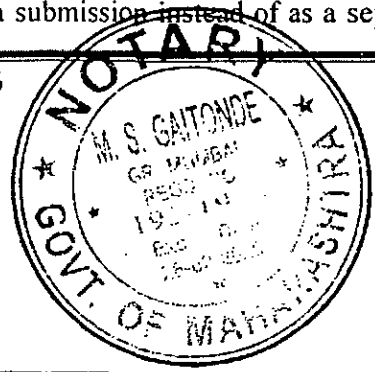
11.1. SWPL stated that:

- a) It has submitted the data regarding captive generation and consumption to MSEDCL. However, MSEDCL is asking for MSLDC certification of that data.
- b) Vide letter dated 16 March, 2016, SWPL has already requested MSLDC for certification of the data.
- c) The Commission may direct MSLDC to verify and certify the data.

11.2. MSEDCL stated that it has filed its initial Reply, but would like to make a further submission in view of TPC-D's submission.

11.3. The Commission asked MSEDCL about the procedure followed in the past while dealing with the determination of captive status. MSEDCL stated that MSLDC certification is required for the recognition of captive status and the same procedure has been followed in the past. MSEDCL has not corresponded with MSLDC regarding the certification, but will do so and revert to the Commission.

11.4. To the Commission's query regarding the need for filing another Miscellaneous Application to implead MSLDC and RInfrac-D, TPC-D stated that the MA filed on 22 February, 2017 may be considered as a submission instead of as a separate MA. The

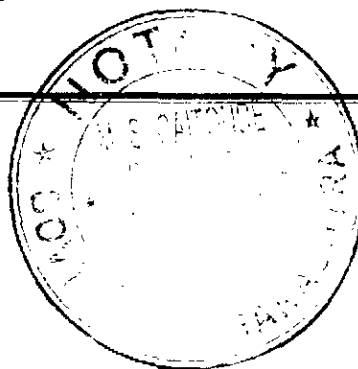


MSLDC certification is required as per the EA, 2003 and, accordingly, TPC-D has written to MSLDC for certification but no response has been received. The Commission may issue a direction to MSLDC in this regard.

- 11.5. To a query of the Commission, SWPL stated that it has excluded the consumption of energy supplied to Captive Users from Units 1 and 2 (non-CGP Units) SWPL is ready to pay CSS on the consumption of energy supplied from these non-CGP Units.
- 11.6. The Commission decided to implead MSLDC, and directed MSLDC to provide the certified data after verification to all parties within a month with a copy to the Commission. TPC-D and MSEDCL may file their submissions within two weeks thereafter.

12. Vide its further submission dated 29 May, 2017, TPC-D stated that:

- 12.1. The Commission vide its Daily Order of 23 February, 2017 had impleaded MSLDC as a party and directed it to provide certified data to assess the SWPL CGP status for FY 2014-15 and FY 2015-16 to all parties within a month. TPC-D and MSEDCL were further directed to file their submissions within two weeks of receipt of the data from MSLDC. Accordingly, the Commission had tentatively reserved the Case for Orders, subject to the nature of the submissions made by the Parties.
- 12.2. Pursuant to the Daily Order dated 23 February, 2017, TPC-D, vide its letters dated 24 February, 27 March and 20 April, 2017, had repeatedly requested MSLDC to provide the following data which is essential to assess the CGP status of SWPL for FY 2014-15 (and for FY 2015-16 in Case No. 159 of 2016 which is also pending for adjudication before the Commission).
 - a. The scheduling of power to consumers of SWPL availing OA through Group Captive route for FY 2014-15 and FY 2015-16.
 - b. Metering data to show entire generation on 15 minute time block basis distinctively from the Captive Units (Unit 3 and 4) and IPP Units (Units 1 and 2) of SWPL during FY 2014-15 and FY 2015-16.
 - c. Date-wise revision of schedules on 15 minute time block basis of SWPL's consumers availing OA through Group Captive route during FY 2014-15 and FY 2015-16.
 - d. Outage details of Units 3 and 4 during FY 2014-15 and FY 2015-16



- e. Reconciliation of entire generation from Units 3 and 4 vs. scheduling of power to Captive Consumers during FY 2014-15 and FY 2015-16.
- f. Details of the generation of power from each of the Units of SWPL during FY 2014-15 and FY 2015-16
- g. Any other relevant document/data/information in this regard.

12.3. Vide letter dated 27 April, 2017, MSLDC submitted the energy injection of SWPL at 220 KV Warora Line-I and 220 kV Warora Line – II for FY 2014-15 and FY 2015-16. Since the data provided by MSLDC is insufficient for determining SWPL’s captive status, TPC-D vide its letter dated 5 May, 2017 requested MSLDC to provide the requisite certified data forthwith.

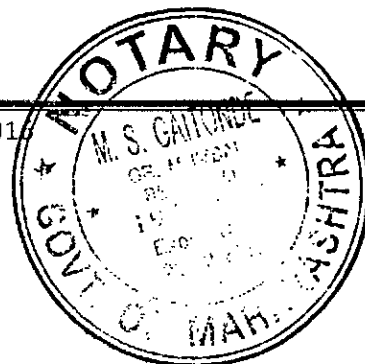
12.4. MSLDC has not given its response on the data sought by TPC-D. On the contrary, even the data that has been provided on 27 April, 2017 is inadequate and not helpful for determination of SWPL’s captive status.

12.5. Hence, the Commission may:

- a. Revive the present Case No. 77 of 2015
- b. Direct MSLDC to forthwith provide the requisite data, which is essential to assess SWPL’s CGP status for FY 2014-15 and FY 2015-16.
- c. Order an investigation into the affairs of SWPL under Sections 94(1) and 128 of the EA, 2003 read with Regulation 82 of the MERC (Conduct of Business) Regulations, 2004 (as sought by TPC-D in its MA filed on 22 February, 2017) so as to assess the compliance/ non- compliance of the provisions of the EA, 2003 and the Rules and Regulations thereunder qua SWPL’s captive status for FY 2014-15.

13. Vide its submission dated 6 June, 2017, MSLDC stated as follows:

13.1. The interface points identified for SWPL in respect of the Final Balancing and Settlement Mechanism (FBSM) are the outgoing feeders, i.e. 220 KV Warora –I and 220 KV Warora –II Lines. MSLDC has MRI data of SWPL of these Lines only, i.e. the G-T wise Availability-based Tariff (ABT) data is not available.



13.2. Energy Injection Report for FY 2014-15 of SWPL into the State Grid at 220 KV Warora Line –I and 220 KV Warora Line –II for FY 2014-15 as per ABI meter data submitted by the EHV O&M Circle. Chandigarh is as under:

Table 8: Energy Injection Report for FY 2014-15 as submitted by MSLDC

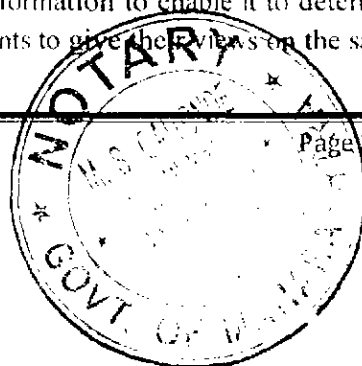
Month	220 KV Warora line -I	220 KV Warora line -II	Total in kWh
	Import in kWh	Import in kWh	
April, 14	2169610	2180890	4350500
May, 14	41432180	41509900	82942080
June, 14	11855410	11978610	23834020
July, 14	55485010	55951270	111436280
August, 14	74338200	74913370	149251570
September, 14	56797350	57270030	114067380
October, 14	81638010	81672330	163310340
November, 14	39126920	39540700	78667620
December, 14	40744430	41024950	81769380
January, 15	39149040	39384140	78533180
February, 15	38230690	38570530	76801220
March, 15	40291570	40582110	80873680
Total in kWh	521258420	524578830	1045837250

14. In its submission dated 16 October, 2017, TPC-D stated that:

14.1. The Commission had impleaded MSLDC and directed it to provide certified data after verification, to enable assessment of SWPL's CGP status for FY 2014-15, to all parties within a month. TPC-D and MSEDCL were further directed to file their submissions within two weeks of receipt of the data from MSLDC. The Commission had tentatively reserved the Case for Orders, subject to the nature of the submissions made by the Parties.

14.2. MSLDC had been repeatedly to provide the data set out in TPC-D's earlier submission, which is essential to assess SWPL's CGP status for FY 2014-15. The data provided on 27 April, 2017 was insufficient for this purpose. Till date, both MSLDC and SWPL have failed to respond to TPC-D communications and/or provide the necessary data/information as directed by the Commission.

14.3. The Commission in its Daily Order dated 29 June, 2017 in Case No. 159 of 2016 directed SWPL to provide the following data/ information to enable it to determine its captive status for FY 2015-16, and the Respondents to give their views on the same:



"3. (IV) SWPGL should provide the following data / information to enable the Commission to determine the captive status of SWPGL, and for the respondents to give their views:

- a) The details of scheduling of power to consumers of SWPGL through Group Captive route for FY 2015-16.
- b) Metering data to show all Unit-wise generation on a 15 minute time block basis separately the Captive Units (Units 3 and 4) and IPP Units (Units 1 and 2) of SWPGL for FY 2015-16.
- c) Date wise revision of schedules on 15 minute time block basis of SWPGL availing Open Access through Group Captive route for FY 2015-16.
- d) Forced and planned shutdown/ back down details of Captive Units (Units 3 and 4) for FY 2015-16.
- e) Reconciliation of the entire net generation on 15 minute time block basis from Captive Units (Units 3 and 4) vs scheduling of power to captive consumers for FY 2015-16.
- f) Details of the net generation of power from each of the units of SWPGL for FY 2015-16.
- g) Any other relevant document / data / information...

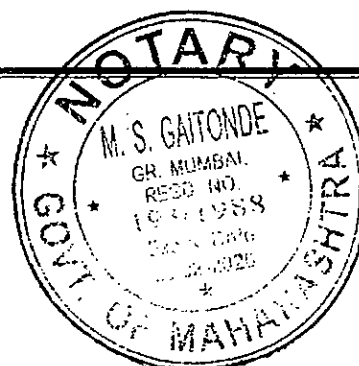
6. The Commission notes that SEMs are installed at each Unit of SGPGL. MSLDC does not have Generator Transformer (GT) wise ABT data of generation as meters are installed for 220 kV outgoing Warora I and II Lines. Hence, the Commission directs SWPGL to provide Unit wise ABT generation data to MSLDC, TPC-D, MSEDCL and RInfra-D for FY 2015-16. SWPGL shall also submit the information at para 3 (IV) above duly certified by MSLDC within two weeks, with copies to the Respondents."

14.4. Vide its submission dated 18 September, 2017, TPC-D had highlighted discrepancies in the data/information submitted by SWPL and non-compliance of the Commission's directions dated 29 June, 2017. It had also requested the Commission to revive Case No. 77 of 2015 and order an inquiry under Section 128 of EA, 2003 since SWPL had failed to provide the necessary data despite repeated requests.

14.5. TPC-D has been repeatedly following up with SWPL for requisite details/information which is essential to determine its CGP status.

14.6. SWPL has filed a Petition in Case No. 62 of 2017 in which it has stated that:

- a. "The Petition is filed pursuant to the direction given by the Commission on the last date of hearing held on 14 September, 2017 in regard to the unit wise metering data for generating data for the generating Units of the Petitioner.



- b. *As confirmed in the previous fillings, Unit wise ABT meters are installed for each of the generating Units of the Petitioner's generating Station. Till April, 2014, the unit wise generation data was being downloaded and taken by SLDC for each of the generating Units. The said practice was however discontinued from June, 2014.*
- c. *The ABT meters installed at the generating gave capability to store historical data for 35 days. Therefore, as at present, the data for the last 35 days is stored in the ABT meters installed for generating units of SWPGL. The 15 minute time block wise injection data from Unit No. 3 and 4 of the generating Station of the SWPGL for the period from 29 July, 2017 to 1 September, 2017 was submitted along with the Petition."*

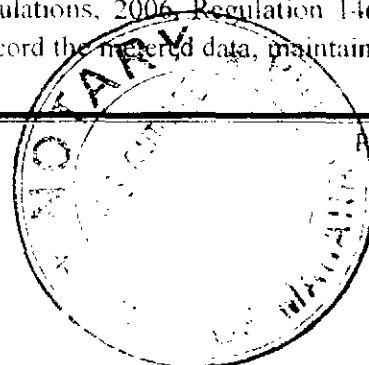
14.7. SWPL has admitted that it does not have details of the Net Generation of power from each of the 4 Units (i.e. 2 IPP Units and 2 CGP Units) of its Plant, since it failed to download and maintain a record of the Unit-wise generation for the period of May, 2014 to 28 July, 2017 (i.e. approximately 3 years).

14.8. The Commission had sought this 15 minute data from all 4 Generating Units of SWPL, since it was not only demonstrated by IPC-D but also admitted and acknowledged by SWPL that it had intermittently supplied power to its Captive Users from Units 1 and 2 (i.e. IPP Units) of its Generating Station, without any schedule, OA permission and /or intimation/approval for change in source of injection. SWPL has failed to disclose the fact that power has been supplied to the Captive Users from Units 1 and 2 (i.e. IPP Units) of its Generating Station.

14.9. Considering unscheduled/intermittent supply of power to Captive Users from the IPP Units, other discrepancies highlighted by IPC-D and in the absence of crucial metering data, SWPL cannot conclusively demonstrate that it has fulfilled the requirements of Rule 3 of the Electricity Rules, 2005 so as to enjoy the benefits provided to CGPs for FY 2014-15. The onus to prove that all the requirements of Rule 3 read with the regulatory framework qua supply of power from the Captive Power Station have been met in its absolute sense is on SWPL.

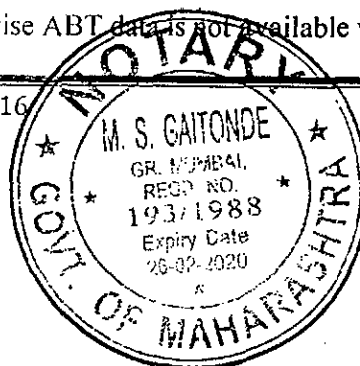
14.10. At the hearing on 29 June, 2017, the Commission had emphasised that the generation data from each of the 4 Units of SWPL, duly certified by MSLDC, was crucial to ascertain the captive status.

14.11. SWPL's affidavit dated 28 September, 2017 (in the separate Case No. 62 of 2017) is a clear admission that it has not complied with Regulation 14 (3) of the CEA (Installation and Operation of Meters) Regulations, 2006. Regulation 14(3) casts an obligation on the Generating Company to record the metered data, maintain a record of

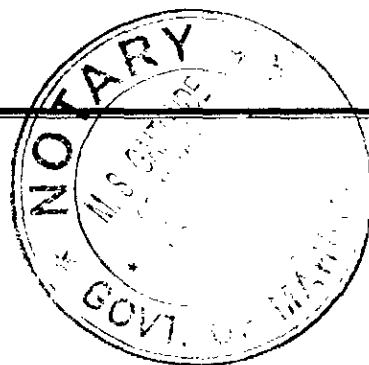


all the information associated with energy accounting and audit meters and verify the correctness of the metered data. It also requires the Generating Company to prepare quarterly, half-yearly and early energy accounts for its system.

- 14.12. SWPL's conduct (non-disclosure/ suppression of relevant facts), and belated admission that there is no record of Unit-wise generation data for the past 3 years clearly demonstrates that SWPL has approached the Commission with unclean hands while seeking a declaration of compliance of its captive status for FY 2015-16 in Case No. 159 of 2016.
- 14.13. The Petition was filed in May, 2015, but SWPL and MSLDC have failed to provide the requisite details/ information despite repeated requests from TPC-D and directions by the Commission. It is only at this belated stage, i.e., in September, 2017, that SWPL in another Petition (Case No. 62 of 2017) has disclosed the crucial fact that it does not have the necessary details which are required to determine its CGP status.
- 14.14. In terms of the EA, 2003, Rules and Regulations and the conditions imposed while granting OA, if a consumer fails to provide necessary information/ details to demonstrate its compliance with Rule 3 of the Electricity Rules, the entire electricity generated shall be treated as if it is a supply of electricity by a Generating Company and the consumer shall be liable to pay CSS and such other applicable charges.
- 14.15. The new revelations/ admissions necessitate that the Commission revive this matter, which was tentatively reserved for orders subject to the nature of the submissions made by the Parties. In the alternative, in the absence of the critical data which is pertinent to determine the captive status of any Group Captive Power Producer, the Commission may dismiss this Petition of SWPL seeking approval of its Captive Status for FY 2014-15 and accordingly direct that CSS becomes payable on the entire electricity generated by SWPL during FY 2014-15.
15. In its further submission dated 18 November, 2017, MSEDCL stated that:
- 15.1. At the hearing held on 23 February, 2017. The Commission decided to implead MSLDC as a party, and directed MSLDC to provide the certified metering data. The Commission also directed TPC-D and MSEDCL to file their submissions within two weeks thereafter.
- 15.2. Vide letter dated 1 June, 2017, MSLDC has informed that the interface points identified for SWPL in respect of the FBSM are meters of the outgoing feeders, i.e. 220 kV Warora-I and 200 kV Warora-II Lines. MSLDC has MRI data of SWPL of only these Line meters and the G-T-wise ABT data is not available with MSLDC.



- 15.3. In Case No. 159 of 2016 [regarding determination of CGP status in FY 2015-16], SWPL has stated that *"Special Energy Meters have been installed at each of the Generating Units"*. During the hearing held on 29 June, 2017, the Commission had directed SWPL to provide Unit-wise ABT generation data to MSLDC, TPC-D, MSEDCL and RInfra-D.
- 15.4. At the hearing held on 11 July, 2017 in Case No. 62 of 2017, SWPL had again stated that *"ABT compliant meters are installed at the plants, which are capable of recording electricity injection from each unit on a 15 minute time block basis"*. The Commission had also enquired regarding this:
- "The Commission asked SWPGL whether the Special Energy Meters (SEM) installed at each of its Generating Units are with 15 minutes time integration feature and in operation mode for the purpose of MD and kWh both, and whether the current BEMs are recording MD and kWh on 15 minutes time integration. The Advocate of SWPGL stated that he would collect the information and file a submission accordingly."*
- 15.5. However, even after repeated directives from the Commission, till date SWPL has not provided Unit-wise 15 minute ABT meter data for FY 2014-15 to FY 2016-17.
- 15.6. At the hearing held on 14 September, 2017, SWPL had stated that it could submit the generation data only of the last 35 days on 15 minute time block basis for each Generating Unit. Hence, it is evident that the generation data of Units 3 and 4, which is very vital for establishing the CGP status of SWPL, is not available.
- 15.7. SWPL is the ultimate beneficiary of declaration of CGP status. Hence, it is the responsibility of SWPL to arrange for all statutory and technical arrangements such as keeping record of certified captive generation; installing, testing and arranging for joint meter reading of captive Unit generation.
- 15.8. The Electricity Rules, 2005 envisages that not less than 51 % of the aggregate electricity generated by such Plant, determined on an annual basis, is consumed for captive use.
- 15.9. There is no certified authentic data available regarding energy generated from Captive Units 3 and 4 of SWPL for FY 2014-15. Hence, compliance with the condition prescribed in the Electricity Rules, 2005 cannot be verified.



15.10. SWPL has injected power from Units 1 and 2 (i.e. non-Captive Units) to their Captive Consumers. SWPL has also agreed to this fact. In the absence of certified SEM data for FY 2014-15, the captive and non-captive Units cannot be segregated. It is possible that all or most of the power generated from Units 1 and 2 (i.e. non-Captive Units) might have been wheeled to OA consumers. After pointing out that SWPL had supplied power from non-Captive Units, at present the generation of SWPL has significantly reduced and, for most of the time, one of its Captive Units is off-bar. Under such circumstances, the CGP status of SWPL cannot be established for the past period, i.e. FY 2014-15.

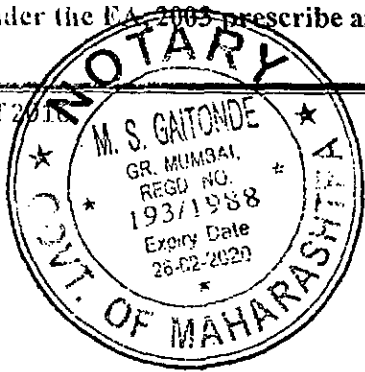
15.11. At the hearing on 23 February, 2017, SWPL agreed that it has injected power from Units 1 and 2, i.e. non-Captive Generating Units, to its OA consumers. This is also clearly reflected in the Commission's Daily Orders of 11 July, 2017 and 14 September, 2017 [in Case No. 62 of 2017]. It is also very clear from these hearings and Daily Orders that one of the major elements for determination of CGP status, i.e. installation of Special Energy Meter (SEM) and Unit-wise data on 15 minutes time block is not available with SWPL. If, as per SWPL's admission at the hearing on 14 September, 2017, SWPL can provide SEM compliance data only for 35 days, SEM data being an important and deciding factor in determining CGP status, the Commission may draw an adverse inference against SWPL.

15.12. From the conduct of SWPL, it is clear that it has wilfully and deliberately not followed the procedure for joint meter reading (JMR) and keeping record of certified captive generation data so that the electricity generated from the IPP Units 1 and 2 may also be wheeled as electricity generated from the CGP Units 3 and 4, and thus gain monetary benefits by way of exemption from CSS. In the absence of certified SEM data for FY 2014-15, theoretically it is impossible to determine the CGP status.

15.13. Since February, 2016, after the directives of the Commission, SWPL at various hearings in similar matters (Case Nos. 159 of 2016 and 62 of 2017) has stated that it has the generation SEM data of the Captive Units and that it would be provided to MSEDCL for ascertainment of its captive status. However, at the hearing on 14 September, 2017, SWPL admitted that it has the data only for the last 35 days. Hence the delay in filing the response in this matter is due to the failure of SWPL to provide the Unit-wise SEM generation data which it had committed to providing before the Commission in hearings of similar Cases.

Commission's Analysis and Ruling

16. The Electricity Rules, 2005 notified under the EA, 2003 prescribe as follows:



“3. Requirements of Captive Generating Plant.

(1) No power plant shall qualify as a ‘captive generating plant’ under section 9 read with clause (8) of section 2 of the Act unless

(a) in case of a power plant

(i) not less than twenty six percent of the ownership is held by the captive user(s), and

(ii) not less than fifty one percent of the aggregate electricity generated in such plant, determined on an annual basis, is consumed for the captive use:

Provided that in case of power plant set up by registered cooperative society, the conditions mentioned under paragraphs at (i) and (ii) above shall be satisfied collectively by the members of the cooperative society:

Provided further that in case of association of persons, the captive user(s) shall hold not less than twenty six percent of the ownership of the plant in aggregate and such captive user(s) shall consume not less than fifty one percent of the electricity generated, determined on an annual basis, in proportion to their shares in ownership of the power plant within a variation not exceeding ten percent;

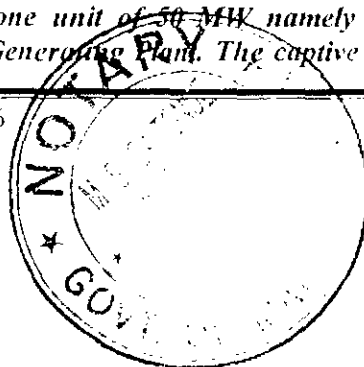
(b) in case of a generating station owned by a company formed as special purpose vehicle for such generating station, a unit or units of such generating station identified for captive use and not the entire generating station satisfy (s) the conditions contained in paragraphs (i) and (ii) of sub-clause (a) above including-

Explanation:

(1) The electricity required to be consumed by captive users shall be determined with reference to such generating unit or units in aggregate identified for captive use and not with reference to generating station as a whole; and

(2) the equity shares to be held by the captive user(s) in the generating station shall not be less than twenty six per cent of the proportionate of the equity of the company related to the generating unit or units identified as the captive generating plant.

Illustration: In a generating station with two units of 50 MW each namely Units A and B, one unit of 50 MW namely Unit A may be identified as the Captive Generating Plant. The captive users shall hold



not less than thirteen percent of the equity shares in the company (being the twenty six percent proportionate to Unit A of 50 MW) and not less than fifty one percent of the electricity generated in Unit A determined on an annual basis is to be consumed by the captive users.

(2) It shall be the obligation of the captive users to ensure that the consumption by the Captive Users at the percentages mentioned in sub-clauses (a) and (b) of sub-rule (1) above is maintained and in case the minimum percentage of captive use is not complied with in any year, the entire electricity generated shall be treated as if it is a supply of electricity by a generating company."

Explanation:- (1) For the purpose of this rule.-

a. "Annual Basis" shall be determined based on a financial year;

b. "Captive User" shall mean the end user of the electricity generated in a Captive Generating Plant and the term "Captive Use" shall be construed accordingly;

c. "Ownership" in relation to a generating station or power plant set up by a company or any other body corporate shall mean the equity share capital with voting rights. In other cases ownership shall mean proprietary interest and control over the generating station or power plant;

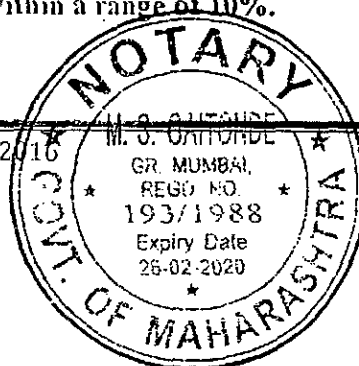
d. "Special Purpose Vehicle" shall mean a legal entity owning, operating and maintaining a generating station and with no other business or activity to be engaged in by the legal entity."

17. Accordingly, the questions to be addressed for determining the CGP status or otherwise of SWPL's Units 3 and 4 in FY 2014-15 are

a) Whether the Captive Users of SWPL held 26% equity shares with voting rights in the identified CGP Units 3 and 4 in FY 2014-15?

b) Whether the Captive Users of SWPL satisfied the following in FY 2014-15:

- Consumption of not less than 51% of the aggregate electricity generated by the Units identified for captive use, on an annual basis; and**
- If so, whether such consumption is in proportion to their shares in the ownership of the Plant, within a range of 10%.**



18. ISSUE A - Whether the Captive Users of SWPL held 26% equity shares with voting rights in the identified CGP Units 3 and 4 in FY 2014-15?

18.1. Units 3 and Unit 4, which are claimed to be the Captive Generating Units of SWPL's Power Plant, are supplying power to several shareholders/Users.

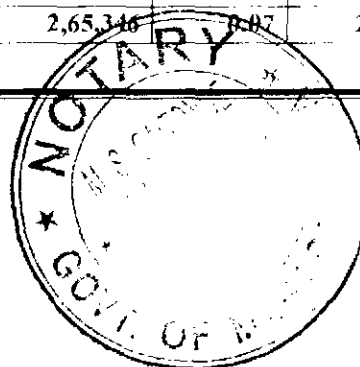
18.2. SWPL has furnished the following certifications regarding the extent of ownership of the Captive Users:

- Auditor's Certificate dated 8 May, 2015 certifying the shareholding pattern as on 1 April, 2014, i.e. at the beginning of FY 2014-15;
- Auditor's Certificate dated 8 May, 2015 certifying the shareholding pattern as on 11 December, 2014.
- Auditor's Certificate dated 17 December, 2014 certifying the shareholding pattern as on 15 December, 2014.

The shareholding pattern of the Captive Users as per these certifications was as follows:

Table 9: Audited Shareholding by Captive Users in FY 2014-15, as submitted by SWPL.

Sr. No	Name of Shareholder	No. of Equity Shares of Rs. 10/- each (As on 1 April, 2014)		No. of Equity Shares of Rs. 10/- each (As on 11 December, 2014)		No. of Equity Shares of Rs. 10/- each (As on 15 December, 2014)	
		No of Equity Shares of Rs. 10/each	% to Total Equity	No of Equity Shares of Rs. 10/each	% to Total Equity	No of Equity Shares of Rs. 10/each	% to Total Equity
1	Viraj Profiles Ltd	2,32,98,938	6.34	2,32,98,938	6.34	2,32,98,938	6.34
2	Sona Alloys Private Ltd	26,53,455	0.72	14,15,176	0.39	14,15,176	0.39
3	RL Steels and Energy Ltd	26,53,455	0.72	26,53,455	0.72	26,53,455	0.72
4	Mahindra Hinoday Industries Ltd	17,68,970	0.48	17,68,970	0.48	17,68,970	0.48
5	Mahindra and Mahindra Ltd	19,45,867	0.53	19,45,867	0.53	19,45,867	0.53
6	Mahindra Vehicle Manufacturers Ltd	12,38,279	0.34	12,38,279	0.34	12,38,279	0.34
7	Mahindra Sanyo Special Steels Ltd	61,91,395	1.69	61,91,395	1.69	61,91,395	1.68
8	Mahindra Forgings Ltd	8,84,485	0.24	8,84,485	0.24	8,84,485	0.24
9	Bebitz Flanges	2,65,346	0.07	2,65,346	0.07	2,65,346	0.07



Sr. No	Name of Shareholder	No. of Equity Shares of Rs. 10/- each (As on 1 April, 2014)		No. of Equity Shares of Rs. 10/- each (As on 11 December, 2014)		No. of Equity Shares of Rs. 10/- each (As on 15 December, 2014)	
		No of Equity Shares of Rs. 10/each	% to Total Equity	No of Equity Shares of Rs. 10/each	% to Total Equity	No of Equity Shares of Rs. 10/each	% to Total Equity
	Works Private Ltd						
10	Mahalaxmi TMT Private Ltd	78,87,669	2.15	78,87,669	2.15	78,87,669	2.15
11	India Steel Works Ltd	10,61,382	0.29	10,61,382	0.29	10,61,382	0.29
12	Cosmo Films Limited	NIL	NIL	NIL	NIL	22,99,661	0.63
Total		4,98,49,241	13.57	4,86,10,962	13.24	5,09,10,263	13.86

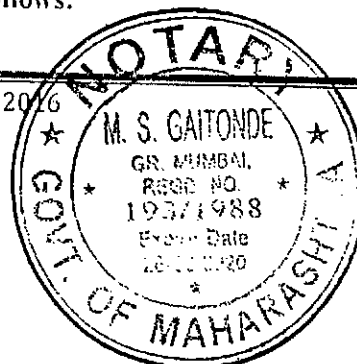
18.3. Based on this certification, the Commission has arrived at the equity shares held by the Captive Users at the SWPL Company level, which should have been an integral part of the Auditor's Certificate:

Table 10: Equity shareholding pattern of SWPL as a Company vis-à-vis its Captive Users for FY 2014-15

Particulars	No. of Equity Shares of Rs. 10/- each (As on 1 April, 2014)		No. of Equity Shares of Rs. 10/- each (As on 11 December, 2014)		No. of Equity Shares of Rs. 10/- each (As on 15 December, 2014)	
	No of Equity Shares of Rs. 10/each	% to Total Equity	No of Equity Shares of Rs. 10/each	% to Total Equity	No of Equity Shares of Rs. 10/each	% to Total Equity
Total equity Shares held by Captive Users	4,98,49,241	13.57	4,86,10,962	13.24	5,09,10,263	13.86
Total Equity Shares at Company Level derived by the Commission	367348865*	100	367152280#	100	367317914\$	100

* Total number of equity shares at Company Level= 49849241 x 100/13.57;
 # Total number of equity shares at Company Level= 48610962 x 100/13.24;
 \$ Total number of equity shares at Company Level= 50910263x 100/13.86;

18.4. The Commission notes that the total number of equity shares and the value of the equity shareholding, considering nominal amount per equity share of Rs.10 issued to Captive Users, works out as follows:

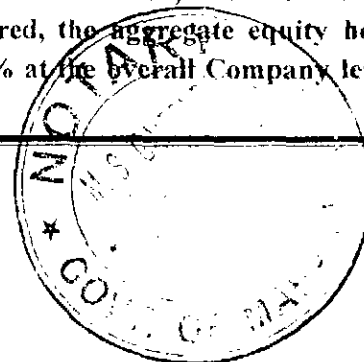


- As on 1 April, 2014 : No. of Shares: 4,98,49,241; Value: Rs. 49,84,92,410;
- As on 11 December, 2014 : No. of Shares: 4,86,10,962; Value: Rs. 48,61,09,620;
- As on 15 December, 2014 : No. of Shares: 5,09,10,263; Value: Rs. 50,91,02,630.

18.5. As is evident from Table 9 above, the number of equity shares held by Captive Users of SWPL at Sr. Nos. 1 to 11 (excluding Sona Alloys at Sr. No. 2) has remained constant throughout the year. The change in the equity shareholding of Sona Alloys is recorded in the Auditor's Certificate as on 11 December, 2014 and has remained constant thereafter. Other than these Captive Users, Cosmo Films (Sr. No. 12) was added as a shareholder in December, 2014 (most likely between 11 December and 15 December, 2014 considering the Auditor's Certificates). SWPL has stated that changes in the equity shareholding have been intimated to the concerned Licensees as and when they took place. However, the exact date when Cosmo Films was added is not specifically mentioned in the Petition. Further, while the exact date when the shareholding of Sona Alloys changed has also not been expressly stated in the Petition, it can be inferred from the weighted average shareholding computation submitted in Table 6 that the change took place on 11 December, 2014.

18.6. The Commission also notes that, while in Table 5 of its Petition SWPL has shown the shareholding of India Steel Works Ltd. as 0.15%, it actually works out to 0.29% as per the Audited Shareholding Certificates as on 1 April, 11 December and 15 December, 2014. Hence, the Commission considers 0.29% to be its shareholding for assessment against the captive status criteria for FY 2014-15. This information is important to establish that the equity shareholding of the Captive Users in Units 3 and 4 of the Plant did not fall below 26% at any time during the financial year.

18.7. Further, from the information regarding the implemented schedule of the Captive Users submitted by SWPL, it is observed that Cosmo Films had not consumed any power from the CGP Units during the year. Accordingly, in line with the approach of the Commission in its previous Order in Case No. 101 of 2014 (for FY 2013-14), the Commission has considered only those Users who actually consumed energy from the CGP in FY 2014-15. In the present case, Cosmo Films held only 0.63% of the aggregate 13.86% equity shareholding held by the Captive Users. Hence, even if it is not considered, the aggregate equity shareholding of the Captive Users would be more than 13% at the overall Company level with four Generating Units. Thus, even if the newly-added Member, Cosmo Films, is not considered, the aggregate equity holding of the Captive Users would be well above 13% at the overall Company level (i.e. more than 26% of the Captive Units 3 and 4).



18.8. Based on the available information, the Commission concludes that the aggregate equity shareholding of the Captive Users meets the first requirement of the Electricity Rules, 2005 inasmuch as they held more than 26% equity shareholding in the CGP Units 3 and 4.

19. ISSUE B - Whether the Captive Users of SWPL satisfied the following in FY 2014-15:

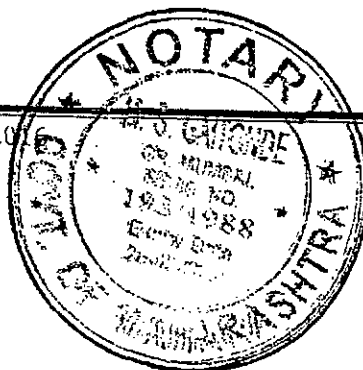
- Consumption of not less than 51% of the aggregate electricity generated by the Units identified for captive use, on an annual basis; and
- If so, whether such consumption is in proportion to their shares in the ownership of the Plant, within a range of 10%. Captive Users of SWPL satisfies 51% consumption to comply with Electricity Rules, 2005?

19.1. SWPL has stated that the total generation from the two identified CGP Units in FY 2014-15 was 991.93 MUs, of which consumption by the Captive Users was 768.82 MUs, i.e. 77.51% of the total generation. Hence, it claims that the requirement of the Electricity Rules, 2005 that Captive Users consume at least 51% of the aggregate electricity generated by the CGP Units was satisfied. The details are given in Tables 5 and 6 and para 3.7 of this Order.

19.2. The Respondents have contended that SWPL had supplied power from the Non-CGP Units (Units 1 and 2) to the Captive Users during outages of the CGP Units (Units 3 and 4), in contravention of the conditions of the OA allowed to SWPL for supply of power to Captive Users. However, no quantification and supporting documentation or other details in this regard have been provided by them to support this contention.

20. The Respondents have also raised the issue of availability of certified data of generation from all the SWPL Units from MSLDC and other relevant data mentioned earlier in this Order. This data is critical for establishing compliance with the CGP requirements of the Electricity Rules, 2005 by SWPL.

21. Hence, the Commission had directed MSLDC vide its Daily Order dated 23 February, 2017 to provide the certified data, but TPC-D submitted on 29 May, 2017 that MSLDC had not provided it. Subsequently, MSLDC submitted the energy injection data at the 220 KV Warora Lines I and II for FY 2014-15 as per ABT meter data. However, the GT wise ABT data was not available.



22. In a belated submission dated 16 October, 2017, TPC-D has stated that, in another Case, SWPL had admitted that it had supplied power from its Non-CGP Units 1 and 2 during forced outage of Units 3 and 4. However, no quantification has been provided.
23. TPC-D has also contended that, in its affidavit in Case No. 62 of 2017, SWPL has also admitted that it does not have details of the Net Generation from each of its 4 Units (CGP and non-CGP) since it had not downloaded and maintained a record of the Unit-wise generation for the period May, 2014 to 28 July, 2017 (i.e. around 3 years). Thus, SWPL has itself admitted that, till April, 2014, the Unit-wise generation data was being downloaded and taken by MSLDC for each of the Generating Units. This practice was, however, discontinued from June, 2014. The Commission cannot understand why the established and proper practice of taking monthly metered data of every Unit was stopped from June, 2014. No explanation has been attempted by SWPL, MSLDC or the Distribution Licensees.
24. At the hearing held on 23 February, 2017, SWPL stated that it had supplied power from its non-CGP Units 1 and 2 to the Captive Users during outages of the CGP Units and, to that extent, no captive status is claimed. It had already excluded the energy supplied to Captive Users from these Units. SWPL or its Captive Users would pay the CSS for this consumption. However, for best reasons known to it, SWPL has not provided the quantum of such power or details of tripping of its CGP Units. Moreover, as explained subsequently in this Order, this statement of SWPL appears to be without basis.
25. The Commission finds it surprising that, although issues regarding the Group Captive status of Generators have been regularly raised for some years now, none of those concerned - SWPL, MSLDC or the Distribution Licensees - could provide the data necessary for determining the captive status of Units 3 and 4 of SWPL for FY 2014-15. Hence, the Commission sought data on the generation schedules of these Units and the data on trippings in respect of all four Units from MSLDC. Based on the data provided by MSLDC vide its e-mail dated 17 January, 2018 and the submissions made by SWPL, the Commission notes the following, which is of relevance to the determination of the CGP status of Units 3 and 4 in FY 204-15:
- (i) As per the generation details submitted by SWPL, set out at Table 7 of this Order, Unit 1 was operational only in October, 2014; Unit 2 was not in operation during the entire year. These were both non-CGP Units.
 - (ii) This is corroborated by the tripping data for these non-CGP Units provided by MSLDC in the Table below:

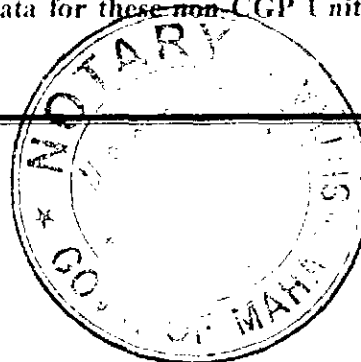


Table 11: SWPL non-CGP Units 1 and 2 outages in FY 2014-15, as per MSLDC

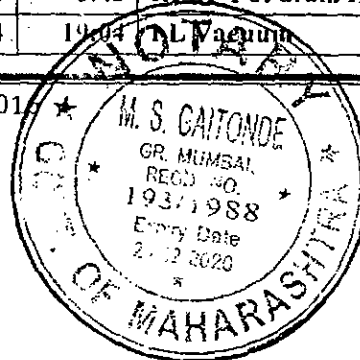
Generating Company	Capacity	Tripping Date	Tripping Time	Sync. Date	Sync. Time	Reason for outage
SWPL U-1	135	30-Jan-14	12:45	09-Oct-14	6:27	Turbine vibration
SWPL U-1	135	10-Oct-14	03:04	10-Oct-14	11:56	Turbine Oil Leakage
SWPL U-1	135	30-Oct-14	00:43		Continued	ESP Bag Filter Damaged.
SWPL U-2	135	18-Feb-14	00:02		Continued	Ash Conveyor problem

(iii) Table 11 shows that Unit 1 of SWPL was under outage from 30 January, 2014 till 9 October, 2014. After synchronizing with the grid for less than a day, it tripped again on 10 October, 2014 for a few hours and was then synchronized at 11:56 am on the same day. Unit 1 continued operations till 30 October, 2014, when it again tripped and the outage continued till the end of FY 2014-15. Thus, the non-CGP Unit 1 was operational only for around 21 days in 2014-15, while Unit 2 was not in operation at all.

(iv) MSLDC has also provided the following outage information of CGP Units 3 and Unit 4:

Table 12: Forced and Planned Outages of CGP Units 3 and 4 for FY 2014-15 as per MSLDC

Units	Outage Date	Time	Sync. Date	Time	Outage Reason
UNIT-3	01-04-14	0:07	30-04-14	21:41	No Load schedule
	14-05-14	21:43	14-05-14	23:24	Flame failure
	04-06-14	0:12	23-06-14	19:42	Due to Low coal stock
	15-10-14	0:01	29-10-14	21:58	No Load schedule and due to ID Fan Vibration High
	06-12-14	17:55	06-10-14	23:46	Bus bar diff protection operated
	25-12-14	14:02	26-12-14	0:55	No Load schedule and ID Fan B Vibration High
	21-02-15	0:24	05-03-15	22:00	ID Fan vibration High
	06-02-15	0:08	17-03-15	16:31	Turbine bearing vibration HH
	17-03-15	19:19	18-03-15	0:22	Turbine bearing vibration HH
UNIT-4	22-03-15	3:15	22-03-15	6:05	Due to thrust pad temperature high
	03-04-14	0:01	10-07-14	21:45	No Load Schedule
	01-09-14	0:06	01-09-14	9:15	No Load schedule and due to replacement of seal air fan
	01-09-14	23:58	02-09-14	7:45	Turbine Valve Broken
	14-09-14	0:03	23-09-14	5:46	Coal shortage
	14-10-14	0:03	14-10-14	6:45	HBPB Pot drain Heavy leakage
	25-10-14	17:45	25-10-14	19:04	Low Vacuum



Units	Outage Date	Time	Sync. Date	Time	Outage Reason
	01-11-14	0:19	25-12-14	7:52	No Load schedule
	01-01-15	17:30	03-01-15	0:12	PA Fan-B vibration III
	13-01-15	13:30	13-01-15	17:05	DEH DPU 1/21 malfunction
	25-01-15	22:27	20-02-15	18:48	NO Load schedule and Due 1D fan vibration high
	18-03-15	2:34	Continued		NO Load schedule

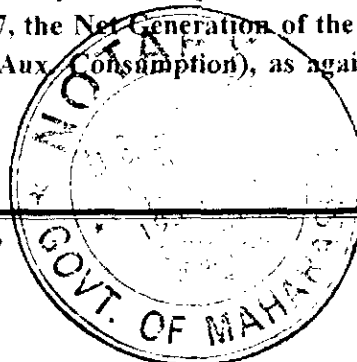
(v) Thus, CGP Units 3 and 4 were also under outage for some time in October, 2014, while Unit 1 was in operation during a part of that month. The Commission has sought to correlate the period during which the CGP Units 3 and/or 4 were under outage and the non-CGP Unit 1 was in operation.

(vi) The Commission notes that, even after considering the outage periods of CGP Units 3 and 4 during October, 2014, their generation as submitted by SWPL was much higher than the captive consumption in that month (and thus there might have been no need to provide them power from non-CGP Unit 1 during its days of operation in October). This is also evident from the CGP generation and captive consumption data for that month shown in Table 4 earlier in this Order.

(vii) MSLDC has provided the month-wise daily schedule which shows that the total energy scheduled in FY 2014-15 was 1041.33 MUs. As against this, the net energy exported (SWPL has also imported 1.52 MUs from the grid) as submitted by SWPL in Table 7 is 1045.82 MUs. This net energy exported also nearly matches the power injected by SWPL at the inter-connection point (1045.84 MUs) as certified by MSLDC (Table 7 of this Order).

26. According to SWPL's Petition (para 3.7 of this Order) and as reflected in Tables 5 and 6 above, the total generation from the CGP Units was 991.93 MUs and the corresponding consumption by Captive Users was 768.82 MUs, i.e. 77.51%. Accordingly, SWPL has claimed that it met the criterion of at least 51% consumption of the CGP Units' generation by Captive Users.

27. The Commission notes that the total generation (991.93 MUs) or the Gross Generation considered by SWPL as shown in Tables 5 and 6 is actually the Net Generation from the CGP Units after deducting the Auxiliary Consumption. Further, as per the information submitted by SWPL in Table 7, the Net Generation of the CGP Units was actually 994.76 MUs (Gross Generation - Aux Consumption), as against 991.93 MUs considered by SWPL.



28. The Commission also notes that SWPL has not considered any generation from CGP Units 3 and 4 in April, 2014, as is evident from its submission in Table 4 of this Order. This contradicts the data provided in Table 7, in which generation from these GCP Units has been shown in April, 2014. The day-wise generation schedule provided by MSDLC also reflects the schedule for the Plant for 2 days during April, 2014. The reason for not considering any generation in April, 2014 has not been mentioned by SWPL. Hence, the Commission has considered the generation from CGP Units 3 and 4 in April, 2014 based on the information set out in Table 7.
29. From the above, it is evident that SWPL has applied the proportionality test considering the Net instead of the Gross Generation. It also appears that SWPL has considered the captive consumption measured at G-T interface instead of such consumption grossed up with Auxiliary Consumption. As in its earlier Orders for FY 2012-13 and FY 2013-14, the Commission has applied the proportionality test considering the Gross Generation at the Generation Terminal of Units 3 and 4 compared with the captive consumption submitted by SWPL grossed up with their average Auxiliary Consumption on an annual basis.
30. Further, as is evident from the submissions of SWPL, there have been changes in the equity shareholding of the Company during the year. Thus, it has to be seen whether, irrespective of the changes in the equity shareholding of the Company, the consumption of the Captive Users as a percentage of generation was equal to or higher than the minimum prescribed in Rule 3 of the Electricity Rules, 2005. Accordingly, the Commission has examined the status of Units 3 and Unit 4 in two scenarios, i.e. i) based on the equity shareholding at the beginning of the year, and ii) based on the revised equity shareholding during the year (as on 11 December, 2014).
31. The equity shareholding as on 15 December, 2014, as submitted by SWPL, is the same as on 11 December, except for the addition of Cosmo Films. However, since Cosmo Films did not consume any power during the year, the Commission has determined the CGP status of SWPL considering the equity shareholding as on 11 December, 2014 and that the equity shareholding had not changed thereafter in the remaining period of FY 2014-15.
32. Considering the above and the submissions regarding the equity shareholding, annual gross generation, and the consumption figures grossed up with the Auxiliary Consumption for FY 2014-15 pertaining to CGP Units 3 and 4, the Commission has computed the relevant parameters against the CGP criteria of the Electricity Rules, 2005 as set out in Table 13 below:

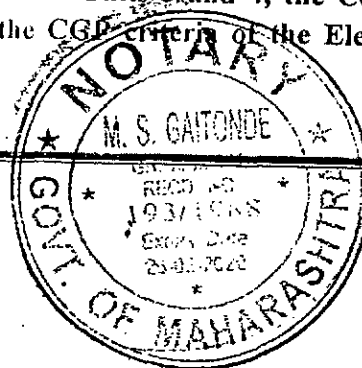


Table 13: Computation of Captive Status of SWPL in FY 2014-15 considering equity shareholding as on 1.4.2014
Scenario (i)

Sr. No.	Name of the Shareholder	No. of Equity Shares of Rs. 10/- each		% of consumption to be done by Captive User for meeting 51% consumption criterion	Gross Generation considered for 51% Calculation	Permissible Range for shareholding pattern for 51% consumption criterion			Adjusted Actual Consumption	Whether actual consumption (d) is equal to or greater than lowest permissible range (b)
		As per share certificates as on 01.04.2014	% of shares in Ownership of the Company			with 0% variation	variation of -10%	variation of +10%		
						MU a	MU b	MU c		
1	Viraj Profiles Limited	23,298,938	6.34%	46.72%	569.68	239.54	238.86	292.77	314.04	YES
2	Behitz Flanges Works Private Limited	265,346	0.07%	0.52%	569.68	2.64	2.64	3.23	9.57	YES
3	Mahindra and Mahindra Limited	1,945,867	0.53%	3.91%	569.68	20.02	19.97	24.47	62.76	YES
4	Mahindra Vehicle Manufacturers Limited	1,238,279	0.34%	2.51%	569.68	12.85	12.81	15.70	31.40	YES
5	Mahindra CIE Automotive Limited (Formerly Mahindra Forgings Limited)	884,485	0.24%	1.77%	569.68	9.07	9.04	11.08	24.66	YES
6	Mahindra Hinoday Industries Limited	1,768,970	0.48%	3.54%	569.68	18.14	18.08	22.17	49.26	YES
7	Mahindra Sanyo Special Steels Limited	6,191,395	1.69%	12.45%	569.68	63.85	63.67	78.04	107.80	YES
8	RL Steels and Energy Limited	2,653,455	0.72%	5.31%	569.68	27.20	27.13	33.25	52.46	YES
9	India Steel Works Limited	1,061,382	0.29%	2.14%	569.68	10.96	10.93	13.39	17.63	YES
10	Sona Alloys Private Limited	2,653,455	0.72%	5.31%	569.68	27.20	27.13	33.25	27.17	YES
11	Mahalaxmi TMT Private Limited	7,887,669	2.15%	15.84%	569.68	81.23	81.00	99.28	166.56	YES
Total		49,849,241	13.57%	100%	569.68	512.71	626.65	863.31		YES

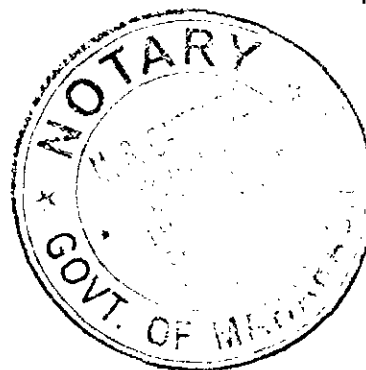
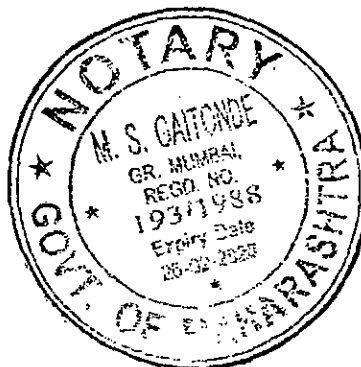


Table 14: Computation of Captive Status of SWPL in FY 2014-15 considering equity shareholding as on 11.12. 2014
Scenario (ii)

Sr. No.	Name of the Shareholder	No. of Equity Shares of Rs. 10/- each		% of consumption to be done by Captive User for meeting 51% consumption criterion	Gross Generation considered for 51% Calculation	Permissible Range for shareholding pattern for 51% consumption criterion			Adjusted Actual Consumption	Whether actual consumption (d) is equal to or greater than lowest permissible range (b)
		As per share certificates as on 11.12.2014	% of shares in Ownership in the company			with 0% variation	variation of -10%	variation of +10%		
						MIU	MIU	MIU		
a	b	c	d	e=d or >b						
1	Viraj Profiles Limited	23,298,938	6.34%	47.89%	569.68	272.79	245.51	300.07	314.04	YES
2	Bebitz Flanges Works Private Limited	265,346	0.07%	0.53%	569.68	3.01	2.71	3.31	9.57	YES
3	Mahindra and Mahindra Limited	1,945,867	0.53%	4.00%	569.68	22.80	20.52	25.08	62.76	YES
4	Mahindra Vehicle Manufacturers Limited	1,238,279	0.34%	2.57%	569.68	14.63	13.17	16.09	31.40	YES
5	Mahindra CIE Automotive Limited (Formerly Mahindra Forgings Limited)	884,485	0.24%	1.81%	569.68	10.33	9.29	11.36	24.66	YES
6	Mahindra Hinoday Industries Limited	1,768,970	0.48%	3.63%	569.68	20.65	18.59	22.72	49.26	YES
7	Mahindra Sanyo Special Steels Limited	6,191,395	1.69%	12.76%	569.68	72.72	65.44	79.99	107.80	YES
8	RL Steels and Energy Limited	2,653,455	0.72%	5.44%	569.68	30.98	27.88	34.08	52.46	YES
9	India Steel Works Limited	1,061,382	0.29%	2.19%	569.68	12.48	11.23	13.73	17.63	YES
10	Sona Alloys Private Limited	1,415,176	0.39%	2.95%	569.68	16.78	15.10	18.46	27.17	YES
11	Mahalaxmi TMT Private Limited	7,887,669	2.15%	16.24%	569.68	92.51	83.26	101.76	166.56	YES
Total		48,610,962	13.24%	100%		569.68	512.71	626.65	863.31	YES



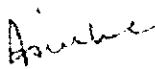
33. As is evident from the above, in FY 2014-15, the Commission concludes that SWPL met the CGP criterion of captive consumption of at least 51% (in proportion to the shareholdings of Captive Users, within $\pm 10\%$) under both scenarios, as per the second proviso to Rule 3(1) (a) (ii) of the Electricity Rules, 2005. Thus, SWPL and its Captive Users are entitled to the consequential dispensations, including exemption from payment of CSS, since it qualifies as a Group CGP in FY 2014-15 in respect of Units 3 and 4.

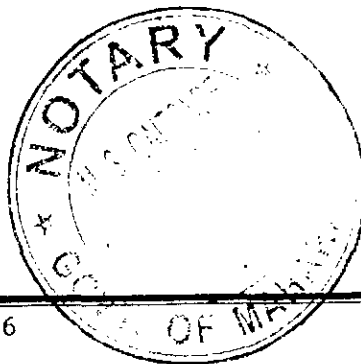
34. Considering the glaring deficiencies and omissions in the data and analysis provided in such Cases by all concerned and the need for streamlining the process for determination of Captive status, the Commission has had to set out guidelines for the purpose in its recent Order dated 17 January, 2018 in Case No. 23 of 2017. The Commission also notes that, till this Petition was filed, the Distribution Licensees had not initiated verification of SWPL's CGP status after the close of FY 2014-15, as they are expected to do in the ordinary course.

The Petition of Sai Wardha Power Ltd. in Case No. 77 of 2015 and Tata Power Co. Ltd. (Distribution)'s Miscellaneous Application No. 2 of 2016 stand disposed of accordingly.

Sd/-
(Deepak Lad)
Member

Sd/-
(Azeez M. Khan)
Member


(Ashwani Kumar Sinha)
Secretary



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Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
World Trade Centre, Centre No.1, 13th Floor, Cuffe Parade, Mumbai 400 005
Tel. No. 022 22163964/65/69 – Fax 022 22163976
E-mail: mercindia@merc.gov.in
Website: www.mercindia.org.in/ www.merc.gov.in

CASE No.77 of 2015

In the matter of

Petition of Sai Wardha Power Ltd. seeking declaration of the Captive Generation status of
its Generating Units 3 and 4 for FY 2014-15

Miscellaneous Application No. 2 of 2016

Application of Tata Power Company Ltd. (Distribution) seeking intervention in Case No.
77 of 2015

Coram

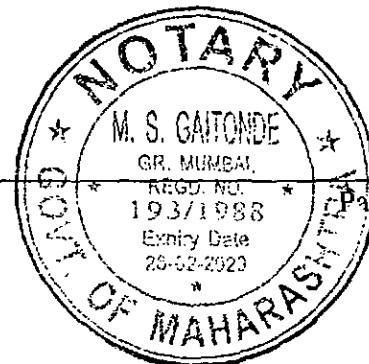
Shri Azeez M. Khan, Member
Shri Deepak Lad, Member

Date: 12 March, 2018

CORRIGENDUM ORDER

1. Table 13 at para. 32 of the Order dated 9 February, 2018 in Case No. 77 of 2015 and MA No 2 of 2016 sets out the “*Computation of Captive Status of SWPL in FY 2014-15 considering equity shareholding as on 1.4.2014 - Scenario (i)*”. Certain figures in columns ‘a’ and ‘b’ of Table 13, under the heading “Permissible Range for shareholding pattern for 51% consumption criterion”, require correction. Accordingly, Table 13 shall be substituted by the following Table and note, in which the revised figures in columns ‘a’ and ‘b’ and, consequently, the finding under column ‘e’ in respect of Sr. No. 10, are underlined:

Case No. 77 of 2015 SWPL Order - Corrigendum



Page 1 of 5

Table 13: Computation of Captive Status of SWPL in FY 2014-15 considering equity shareholding as on 1.4.2014
Scenario (i)

Sr. No.	Name of the Shareholder	No. of Equity Shares of Rs. 10/- each		% of consumption to be done by Captive User for meeting 51% consumption criterion	Gross Generation considered for 51% Calculation	Permissible Range for shareholding pattern for 51% consumption criterion			Adjusted Actual Consumption	Whether actual consumption (d) is equal to or greater than lowest permissible range (b)
		As per share certificates as on 01.04.2014	% of shares in Ownership of the Company			with 0% variation	variation of -10%	variation of +10%		
						MU a	MU b	MU c		
1	Viraj Profiles Limited	23,298,938	6.37%	46.72%	360.88	266.16	239.54	292.77	314.04	YES
2	Bebitz Flanges Works Private Limited	265,346	0.07%	1.29%	360.88	2.04	1.84	2.24	1.57	YES
3	Mahindra and Mahindra Limited	1,945,867	5.52%	11.01%	360.88	22.25	20.02	24.47	67.76	YES
4	Mahindra Vehicle Manufacturers Limited	1,238,279	3.51%	7.01%	360.88	14.27	12.85	15.79	31.46	YES
5	Mahindra CIE Automotive Limited (Formerly Mahindra Forgings Limited)	884,485	2.51%	5.01%	360.88	10.08	9.07	11.08	24.66	YES
6	Mahindra Hinoday Industries Limited	1,768,970	5.08%	10.16%	360.88	20.15	18.14	22.17	49.26	YES
7	Mahindra Sanyo Special Steels Limited	6,191,395	17.99%	35.98%	360.88	70.95	63.85	78.01	107.80	YES
8	RL Steels and Energy Limited	2,653,455	7.63%	15.26%	360.88	30.23	27.20	33.25	52.46	YES
9	India Steel Works Limited	1,061,382	3.00%	6.00%	360.88	12.17	10.96	13.39	17.63	YES
10	Sona Alloys Private Limited	2,653,455	7.62%	15.24%	360.88	30.23	27.20	33.25	27.17	NO*
11	Mahalaxmi TMT Private Limited	7,887,669	22.71%	45.42%	360.88	90.26	81.23	99.28	166.56	YES
Total		49,849,241	13.57%	100%		569.68	512.71	626.65	863.31	YES



Note: * Sona Alloys does not meet the CGP criterion of captive consumption of at least 51% ($\pm 10\%$) in proportion to its shareholding, considering its equity shareholding as on 1.4.2014 (Scenario (i)). However, Sona Alloys does meet this criterion considering its equity shareholding as on 11.12.2014 (Scenario (ii)), as reflected in Table 14."

2. As stated in the Order, the shareholding of Sona Alloys reduced from 2,653,455 shares as on 1 April, 2014 to 1,415,176 shares as on 11 December, 2014, as per the Auditor's Certificates. However, the shareholding of all other Captive Users remained unchanged throughout the financial year.
3. The Commission had also discussed, at para. 18.5 of its Order, the weighted average shareholding of Sona Alloys with reference to the CGP criteria. However, in the context of the revisions made in Table 13, the following Table 15 shall be added to the Order:

(Table is on Next Page.....)

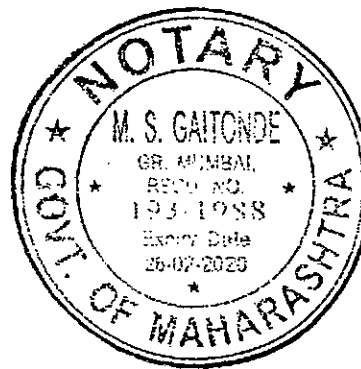


Table 15: Computation of Captive Status of SWPL in FY 2014-15 considering equity shareholding weighted average - Scenario (iii).

Sr. No.	Name of the Shareholder	No. of Equity Shares of Rs. 10/- each		% of consumption to be done by Captive User for meeting 51% consumption criterion	Gross Generation considered for 51% Calculation in MU	Permissible Range for shareholding pattern for 51% consumption criterion			Actual Consumption	Whether actual consumption (d) is equal to or greater than lowest permissible range (b)
		As per share certificates	% of shares in Ownership in the Company			with 0% variation	variation of -10%	variation of +10%		
						MU a	MU b	MU c	MU d	e=d or >b
1	Viraj Profiles Limited	23,298,938	6.34%	47.07%	569.68	268.13	241.32	294.95	314.04	YES
2	Bebitz Flanges Works Private Limited	265,346	0.07%	0.52%	569.68	2.96	2.66	3.26	9.57	YES
3	Mahindra & Mahindra Limited	1,945,867	0.53%	3.93%	569.68	22.17	20.17	24.66	62.76	YES
4	Mahindra Vehicle Manufacturers Limited	1,238,279	0.34%	2.52%	569.68	11.38	12.94	15.82	31.40	YES
5	Mahindra CIE Automotive Limited (Formerly Mahindra Forgings Limited)	884,485	0.24%	1.78%	569.68	11.38	11.14	11.17	24.66	YES
6	Mahindra Hiroday Industries Limited	1,768,970	0.48%	3.56%	569.68	20.30	18.27	22.33	49.26	YES
7	Mahindra Sanyo Special Steels Limited	6,191,395	1.69%	12.55%	569.68	21.17	61.33	78.62	107.80	YES
8	RL Steels & Energy Limited	2,653,455	0.72%	5.35%	569.68	30.45	27.41	33.50	52.46	YES
9	India Steel Works Limited	1,061,382	0.29%	2.15%	569.68	12.26	11.04	13.49	17.63	YES
10	Sona Alloys Private Limited	2,276,882*	0.62%	4.60%	569.68	26.22	23.60	28.84	27.17	YES
11	Mahalaxmi TMT Private Limited	7,887,669	2.15%	15.96%	569.68	90.91	81.84	100.02	166.56	YES
Total		49,472,668	13.47%	100%		569.68	512.71	626.65	863.31	YES

* Details of Weighted average Shareholding of Sona Alloys for FY 2014-15 as given in the Table below:

Shareholding Period	No. of Days	No. of Shares
01.04.14 to 10.12.14	254	2653455
11.12.14 to 31.03.15	111	1415176
Weighted Average	365	2276882



4. In view of these revisions, the phrase "under both scenarios" at para. 33 of the Order shall be substituted by the phrase "considering these scenarios".

Sd/-
(Deepak Lad)
Member

Sd/-
(Azeez M Khan)
Member

Ashwan
(Ashwan Kumar Sinha)
Secretary

