

BEFORE THE HIMACHAL PRADESH ELECTRICITY REGULATORY COMMISSION  
SHIMLA

M/s Astha Projects (India) Ltd.,  
having registered office at 482,  
Sector-A Pocket-C, Vasant Kunj,  
New Delhi.

...Petitioner

V/s

1. The Himachal Pradesh State Electricity Board Ltd.,  
Vidyut Bhawan, Shimla-171004.
2. The Government of Himachal Pradesh  
through Secretary (MPP & Power)  
Shimla-171002.

... Respondents

Petition No. 81 of 2010

(Passed on 23.11.2010)

**CORAM**  
**YOGESH KHANNA,**  
**CHAIRMAN**

Counsels :

for the petitioner

Sh. Ajay Vaidya  
Advocate

for the respondent No.1

Sh. Ramesh Chauhan  
(authorised representative)

for the respondent No.2

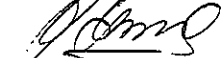
Sh. K.S. Chauhan  
Dy. D.A.

**ORDER**

(Last heard on 18.10.2010 and orders reserved)

M/s Astha Projects (India) Ltd., a registered Company under the Companies Act, 1956, having its registered office at 482, Sector-A Pocket-C, Vasant Kunj, New Delhi (hereafter referred as "the petitioner Company") through Sh. S.N. Kapoor its Director, has developed the Dehar Small Hydro

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Project, with installed 5 MW capacity, at Dehar in Chamba District, interfacing with the 33 kV Dentha Sub-Station (hereinafter referred as "the SHP").


2. Per the Power Purchase Agreement (in brevity "the PPA") executed with the Himachal Pradesh State Electricity Board Ltd (hereinafter referred as "the Board"), the cost of the 33 kV interconnection facility as well as the 33 kV dedicated transmission line from the SHP to the Board's interface point is to be borne by the petitioner company. The Board is to maintain the interconnection facility comprising of 33 kV terminal bay and metering equipment and the operation and maintenance charges (in brevity "O.M charges") thereof are to be borne by the petitioner Company.

3. The petitioner company alleges that to determine the operation and maintenance charges of the interconnection facility, the Board is dividing the total operation and maintenance cost of the sub station by the number of 33 kV bays in the sub-station. The Independent Power Producers have, therefore, to bear the operation and maintenance cost of one 33 kV bay by sharing the entire operation and maintenance cost of the sub-station in proportion to the number of 33 kV bays in the sub-station. Consequently the operation and maintenance cost of one 33 kV dedicated bay of the Independent Power Producer works out to be exorbitantly very high.

4. Normally there are only one or two existing 33 kV bays at the 33 kV Sub-stations. The sub station consists of a large quantum of equipments, other than the 33 kV bays, comprising of 33/11 kV power transformers, station transformers, 11 kV incoming and outgoing bays, capacitors banks etc. Thus the methodology adopted by the Board for working out the O&M cost of the interconnection facility only on the basis of number of 33 kV bays is irrational, illogical and is not derived as per the laid down guidelines issued by various regulatory authorities.

5. In case of Dehar SHP, the interfacing Dentha 33 kV sub-station, has only two 33 kV breaker bays, including the terminal bay from the power house of the petitioner company, two 33/11 kV transformers and a number of 11 kV breaker bays, a station transformer and some of the feeders without breakers and bus coupler equipments etc. Prior to the interfacing of the said SHP, the O&M charges of the entire sub-station were being incurred by the Board.

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With the interfacing of the petitioner company's project, only the equipments relating to one 33 kV bay comprising of a breaker, isolator, CTs, LAs and control panel alongwith metering equipments has been added.

7. The Board has asked the petitioner company to pay a sum of Rs. 13,99,840/- on account of O&M cost for the year 2009-10, which is alleged to be exorbitantly high and is arbitrary and unreasonable. Many communications have been stated to have been addressed to the Board by the petitioner company and the representatives of the petitioner company also visited the office of the Board and met with the concerned officials of the Board to rationalize the O&M charges or to ascertain justification for such high O&M charges, but due to the adamant and lax attitude of the Board the matter could not be resolved.

8. With the background, as set out in the preceding paras of this Order, the petitioner company has approached this Commission for direction to the respondent Board to frame guidelines to work out the cost of O&M, for the interconnection facility, based on the regulations made by this Commission and also to restrain the Board from making recovery of the O&M charges from the energy bills of the SHP, till the pendency of this petition.

9. In response to the petition, the respondent Board states -

- (a) that the O&M charges are to be borne by the petitioner company as per Clause 6.3 of "the agreement for execution of operation and maintenance of interconnection facilities" entered into by the petitioner company with the Board on 23.1.2009. Accordingly the respondent Board, in order to determine the O&M charges of the interconnection facility, is dividing the total cost of O&M of sub-stations by the number of 33 kV bays in the sub-stations.
- (b) that it is not correct that there were two number bays in the sub-station but in fact there are four number of 33 kV bays viz one No. interconnection bay, one No. 33 kV outgoing bay and two No. transmission bays;
- (c) that the plea of the petitioner company that prior to the interfacing of the SHP, the O&M charges of the entire sub-station had been incurred by the Board and only one bay had

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been added by the IPP is not acceptable and points out that in fact the total O&M charges of the sub-station for a particular year, mainly comprise of the establishment cost and it is pleaded that if IPP is to maintain its bay itself the amount it had to incur towards the technical staff, as respondent Board does towards the establishment. For the O&M of 11 kV systems, the Board does not keep the staff, round the clock in the shifts, at 11 kV equipment system. It is only at 33 kV and above stations where the staff is kept around the clock for operation and maintenance. Hence while working out the OM charges for the IPP, the 11 kV bays/feeders cannot be taken into account for adding to total number of incoming/outgoing bays/ feeders in the sub-station;

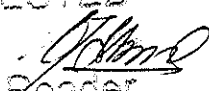
- (d) that the petitioner company has not paid the O&M charges, since the date of evacuation of power i.e. August, 2004, the unpaid amount is to bear penalty @ 1.5% per month under clause 8 of the Agreement for Execution, Operation and Maintenance of interconnection feeder;
- (f) that the respondent Board admits that representative of the petitioner company visited the Board's office and he too was convinced about the quantum of bills raised.

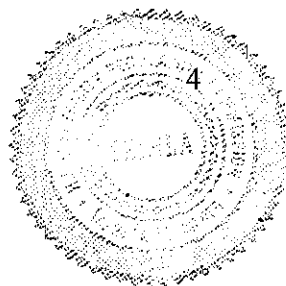
10. The respondent Board further states that ~~the~~ advertently expenses for the year 2009-10 were taken as Rs. 25,22,232/- instead of Rs. 22,22,375/- for which revised bill would be raised to the petitioner company by considering total four bays.

11. The respondent Board also urges that this dispute, arising out of agreement, should have been resolved under clause 11 of the aforesaid agreement through mutual conciliation or the adjudication by the arbitrator under the Arbitration and Conciliation Act, 1996. Hence the Board pleads that this petition deserves to be dismissed on this score.

12. In the rejoinder to the reply, filed by the respondent Board, the petitioner reaffirms and reiterates the averments made in the main petition. The petitioner company refutes the contention of the respondent Board that no staff is kept for the maintenance of the 11 kV equipment/system and asserts

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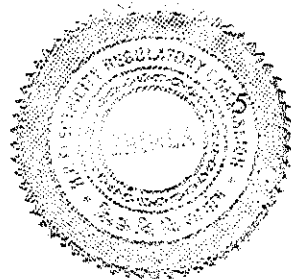
that the petition pertains to the O&M charges of a 33 kV sub-station, which also includes 11 kV breakers and panels besides the 33 kV breakers and panels. The 11 kV feeders emanating from this sub-station are controlled and maintained from this 33 /11 kV sub-station and maximum number of operations by way of tripping or controls are on 11 kV system. The power from the petitioner's power house is delivered to the Board at 33 kV on the 33 kV incoming bay, beyond which the Board is responsible for its distribution/disposal. The petitioner's responsibility, therefore, is limited to the 33 kV incoming dedicated bay only and as such the O&M charges should be worked out accordingly by the Board on the percentage of capital cost. The contention of the respondent Board that a penalty of 1.5% p.m. is leviable is not tenable since the amount in question is disputed particularly in view of the admission by the respondent Board of having wrongly calculated the O&M charges considering two 33 kV bays instead of four bays. It is further stated that the representative of the petitioner company not only visited the offices of the respondent Board, but also represented to the Chief Engineer (SP) and discussed the issue with Member (OP) of the Board.

13. From the facts of the case, as set out in the preceding paras of this Order, it is clear that the respondent Board has apportioned the total amount of normal operation and maintenance (O&M) of the sub-station in proportion to the 33 kV incoming bays at the substation. As such, no part out of the total O&M cost has been apportioned to the O&M of the transformer(s) and the 11 kV bays/control equipment for the outgoing feeders. Per statement of the respondent Board the O&M charges are being worked out on the basis of Clause 6.3 of the Interconnection Agreement, as reproduced below:-

"6.3 The Board shall intimate the tentative amount required to be deposited for normal operation and maintenance of the Interconnection facility for each ensuing year on or after 15<sup>th</sup> Feb. of each preceding year. The charges payable by the Company on this account shall be worked out on pro-rata basis i.e. by apportioning the total expenses relating to operation and maintenance of Sub-station (including infrastructural works such as approach roads, staff quarters, sanitation, repair of buildings etc.) in the ratio of number of bays comprised in Interconnection facility to the total number of incoming/outgoing bays/feeders in the Substation. The pro-rata amount worked out on this basis in respect of interconnection facility shall be suitably increased to account for applicable departmental charges."

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14. Subsequently, the Board has, however, offered to apportion the cost to 33 kV bays for the transformer also, but have not agreed to apportion any cost to include 11 kV bays. Based on this the total O&M expenditure of the substation shall get distributed in four parts in a typical case having 2 Nos. 33 kV Incoming feeders and two 33/11 kV transformers.

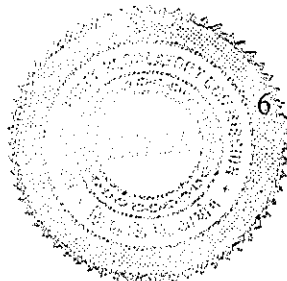
15. The petitioner company is not in agreement with the respondent Board for exclusion of the 11 kV bays for the purpose on the plea that it does not provide O&M staff at the 11 kV sub-station. SHP developers assert that charges to be levied by the Board for operation and maintenance of the Interconnection facilities for SHPs should be rationalized. There could be some rationale in allocating some lower weightage to 11 kV feeders as compared to 33 kV feeders for the purpose, but it shall be unfair to totally exclude the same. Since 11 kV feeders shall ipso facto involve 33/11 kV transformation and the transformer bays, it would be a fair proposition if the 11 kV outgoing feeders are given equal weightage as that of 33 kV incoming feeders, but the other bays including transformer bays etc. are excluded for the purpose. This will by and large, balance out the various related factors. This shall also simplify the formulation.

16. The Commission is aware that it lacks jurisdiction to interfere with the agreement voluntarily entered into between the parties but simultaneously such agreement are to be interpreted keeping in view its provisions vis-à-vis the objective to be achieved. The Commission has also perused the Clause 6.3 of the Interconnection Agreement as referred to by the respondent Board, as reproduced in para 14 of this Order, and finds that the same does not make any distinction between 33 kV and 11 kV bays/feeders. A plausible interpretation of the said Clause would also imply that all the incoming and outgoing feeders should be considered for working out the proportionate amount to be charged to SHPs for normal O&M of the interconnection facilities.

17. To clinch this issue the Commission has also explored the possibility to consider fixing the O&M cost in absolute terms and allowing amount escalation thereon, but the same was not found to be equitable keeping in view the fact that the number of feeders and consequently the average O&M cost

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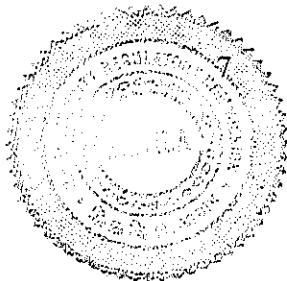
per bay may vary considerably depending upon the location and layout of the substation. The Commission has also tried to consider suggestion of the petitioner to levy these charges in the shape of a fixed percentage of the Capital cost of the Interconnection facilities on the same pattern on which normative O&M charges are worked out for tariff determination, but also it did not find the same to be feasible as Interconnection facilities for SHPs constitute a small component of the over all project cost and normal O&M thereof is a labour intensive activity as most of these costs comprise the establishment cost of the staff posted at the substation for round the clock duty. The Commission finds it appropriate that the normal O&M costs of substation should be apportioned for the beneficiaries on the basis of the number of incoming and outgoing feeders at the substation.

18. The Commission, therefore, lays down the guidelines to work out the cost of O&M for interconnection facilities for the SHPs (upto 25 MW) as under :-

- (i) the total amount of normal O&M costs of the interconnecting manned substation shall be apportioned in the ratio of number of feeders for which interconnection facilities are provided to SHPs to the total number of incoming and outgoing feeders irrespective of the voltage level of such feeders. The normal O&M cost of substation shall also include the maintenance costs of the infrastructure works, such as approach roads, staff quarters, sanitation, repair of buildings etc., as per provisions of the agreement;
- (ii) the prorata amount worked out on the above lines in respect of the interconnection facilities shall be suitably increased to account for the applicable departmental charges as stipulated in the agreement;
- (iii) the other provisions including those relating to detailed mechanism for payment of the charges in this regard as contained in the agreement executed by the petitioner with the respondent Board shall remain unchanged. However, the amount

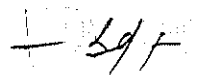
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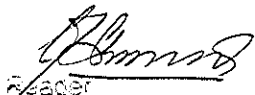
billed/recovered by the Board on account of normal O&M charges in excess of that determined as per the above formulation shall be withdrawn/ refunded alongwith the penalty, if any charged on such excess amount.

The petition is accordingly disposed of.



(Yogesh Khanna)  
Chairman

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