

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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Case No. 19 of 2011

In the matter of
Petition of Indian Wind Energy Association (InWEA) and others seeking adjudication
of dispute regarding provisions of non-discriminatory Open Access

Shri V.P. Raja, Chairman
Shri Vijay L. Sonavane, Member

1. The Secretary,
Indian Wind Energy Association,
PHD House, 3rd floor, Opp. Asian Games Village,
August Kranti Marg, New Delhi 110 016

2. M/s Ajanta Limited,
Orpat Industrial Estate,
Rajkot-Morbi Highway,
Morbi 363 641, Gujarat

3. M/s D.J. Malpani,
Malpani House,
I.G. Marg, Sangamner 422 605
Dist. Ahmednagar.

4. The Director,
Lap Finance & Consultancy Pvt Ltd.,
27, Sameer Housing Society,
Dhankwadi, Pune 411 043

5. M/s Navalakha Translines,
50-A, Hadaspar Industrial Estate,
Pune 411 013.

6. Shri S.K. Parikh,
10/276, Kapad Market,
Ichhalkaranji 416 115,
District Kolhapur.

7. The Director
SUN-N-SAND Hotel (Shirdi) Pvt Ltd.,
61, Devi Bhavan,
Napean Sea Road, Mumbai 400 006

8. The Managing Director,
SUN-N-SAND Hotel Pvt Ltd.,
61, Devi Bhavan,
Napean Sea Road, Mumbai 400 006

9. M/s Musale Investment Pvt Ltd.,
C/303, Vasant Smruti Co-op Hsg Society,
Asha Nagar, Thakur Complex,
Western Express Highway, Kandivli (East), Mumbai 400 101.

10. M/s Diamond Labels Pvt Ltd.,
C/303, Vasant Smruti Co-op Hsg Society,
Asha Nagar, Thakur Complex,
Western Express Highway, Kandivli (East), Mumbai 400 101.

11. M/s Poona Health Services Pvt Ltd.,
16, Shivaji Nagar,
Pune 411 005

12. M/s Nav Gases & Chemicals,
50-A, Hadaspar Industrial Estate,
Pune 411 013.

13. M/s Melilink Services,
16, Shivaji Nagar,
Pune 411 005.

14. M/s Giriraj Enterprises,
Malpani House,
I.G. Marg, Sangamner – 422 605,
Dist. Ahmednagar.

..... Petitioners

Vs.

The Managing Director,
Maharashtra State Electricity Distribution Co Ltd.,
Prakashgad, Bandra (East)
Mumbai 400 051.

..... Respondent

Present during the hearings:

For the Petitioners: Shri. Sanjay Sen (Adv.)
Smt. Surbhi Sharma (Adv.)
Shri. Hemant Singh (Adv.)
Shri. VikalpVats (Rep.)

For the Respondent: Shri. Rahul Sinha (Adv.)
Shri. Ravi Prakash (Adv.)
Shri. A. Bernard (Adv.)
Shri. R. G. Sonawane (Rep.)
Shri. D. H. Kulkarni (Rep.)

ORDER

Date: 3 January, 2013

Indian Wind Energy Association (InWEA) along with 13 others, has jointly submitted a Petition under affidavit on 25 January, 2011 under Section 42 (3) of the Electricity Act, 2003 and Regulations 3 & 18 (2) of MERC (Distribution Open Access) Regulations 2005 and Regulations 92-94 of MERC (Conduct of Business) Regulations, 2004 seeking adjudication of dispute regarding provisions of non-discriminatory Open Access.

2. The prayers in the petition are as follows:-

“

- a. *That the Hon'ble Commission may kindly pass an Order directing MSEDCL, to ensure that non-discriminatory open access is provided to the petitioner to enable supply of electricity from its generating station to the third party or open access consumers;*
- b. *That the Hon'ble Commission be pleased to direct MSEDCL to give credit for the energy already supplied by the Generators from the date of from the date of commissioning for Group-III developers and from the expiration of PPA for Group-II developers by feeding the same into the grid and not hold back the same;*
- c. *That the Hon'ble Commission be pleased to direct to pay the commercial settlement including interest charges, in case the energy generated till now cannot be utilised*

by March 2011, as the delay in granting the Open Access charges are impacting the financial condition of the investors

d. That the Hon'ble Commission be pleased to pass such further order or orders as this Hon'ble Commission may deem just and proper in the circumstance of the case."

3. The Petitioner has submitted as follows in its Petition:

- a. The Indian Wind Energy Association (InWEA) is an association registered at New Delhi to represent the interests of various stakeholders in the wind energy sector all over India. List of 299 members of InWEA located in state of Maharashtra is annexed with the Petition and it is stated that this Petition is filed along with and on behalf of these members.
- b. In line with the provision outlined under the Section 42(3) of the Electricity Act, 2003, it is a statutory obligation on distribution utility (MSEDCL) to provide non-discriminatory use of its distribution system to such persons who require Open Access in order to obtain power from the generator.
- c. Further, as per Regulation 3.1 of MERC (Distribution Open Access) Regulations, 2005, any person who has a contract demand more than 1 MVA is eligible for Open Access.
- d. Regulation 3.2 of the MERC (Distribution Open Access) Regulations, 2005 specifies that the Commission shall allow Open Access to the distribution system of a Distribution Licensee to a Generating Company or Licensee, other than such Distribution Licensee.
- e. Members of InWEA have invested and commissioned Wind Turbine Generators, at various locations in Maharashtra. These projects include both the Group-II and Group-III, as defined under clause 1.4 of the Wind Tariff Order issued by the Commission on 24 November, 2003.
- f. These Wind generators vide their applications requested and intimated the MSEDCL that they are going to sell 100% of the power produced under "Third Party Sale" to various consumers who are interested in Open Access. As per the prevailing practice at that time, generators who have commissioned projects prior to the issuance of Procedure of Open Access in May 2010 had submitted an application to MSEDCL

requesting the Respondent to grant a no objection certificate (NOC) and credit the units injected by the generators into the grid from their date of commissioning.

- g. Meanwhile, MSEDCL issued the Procedure of Distribution Open Access in the month of May 2010. As per the notified procedure, Open Access applications were amended and again a fresh set of Open Access applications were submitted, which are also pending with the MSEDCL.
- h. As per Regulation 4 of the MERC (Distribution Open Access) Regulations, 2005 MSEDCL issued the Procedure for Distribution Open Access and as per Clause 2 of the said procedure, MSEDCL shall convey the concurrence / rejection within seven (7) days from the date of receipt of the applications, and permission must be granted within thirty (30) days from the date of application.
- i. Open Access applications submitted by InWEA members have been pending with MSEDCL from three months to eight months and MSEDCL has neither granted nor rejected Open Access, though as per the procedure set by MSEDCL, the company was bound to convey the concurrence / rejection within seven (7) days from the date of receipt of the applications, and grant permission within thirty (30) days from the date of application.
- j. One of the association's members, viz., M/s Navlakha Transline approached the Commission (Case No. 41 of 2010) for grant of Open Access. During the hearing of the matter held on 5 October, 2010 MSEDCL promised to provide Open Access. In the same matter, during the hearing held on 2 December, 2010 the Commission observed that Open Access has to be granted and cannot be denied as it has been mandated in the Electricity Act, 2003.
- k. The non-granting of Open Access will affect the financial position of the wind energy generators and act as an obstruction to further investments in the renewable energy sector. The Commission is requested to issue appropriate directions to MSEDCL for providing non-discriminatory Open Access and release of the credits of energy supplied by generators from the date of Commissioning of Group-III developers and from the expiration of PPA for Group-II developers, as non-release of credits would have grave cash flow implications for the developers and thereby affect their ability to service their debt obligations.

4. The Commission vide notice dated 7 March, 2011 fixed a hearing in the matter on 1 April, 2011 and directed the Petitioners to serve a copy of the Petition on the Respondent and Authorized Consumer Representatives.

5. During the hearing the Respondent, MSEDCL submitted that annexures to the Petition were not received and hence they could file a reply only when the complete Petition is received by them. However, it was submitted that the present Petition is filed by InWEA under Section 86(1) (f) of the Electricity Act, 2003 and Regulation 18 (2) of MERC (Distribution Open Access) Regulations, 2005 which is applicable for adjudication of dispute between Licensee and Generating Company, and adjudication of dispute between Distribution Licensee and a Supplier respectively. But InWEA is an Association and not a generator or supplier as defined under the Electricity Act, 2003 and therefore, the present Petition is not maintainable.

6. In reply to above, the Petitioners submitted that the present Petition may be treated as a Petition filed for common relief by number of persons in order to avoid multiplicity of proceedings. However, it has clarified that along with InWEA there are 13 numbers of co-Petitioners in the present matter who are wind generators. Affidavits filed by the co-Petitioners are enclosed as annexure to the Petition. However these annexures were not served on MSEDCL along with the Petition; and the same would be done immediately. These submissions were noted by the Commission.

7. MSEDCL vide letter dated 25 April, 2011 filed written submissions in the matter. In the said submissions, MSEDCL took an objection to the maintainability of the Petition on the following grounds:

- a. The Petitioner, InWEA, is not a generating company under the provisions of the Electricity Act, 2003 and as such has no *locus standi* to invoke the provisions of Section 86 (1) (f) of the Electricity Act, 2003 for the adjudication of the dispute with the Distribution licensee, MSEDCL.
- b. Dispute with Distribution Licensee under the MERC (Distribution Open Access) Regulations, 2005 can only be adjudicated by the Consumer Grievance Redressal Forum and not by the Commission.

8. During the hearing held on 24 August, 2011 the Petitioners clarified that Wind Generators are Co-Petitioners in the matter and hence the Petition is maintainable. On the jurisdictional issue, the Petitioners submitted that in the matter of Indo Rama Synthetic, the Hon. Appellate Tribunal for Electricity (APTEL) vide judgment dated 28 July, 2011 upheld the jurisdiction of the Commission to adjudicate upon disputes concerning the provisions of

Open Access. The Petitioners further submitted that all submissions of MSEDCL in this matter was limited to maintainability of the Petition and not related to the merits of the matter and hence requested to grant the Open Access as per the provisions of the Open Access Regulations.

9. On the specific query of the Commission regarding the prayers of the Petitioners, MSEDCL submitted that prayers (a) and (b) i.e., granting of Open Access and issuing of credits for energy injected into the grid are acceptable to MSEDCL. On which Petitioners submitted that as the prayers are acceptable to MSEDCL they can discuss the modalities of settlement of past period wind energy credit with MSEDCL to which MSEDCL agreed.

10. During the hearing held on 21 September, 2011 the Petitioner submitted that credits of energy for four Wind Generators have been received whereas the balance is pending even though they have already paid all Open Access charges. MSEDCL has confirmed that NOCs to all wind generators have been issued and as Open Access charges have been paid wind energy credit will be issued by respective Circle Offices of MSEDCL.

11. The next hearing in the matter was held on 2 November, 2011. During the hearing, the Petitioners submitted that wind energy credits for eight wind generators have not been received. MSEDCL submitted that once the Petitioners hand over the list of these generators, energy credits will be issued within a week. During the hearing held in the matter on 1 December, 2011 the Petitioner confirmed that all the credits for wind energy injected in to the grid have been received by them.

12. Further vide its written submission on 1 December, 2011 the Petitioners submitted that all the customers who are Co-Petitioners in the present proceedings have received the energy credit reports and unit adjustment and credit adjustment is in process. Out of these co-applicants maximum number of co-applicants will use/ consume the energy already injected into the grid in the successive four months of FY 11-12 (i.e., December 2011 to March 2012). However, only two Co-Petitioners will not able to use/consume the energy already injected into the grid in the successive four months. Therefore, it is prayed that MSEDCL may be directed to settle the account of those Open Access consumers which cannot use / consume the already injected energy in the successive months by payment in cash against credit for energy supplied by the Generators during the period when the application for grant of open access was pending and no adjustment thereto was provided in the monthly bills.

13. Heard the parties. The Respondent has objected to the locus of the Indian Wind Energy Association on the ground that it is not a generating company entitled to invoke the

provisions of Section 86(1)(f) of the 2003 Act. However, the present petition has been jointly filed where generating companies generating electricity from wind have joined as co-petitioners. In any case, an association can always agitate an issue that affects its members. Moreover, even the Hon'ble Appellate Tribunal for Electricity has entertained appeals from various associations in power sector. Accordingly, there is no substance on the objection of locus as raised by the Respondent.

14. The other objection raised by the Respondent is that the present dispute cannot be adjudicated upon by this Commission and can be adjudicated upon only by the Consumer Grievance Redressal Forum. In this regards the Hon'ble Tribunal in Appeal No.36 of 2011 dated 28th July 2011(MSEDCL v. MERC and Ors.) held that the CGRF does not have jurisdiction when open access has been applied for and which has been denied. Hon'ble Tribunal has clearly held that disputes relating to open access would be dealt only by the Commission. The CGRF will have no jurisdiction to entertain or decide a dispute where the statutory mandate to provide open access has been violated by the Distribution Licensee. Moreover, under Regulation 18 of the Distribution Open Access Regulations, 2005, any dispute between the Distribution Licensee and the Supplier is to be adjudicated by the Commission. Hence, the aforesaid contention is also devoid of merits and is accordingly rejected.

15. The Commission is of the view that prayer (a) and (b) of the Petitioner i.e., granting of non-discriminatory Open Access and issuing of credits for the wind energy injected into the grid has been already satisfied by MSEDCL as per the statements made during the proceedings of this case as referred to in paragraphs 9, 10 and 11 above. Regarding prayer (c) i.e., commercial settlement of the unutilised wind energy, the Commission is of the view that the procedure of commercial settlement of unutilised wind energy (banking) has been stipulated in Wind Tariff Order issued by this Commission on 24 November, 2003. Further, MERC vide Order dated 3 January 2012 in Case No 8, 18, 20 and 33 of 2012 ruled for continuation of Banking facilities as follows:

“ 3.55 Thus, the Commission in the above mentioned Orders in Case No. 43 of 2010 which has been issued after the notification of MERC RE Tariff Regulations, 2010 and subsequent RE Tariff Orders for RE Projects including wind projects, directed for continuation of banking facility and has directed MSEDCL to issue credit notes for open access transactions.

3.66 The Commission has deliberated on this issue for continuation of banking facility and issuance of credit notes on timely basis as is evident from the extracts of various Orders(i.e., Case No. 33 of 2007, Case No. 41 of 2010, Case No. 43 of 2010, Case No.

67 of 2008, 101 of 2008, Case No. 21 of 2007 and Case No. 80 of 2008). Therefore, the Commission is of the view that provisions of Banking of power have been reiterated by the Commission through its various Orders mentioned above and the same needs to be continued.”(emphasis added)

Accordingly, the principles of commercial settlement (Banking) mentioned in the said Wind Tariff Order issued in 2003 are applicable in the present matter also.

16. During the proceedings, a need was felt to streamline issues of Wind Energy Credits on a generic / uniform basis rather than on a case to case basis and hence the need to have in place a Citizen Charter indicating time lines for each activity undertaken during Wind Energy transactions and contact details of the Officers responsible for completing all these activities. MSEDCL vide letter dated 20 January, 2012 informed that a Citizen’s Charter for NCE / CPP decisions has been formulated and uploaded on MSEDCL’s website.

With the above, Case No. 19 of 2011 stands disposed of.

Sd/-
(Vijay L. Sonavane)
Member

Sd/-
(V. P. Raja)
Chairman