

**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 221639761
E-mail: mercindia@merc.gov.in / mercindia@mercindia.org.in
Website: www.merc.gov.in / www.mercindia.org.in**

Case No. 44 of 2014

**In the matter of
Petition filed by M/s Green Energy Association praying for directions against MSEDCL to
comply with provisions of the Electricity Act, 2003 and MERC (Distribution Open Access)
Regulations, 2005 and issue Open Access permissions to the members of the Petitioner.**

**Smt. Chandra Iyengar, Chairperson
Shri Vijay L. Sonavane, Member**

Petitioner : M/s Green Energy Association

Respondents : MSEDCL -----Respondent No. 1
MEDA -----Respondent No. 2

Representatives for the Petitioner : Shri H. Toor Counsel
Ms. Dipali Sheth

Representatives for the Respondents : Shri Kiran Gandhi, Advocate for MSEDCL
Shri S. S. Paratkar, MSEDCL (Rep.)

Consumer Representative : Shri Ashok Pendse, TBIA

Order

Date: 6 May, 2014

M/s Green Energy Association (herein after referred as Petitioner) filed a Petition on 28 January, 2014 praying for directions against MSEDCL to comply with provisions of the Electricity Act, 2003 and MERC (Distribution Open Access) Regulations, 2005 and issue Open Access permissions to the members of the Petitioner pursuant to their respective applications under Section 86(1) (e) read with Sections 42, 129, 142 and 149 of the Electricity Act, 2003; Regulation No. 4 of MERC (Distribution Open Access) Regulations, 2005, Regulation 92 & 94 of MERC (Conduct of Business) Regulations, 2004 & Order dated 3 January, 2013 issued by the Commission in Case Nos. 8, 18 & 20 of 2012.

2. The prayers of the Petitioner are as under:

a) Direct Respondent No.1 to immediately issue the open access permissions and also the credit notes to the members of Petitioner for energy injected till date and continue to issue the same in timely manner.

b) Allow change of buyer/consumer where for same period as per the original application the buyer/consumer under whose name open access application was made has refused to purchase power due to inordinate delay by Respondent No.1 in granting open access permissions.

c) Direct Respondent No. 1 to adjust the energy injected by the members of the Petitioner till date who have applied for captive use and third party sale in consumer, bills (whether new consumer or original consumer, as the case may be) and compensate for the loss incurred by the generators in the event the same cannot be adjusted;

d) Award cost of these proceedings against the Respondents and in favour of the Petitioner.

e) Pass such other order(s) as the Hon'ble Commission may deem just in the facts of the present case."

The interim prayers of the Petitioner are as under:

" a) Pass an ad-interim ex-parte order directing Respondent No.1 to immediately issue the open access permissions and also the credit notes to the members of Petitioner for energy injected till date and continue to issue the same in timely manner.

b) Confirm the ex-parte orders after notice to the Respondents; and

c) Pass such other order(s) as the Hon'ble Commission may deem just in the facts of the present case."

3. The fact of the case as stated in the Petition are as follows:

3.1 Petitioner, M/s Green Energy Association was set up in 2013 as non-profit organization having its head office situated in Lower Parel, Mumbai. The main object of the Petitioner is development of Renewal Energy including Solar Energy.

3.2 The Petitioner has 36 members in the State of Maharashtra. Members of the Petitioner have set up Solar PV power plants within the state. The members of the Petitioner who were inclined to sell power to third parties initiated negotiations with third parties for the sale of the power to be produced by their solar power plants. Various PPAs were entered between the Members of Petitioner and third parties.

3.3 The members of the Petitioner have sought Open Access permission from MSEDCL and have filed requisite applications qua the same. The Solar Power Plants of the Members of Petitioner have commissioned and the Members have submitted the requisite Commissioning Certificate to MSEDCL.

- 3.4 The Petitioner has been informed by its members that applications are pending with MSEDCL for a period of more than 121 days and in some cases more than 290 days from the date of Commissioning .Consequently, the members of Petitioner are unable to get credit notes, as Open Access permission from MSEDCL is prerequisite for issuing credit notes by relevant circle office of MSEDCL.
- 3.5 MSEDCL has failed to inform the applicants within what time frame the said Open Access permissions would be issued to the applicants. MSEDCL has also failed to give any reasons for such inordinate delays in processing such applications.
- 3.6 Petitioner submitted that due to such arbitrary acts of the MSEDCL, an amount of approximately Rs. 568 Lakhs cannot be recovered by the members of Petitioner from the Open Access consumers as on 31 December, 2013.
- 3.7 It was further submitted that the approximate project cost of Solar PV Project is of Rs. 7.65 Crore per MW and an investment of about Rs. 96.39 Crore has already been made by the members who are availing Open Access for sale of power. Actual cost could be more as the capital cost in many cases could even exceed the average capital cost. Considering 70% to 75 % of the investment is from borrowed funds, the borrowing is to the tune of approximately Rs. 72 crores.
- 3.8 Further with interest at 13% to 14% per annum payable on such borrowed funds, the investors are already liable to pay interest of about approximately Rs. 4.54 crores from the date of commissioning till date.
- 3.9 Petitioner submitted that projects with capacity of 12.60 MW have already been commissioned under Open Access mode by the investors and the power is being fed into the grid. The Petitioner submits that MSEDCL is enjoying the benefits of such power fed into grid and enriching itself by collecting the value of the power from its customers and at same time not issuing Open Access permissions and consequently also not issuing credit notes to the developers for want of Open Access permissions.
- 3.10 In some cases on account of such inordinate delay, the third party purchasers may consider cancelation of the PPA and in such cases members of Petitioners would be required to identify new buyers. According to the Petitioner it will therefore imperative that the Commission directs MSEDCL to allow for change of name of new buyer for the same period as if it had been in the original application.
- 3.11 It is prayed that the Commission may direct MSEDCL to adjust the generated power and consequently, revise the bills of consumers for the same period. Also in the event new buyer cannot be identified it will be necessary for the Commission to direct MSEDCL to compensate the developers where the PPA is cancelled due to their inaction.
- 3.12 Petitioner has submitted the details of Open Access applications for sale to third party as well as captive use made by the members of Petitioner and it is as follows:-

Sr. No.	Name of generator	Installed capacity in MW	Date of commissioning	Power sale option (Third Party/Captive)	Name of consumer	Date of application	Contract demand
1	Bothra Agro Equipments Pvt. Ltd.	1.00	27-Aug-13	Captive	-----	9-May-13	1000 KVA
2	Patodia Forgings & Gears Ltd.	0.60	25-Sep-13	Captive	-----	29-June-13	1250 KVA
3	Patel Wood Syndicate	1.00	28-Mar-13	Third Party	Amcor Rigid Plastic India Pvt. Ltd.	12-Apr-13	2000 KVA
4	New Patel Saw Mill	1.00	28-Mar-13	Third Party	Amcor Rigid Plastic India Pvt. Ltd.	12-Apr-13	2000 KVA
5	Dr. D H Patel	1.00	28-Mar-13	Third Party	Amcor Rigid Plastic India Pvt. Ltd.	12-Apr-13	2000 KVA
6	Hemant Group	1.20	14-Aug-13	Third Party	Atharva Foundaries Pvt. Ltd.	17-Jun-13	4000 KVA
7	Agarwal Mineral Goa Pvt. Ltd.	4.00	6-Sep-13	Third Party	Pudumjee Pulp & Paper Mills Ltd.	13-Aug-13	10412 KVA
8	Gangadhar Narsingdas Agrawal (HUF)	1.00	25-Sep-13	Third Party	Pudumjee Industries Ltd.	13-Aug-13	4950 KVA
9	Saidpur Jute Co. Ltd.	0.60	25-Sep-13	Third Party	Pudumjee Industries Ltd.	13-Aug-13	4950 KVA
10	GI Energies	0.60	25-Sep-13	Third Party	Gabriel India Ltd.	15-Jul-13	2000 KVA
11	Advik Hi-tech Pvt. Ltd.	0.60	25-Sep-13	Third Party	Brahma Bazaz Hotel Ltd.	12-Jun-13	1184 KVA
	Total	12.60					

4. Maharashtra Energy Development Agency (MEDA), Respondent No.2 vide letter dated 16 April, 2014 has submitted their submission , the details of which are summarized as below:-

4.1 MEDA has submitted that in order to promote solar power in the State, MSEDCL may issue necessary open access permissions and credit notes to the members of the Petitioner as per applicable provisions, rules, Regulations.

4.2 The Commission may allow prayer No. b of Petitioner as per provisions, rules and Regulations of open access. In regards of prayer No. c of Petitioner, MEDA submitted that The Commission may take appropriate decision in this matter.

5. MSEDCL has submitted its submission on 21 April, 2014, which is summarized as below:-

5.1 MSEDCL has submitted that it has always promoted Renewable Energy (RE) generation in the State and does not have any objection/reservation for solar power generation.

5.2 MSEDCL is allowing Open Access permissions to consumers availing power supply from various other renewable sources such as Wind, Bagasse, Biomass, Small Hydro Generators and the same is in accordance with the directions of the Commission. The Commission has issued broad directives/guidelines in case of Open Access for these type of RE generators.

5.3 According to MSEDCL in absence of any guidelines regarding Open Access through solar generator, it is not clear whether to pass the benefits such as Energy Banking, Non reduction of Contract demand and Concessional cross subsidy surcharge to solar projects as is being done with other Renewable Energy Projects.

5.4 It is submitted by MSEDCL that solar power is generated in 6-7 Hours in the day time i.e. during off peak hours and a credit has to be given against the peak time consumption of the consumer, self use or third party as the case may be. It is submitted that solar power will be utilised against the existing consumption during day time and MSEDCL power will be utilised during night hours, when the power is available at cheapest rate with TOD night rebate. Thus consumer will get dual benefit as mentioned below:-

i. MSEDCL submitted that consumer does not require to draw costly power from MSEDCL as consumer uses solar generation during day time. Hence, consumer saves on day time consumption. Similarly, consumer will avail a very high night rebate given in TOD Tariff. Thus consumer saves on night time consumption. The night rebate is basically given to consumers those are drawing power from MSEDCL during day time and night time in order to spread the demand across different time slots of the day.

ii. Therefore, consumers intend to source power from solar generators are not actually shifting their load into night hours. Hence, a very high rebate given to such consumers in the night Tariff will considerably increase the energy charge during the other times of the day. It will adversely affect other categories of consumers who are not eligible for TOD Tariff.

iii. MSEDCL submitted that MERC (Distribution Open Access) Regulations, 2005 does not provide for wheeling of power under Open Access from more than one generating company/ sources. MSEDCL submitted that there are operational and billing issues if two different sources are considered.

5.5 MSEDCL submitted that many solar developers/generators are approaching for getting permission for connectivity to their network/feeder at 33 kV or below, to their rooftop or ground mounted solar PV projects being installed in the existing factory premises.

MSEDCL passed the Board Resolution No. 104 dated 26/03/2014, formulated the Policy allowing them for connectivity at 33 kV or below to internal network.

5.6 MSEDCL submitted that the issue raised by the Petitioner will affect the consumers of state of Maharashtra and therefore it requested to the Commission to take Public Hearing to address various issues and issue broad guidelines for allowing Open access in case of Solar Generators.

6. Regulatory process:

6.1 Petitioner submitted the present Petition on 28 January, 2014 with incomplete court fee as per MERC (Fees and Charges) Regulations, 2004. Hence, Petitioner directed to submit the Petition with complete Fees. Meanwhile Petitioner filed an Original Petition before APTEL for direction instead of complying with the direction issued by the Commission.

6.2 Hon'ble APTEL vide its Judgment dated 24 March, 2014 in O.P. No. 3 of 2014, directed the Petitioner to pay the court fee of Rs.94, 000/- by 25 March, 2014 and also directed the Commission to hear the Petition after receipt of the said amount and dispose of the same as early as possible in view of urgency point out by the Petitioner. Accordingly, Petitioner paid the said amount on 25 March, 2014.

6.3 The Commission vide Notice dated 1 April, 2014, scheduled a hearing in the matter on 22 April, 2014 and directed the Petitioner to serve a copy of Petition on Respondents and authorized Consumer Representatives.

6.4 During hearing, Shri H. Toor, Counsel and Ms. Dipali Sheth, Advocate appeared on behalf of Petitioner and Shri Kiran Gandhi, Advocate and Shri S. S. Paratkar appeared on behalf of the Respondent No. 1, MSEDCL and none was present for the Respondent No. 2 MEDA. Consumer Representative, Shri Ashok Pendse, TBIA was present during hearing. Shri Ashok Pendse, TBIA (CR) also present his views on the Open Access issue for captive generator.

Commission's Analysis:-

7. Having heard the parties and after considering the materials placed on record, the Commission analyzed following issues:

- 1) Open Access permission through solar generator as single source and
- 2) Open Access permission through more than one source

Issue No.1: Open Access permission through solar generator as single source:-

8. Petitioner has submitted that the solar power plants were commissioned and the members of the Petitioner who had applied for Open Access permission also submitted commissioning certificates. Admittedly the applications are pending with MSEDCL for a period of more than

121 days and in some cases more than 290 days from the date of Commissioning. Hence, the members of Petitioner are unable to get credit notes.

9. The Commission enquired MSEDCL about delay for issuing Open Access permissions to the consumers applied for sourcing power from solar generators. MSEDCL submitted that it is allowing the Open Access permissions to consumers availing power supply from Wind, Bagasse, Biomass, Small Hydro Generators as per the Regulations and in terms of the relevant Orders passed by the Commission. The Commission has issued broad directives/guidelines in case of Open Access for this type of RE generators.
10. In absence of any guidelines regarding Open Access through solar generator, it is not clear whether to pass the benefits such as energy banking, non reduction of contract demand, concessional cross subsidy surcharge given to other RE projects to solar projects also.
11. MSEDCL has submitted the current status of 11 consumers applied for Open Access permission for availing open Access from solar generators. It has submitted that two nos. of consumers have already granted Open Access permission from wind generator. Whereas eight Nos. of generators has been also permitted Open Access permission for sale of solar energy to Utility (BEST), which is valid upto 31 March, 2014 and one consumer (M/s Patodia Forgings and Gears Ltd.) has been denied to avail Open Access vide letter dated 19 April, 2014.
12. In view of the above facts the Commission is of the view that Open Access is the right of the consumers and it is casted upon by the Electricity Act, 2003. The Electricity Act, 2003 has defined the Open Access as non discriminatory provisions for use of transmission lines or distribution system or associated facilities by any licensee or consumer or person engaged in generation.
13. The plain reading of Section 2(47) and Section 42 (2) of the Electricity Act, 2003 indicates that MSEDCL cannot discriminate amongst different RE sources. Energy is coming from whatever source, it is inject in the system as a Unit. The Commission observes that MSEDCL has allowed open access permission for sale of solar energy to Utility (BEST) for certain period. The Commission disagreed with MSEDCL submission that it delayed the Open Access permission on absence of guidelines/policy for Open Access through solar generator.
14. In view of above the Commission directs MSEDCL to allow the Open Access through solar generator as single source. The Commission also directs MSEDCL to continue the procedures followed for allowing Open Access permissions through RE generators during previous financial year.
15. The Commission further directs MSEDCL to issue credit notes immediately for the previous months, if not done earlier as per timelines as stipulated in its Citizen Charter.

Issue No.2: Open Access permission through more than one source:-

16. MSEDCL submitted that MERC (Distribution Open Access) Regulations, 2005 do not provide for wheeling of power under Open Access from more than one generating company/ source. MSEDCL submitted that there are operational and billing difficulties for allowing Open Access from more than one source.

17. The provisions of MERC(Distribution Open Access) Regulations, 2005 is reproduced below:-

3.2 The Commission shall allow open access to the distribution system of a Distribution Licensee to a Generating Company or a Licensee, other than such Distribution Licensee, to give supply of electricity to a consumer or person, whose premises are situated within the area of supply of the Distribution Licensee, from the date on which such consumer or person, to whom such supply is to be given, becomes eligible for open access in accordance with Regulation 3.1 above:

Provided that the application for open access under this Regulation 3.2 shall be made by the eligible consumer or person, whose premises are situated within the area of supply of the Distribution Licensee, to whom supply is intended to be given by such Generating Company or Licensee.

18. The Commission observed that MSEDCL has denied Open Access permission for sourcing power from more than one source on the ground of operational and billing difficulties which cannot be ignored.

19. Further, MSEDCL submitted that it is not against Open Access. MSEDCL's denial to consumers seeking Open Access through more than one source is only on the ground of the operational and billing difficulties faced by it and those cannot be ignored while granting Open Access permissions. These issues need to be addressed by providing Regulation for the same; these issues are not covered under the MERC (Distribution Open Access) Regulations, 2005.

20. In view of above, the Commission is of the opinion that in the present circumstances it is not appropriate to allow Open Access permission through more than one source without considering all relevant factors including operational and billing difficulties involved in it and framing it into proper Regulatory mechanism. The Commission is in the process of amendment of the existing MERC (Distribution Open Access) Regulations, 2005. The Commission shall endeavor to expedite the process of amendment of MERC (Distribution Open Access) Regulations, 2005 after incorporating the concerns raised by all stakeholders.

Summary of findings:

21. **The plain reading of Section 2(47) and Section 42 (2) of the Electricity Act, 2003 indicate that MSEDCL cannot discriminate amongst different RE sources. Power is coming from whatever source, it is inject in the system as Unit. The Commission observes that MSEDCL has allowed open access permission for sale of solar energy to Utility (BEST) for certain period. The Commission disagreed with MSEDCL submission that it delayed the Open Access permission on absence of guidelines/policy for Open Access through solar generator.**
22. **In view of above the Commission directs MSEDCL to allow the Open Access through solar generator as single source. The Commission also directs MSEDCL to continue the procedures followed for allowing Open Access permissions through RE generators during previous financial year.**
23. **The Commission further directs MSEDCL to issue credit notes immediately for the previous months, if not done earlier as per timelines as stipulated in its Citizen Charter.**
24. **The Commission is of the opinion that in the present circumstances it is not appropriate to allow Open Access permission through more than one source without considering all relevant factors including operational and billing difficulties involved in it and framing it into proper Regulatory mechanism. The Commission is in the process of amendment of the existing MERC(Distribution Open Access) Regulations, 2005 .The Commission shall endeavor to expedite the process of amendment of MERC (Distribution Open Access) Regulations, 2005 after incorporating the concerns raised by all stakeholders.**

With the above, Petition filed by M/s Green Energy Association in Case No. 44 of 2014 stands disposed of.

**Sd/-
(Vijay L. Sonavane)
Member**

**Sd/-
(Chandra Iyengar)
Chairperson**