

Before the  
**MAHARASHTRA ELECTRICITY REGULATORY COMMISSION**  
World Trade Centre, Centre No.1, 13<sup>th</sup> Floor, Cuffe Parade, Mumbai 400005.  
Tel. 022 22163964/65/69 Fax 22163976  
Email: [mercindia@mercindia.org.in](mailto:mercindia@mercindia.org.in)  
Website: [www.mercindia.org.in](http://www.mercindia.org.in)

**Case No. 71 of 2008**

**In the matter of  
Petition filed by BF Utilities Ltd., for adjudication of dispute regarding provision  
of non-discriminatory open access.**

**Shri V.P. Raja, Chairman  
Shri A. Velayutham, Member  
Shri S. B. Kulkarni, Member**

M/s BF Utilities Ltd.  
Mundhwa, Pune Cantonment,  
Pune 411 036.

...Petitioner.

V/s

1. Maharashtra State Electricity  
Distribution Company Ltd.  
Prakashgad, Bandra (East),  
Mumbai 400 051.
2. Maharashtra State Electricity  
Transmission Company Ltd.  
State Transmission Utility,  
Prakash Ganga, E-Block,  
Bandra-Kurla Complex,  
Bandra (East),  
Mumbai 400 051.
3. State Load Despatch Centre  
Through Chief Engineer,  
Thane-Belapur Road,  
P.O Airoli,  
Navi Mumbai 400 708.

....Respondents.



## **ORDER**

**Dated: May 25, 2009**

M/s B.F. Utilities Ltd, Pune, a wind energy developer, submitted a Petition under affidavit, before the Commission on September 4, 2008 alleging that it is aggrieved with the manner in which Maharashtra State Electricity Distribution Co. Ltd., (“MSEDCL”) is demanding that the Petitioner is required to obtain licence before it could be given open access for wheeling electricity generated by it to Bharat Forge Limited and such other persons who may be requiring the wheeling of electricity from MSEDCL in accordance with the provisions of Section 42(3) of the Electricity Act, 2003 (“EA 2003”) in terms of which MSEDCL’s duties would be that of a common carrier providing non-discriminatory open access. The Petitioner states that it is in receipt of a letter dated July 14, 2008 issued by MSEDCL wherein MSEDCL has asked the Petitioner to obtain a license as a first and foremost requirement before MSEDCL could grant open access to enable the Petitioner to supply and wheel electricity to Bharat Forge Limited and such other persons who may be requiring the wheeling of electricity from MSEDCL in accordance with the provisions of Section 42(3) of the EA 2003. The Petitioner states that it is aggrieved by the stand taken by the MSEDCL under its aforesaid letter which according to the Petitioner is a demand which is unsustainable under law and is therefore required to be quashed and set aside.

2. The Petitioner has prayed as follows -

*(a) That pending the final disposal of the present petition the Hon’ble Commission may kindly pass interim order under Section 94 (2) of the Electricity Act, 2003 directing MSEDCL, MSETCL/ STU and SLDC to ensure that non-discriminatory open access is provided to the petitioner to enable supply of electricity from its generating station to consumers (in the present set of facts and circumstances) such as Bharat Forge Limited, electricity traders and distribution licensees without demanding that the petitioner would require to obtain any license for the said activity;*

*(b) That the Hon’ble Commission be pleased to hold and declare that there would be no requirement to obtain license by the petitioner for supplying electricity to open access consumers particularly Bharat Forge Limited, electricity traders and distribution licensees.*



(c) *That the Hon'ble Commission be pleased to direct MSEDCL to give credit for the energy already supplied and to be supplied by the petitioner by feeding the same into the grid and not to hold back the same;*

(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. As stated in the Petition, the specific fact of the present case is that a 6.90 MW wind mill project was set up by Bharat Forge Ltd., and commissioned on December 28, 1999 at Satara, Maharashtra. The generation was self consumed by Bharat Forge Ltd., at its plant at Pune. In the year 2001, due to a scheme of demerger of Bharat Forge Ltd. the aforesaid wind mill project was transferred with effect from March 1, 2001 to the resultant company called BF Utilities Ltd. (i.e. the Petitioner herein). However, Bharat Forge Ltd. continued to consume the power generated by the aforesaid wind mill under "Third Party Sale" arrangement with the Petitioner since the wind mill project stood transferred to BF Utilities Ltd. Such an arrangement is still continuing in operation. From the month of January, 2008 MSEDCL did not issue credit notes on account of open access charges that in accordance with MSEDCL were leviable on the said transaction of sale by the Petitioner to Bharat Forge Ltd. While following up on this issue MSEDCL issued a letter dated July 14, 2008 demanding that the Petitioner is required to obtain a license from the Commission.

4. It has been submitted that the Petitioner has neither in the past nor is intending in future to connect up to the IntraState Transmission System (InSTS) by laying transmission or distribution lines or distribution system because the Petitioner is already connected to the grid / MSEDCL System. The entire scheme under Section 42(3) of the EA 2003 pre-supposes that the person who requires a supply of electricity from a generating company other than the distribution licensee in whose area of supply such person's premises are situated can require the distribution licensee for wheeling such electricity, that such a person is already connected with the distribution licensee's distribution system (in this case MSEDCL's distribution system) and also means that the generating company is also connected to the distribution system of the distribution licensee. The words "*....whose premises are situated within the area of supply of a distribution licensee..*" means that such a person is already connected with the distribution licensee's distribution system (in this case MSEDCL's distribution system) and also means that the generating company is also connected to the distribution system of the distribution licensee. If the generating company does require to lay down dedicated transmission lines the EA 2003 does not require the generating company to obtain licence for laying down the dedicated transmission lines. If, however, such



person's premises are not connected to the distribution system of the distribution licensee or if the generator too is not connected to the distribution or transmission system of the distribution or transmission licensee, as the case may, and for which if the generator has to lay down distribution or transmission lines then in that event the question of obtaining licence by the generating company would arise for in such a case the generator would be laying down distribution or transmission lines, as the case may be, with the intention of getting into the business of distribution or transmission, as the case may be. This, according to the Petitioner, is however not the case in the present case of the Petitioner. For the purposes of giving power to any person who requires electricity from the Petitioner in the event the Petitioner lays down "Dedicated Transmission Lines" that includes any electric supply line for point to point transmission which are required for the purpose of connecting electric lines or electric plants to any transmission lines or sub-stations or generating stations or the load centre, as the case may be, then the EA 2003 does not require the Petitioner to obtain any license.

5. It has been stated by the Petitioner that whenever a generator supplies electricity to any person, consumer, electricity trader, licensee and for which it does not require to lay down transmission or distribution lines save and except dedicated transmission lines within the meaning of Section 2(16) of the EA 2003, such a generator does not require to obtain any licence. Under the EA 2003, licencees are electricity traders, distribution licensees, and transmission licensees. For selling electricity to any of these licensees the generating company does not require to obtain any licence. It has been submitted that the Petitioner herein does not intend to do anything out of the following - (a) transmit electricity; or (b) distribute electricity; or (c) undertake trading in electricity. Therefore, the question of obtaining license for an activity for which it does not require to obtain any license cannot be forced upon the Petitioner. This demand would be illegal *per se*.

6. Furthermore, as per Section 2 (17) of the EA 2003 a distribution licensee is required to operate and maintain a distribution system for supplying electricity to the consumers in his area of supply. As per Section 2(3) of the Act 'area of supply' means the area within which a distribution licensee is authorized by its license to supply electricity. As per Section 2 (19) distribution system means the system of wires and associated facilities between the delivery points on the transmission lines or the generating station connection and the point of connection to the installation of consumers. It has been submitted that the Petitioner is not intending to have any 'area of supply' to be authorized by the Commission for the Petitioner for the purposes of sale to consumers. It has been further submitted that the Petitioner is not going to operate and maintain a distribution system of wires and associated facilities between the delivery points on the transmission lines or the generating connection and the point of connection to the installation of consumers. It has been submitted that Section 2 (29)



provides that to “generate” means to produce electricity from a generating station for the purpose of giving supply to any premises or enabling a supply to be so given. The activities of producing electricity for the purpose of giving supply to any premises does not require generating station/generating company to obtain any license under the EA 2003. Section 7 of the EA 2003 expressly exempts a generating company from the requirement of obtaining a license under the EA 2003 to operate a generating station (subject to Section 73 (b) relating to compliance with technical standards regarding connectivity with the grid). Therefore the activity to operate a generating station and to generate in order to produce electricity for the purpose of giving supply to any premises or enabling a supply to be so given, does not require the Petitioner to obtain license under the Act. It has also been submitted that to establish/operate and maintain a generating station requirement for obtaining license is specifically exempted under Section 7 as aforesaid.

7. It has been submitted that under Section 39 (2) of the EA 2003 it is a mandatory function of the State Transmission Utility to provide non discriminatory open access to its transmission system for use by a generating company or to a consumer on the payment of certain charges. It is therefore statutorily obligatory on the State Transmission Utility (STU) to provide such open access to its transmission system for use by either the Petitioner or by such persons who require open access in order to obtain power from the Petitioner. The same duty is mandated on Maharashtra State Electricity Transmission Co. Ltd. to provide non-discriminatory open access to its transmission system to the Petitioner or such persons who require open access in order to obtain power from the Petitioner. It is also statutorily obligatory on MSEDCL to provide non-discriminatory use of its Distribution System to the Petitioner or such persons who require open access in order to obtain power from the Petitioner. Under Section 42(3) if Bharat Forge Ltd. or any person whose premises are situated within the area of supply of MSEDCL requires a supply of electricity from the Petitioner other than MSEDCL, Bharat Forge Ltd. or such person requiring the wheeling is entitled under the said section to, by notice, require MSEDCL for wheeling such electricity and the duties of MSEDCL with respect to such supply shall be of a common carrier providing non-discriminatory open access.

8. In view of the above submissions, it has been submitted that the Commission needs to consider issuing appropriate directions to MSEDCL, Maharashtra State Electricity Transmission Company Ltd. (MSETCL), STU, and State Load Despatch Centre (SLDC) with regard to providing non-discriminatory open access for enabling the sale and supply of electricity by the Petitioner to open access consumers particularly Bharat Forge Limited, electricity traders and distribution licensees.



9. A reply has been filed by MSEDCL on 26.09.2008 wherein it has been stated that for the option of sale of power to third party cases license from the Commission is required as per sections 12 to 15 of EA 2003 and as per Bombay High Court's order dated 4.04.2005, supported by Supreme Court's order dated 17.05.2005. MSEDCL has also referred to an Order dated 6.05.2008 passed by the Commission in which it is stated that *"There is no exemption to a generating company (not being a captive generating plant) from the requirement to obtain license to supply electricity to any licensee or consumer"*

10. Per contra, in the rejoinder the Petitioner has stated that the issue raised by MSEDCL can be answered in terms of the Commission's order dated 22.10.2008 in Case No.49 of 2008 (*Pioneer Distilleries case*), wherein the Commission has specifically under Paragraph 21 of the said Order held that the Order dated 4.4.2005 passed by the Hon'ble High Court at Judicature at Bombay in the case of *"Maharashtra State Electricity Board (MSEB) V/s. State of Maharashtra, Bhushan Steel and Strips Ltd. and Others* does not apply in view of the amendment made to Section 9 of the Electricity Act, 2003 by virtue of Electricity (Amendment) Act, 2007 which has removed the requirement to obtain license by captive generating plant for sale to licensee or consumer. The said Judgment passed by the Hon'ble Bombay High Court which has been referred to by MSEDCL in its present reply has been held to be infructuous by the Commission in the aforesaid Order dated 22.10.2008 passed in Case No.49 of 2008. The Commission has held as under:

*"21. As regards MSEDCL's contentions about applicability of Hon'ble Mumbai High Court's Judgment in Bhushan Steel case, which is the case of captive power plant undertaking sale to third party, the EA 2003 has since undergone an amendment and Section 9 has been specifically amended to allow a CPP to sell surplus power without a licence. The Commission is of the view that with the Electricity (Amendment) Act, 2007 removing the requirement to obtain licence by captive generating plant for sale to licensee or consumer by amending Section 9 of the EA 2003, the aforesaid Judgment of the Hon'ble High Court is rendered infructuous....."*

Furthermore, it is not the Petitioner's case that the wind farm in question is a captive generating plant of Bharat Forge Ltd. Therefore, the reference placed by MSEDCL to the aforesaid Judgment of the Hon'ble High Court is to be rejected at the threshold.

11. The Petitioner has also stated that in its order dated 22.10.2008 in Case No.49 of 2008 which has been passed by the Commission subsequent to the Order dated 6.5.2008 which was passed earlier in the case of M/s. Yash Agro Ltd., the Commission has specifically held that the requirement to obtain a license by a Generating Company





only arises when the Generating Company needs to lay down lines to connect up to the Intra State Transmission System. It has been submitted that the Petitioner in the present matter is already connected to the distribution and transmission net work of MSEDCL which fact has been admitted by MSEDCL at Page 12 of its reply on Para 5, 6, 7, 8, 9 and 10 where MSEDCL has admitted the fact that *“In case of third party sale, wind generator utilizes distribution infrastructure (at injunction points and drawer points and transmission net work”*. The Commission has also held that license is required when a Generating Company sets up or lays down distribution lines or puts up distribution system. The admission made by MSEDCL in its reply vindicates the stand of the Petitioner under paragraph 3 of its petition that the Petitioner has neither in the past nor intending to connect up to the Intra State Transmission System by laying down transmission or distribution lines or set up distribution system because the Petitioner does not need to lay down any line as it is already connected to the grid/MSEDCL system. In view of the above, MSEDCL’s reliance on the Commission’s order dated 6.5.2008 is liable to be rejected at the threshold. The Commission has held as under:

“15...

*MSEDCL has in this regard referred to one specific portion of the said Order, which is reproduced below:*

*“.....There is no exemption to a generating company (not being a captive generating plant) from the requirement to obtain license to supply electricity to any licensee or consumer.” It is necessary to distinguish the above Order passed by the Commission. Most importantly, the correct interpretation to the Commission’s aforesaid finding is that a licence is required while a generating company wishes to sell electricity to a distribution licensee for which it needs to connect up to the intra State transmission system by laying down lines. This licence would be a transmission licence because it would involve transmission of energy. Similarly, when a generating company wishes to sell electricity to consumer(s) by laying down distribution lines/putting up distribution system, then in that event, the generating company would need a distribution licence for setting up such lines....”*

12. A hearing was held in the matter on January 20, 2009. Counsel for the Petitioner submitted that he needs to clarify a fundamental misconception and fallacy in the contentions of MSEDCL as follows- The Petitioner is not seeking to operate and maintain a distribution system of wires and associated facility between the generating station connection and the point of connection to the installation of Bharat Forge Ltd./ consumers, which is within the meaning of the terms “distribution licensee” as defined in Section 2(17) of the Act and the term “distribution system” within the meaning of Section 2(19) of the Act. Therefore, question of obtaining license to distribute electricity under Section 12(b) read with Section 14(b), does not arise at all. The



Petitioner is also not establishing or operating transmission lines so therefore the question of obtaining transmission license within the meaning of Section 2(73) read with Section 12(a) and Section 14(a) does not arise at all. It is to be understood that the duty on MSEDCL under Section 42(1) to develop and maintain a distribution system in its area of supply neither gets curtailed nor overlapped in any manner whatsoever by virtue of the fact that the consumer called Bharat Forge Ltd., is availing open access in terms of Section 42 and by paying the charges of wheeling/surcharge under Section 42(4) of EA 2003, Bharat Forge Ltd., would be thereby meeting the fixed cost of MSEDCL arising out of its obligation to supply. It was also submitted that if the legislature intended to require a generating company to obtain a license where it is supplying electricity to a consumer who has sought open access under Section 42 then the legislature would have said so. It was also submitted that if license is to be obtained in such circumstances then the provision of open access under Section 42 is rendered completely *infructuous*, inoperative and sterile and that is what the legislature has not done.

13. Replying to the arguments made by Counsel for MSEDCL, Counsel for the Petitioner submitted that MSEDCL's stand with regard to the tenure of Group II projects; fiscal incentives provided to the Petitioner; the fact that the Petitioner has already been relieved from all commercial liabilities/obligation within a period of 8 years of operation of the project; are totally extraneous and/or are of no relevance to the present Petition and consequently required to be rejected at the threshold. It was also argued by the Counsel for the Petitioner that similarly all contentions raised by MSEDCL on whether the Petitioner and Bharat Forge Ltd., are independent companies are also required to be rejected because, as aforesaid, it is not the case of the Petitioner that the wind farm in question is a captive power plant of Bharat Forge Ltd.

14. Furthermore, Counsel for the Petitioner has refuted references made by MSEDCL in its reply to the following Orders passed by the Commission in respect of maintainability of the Petition stating that they are extraneous to the Petition and are of no relevance at all:

(i) It has been stated that the Order dated 20.11.2007 in Case No.33 of 2007 at Para 34(c) has held that "*Post the efflux of term in the EPAs that MSEDCL have executed with wind energy projects (under Group-II Category), the said wind energy developers may sell power to open access consumer apart from MSEDCL. Such transactions of open access wheeling shall be governed by MERC (Transmission Open access Regulations), 2005 or MERC (Distribution Open Access) Regulations, 2005, as the case may be.*" It has been submitted that neither of the following two regulations specified by the Commission requires the Petitioner herein to obtain license to supply power to Bharat Forge Ltd/consumer: *MERC (Transmission Open access Regulations), 2005 or MERC (Distribution Open Access) Regulations, 2005.*





(ii) It has been stated that the Order dated 7.10.2008 in Case No.89 of 2007 at Para 40 has held as under:

*“Further, the Commission under its Order dated November 20, 2007, had observed that, “while the Commission reiterates that wind energy generators have freedom to sell to any party other than MSEDCL pursuant to expiry of the existing EPA, in case wind energy developer wishes to sell to MSEDCL (or any other distribution licensee), the licensees and such wind energy developers need to explore alternate commercial arrangements pursuant to expiry of existing EPA sufficiently in advance so that need for seeking approval for interim arrangement does not arise at all.”*

(iii) It has been stated that the Order dated 6.5.2008 in Case No.97 of 2007, in fact, relates to review of tariff and not related at all to the issue as to whether license is required to be obtained by the generator to supply electricity to a consumer.

15. Having heard the parties and after considering the materials placed on record, the Commission is of the view that the present case essentially revolves around denial of grid connectivity in the manner envisaged under Section 86(1)(e) of EA 2003, and in view of the same, the Commission has the jurisdiction to entertain the Petition filed by M/s. B.F. Utilities Ltd., and to consider the reliefs prayed therein. The Commission had dealt with similar issues while disposing of Case No. 49 of 2008 by its Order dated October 22, 2008 in the matter of Petition filed by M/s Pioneer Distilleries Limited for adjudication of dispute with MSEDCL, in which the Commission had *inter alia* given the following findings:

15. ....a licence is required while a generating company wishes to sell electricity to a distribution licensee for which it needs to connect up to the intra State transmission system by laying down lines. This licence would be a transmission licence because it would involve transmission of energy. Similarly, when a generating company wishes to sell electricity to consumer(s) by laying down distribution lines/putting up distribution system, then in that event, the generating company would need a distribution licence for setting up such lines.

.....ensuring connectivity with the grid is the prime responsibility of MSEDCL and PDL should not have to lay its own lines, unless it is desirous of laying down dedicated lines for the purpose of supply... ”.

...

16. In this context, the Commission observes that Section 10 of EA 2003 lays down the duties of Generating Company and has clearly dealt with two



*aspects of establishment of generating station by Generating Company and undertaking 'supply' of electricity from such generating station, separately thereunder, as reproduced below:*

*“ (1) Subject to the provisions of this Act, the duties of the generating company shall be to establish, operate and maintain generating stations, tielines, sub-stations and dedicated transmission lines connected therewith in accordance with the provisions of this Act or the rules or regulations made thereunder.*

*(2) A generating company may supply electricity to any licensee in accordance with this Act and the rules and regulations made thereunder and may, subject to the regulations made under sub-section (2) of Section 42, supply electricity to any consumer.” (Ref. Section 10 (1) and (2) of EA 2003).*

*17. The above Sections of EA 2003 do not envisage any requirement to obtain licence for supply of electricity from a generating station unless such supply entails laying down of transmission or distribution lines at which time the provisions of Sections 12 to 15 which deal with Licensing would be attracted for undertaking transmission, distribution or trading, which are licensed activities as per Section 12 to 15 of EA 2003. Further, provisions of Section 7 would need to be kept in view.*

*“7. Any generating company may establish, operate and maintain a generating station without obtaining a licence under this Act if it complies with the technical standards relating to connectivity with the grid referred to in clause (b) of section 73.”*

*18. As regards connectivity of generating station to the grid is concerned, the Commission has stipulated under Regulation 4.4 of MERC (Distribution Open Access) Regulations, 2005, the procedures for enabling open access and connectivity to Generating Company for accessing distribution system of distribution licensee as reproduced below:*

***4.4 Application by Generating Company or Licensee:***

*4.4.1. Where a Generating Company or a Licensee is connected or intends to be connected to the distribution system of a Distribution Licensee and intends to give supply of electricity to an eligible consumer or to an eligible person as specified in 3.1, using such distribution system, the Distribution Licensee shall, within a period of thirty (30) days from the receipt of application for open access, intimate such Generating Company or Licensee of the technical requirements, details of works to be carried out, charges to be paid and estimated time period*



*for completion of works in order to provide or enable such Generating Company or Licensee to give such supply”.*

*19. Thus, it is evident that distribution licensee is obliged to ensure grid connectivity for the generating station and arrange for evacuation of power from such generation station. Further, Regulation 5 and Annexure-II of MERC (Distribution Open Access) Regulations, 2005 have clearly outlined conditions and Form of Agreement (namely, Connection and Use Agreement) for access and use of distribution system of distribution licensee by Generating Company. The Commission observes that under the said Connection and Use Agreement, the ‘Connection Point’ is defined as the physical point at which the premises of the Connector are connected to the distribution system. As per the MERC (Distribution Open Access) Regulations, the distribution licensee is not only obliged to provide access to its distribution system but is also duty bound to undertake necessary works to ensure connectivity for generating stations to its distribution system in a timely manner.*

*20. Thus, Distribution Open Access Regulations notified by the Commission has in terms of Section 2(47) of the EA 2003 enabled non-discriminatory “open access” for the use of transmission lines or distribution system or associated facilities with such lines or system by a person engaged in generation in accordance with the said regulations specified by the Commission. These provisions enable a Generating Company to access the distribution system of a distribution licensee for undertaking such supply to any other licensee (including trading licensee) or eligible consumer subject to payment of applicable charges for access and use of such distribution system. In this regard, it is relevant to refer to Section 2(47) as under:*

*“open access” means the non-discriminatory provision for the use of transmission lines or distribution system or associated facilities with such lines or system by any licensee or consumer or a person engaged in generation in accordance with the regulations specified by the Appropriate Commission.*

*21. As regards MSEDCL contentions about applicability of Hon’ble Mumbai High Court’s Judgment in Bhushan Steel case, which is the case of captive power plant undertaking sale to third party, the EA 2003 has since undergone an amendment and Section 9 has been specifically amended to allow a CPP to sell surplus power without a licence. The Commission is of the view that with the Electricity (Amendment) Act, 2007 removing the requirement to obtain licence by captive generating plant for sale to licensee or consumer by amending Section 9 of the EA 2003, the aforesaid Judgment of the Hon’ble*



*High Court is rendered infructuous. In any case, the reference to the said Judgment is wholly inapplicable to the present case where the Petitioner is not a Captive Generating Plant within the meaning of Section 2(8) of the EA 2003, while the Hon'ble High Court's Judgment applied to a Captive Generating Plant. Further, several Generating Companies such as MSPGCL and NTPC continue to undertake supply to licensees without need to avail licence, even pursuant to Hon'ble High Court's Judgment in Bhushan Steel case, a fact which has not been denied by MSEDCL. MSEDCL has also not raised this issue in case of any other Generating Company until issuance of Commission's Order dated May 6, 2008 in Case No. 93 of 2007.*

*22. In view of the above, the Commission rules that no licence is required to be availed by Petitioner as Generating Company for undertaking supply from its generating station. In addition, the Commission observes that the proposed generating station of the Petitioner being renewable energy based generating station as per provisions under Section 86(1)(e) of EA 2003, the Commission is mandated to promote and ensure suitable measures for connectivity to Grid for supply from such generating sources. Accordingly, the Commission directs MSEDCL to establish and ensure connectivity and access to its distribution system for Petitioner's Generating station, expeditiously. ..."*

16. The present case is covered by the above findings which squarely apply to the "Third Party Sale" arrangement between the Petitioner and Bharat Forge Ltd., in relation to the 6.90 MW wind mill project particularly in view of the admission of the Petitioner that it has neither in the past nor is intending to connect up to the Intra-State Transmission System by laying down transmission or distribution lines or distribution system because the Petitioner does not need to lay down any line as it is already connected to the grid / MSEDCL System. This is not disputed by MSEDCL.

17. It is also statutorily obligatory on MSEDCL to provide non-discriminatory use of its Distribution System to the Petitioner or such persons who require open access in order to obtain power from the Petitioner. Under Section 42(3) if Bharat Forge Ltd. or any person whose premises are situated within the area of supply of MSEDCL requires a supply of electricity from the Petitioner other than MSEDCL, Bharat Forge Ltd. or such person requiring the wheeling is entitled under the said section to, by notice, require MSEDCL for wheeling such electricity and the duties of MSEDCL with respect to such supply shall be of a common carrier providing non-discriminatory open access.



18. In view of the above, the Commission directs MSEDCL to issue credit notes without demanding that the Petitioner is required to obtain a license from the Commission. However, for availing open access to the wires the Commission makes it clear that the applicable transmission charge/transmission loss and wheeling charge/wheeling loss involved in transmitting / wheeling of RE power must be paid for.

19. The Commission directs all the Respondents to co-operate with the Petitioner and ensure that non-discriminatory open access is provided to the Petitioner (subject to the provisions of applicable law and regulations and payment of applicable transmission charges/transmission losses and wheeling charges/wheeling losses) to enable supply of electricity from its generating station to consumers such as Bharat Forge Limited, electricity traders and distribution licensees without demanding that the Petitioner would require to obtain any license for the said activity.

The dispute as referred for adjudication, accordingly stands disposed of with the above findings and directions.

Sd/-  
(S.B. Kulkarni)  
Member

Sd/-  
(A. Velayutham)  
Member

Sd/-  
(V.P. Raja)  
Chairman



(P.B. Patil)  
Secretary, MERC