

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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Case No. 35 of 2011

In the matter of
Complaint filed by Bajaj Finserv Ltd., alleging non-compliance of the
Commission's Orders by MSEDCL, on change of Third Party sale, erroneous
recovery of short term transmission charges, stopping wheeling arrangement of
third party sale and holding refund of erroneous wheeling charges forcibly
recovered earlier.

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

Bajaj Finserv Ltd.,
C/o Bajaj Auto Limited,
Mumbai-Pune Road, Akurdi, Pune

...Complainant

And

1. Arvind Dyeing & Bleaching Mills Pvt., Ltd.,
Arvind House, 30, Old Industrial Estate, Ichalkaranji.
2. Arvind Finlease Pvt. Ltd.,
Arvind House, 30, Old Industrial Estate, Ichalkaranji.
3. Arvind Cotsyn (India) Ltd.,
Arvind House, 30, Old Industrial Estate, Ichalkaranji.
4. Shri Charbhuj Sales Corporation,
10/1202, Shri Niketan,
Marathe Mill Corner, Date Mala, Ichalkaranji

.....Interveners

V/s

Maharashtra State Electricity Distribution Co. Ltd.

.....Opponent

Present during the hearings:

For the Complaint: Shri S. P. Shinde

For the Interveners: Adv. S. C. Karandikar

For the Opponent: Shri Rahul Sinha; Shri Abhishek Maitra, Advocates;
Shri R. G. Sonawane-S.E.(Comm.), MSEDCL; Shri M. S. Kele-S.E.(Comm.), MSEDCL; Shri G. G. Chavan-S.E., STRC (Satara Rural Circle); Shri M. R. Kanase-E.E., MSLDC, Kalwa; Shri D. H. Kulkarni-MSEDCL.

For Maharashtra Energy Development Agency: Shri J. V. Torane

ORDER

Dated: 25th January, 2012

Bajaj Finserv Ltd., the Complainant, filed a complaint against Maharashtra State Electricity Distribution Company Ltd. (“MSEDCL”), the Opponent, on 1st March, 2011 under Sections 142 and 146 of the Electricity Act 2003 (hereinafter referred to as “EA2003”) alleging non-compliance of the Commission’s various Orders by not permitting change of third party sale to existing wind energy project; by deviating from the Commission’s Rulings/ Orders by SE MSEDCL Satara; by erroneous recovery of short term transmission charges other than that approved in the tariff for 2010-11; by forcefully stopping wheeling arrangement of third party sale with effect from January 2011; by holding refund of capital subsidy and the erroneous wheeling charges forcibly recovered earlier.

2. The prayers made by the Complainant are as follows:

“

- a) *Direct MSEDCL to follow strictly the Commission’s directives stipulated in wind power tariff order dated 24.11.2003 and case No.33 of 2007 regarding third party sale of wind energy and continue wind energy wheeling arrangement of BFS’s projects for third party sale/ captive use and continue short term open access till the project life of 20 Yrs from the date of commissioning and not to stop change of third party sale permissions during the project life.*
- b) *Direct incumbents SE/ Dy. E. MSEDCL Satara to follow strictly short term transmission tariff Rs.56.4/MWh and not Rs.1,353.5/MW/day. And as per EA 2003 section 62(6), refund excess recovered amount immediately Rs.73.10 Lakh. Also, direct to refund Rs.5.4 Cr. And units 1202751 earlier erroneously recovered wheeling charges other than the amount sub-judice.*

- c) *Direct incumbent SE/ Dy. E. MSEDCL Satara to not stop issuance of generation/ credit reports and to issue forthwith credit notes withheld since Jan'11.*
- d) *Direct MSEDCL to immediately refund Rs.10Lakh, wrongly recovered from BFS along with bank interest from 19th December 2009 (date of Commission's General Order).*
- e) *Appropriate action may please be taken against incumbents, SE (Satara), Dy. E.(Satara) and responsible officers of MSEDCL's HO Mumbai, under section 142 and 146 of EA 2003, since petition matter is sufficient proof of repetitive contraventions of Commission's order committed jointly by them and created hindrance in the process of promotion to RE as per 86 1.(e) of EA 2003."*
3. The Complainant vide letter dated 16th March, 2011 submitted a supplementary affidavit with additional prayers, as hereunder:
- "f) Point No.4 of MSEDCL's letter no. Co ord Cell/ Wind/ No.08025 dated 11th March 2011 to be quashed for stopping of wheeling arrangement, in absence of fresh NOCs.*
- g) Direct MSEDCL to continue to issue monthly generation credit reports without interruption and regularize existing permissions at their end by adjusting/ recovering Commission's approved annual / monthly fees etc as per Schedule A and B of the MSEDCL's letter No.08025 dtd. 11th March 2011 prospectively, i.e., w.e.f. 1st April, 2011 (FY 2011-12)."*
4. The facts submitted by the Complainant are as follows:
- A. Erstwhile Bajaj Auto Ltd. had installed Group-II wind power projects in year 2000-2002 at Satara & Ahmednagar districts for 100% captive use. The Complainant, Bajaj Finserv Ltd., has submitted that in the year 2007-08, Bajaj Auto Ltd was demerged into three companies namely: Bajaj Holding and Investment Ltd. ("**BHIL**"), Bajaj Finserv Ltd. ("**BFS**") and. Bajaj Auto Ltd. ("**BAL**"). Post demerger, the ownership of the wind power projects went to BFS, and, then BAL became a third party user of the wind energy (from being a captive user earlier).
- B. MSEDCL accorded Open Access permission on 3rd November, 2008 to BFS for third party sale of electricity, without any tenure.
- C. During the year 2007-08, Bajaj Auto Ltd.'s Akurdi plant ("**BALA**"), a third party user, discontinued its vehicle assembly facilities which resulted in reduction in the electricity consumption from 30 lakh units/ month to 15 lakh units/ month and resulting in substantial reduction in its monthly energy bill.

- D. At that time, refund (settlement of the earlier units) adjustment amounting to Rs.4.31 crore was pending with MSEDCL, Pune for BALA. MSEDCL was not in a position to refund the amount other than by adjustment in electricity bills. Due to such a situation, BFS, with prior permission of MSEDCL, discontinued the supply of wind energy to BALA and sold energy to another third party, i.e., Serum Institute, Pune, in order to increase MSEDCL's monthly electricity bill to BALA and thus to facilitate adjustment of the refund. BALA received complete refund by August 2010.
- E. Meanwhile, the Complainant made an application to MSEDCL, the Opponent, on 28th July, 2010 to resume wind energy supply to BALA. The Complainant also made an application to the Opponent on 28th September, 2010 to divert part of the third party sale for its captive use at BFS complex, Pune, from another existing third party user Pudumjee Pulp & Paper Mill, Pune.
- F. The Opponent, however, did not accept the Complainant's request, although the wind generator's connectivity would remain same and there was only a need to change the name of the third party.
- G. The Complainant submitted that due to the Opponent's refusal to carry out the said change, the Complainant had no option but to stop or lose generation since MSEDCL was not permitting a change of third party user while the existing third party buyer is not interested in purchasing wind energy after January/February, 2011.
- H. The Complainant submitted that the OA tariff for InSTS as well as for MSEDCL has been approved by the Commission for FY2010-11, whereby the Commission rationalised short-term transmission charges vide Order in Case No.120 of 2009 on the basis of wheeled energy. The Opponent's Superintending Engineer, Satara, (S.E., Satara) however, was levying short term transmission charges of Rs.1,353.5/MW/day with effect from 1st Sept., 2010 on the basis of unmetered power (MW/ day) of project instead of Rs.56.4/MWh based on actual energy generated, metered and transacted. Since the Complainant had no option but to pay, the Complainant had paid to the Opponent transmission charges in excess of tariff, amounting to about Rs.70.31 lakh from 1st September, 2010 to December, 2010.
- I. The Opponent had erroneously recovered an amount to the tune of Rs.5,40,36,895/- during April 2008 to June 2009 period (after which the Opponent had corrected itself), and 1202751 units, which is not sub-judice anywhere, and the Opponent has no right to keep the refund pending.

- J. The Opponent's S.E., Satara abruptly stopped the wheeling of wind energy to third party with effect from generation month January 2011 without giving any prior notice or reasons. Thus, MSEDCL is benefited, if the wheeling is stopped as the projects are continuously running and energy is injected into the grid. However, both the generator and third party will incur heavy losses. There has been repetitive stoppage of the wheeling arrangement for self-use/ third party sale projects, details of which are as under:

Stoppage Sr. No.	Month & Year	Period of Stoppage
1	April 2007	Lifted after Commission's Order in Case 21 of 2007 dated 7 th Nov., 2007.
2	April 2008	Lifted after payment of double charging OA MYT 08-09 (extra above tariff Rs.5.31 Cr.)
3	September 2008	Lifted after return of 50% capital subsidy

- K. The Complainant referring to the Commission's Wind Power Tariff Order 2003, submitted that the S.E. Satara has forcefully recovered 50% capital subsidy received by wind power investors from the Government of Maharashtra, under Group-II projects for captive use/ third party sale, who have not availed of promotional tariff. Moreover, MSEDCL has misinterpreted the Commission's Order of 2003 dated 24th November, 2003 in Case 17(3), 3, 4 & 5 of 2002 providing that "*.....such benefits (capital subsidy) if materializing in future, should be equitably shared between the developer and the purchasing agency*". This has since been clarified and set aside by the Commission.
- L. Subsequent to the filing of the complaint, the Complainant vide a supplementary affidavit dated 16th March, 2011 raised an additional issue that "after the Complainant's filing the present Complaint with the Commission, the commercial department of MSEDCL, vide letter no. 08025 dated 11th March, 2011 instructed its field offices to inform existing wind power project developers to apply for fresh NOCs with effect from April 2011, and as per point no. 4 of the letter, the field officers are directed to stop issuing Generation Credit Reports (GCRs) from 1st April, 2011 onwards, in absence of fresh NOCs".
5. During the hearing held on 5th May, 2011, representatives of the Complainant, and the Opponent appeared before the Commission. The Complainant reiterated its submission and further stated that after filing the Complaint, it had received Generation Credit Notes for two months, i.e., up to March 2011. Further, as per the letter from MSEDCL, the Complainant will have to pay various processing fees and charges for obtaining new Distribution Open Access permission. The Commission observed that no charges could be unilaterally imposed by the Licensee, other than the Schedule of Charges as approved by the Commission.

The Opponent then submitted that it has not received a copy of the Complainant's supplementary submissions and asked for additional time to submit its reply. Further, the Opponent was trying to regularize the procedure and had already released the capital subsidy amount, which would be received by the Complainant shortly.

The Commission directed the Complainant to serve a copy of its supplementary submissions on the Opponent. Also, taking into consideration that the present matter is related with the development of the renewable energy, the Commission directed the Complainant to implead Maharashtra Energy Development Agency ("MEDA") as a party in the matter, and to serve a copy of the Petition along with all the relevant documents on MEDA. The Commission directed the Opponent to file its detailed reply on various issues raised by the Complainant, and to serve a copy of the same on all concerned, well before the date of the next hearing.

6. The Commission vide notice dated 5th May, 2011, scheduled a hearing in the matter, on 18th May, 2011, at 15.00 hrs.
7. Meanwhile, the Commission received Intervention Applications in the matter from the following four(4) entities on the ground that their problems with MSEDCL were of a similar nature as the ones filed by the Complainant (BFL) and hence requested that their applications be allowed:
 - (i) Arvind Dyeing & Bleaching Mills Pvt., Ltd. Ichalkaranji
 - (ii) Arvind Finlease Pvt. Ltd., Ichalkaranji
 - (iii) Shri Charbhuj Sales Corporation., Ichalkaranji
 - (iv) Arvind Cotsyn (India) Ltd., Ichalkaranji
8. On 18th May, 2011, representatives of the Complainant and the Opponent appeared before the Commission. All Intervention Applications were allowed. Copies of the said applications were given to the Complainant, the Opponent and MEDA. The Complainant reiterated its submissions and requested that Credit Notes be issued by MSEDCL. In response, the Opponent submitted that it had already issued Credit Notes up to the month of March, 2011, and that for the month of April, 2011 onwards the Complainant was required to seek permission for the grant of Open Access.

Further, the Complainant submitted a comparative statement on working of the MSEDCL's two Circle Offices, viz., Satara and Ahmednagar. The data provided by the Complainant indicated that the Satara Circle needed improvement in its ways of working in respect of the wind power generators. The Commission observed that MEDA should take the responsibility of streamlining the procedures and hence

directed MEDA to visit the Satara area, including MSEDCL's Circle Office in order to find out whether any other area had similar issues. MEDA was directed to submit a report within two weeks from the date of hearing.

The Complainant also requested for expediting the process of issuance of the Credit Notes and Generation Reports. The Commission directed MSEDCL to expedite the matter and submit the status report within 15 days of the date of hearing.

9. Vide its letter dated 1st June, 2011 MEDA submitted its report to the Commission, conveying that *'as per CERC order dated 09-11-2010, role and responsibility of the distribution licensee defined is elaborated as below:*

i) In case of RE project connected to distribution network, the concerned distribution licensee shall undertake joint meter reading (along with concerned RE generator) and maintain energy accounting information of such RE generator on monthly basis.

ii) In case RE generator is connected with the network of distribution licensee, submit energy injection report to the concerned SLDC on monthly basis.

On the basis of above guidelines MSEDCL is expected to follow the guidelines of CERC under the REC mechanism as well as MERC.'

MEDA further submitted that *"- - - S.E. Satara assured that the balance credit reports will be issued to all concerned by 30/05/2011 which includes the clearance of wheeling charges and other issues - - -"*.

10. During the hearing, on 8th June, 2011, MEDA further submitted that MSEDCL had accepted that the balance Credit Reports would be issued by 30th May, 2011, but the status of the same was not known. MEDA also conveyed that except at Satara, such problems do not exist in other areas of the state.
11. During the hearing held on 28th July, 2011 the Complainant submitted that it has received new permission by revoking old permission and the Credit Notes have been received up-to the month of June, 2011. But, the delay in the issuance of Credit Notes is affecting the Complainant financially and their users have not received the benefit of wind energy credit for which they have been billed fully. Moreover, MSEDCL vide its circular dated 11th March, 2011 restricted the tenure of Open Access permission for one year whereas the Complainant wanted the Open Access permission for 12 years. The Complainant further submitted that life of the wind power project being 25 years, the Open Access permission should also be considered for a corresponding period, and that irrespective of the 'Short Term' or 'Long Term' Open Access permission, the wheeling arrangement should not be stopped.

The Complainant further submitted that delay in Generation Reports affects the process of Renewable Energy Certificates (REC), and that the fees and charges charged to the Open Access consumers are not as approved by the Commission.

The Interveners submitted that they were forced to pay charges against the fresh applications which they had to make, for getting the Credit Notes. They further observed that the moment the wind generation is erected, it is an irrevocable bond, the NOC may be submitted once while making a new application and not every year. As long as there is no change in the user/ third party sale, there is no point in asking for a fresh application every year. Also that, the start-up power for auxiliary consumption should be deducted from the energy utilized, and temporary charges for the same should not be made applicable.

After hearing the parties, the Commission observed that from MEDA's submissions it is apparent that the problems being faced by wind energy generators exist only in the Satara Circle. Therefore, the Commission directed that the field officers of the Opponent, who were responsible for handling matters related to wind generators in the Satara Circle, also be heard in the matter. Based on the inputs given, the Commission directed that Summons be issued to the Superintending Engineer and the Deputy Executive Engineer, of the concerned Satara Division, directing them to personally appear before the Commission at the next hearing.

12. During the next hearing held on 18th Aug., 2011, MSEDCL's Shri G. G. Chavan, S.E., Satara Rural Circle, Shri M. R. Kanase, E.E., MSLDC, Kalwa, who was earlier posted at Satara, appeared along with other representatives of the Opponents, the Complainant and the Interveners.

The Complainant submitted that the Credit Notes were now being issued regularly, but there was delay in receiving the Injection Report. As per the CERC-REC programme, the Credit Notes need to be submitted along with the Injection Report. The Complainant requested the Injection Report be issued along with the Credit Note. The Interveners submitted that they have received the Credit Notes till the month of June, and meter reading for the month of July has already been done, however, the Credit Notes for the same are not yet received.

It was also submitted that the Commission vide Order dated 19th December, 2009 (Case No. 30 of 2009) directed MSEDCL, the Opponent, to refund the amount against the capital subsidy collected from wind developers. But, when the Interveners, namely Arvind Dyeing & Bleaching Mills Pvt. Ltd., Arvind Finlease Pvt. Ltd. and Arvind Costsyn (India) Ltd., had vide letter dated 27th May, 2011 requested the Opponent for refund of capital subsidy along with the interest, the Opponent, however, had not refunded the amount till date. Copies of the said letter were handed over to the Opponent.

The Opponent responded that the Interveners had not paid the Open Access charges due to which the Credit Notes had not been issued. It further submitted that Satara district has the maximum number of wind generators with 294 metering points and the number of employees appointed for meter reading is small, which results in delay in meter reading and recording.

Based on the submissions, the Commission observed that MSEDCL should not link the Credit Notes with other payments/ charges. Also that MSEDCL needs to improve the metering system and procedures in order to reduce the delay in taking readings and enable early release of Credit Notes/ Injection Reports. The Commission then directed the Opponent to provide, to wind generators copies of all the MSEDCL's circulars related with capital subsidy. The Complainant and Interveners were directed to study the related circulars and make their submissions. Also, the Commission directed the Complainant and the Interveners to list out the items and processes, based on which MSEDCL can prepare a Citizen's Charter, and submit the list at the next hearing.

13. During the hearing held on 1st November, 2011 the Complainant stating that a Citizen Charter has been discussed with MSEDCL, submitted a copy of the Minutes of Meeting held between the wind generators and MSEDCL on 13th September, 2011 when a draft of the Citizen Charter was discussed. The Complainant further submitted that the factors considered in the Citizen Charter are accepted by both the parties, except one issue on the replacement of meters. The Complainant submitted that as per MSEDCL the replacement of meters is to be done within a month's time by ABT type meters. But the same cannot be carried out in a month. The market is not yet so established to have adequate number of automatic meters available with a number of manufacturers. MSEDCL responded that they are ready to buy meters for such consumers.

Another issue raised by the Complainant was with reference to the Cross Subsidy Surcharge on the ground that MSEDCL vide Circular No. 147 has raised some points which are impractical to implement. MSEDCL responded that some replies are submitted by the consumers on this Circular and they will be arranging a meeting in order to finalise it in a convenient way to all concerned.

14. Based on the material on record and the submissions made by the parties, the Commission is of the view that in this matter before the Commission, the Opponent, MSEDCL, to whose network the Complainant and the Interveners, along with other renewable energy generators are connected, needed to handle the matter in a more transparent manner.

When a renewable energy generator has installed a plant, and connected to the network of a Distribution Licensee or a Transmission system, the bond needs to be considered as an irreversible bond in the sense that non-usage of the energy

generated at any time will result in sheer wastage of scarce resources. At the same time the generator should become eligible to get credit for the energy wheeled into the system in the form of Credit Notes and energy Injection Reports. With this in view MSEDCL needs to streamline its processes and procedures by which the renewable energy generators do not feel harassed at any time. Also, MSEDCL should avoid imposing unnecessary restrictions in the system already in operation. The Rules and Regulations in force must be equally applicable to all similar users of the network.

Moreover, as already brought out above, MSEDCL needs to strive to improve the meter-reading systems and procedures besides improving the meters which will eliminate the time delay in taking the meter-readings on records, to enable early release of Credit Notes/ Injection Reports, to the renewable energy generators.

MEDA is directed to regularly look at the practices and processes being followed in various areas where the wind generators operate from the point of view of removing any difficulties being faced by them. In case of repetition of any kind of problems, the same needs to be brought to the notice of this Commission.

15. This Commission, however, is not the grievance resolving cell to resolve the individual disputes between the parties concerned on operational matters on a day-to-day basis. The concerned parties need to sit together to sort out the differences and difficulties faced by both the sides in day-to-day operations. The Commission is presently concerned only with the prayers made by the Complainant and the Interveners, in the present Complaint, which have been resolved to the satisfaction of the Complainant and the Interveners.

Therefore, nothing material survives in the matter before the Commission.

With above, the Petition in Case No. 35 of 2011 stands disposed of. No order as to costs.

Sd/-
(Vijay L. Sonavane)
Member

Sd/-
(V. P. Raja)
Chairman