

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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Case No. 149 of 2008

In the matter of
Petition filed by M/s. Tata Motors Ltd., and M/s. Nishkalp Energy Ltd., seeking directives for formulation of special terms for open access applicable for wind energy projects, falling under Group II (post expiry of 8 years period).

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

Tata Motors Ltd.
Bombay House,
24, Homi Mody Street
Fort, Mumbai 400 001

... Petitioner No. 1

And

Nishkalp Energy Ltd
DGP House, 4th Floor
Old Prabhadevi Road
Worli
Mumbai 400 025

... Petitioner No. 2

Vs.

Maharashtra State Electricity Transmission Company Ltd.
Prakashganga, C-19, 'E' Block
Bandra Kurla Complex
Bandra (East)
Mumbai 400 051

... Respondent No. 1

And

Maharashtra State Electricity Distribution Company Ltd.
Prakashgad, Bandra (East)
Mumbai 400 051

... Respondent No. 2



ORDER

Dated: August 17th, 2009

M/s. Tata Motors Ltd., and M/s. Nishkalp Energy Ltd., filed a combined Petition on 25.01.2009 and made further submissions on 12.03.2009, inter alia seeking directives for formulation of special terms for open access applicable for wind energy projects, falling under Group II (post expiry of 8 years period).

2. The Petitioners pray as follows:

1. *That this Hon'ble Commission be pleased to condone the delay in filing of this Petition;*
2. *That this Hon'ble Commission in exercise of its powers under Regulation 24.3 of the Transmission OA Regulations and the proviso to Regulation 42.1 of the Tariff Regulations and also other enabling powers under EA, 2003 formulate special terms for open access applicable for wind energy projects, falling under Group II (post expiry of the 8 years period) after taking into account, inter alia, the following factors:*
 - a. *Promotion of cogeneration and generation of electricity from renewable sources of energy;*
 - b. *The unpredictable nature of wind power;*
 - c. *Quantum of wind power fed into the grid as a percentage of the total power fed in to the grid from all sources of power (conventional and non conventional); and*
 - d. *The need to exempt wind energy from all intra state open access charges like transmission charges, wheeling charges, unscheduled interchange charges and such other charges which have been prescribed in monetary terms;*
3. *That pending the hearing and final disposal of the above Petition, this Hon'ble Commission be pleased to direct the Respondents:*
 - a. *To recover from the Petitioners, charges for open access only on the basis of the Order dated 24th November 2003 (Exhibit "A" hereto) even after expiry of the 8 year period;*
 - b. *To continue to issue Credit Notes to the Petitioners from November, 2008 onwards in terms of the said Order dated 24th November, 2003 (Exhibit "A" hereto) and not to withhold the same on any pretext;*
 - c. *To refund to the Petitioner No.1 a sum of Rs. 99,36,759 (Rupees Ninety Nine Lakhs Thirty Six Thousand Seven Hundred Fifty Nine only) being the amount paid under protest by Petitioner No.1 to Respondent No.1 as wheeling and transmission charges upto October, 2008;*
 - d. *To refund to Petitioner No.2 a sum of Rs. 1, 11, 88, 978 (Rupees One Crore Eleven Lakhs Eighty Eight Thousand Nine Hundred Seventy Eight Only) being the amount paid under protest by Petitioner No.2 to Respondent No.1 as wheeling and transmission charges upto October, 2008."*



3. The Petitioners submit that in 1996, the Government of Maharashtra announced a policy for development of renewable energy projects. However since the policy failed to attract the private sector investment, the Government issued revised policy on guidelines formulated by the Ministry for Non Conventional Energy Sources (MNES), Government of India (GOI) for wind power projects.

4. Pursuant to the revised policy, Tata Motors set up 57 kW capacity and 2 windmills of 1000 kW capacity and Nishkalp set up 350 kW capacity and 1 windmill of 1000 kW capacity at an aggregate capital cost of Rs. 220 Crores at Chalkewadi near Satara and Supa near Ahmednagar in Maharashtra.

5. The Petitioners allege that MSEB vide its Circular No. Co.ord/cell/PPP/Gen.NCSE/33702 dated 5th October 2001, revised its policy for power generation projects based on wind and solar energy, without approaching the Commission. Later around March 2002, MSEB approached the Commission seeking approval of energy purchase from Wind and Solar Projects in line with their existing policies. The Commission asked MSEB to file an affidavit in fulfilment of Section 22 (1) (c) of the Electricity Regulatory Commissions Act, 1998 (“ERC Act”) and Conduct of Business Regulations framed by the Commission.

6. Meanwhile, MSEB stopped executing Energy Purchase Agreements (EPA) and Energy Wheeling Agreements (EWA). It also withheld payment/ credits for the energy to be fed in to the grid for sale to MSEB/ Self use/ Sale by third party on the ground that developers/ owners have to obtain the approval of the Commission under the ERC Act. This resulted in delays in issuance of credit reports and different calculations were adopted by different MSEDCL circle officers. As a result, Renewable Energy Developers Association of Maharashtra (REDAM), one of the wind energy producers, approached the Commission. MSEB submitted the proposal for providing interim credit which was accepted by the wind farm developers.

7. The Commission passed interim Orders in Case Nos. 3, 4 and 5 of 2002 that refrained MSEB from entering into any PPA without the prior approval of the Commission as contemplated under ERC Act, 1998. However, vide its Order dated 24th November 2003; the Commission disposed of Case No. 3, 4 and 5 of 2002 along with Case No. 17(3) of 2002. The Commission divided all the wind energy producers into three categories, of which the Petitioners fall under Category II and as regards adjustment for self-use and sale to third party, directed as:

- i) for the period ending 31.03.2003, credit shall be given as per the policy of GoM/ MSEB in force as on 27.12.1999; and
- ii) from 01.04.2003 onwards, net energy delivered to the grid for self use or for sale to third party shall be adjusted against the energy consumption made as per the TOD (Time of Day) tariff time slot. For projects not provided with the TOD meters, the energy wheeled for self use/sale to third party shall be adjusted against the energy consumption made at the lowest energy tariff slab and then at next higher slab and so on till such time appropriate meters are installed.



8. The Petitioners through this Petition brought to the Commission's notice certain points that the Commission had observed in its Order dated 24th November 2003, as follows:

a) The Commission compared wind and thermal energy and was not convinced that wind projects result in incremental T&D losses. On the other hand, the Commission expressed the need to conduct a detailed study on its assumption that wind projects contribute to the reduction in transmission losses since the requirement of transmission energy is reducing. Till the study was so conducted, the Commission determined uniform transmission losses at the rate of 5%. However, the Petitioners submits that there has been no such study conducted so far and the rate continues to apply.

b) In the same Order, the Commission noted that the philosophy of levying T&D losses and wheeling charges is substantially different and thus should not be bundled together. It submits that the Commission was of the view that wheeling charges are meant to include charges for use of the utility's physical infrastructure for wheeling and the administrative expenses involved. In the absence of any other methodology, levy of 2% wheeling charges as recommended by MNES were considered reasonable.

c) Through this Order, the Commission was also to review the tariff rate and tariff structure for wind power projects after 31st March 2007, or on addition of 750 MW of additional wind energy capacity after 1st April 2003, whichever is earlier.

Considering these points, the Petitioners submitted that wind energy generated and transmitted by them merely displaces the energy generated by the Maharashtra State Power Generation Company Ltd. Thus, there is no capacity earmarked by MSETCL on its intra State transmission System for the Petitioners, which remains idle when the Petitioners do not generate energy. Thus, the Petitioners requests the Commission that it shall direct the Respondents to recover the transmission and wheeling charges from the Petitioner in accordance with the said Order dated 24th November 2003.

9. Pursuant to the said Order dated 24th November 2003, the Petitioners were paying 5% Transmission Loss and 2% Wheeling Charges. Respondent No.2 issued Credit Notes to Tata Motors and Nishkalp separately for each of its phase on the basis of energy generated by that phase in a particular month after deducting the transmission and wheeling charges. Vide two separate letters issued on 17th January 2008, in the name of Respondent No.2, MSEDCL demanded payment for wheeling charges and transmission charges, stating that pursuant to Order dated 12th September 2006, passed by the Commission, the validity period of Phase 1 of the Petitioners has expired on 31st March 2007. The said bills were based on the Order dated 20th November 2007. The Petitioners allege that MSEDCL threatened the Petitioners that it would withhold credit reports unless the said payments are made. After receiving two other letters on 30th January by MSEDCL, referring to the Petitioners' undertaking that the Commission's Order will bind them and thus the payments should be made, the Petitioners vide letter dated 21st February, 2008 requested MSEDCL not to take any coercive action and that they would reply shortly. MSEDCL, consequent to the Commission's Order 13th February 2008 in Case No. 85 of



2007, released the withheld credit reports. The Petitioners claim that MSEDCL, pursuant to the Order dated 20th November 2007, started levying open access wheeling and transmission losses and charges on Petitioner's wind power project phases that completed 8 years tenure and held up credit notes for the projects which had not completed 8 years. After the Petitioners representatives met MSEDCL officials around 4th and 8th October, MSEDCL issued credit notes upto October 2008 for the phases of which 8 year tenure had not expired but withheld the ones with completion of 8 years. The Petitioners also claim that again on 22nd September 2008, MSEDCL issued two other letters, requiring Petitioners to pay wheeling and transmission charges every month as per condition to releasing the credit notes.

10. The Petitioners then brought to the Commission's notice that the Order dated 20th November 2007 was passed by the Commission in Case No. 33 of 2007, in the matter of REDAM and InWEA and that no notice of such Order was issued to the Petitioners, even though Tata Motors i.e. Petitioner No.1 is the member of InWEA.

The Petitioners claim that all this adversely affected their financial position.

11. The Petitioner also submits that the Order dated 2nd April 2007 in Case No. 86 of 2006 does not take into account the unique features of wind energy generation and the charges therein are determined considering the conventional power generation and distribution. It also pointed out that in the Order dated 27th June 2006 in Case No. 58 of 2005, the Commission held that persons availing or proposing to avail access to intra State transmission system for the period of 25 years or more shall be termed as Long term Transmission system users and all other users would be short term transmission users. The Petitioners thus point that the applicability of short term rates will be effective for the period of 12 years (post expiry of 8 years period), considering the average life of wind farm being 20 years; when open access on intra state transmission system is required by the Petitioners. The Petitioners claims that the difference between the short and long term being huge, the impact of levying long term open access rates adversely affects the viability of wind projects.

12. The Petitioners draw the Commission's attention to the Discussion Paper issued by Central Electricity Regulatory Commission (CERC) on "Promotion of cogeneration and generation of electricity from renewable sources of energy" in May 2008, where it states that small renewable plants should be exempted from the fixed open access charges.

13. The Petitioners submitted that there is enough ground for the Commission to exercise its powers under Regulation 85(a) of the MERC (Conduct of Business) Regulations, 2004 and review the Orders in question, so far as it affects the charges for transmission and wheeling for the wind energy for self consumption.

14. In reply, MSEDCL, submitted that the Government of Maharashtra vide GR dated 12.3.1998, circulated the policy on wind power generation. MSEB adopted this wind power generation policy vide Circular (Comm.) No. 640 dated 03.04.2000, and adopted the revised policy vide Circular (Comm.) No. 664 dated 05.10.2000. It has been further stated that MSEB



issued NOC for installations of wind farm projects at various places in Satara, Sangli, Ahmednagar and Dhule, with the permission to use wind power for self use, sale of power to MSEB and to third parties. However, such NOCs required the wind developers to obtain the Commission's approved tariff rate for the sale of power to MSEDCL from August 1999. Meanwhile, MSEB vide letter No. 8147 dated 06.03.2002, approached the Commission seeking advice on finalising Energy Purchase Agreement/ Energy Wheeling Agreement to be executed by the wind developers and to examine the provisions of Electricity Regulatory Commissions Act, 1998. Vide affidavit dated 14.05.2002, MSEB submitted two model draft agreements to the Commission for the provisions of (a) Sale of power to MSEB and (b) for self-use and third party sale based on MSEB's policy vide Circular No. 664 dated 5.10.2001. It further submitted to the Commission, the tariff revision proposal for the financial year 2001-2002, along with Policy regarding generation based on wind. Vide Order dated 10.01.2002, the Commission ruled among other things as under:

“...the Commission would not like to comment on the policy of renewable energy sources at this stage; but would like to state that the MSEB has appended the captive power policy, which includes the policy for renewable energy sources along with the Tariff Proposal for the information of the consumers, and the Commission's silence on this policy should not be taken as approval of the same...”

15. MSEDCL submits that all the self-use and third party cases were settled as per the Order dated 24th November 2003, and the Petitioners were required to execute the EWA with the MSEDCL, which it did not. Hence there is no question of deviation from the Government Policy of Maharashtra. MSEDCL submits that it is not concerned with the issue of membership with InWEA and REDAM, and thus no question of serving notice of the Order dated 20th November 2007, passed by the Commission in Case No. 33 of 2007 does not arise. It further submits that it will issue credit notes to the Petitioners as per the said Order along with the Order dated 9th March 2009, after recovering applicable wheeling and transmission charges and loss, with effect from 1.10.2006 for FY 2006-07, FY 2007-08 and FY 2008-09. MSEDCL thus, prays that the Commission should direct the Petitioners to honour the Commission's Orders dated 20.01.2007 and 09.03.2009.



16. A hearing was held in the matter on 7th July 2009. Having heard the parties and after considering the materials placed on record, the Commission is of the view that its decision in its Order dated May 25, 2009 in Case No. 68 of 2008 in the matter of Petition filed by M/s. REDAM seeking review of transmission and wheeling charges for Open Access by Wind Energy Generators, would apply to the present case as well, as essentially the submission of M/s. REDAM was that a special dispensation is required for Renewable Energy (“RE”) Sources inter alia in terms of suitably exempting RE Sources especially infirm power from fixed transmission charges and wheeling charges which are computed on the basis of capacity of the wind farm under open access wheeling transmission.

The present case stands dismissed in view of the decisions of the Commission in its aforesaid Order dated May 25, 2009.

Sd/-
(S.B. Kulkarni)
Member

Sd/-
(A. Velayutham)
Member

Sd/-
(V.P.Raja)
Chairman



(P.B. Patil)
Secretary, MERC