

**Before the**  
**MAHARASHTRA ELECTRICITY REGULATORY COMMISSION**  
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**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**

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

M/s. Renewable Energy Developers  
Association of Maharashtra  
Empire House  
214, Dr. D. N. Road,  
Ent. A. K. Nayak Marg,  
Fort, Mumbai – 400 001. .... Petitioner

V/s  
Maharashtra State Electricity Distribution  
Company Ltd.  
Prakashgad, Bandra (East)  
Mumbai – 400 051. ....Respondent

**ORDER**

**Dated: May 25, 2009**

M/s. Renewable Energy Developers Association of Maharashtra (“REDAM”), Mumbai filed a Review Petition on August 4, 2008, seeking review of various Orders dated November 20, 2007 in Case No.33 of 2007, April 2, 2007 in Case No.86 of 2006



and all MYT Orders determining Open Access Charges passed by the Commission, to the extent it applies to the member wind farm developers of the Petitioners.

2. The Petitioner has prayed as follows:

- (a) *The Hon'ble Commission may consider to issue an amendment to the Order dated November 20, 2007 specifying special terms for open access applicable for renewable energy projects in general and wind in particular including therein considering the typical unpredictable nature of wind power and quantum of wind power fed into the grid in terms of the total power fed into the grid from all sources of power (conventional and non conventional) being negligible, wind power to be exempted 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 on MW basis. There is a rationale to this argument as wind power being denied the two part tariff considering MW/KW into account in the sale/generation of power, it is normal that all charges based on KW/MW basis be made not applicable to infirm power like wind.*
- (b) *Till such time the Hon'ble Commission disposes of the present petition, the utility may be specifically directed by the Hon'ble Commission to continue with the status-quo practice of purchase of power, issue of credits, etc. as followed under Wind Power Tariff Order dated November 24, 2003 in respect of all such cases where the period of EPAs / EWAs have expired or are expiring at the end of 8 year period from the date of commissioning.*
- (c) *pass such further order or orders as this Hon'ble Commission may deem just and proper in the circumstance of the case.*

3. It is essentially the submission of the Petitioner that a special dispensation is required for Renewable Energy ("RE") Sources inter alia in terms of suitability 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 rationale provided for this argument is that the Grid is essentially built for carrying conventional power. RE Sources cannot replace conventional power in its entirety. It has been submitted that consumers cannot solely depend on generation from RE Sources since these sources cannot guarantee the entire and timely electricity requirement of the consumers. RE Sources only substitute conventional power to the extent feasible and available. It has been submitted that the incidence of imposition of several charges for open access wheeling transactions for the usage of the wires by these wind farms for selling wind energy viz., transmission charge, transmission loss, wheeling charge and wheeling loss as held by the Commission in its Order dated November 20, 2007 in Case No. 33 of 2007 disables and creates bottlenecks



in the maximization of non conventional electricity generation by private entrepreneurship and tends to create hardship in facilitating wind energy transmission to the notional destination. It is submitted that in terms of Section 86 (1)(e) of the Electricity Act, 2003 (“EA 2003”), the Commission is mandated to specify the frame work in which non conventional electricity generation would be judicially encouraged. There are factors such as unpredictability and non-dispatchability coupled with tendency of distribution utilities to resent export of power and blocking the grant of open access to non conventional sources based generators with the intent of forcing them to sell energy to utilities at dictated prices, and on top of that the imposition of transmission charge, transmission loss, wheeling charge and wheeling loss makes the non conventional plants suffer.

4. Support has also been placed on a Discussion Paper on “*Promotion of co-generation and generation of electricity from renewable sources of energy*” issued by the Central Electricity Regulatory Commission (“CERC”) under its letter dated May 16, 2008. The said Discussion Paper has been issued in pursuance of the provisions of Sections 61 and 79 (1) (c) of the EA 2003 and the requirement under Clause 6.4 (3) of the Tariff Policy issued on January 6, 2006. The Petitioner has stated that the CERC’s discussion paper on “*Promotion of co-generation and generation of electricity from renewable sources of energy*” categorically identifies the problems associated with imposition of charges for open access and unbalanced provisions as factors seriously discouraging non-conventional generators from seeking open access. At paragraph 48 of the aforesaid Discussion Paper of CERC, the CERC has taken a stand and advised which would also be a point of inference by this Commission that small renewable plants, should be exempted from open access charges viz., transmission/wheeling charge, scheduling fee, etc., and further that there could be a reactive charge as per Indian Electricity Grid Code but there should be no other charge such as standby charge, grid code charge etc.

5. Explaining the specific case of the member wind farms of the Petitioner, it has been stated by the Petitioner that there are several wind farm developers under Group II categorization (as per policy laid down by the Commission under Order dated November, 24, 2003) whose Energy Purchase Agreements (EPAs) have expired on March 31, 2007. Consequently, there are several wind farm developers who will be left to the market forces to sell their wind energy by transmitting the same through the State grid. So, therefore post the efflux of term of the EPAs that MSEDCL has executed with wind energy projects under Group II category the said wind energy developers may sell power to open access consumers apart from MSEDCL as held by the Commission in the said Order dated November 20, 2007 at Para 34(c) thereof. In this regard, the Commission in its Order dated November 20, 2007 has held that several charges will be applicable for



open access wheeling transactions for the usage of the wires by these wind farms for selling wind energy. Paragraph 27 of the said Order dated November 20, 2007 summarizes such applicable charges. In paragraph 26 of the said Order the Commission has clarified that it has determined the applicability of the wheeling charge, wheeling loss, transmission charge and transmission loss for open access transactions through its various Multi-Year Tariff Orders for each licenses separately. The Commission has also clarified that depending on the nature of the open access wheeling transactions, the injunction point(s) and drawl point(s) for open access wheeling transactions could lead to use of distribution assets of multiple distribution licensees and/ or use of Intra-State Transmission System (InSTS). The Commission has clarified that in case of particular licensee the wheeling charges applicable for particular open access transaction shall depend on voltage level at injunction point(s) and drawl point(s) as wheeling charges are determined in accordance with voltage level. Accordingly, transmission charges, transmission losses, wheeling charge, wheeling loss applicable for a particular transaction have to be ascertained on the basis of extent of use of assets of the concerned licensee and extent of use at a particular level. The Commission has held that these charges will be payable by the developers for self use and third party wheeling under Group II category. In paragraph 32 and 33 of the said Order the Commission has held that even while MSEDCL provides energy credit in case of open access wheeling (whether captive or third party) transactions MSEDCL shall make adjustments for applicable wheeling charges and wheeling loss.

6. The Petitioner has made reference to ‘Transmission System User’ (TSU) as defined in Clause (h) of Regulation 2.1 of the MERC (Transmission Open Access) Regulations, 2005 meaning a person who has been allotted transmission capacity rights to access an Intra-State Transmission System pursuant to a Bulk Power Transmission Agreement. The Petitioner states that no such Bulk Power Transmission Agreement has been executed with any of the wind developers of Group II category. It has been contended that although even if it is to be assumed that the wind developers are deemed TSUs under Regulation 5.1 of the MERC (Transmission Open Access) Regulations, 2005, no facilitation has been effected by the intra-state transmission utilities for the execution of Bulk Power Transmission Agreement within the time stipulated under the second proviso to Regulation 5.1 of the aforesaid Transmission Open Access Regulations. Furthermore, in accordance with Regulation 7.7 of the aforesaid regulations, MSETCL, the State Transmission Utility has uploaded a form of Bulk Power Transmission Agreement in its website. It has been contended that the said form of agreement is a draft version and it appears that many of the provisions therein are not legally sustainable.



7. The Petitioner has also pointed out that the renewable wind energy capacity in Maharashtra is quite small and therefore imposition of these open access charges cuts at the root of development and promotion of wind energy projects as the charges are found to be exorbitant vis-a-vis the value of generation less maintenance expenses.

8. The Petitioner also submits that the aforesaid open access charges as determined by the Commission suffers from non application of mind as the unique features of wind energy generation had not been taken into account while fixing such charges under the Order dated April 2, 2007 in Case No.86 of 2006. The said charges under the said Order have been determined keeping in view conventional power generation and distribution of the same. As a result an immediate aftermath of the Order dated November 20, 2007 was the misinterpretation of open access charges applicable for captive/third party consumers at the hands of MSEDCL resulting in the charging of long term open access rates as against short term open access rates. The applicability of short term rates emanates for the reason that Energy Purchase Agreement (EPA) / Energy Wheeling Agreement (EWA) is for a tenure of eight years and considering the average life of wind farm being of twenty years only the balance twelve years are the effective period where open access application is required to be adopted. The difference in the rates of short term and long term being huge, the impact of the levy of long term open access charges affects the viability of the wind power projects. Long term is applicable for a tenure of 25 years or more for sale to Licensee as per CERC Regulations for open access notified on 30.01.2004 followed by MERC under clause 3.2.1 of their Order in Case No. 58 of 2005 dated 27.06.2006. A strong case exists for exemption of wind power from the applicability of Unscheduled Interchange (UI) charges. The open access order does not provide for banking of wind energy, an essential requirement for wind power generation to be effectively utilized. Banking is unique to wind power generation and hence banking is required in respect of wind power being utilized for captive consumption or for third party sale during non-season period. The concerned distribution utility has to provide for suitable banking facility and the liquidation of such banked power for the consuming party shall be based on banking and wheeling agreement to be finalized. The implementation of the present common open access order results in the widely varying nature of the charges applicable for different consumers / generators depending on their injection and consumption points. It would be observed that the Transmission and Wheeling charges / costs aggregate to a minimum of 11% (if wind power transmission is considered under short term tenure i.e. transmission charges are at 25% of transmission charges for long term) and maximum of over 66% (if wind power transmission is considered under long term tenure) on certain basic assumptions of expected generation and expected net price per kWh which means that there is every possibility of an average 40% to 70% of the revenue rate contributing to the payment of open access charges. If long term open access charges are considered as is being interpreted by MSEDCL, the



charges would be exorbitantly high averaging at 66% plus. It may also be observed that on an identical situation for conventional power with assumed 90% PLF, the transmission and wheeling charges varies between about 6% for short term to 11% under long term. Thus, it is respectfully submitted that equating non conventional power with conventional power in the matter of fixation of open access charges, the non conventional power developers would be left with very little part of the revenue as substantial portion has to be passed on to the Licensees. Therefore taking into consideration that wind power forms a miniscule portion of total power generated and transmitted in the State and further the specific nature of wind power which needs no over emphasis, wheeling and transmission of wind power need to be carried out at the preferential rates through review of open access charges as applicable to Non Conventional Power like Wind. The major step to compensate the anomaly would be the abolition of all transmission and other charges which are fixed on the basis of kW/MW in the case of wind power projects. Consequently, there is a need to issue an amendment to the Order dated November 20, 2007 specifying special terms for open access applicable for renewable energy projects in general and wind in particular including therein considering the typical unpredictable nature of wind power and quantum of wind power fed into the grid in terms of the total power fed into the grid from all sources of power (conventional and non conventional) being negligible, wind power to be exempted 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 on MW basis. It has been contended that there is a rationale to this argument as wind power being denied the two part tariff considering MW/KW into account in the sale/generation of power, it is normal that all charges based on KW/MW basis be made not applicable to infirm power like wind.

9. In view of the above submissions, it has been submitted that the Commission needs to consider exempting small wind mills from the imposition of the aforesaid open access charges. It has also been contended that the Petitioners could not bring these submissions to the notice of the Commission while these charges were being fixed and therefore the present Petition is maintainable on the ground that sufficient cause exists for the Commission to undertake a review of the relevant Orders that have imposed open access charges on wind energy transactions. If the aforesaid facts had been brought to the notice of the Commission a different view would have been taken. This is a sufficient ground which the courts have held in "*Shambhubhai Jethalalbhai Patel V/s. State of Gujarat, AIR 2004 Guj. 155; Punjab National Bank Vs. V.P. Mehra, AIR 2004 Delhi 135*". It is also principle of law which can be applied in the present matter that the determination of open access charges for conventional power has also been applied to the non conventional energy without any discussion and that therefore it is sufficient ground for review as held in "*Debaraj Patnayak Vs. Dharanidhar, 2000 AIHC 963 (Orissa)*".



Furthermore it has been submitted that the Commission while exercising its review jurisdiction can take into account a subsequent event.

10. The Petitioner has sought for condonation of delay in filing the present Review Petition on the ground that grave miscarriage of justice will be caused in case the delay is not condoned as the impugned Orders of the Commission need to be reviewed for “sufficient cause” and also suffers from error apparent from the face of the record due to non-application of mind. It has been submitted that the Commission is empowered by Regulations 92, 96, 97, 98 of the Maharashtra Electricity Regulatory Commission (Conduct of Business) Regulations, 2004, to take a re-look at the open access charges.

11. A reply has been filed by MSEDCL on 26.09.2008 wherein it has been stated that the present Petition is not maintainable in view of the fact that relief claimed in the present Petition has been already decided by Commission vide Order 20.11.2007. The Commission vide Order 24.11.2003 Para 1.6.3 directed that the tenure of EPA/ EWA shall be 8 years. This was done so as to allow the investor to recover the costs of investment. Accordingly, wind developer under Group-II category has executed EPA / EWA with MSEDCL. The Commission has considered the sales tax benefit, Accelerated Depreciation & Income Tax Benefit, etc., while fixing the tariff for purchase of wind power and conditions for the wheeling of energy for self-use and/or third party sale for Projects under Group- II. Considering these facts, it has been submitted that Group-II Wind developer have already been relieved of all commercial Liabilities /obligation, within a period of eight years of operation of project. This has been clarified by MEDA vide affidavit dated. 27.02.2008

12. A hearing was held in the matter on January 20, 2009. Counsel for the Petitioner submitted that he would make submissions regarding review of three orders the primary among them being order dated November 20, 2007 in Case No. 33 of 2007, Order dated April 2, 2007 in Case No. 86 of 2006 and Order dated May 31, 2007 in Case No. 104 of 2007 regarding MYT Tariff Orders determining Open Access Charges as passed by the Commission. He submitted that wind energy developers come under Group II projects, as determined by the Commission in an earlier case of determination of tariff in Case no. 17, 3, 4 and 5 of 2002 by Order dated November 24, 2003. Basically, these Group II wind energy developers have entered into EPA’s with MSEDCL for a period of 8 years from the date of commissioning of the projects. These EPA’s have started lapsing from December 27, 2007 onwards and will be lapsing upto March 31, 2011, depending on the date of commissioning of the various projects. The Petitioner is in a situation where upto the expiry of the EPA’s the wind energy developers look forward to accessing the Open Access regime and make supply of electricity generated to various consumers. Now, the Petitioner is faced with the problem of Open Access Charges. It was submitted that the



Commission has primarily determined the Wheeling Charges, Wheeling Losses and Transmission Charges and Transmission Losses under its Order dated November 20, 2007. Counsel submitted that in the Order dated November 20, 2007 the Commission has not differentiated between Conventional Energy and Non-Conventional Energy due to which a major hardship is being faced by the Non Conventional Energy producers. Counsel thereafter submitted that so far as non renewable energy is concerned, under Regulation 26.1 of the MERC (Terms and Condition of Tariff) Regulations, 2005, the following provision is stipulated:

*“Provided that determination of tariff for supply of electricity to a Distribution Licensee from non-conventional sources of generation shall be in accordance with such terms and conditions as stipulated in relevant Orders of the Commission.”*

Counsel for the Petitioner submitted that there are no specific norms so far as non renewable energy is concerned. It was submitted that the Commission has relied upon Table 1.1 of various Tariff Orders of licensees. Most of these licensees do not utilize non conventional power as non conventional power development is in a nascent stage. For conventional energy the production is on an average in excess of 90 % of the norms but in case of non renewable energy this norm cannot be applied, because it is infirm in nature where the capacity utilization is about 20%. Counsel for the Petitioner submitted that there is an error apparent on the face of the record because the Commission did not go into the principal point that renewable energy is infirm in nature. On the issue of delay in filing of the Petition, Counsel stated that in practicality the implementation of the Commission’s Order takes some time, and more so the Petitioner took some time to understand the relevant Orders, and that the last Order was dated May 31, 2008 and within a short time thereafter the Review Petition was filed, seeking review of all the above mentioned three Orders which were a fall out of the first Order i.e., Order dated November 20, 2007. Counsel also mentioned that the Order dated November 20, 2007 is the primary Order and the other Orders are consequential in nature. On the issue of maintainability of the Review Petition, Counsel submitted that it constitutes a patent error on the face of the record because the Petitioner is being made to pay four times whereas the capacity utilization is only 20%. Also, it was submitted that in terms of Sections 61 and 86(1)(e) of the EA 2003, generation of electricity from renewable sources of energy, needs to be promoted. Counsel for the Petitioner submitted that as regards connectivity with the grid is concerned wherefrom the wheeling charges, transmission charges arises, the words “*suitable measures*” mentioned in section 86(1)(e) would mean a special class. Counsel further submitted that so far as renewable energy is concerned and especially wind energy, it is completely dependant on the weather and therefore at no point of time the average capacity of production can be raised from 20% to 90%. Counsel thus





submitted that, the application of the capacity utilization as per table 1.1 of the Norm, would cause great hardship, irregularity, and the wheeling charge rate and transmission charge rate is substantially more than the Petitioner's capacity utilization. Secondly, Counsel submitted that wheeling charge which is four times than that of the Petitioner's capacity will not only be against the spirit of the EA 2003 but would also cause great hardship to the renewable energy producers. The Commission observed that if there is a case for not charging anything then it is a matter of appeal, as it can not be a question of review. The Commission observed that the intention of the policy frame work of tariff determination from RE Sources was to provide incentives to promote RE Sources at the beginning to provide them the support to start off but the eventual goal enshrined in the EA 2003 is that generation, transmission, distribution and supply should be conducted on commercial principles. And, that the support was provided to wind farm developers for a certain number of years in the initial phases means that the members of the Petitioner should face competition, thereafter, and that is the intention of the EA 2003. The Commission also observed that there is always an option of revisiting a policy but it cannot be done by undertaking a review which entails a lot of analysis. It cannot be done in terms of reviewing a particular order. Sufficient experience has still not occurred for a holistic view to be taken, for revisiting the policy. The Commission observed that time has not yet come for the review of the policy frame work.

13. The Petitioner's Counsel argued that they are not asking for any subsidy or any special support for the Group II developers. Explaining their position, Counsel stated that in open access system there are two charges, one is a fixed charge component and the other factors in the losses, and this is applied in three different fields, at the injection point; then there is a transmission charge and transmission loss and at the drawl point there is drawl charge and drawl loss which is as per the November 20, 2007 Order. It applies to conventional energy as well. Now in case of wind energy, when it is being supplied to a consumer, out of 100%, 40% is wind power and the rest 60% is what the consumer draws from the distribution licensee, but he still pays the full fixed charge to the distribution licensee, in addition to this the consumer has to bear the fixed charge on the energy which it is buying from wind developers. So what happens is that the consumer is burdened with additional charge. The Commission observed that all these difficulties faced by the Petitioner should be put forth before a separate forum as these cannot come under the purview of review.

14. It was submitted on behalf of MSEDCL that, the hearing be specifically confined to the ground of admissibility on account of the fact that this is a Review Petition. Further, the Respondent submitted that whatever has been argued by the Petitioner does not make out a case for review in terms of Regulation 85(a) of the MERC (Conduct of Business) Regulations, 2004. Then, the Respondent stated that the Commission could



condone delay but the same should be done in a judicious manner. Thereafter, the Respondent stated that nowhere the Petitioner has submitted that the delay may be condoned for certain reason as for condonation of delay some reason is necessary but here absolutely no reason is given. The Respondent submitted that, on account of the fact that no reason for condonation of delay has been given and the grievance in terms of prayers which has been included in the present Petition does not fit within the preview of Regulation 85(a), the Petition is not maintainable. Per contra, the Petitioner, replied that three reasons have been provided for condonation of delay, firstly, in the interest of justice, and also stated the Hon'ble Supreme Court has held the *interest of justice* is a ground by itself. Secondly, the Petition refers to a grave miscarriage of justice, and thirdly, the Petition states that great prejudice shall be caused if such condonation is not granted.

15. The Commission observed that the Order which the Petitioner seeks to review is a conscious decision of the Commission which means that the Commission has applied its mind.

16. Having heard the parties at length and after considering the materials placed on record, the Commission is of the view that the submissions of the Petitioner needs to be tested against the requirements and the settled principles of review proceedings. The EA 2003 gives the power to the Commission to review its decisions, directions and Orders, as under:-

*“94. (1) The Appropriate Commission shall, for the purposes of any inquiry or proceedings under this Act, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 in respect of the following matters, namely: -*

...

*(f) reviewing its decisions, directions and orders;”*

The proceedings before the Commission are held in accordance with the MERC (Conduct of Business) Regulations, 2004. Regulation 85(a) has been inserted therein keeping in view the provisions of Section 94(1) above. Regulation 85(a) provides as under:-

*“85. (a) Any person aggrieved by a direction, decision or order of the Commission, from which (i) no appeal has been preferred or (ii) from which no appeal is allowed, may, upon the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the direction, decision or order was passed or on account of some mistake or error apparent from the face of the record, or for any other sufficient reasons, may apply for a review of such order,*



*within forty-five (45) days of the date of the direction, decision or order, as the case may be, to the Commission.”*

In light of the above provisions, the submissions as made must satisfy the requirements laid down above and only then could the review as sought be granted. Also, it is well settled that there are definitive limits to the exercise of the power of review. However, it may not be exercised on the ground that the decision was erroneous on merits. That would be the province of a court of appeal. A power of review is not to be confused with appellate power, which may enable an appellate court to correct all manner of errors committed by the subordinate court. The Commission also takes a note of the objection put forth by the Respondents herein, inter alia, raising a question of maintainability of the Review Petition on the ground of delay and laches on the part of the Petitioner, as allegedly the Review Petition had been filed after a period much beyond the specified period of 45 days in terms of Regulation 85(a) of the MERC (Conduct of Business) Regulations, 2004.

17. Coming to the submissions made by the Petitioner justifying the grant of review on the ground that a special dispensation is required for Renewable Energy (“RE”) Sources inter alia in terms of suitability exempting RE Sources especially infirm power from fixed transmission charges and wheeling charges, the Commission is of the view that such an exemption could only be granted if the same is permitted under the EA 2003. However, Section 40(c) of the EA 2003 entitles generating companies (as in the case of the member wind farms of the Petitioner) to seek non-discriminatory open access to the transmission system of the transmission licensees, on payment of the transmission charges. Similarly, consumers who are eligible to seek open access must also pay transmission charges and a surcharge therein as specified by the Commission. For seeking open access to the distribution system, charges for wheeling is required to be determined by the Commission in terms of Section 42(2) as also surcharge in addition to the charges for wheeling. The EA 2003 does not contemplate that a special dispensation is required for Renewable Energy (“RE”) Sources by exempting RE Sources from fixed transmission charges and wheeling charges. The principle is that the cost involved in transmitting / wheeling of RE power must be paid for. When the EA 2003 does not contemplate any such exemption, the Commission cannot make such an exemption by introducing a provision which would override the EA 2003. This will not be within the scope of the law. As required under the aforesaid statutory provisions, the Commission has specified the applicable transmission charge, transmission loss, wheeling charge and wheeling loss for various cases of open access wheeling transactions in various of its Orders as applicable for various licensees. In paragraph 27 of its Order dated November 20, 2007, the Commission has merely put in one place (for the benefit of ease of reference) a summary of applicable transmission charge, transmission loss, wheeling



charge and wheeling loss for various cases of open access wheeling transactions presented in tabular form for ease of understanding. It is not as if these charges have been fixed for the first time in the said Order dated November 20, 2007 that the said Order needs to be reviewed. These charges were fixed under various earlier Orders passed by the Commission. In Order dated April 2, 2007 (Case No. 86 of 2006) in the matter of Determination of Transmission Tariff for Intra-State Transmission System (InSTS) for the first year of the MYT Control Period (FY 2007-08 to FY 2009-10), the Commission has determined Transmission Tariff to be applicable for use of Intra-State Transmission system (InSTS) and composite transmission loss of 4.85% in accordance with the principles outlined under an Order dated June 27, 2006. Neither does the Order dated April 2, 2007 nor does the Order dated June 27, 2006 stipulate exempting RE Sources from fixed transmission charges. The MYT Orders for MSEDCL, TPC-D and REL-D specify the wheeling charges and wheeling losses. There is no exemption to RE Sources from wheeling charges or wheeling loss charges under these Orders.

18. It has been submitted that the incidence of imposition of the aforesaid transmission charge, transmission loss, wheeling charge and wheeling loss for open access wheeling transactions for the usage of the wires by these wind farms for selling wind energy, disables and creates bottlenecks in the maximization of non conventional electricity generation by private entrepreneurship and tends to create hardships to facilitate wind energy transmission to the notional destination. However, the Commission is of the view that the Tariff Policy stipulates that the ultimate objective is to get the transmission system users to share the total transmission cost in proportion to their respective utilization of the transmission system. This is what the Commission's Order dated April 2, 2007 (Case No. 86 of 2006) in the matter of Determination of Transmission Tariff for Intra-State Transmission System (InSTS), provides for. The Tariff Policy does not stipulate exempting RE Sources from fixed transmission charges; transmission losses; wheeling charges or wheeling losses. The National Electricity Policy stipulates that Non-discriminatory open access shall be provided to competing generators supplying power to licensees upon payment of transmission charge to be determined by the Commission. Co-generation and generation of electricity from non-conventional sources has been promoted by the Commission as the Commission has specified, for purchase of electricity from such sources, a percentage of the total consumption of electricity in the area of distribution licensees. The mandate to determine an appropriate differential in prices to promote RE technologies, has also been done in the Commission's Wind Power Tariff Order dated November 24, 2003.

19. In paragraph 30 of its Order dated November 20, 2007, the Commission has clarified that it has not distinguished in respect of applicability of wheeling charges and wheeling loss in respect of open access transactions whether belonging to Group-II wind



energy projects or any other renewable energy source or any other fossil fuel based open access wheeling. The wheeling charges, wheeling loss and transmission charge, transmission loss as determined by the Commission under its various Orders from time to time shall continue to be applicable in respect of open access wheeling transactions as already ruled under various Orders of the Commission.

20. As regards, factors such as unpredictability and non-dispatchability in wind power, these are inherent in nature and cannot be taken into account to exempt RE power from the payment of applicable transmission charge, transmission loss and wheeling charges, wheeling loss on the principle that the cost involved in transmitting / wheeling of RE power must be paid for. The Commission does not sustain the contention that there is a tendency of distribution utilities to resent export of power and blocking the grant of open access to non conventional sources based generators with the intent of forcing them to sell energy to utilities at dictated prices. The Commission is of the view that should such a situation arise and could be proven then the non conventional sources based generators can always take the appropriate recourse under the EA 2003.

21. As regards the aforesaid discussion paper released by the Central Electricity Regulatory Commission (CERC), this Commission notes that the said paper states that “[t]he regulatory commissions have basically to specify the framework in which nonconventional electricity generation would be judiciously encouraged, but in a manner that the State utilities are not subjected to financial loss”. [Emphasis supplied]. This goes with the principle that the cost involved in transmitting / wheeling of RE power must be paid for. The discussion paper released by the Central Electricity Regulatory Commission, is with regard to inter-state transactions and not intra-state transactions with which this Commission is concerned with. Moreover, the discussion paper released by the CERC cannot be pressed for seeking review as has been sought in the present petition. It will be pre-mature to do so as it is a ‘discussion paper’.

22. As regards the contention pertaining to execution of Bulk Power Transmission Agreement, the Commission is of the view that such an aspect cannot be a subject matter of the review proceedings.

23. All in all, the present Review Petition militates against the settled principles of review proceedings in that firstly, a review is not permissible where substantial amount of examination is required as if that the impugned Order is required to be re-looked in great detail for finding the mistake or the error. In any case, the Commission holds that there has been no mistake or error in the impugned orders which fix the transmission charges, transmission loss and the wheeling charges, wheeling loss and which do not exempt RE power from the scope of the transmission charge, transmission loss and the wheeling



charges and wheeling losses. Secondly, any mistake or error must be apparent and glaring on the face of it and must be identifiable on a merely glance. However, that is not the case in the present Petition. If non- exemption of RE power from the scope of the transmission and the wheeling charges is wrong then that is in the province of the appeal court to reverse, certainly not within the scope of review proceedings. The Commission also sustains the objection put forth by the Respondents herein, raising a question of maintainability of the Review Petition on the ground of delay and laches on the part of the Petitioner, as allegedly the Review Petition had been filed after a period much beyond the specified period of 45 days in terms of Regulation 85(a) of the MERC (Conduct of Business) Regulations, 2004. The present Petition cannot be entertained because it is hopelessly time barred and more so because for example in the Order dated April 2, 2007 (Case No. 86 of 2006) in the matter of Determination of Transmission Tariff for Intra-State Transmission System (InSTS) for the first year of the MYT Control Period (FY 2007-08 to FY 2009-10), the Commission has determined Transmission Tariff to be applicable for use of Intra-State Transmission system (InSTS) and composite transmission loss of 4.85% in accordance with the principles outlined under an Order dated June 27, 2006. No error has been shown to exist in the Order dated June 27, 2006. The Commission cannot re-open such old Orders especially when there is no error in it. Since, the principle is that the cost involved in transmitting / wheeling of RE power must be paid for, there exists no reason, sufficient or otherwise, for the Commission to exempt RE power from the payment of transmission and wheeling charges as the liability to pay such charges to seek open access is specified in the EA 2003. The Commission cannot create a special dispensation which is not contemplated by the EA 2003.

In view of the above reasons, the Commission holds that the present Review Petition is not maintainable and therefore, stands dismissed.

Sd/-  
(S.B. Kulkarni)  
Member

Sd/-  
(A. Velayutham)  
Member

Sd/-  
(V.P. Raja)  
Chairman



(P.B. Patil)  
Secretary, MERC

