

**Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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CASE No. 78 of 2018

Case of Maharashtra State Electricity Distribution Co. Ltd. for resolution of disputes and differences arising under the Standby Power Agreements dated 13 June, 2014 amended from time to time on 8 July, 2014, 29 August, 2015 and 30 June, 2016 executed between Global Energy Pvt. Ltd. and it.

Coram

**Anand B. Kulkarni, Chairperson
I. M. Bohari, Member
Mukesh Khullar, Member**

Maharashtra State Electricity Distribution Co. Ltd.Petitioner

Vs

Global Energy Pvt. Ltd.Respondent

Appearance:

For the Petitioner : Shri Ashish Singh, (Adv.)

For the Respondent : Shri Sumanta Ghosh, (Adv.)

ORDER

Dated: 10 January, 2019

Maharashtra State Electricity Distribution Co. Ltd. (“**MSEDCL**”) has filed this Petition under Section 86 (1) (f), 86 (1) (k) of Electricity Act, 2003 (“**EA**”) for resolution of disputes and differences arising under the Standby Power Agreements dated 13 June, 2014 amended from time to time on 8 July, 2014, 29 August, 2015 and 30 June, 2016 executed between Global Energy Pvt. Ltd. (“**GEPL**”) and MSEDCL.

2. MSEDCL’s main prayers are as follows:

- a. *That the Respondent be ordered and decreed to pay to the Petitioner a sum of Rs.9,82,60,352/- (Rupees Nine Crores Eighty Two Lakhs Sixty Thousand Three Hundred Fifty Two only) as per particulars of claim at Exhibit "EE" with further interest on Rs.6,32,69,488/- (Rupees Six Crores Thirty Two Lakhs Sixty Nine Thousand Four Hundred Eighty Eight only) at the rate of 15% per annum from 31st December 2017 till payment;*
- b. *For cost of the petition;*

3. The Petition states as follows:

- 3.1 GEPL had applied to Maharashtra State Load Despatch Centre (MSLDC) on 3 February, 2014 for Short Term Open Access (STOA) permission to supply power to the Power Company of Karnataka Ltd. (PCKL) through the 220 kV Kolhapur-Chikodi double circuit radial line, after a bidding process conducted by Power Company of Karnataka Ltd, PCKL.
- 3.2 MSLDC initially refused Open Access to GEPL. Aggrieved by the denial, GEPL filed Case No. 71 of 2014 before the Commission. The Commission by its Order dated 2 June, 2014, directed MSLDC to grant Open Access to GEPL subject to a condition that GEPL should submit all the required documents as per the procedure laid down.
- 3.3 Pursuant to the Commission's Order, MSLDC granted STOA to GEPL. GEPL vide its letter dated 11 June 2014 requested MSEDCL for Standby Power.
- 3.4 On 11 June, 2014, MSEDCL agreed to provide the Standby power arrangement to GEPL subject to conditions that if GEPL draws power from the Grid it will be charged at temporary tariff of MSEDCL for such over-drawal, however, over injection will be treated as lapsed and this arrangement would totally be at risk and cost of GEPL.
- 3.5 A Standby Power Agreement was executed between MSEDCL and GEPL on 13 June, 2014. As per the Standby Power Agreement, power supply to PCKL against STOA on 220 KV Kolhapur Chikodi line has been granted to GEPL. Since the supply of power from GEPL to PCKL is on radial mode, in case of tripping of generators, the PCKL will avail MSEDCL's power. Such Standby Power is required to be arranged so that any over drawl of power by PCKL shall not result in loss to MSEDCL.
- 3.6 The Standby Power Agreement is mutually agreed by both GEPL and MSEDCL. The parties mutually agreed to put the terms in agreement that in case the PCKL over draws the power from the Grid then it will be charged at temporary tariff of MSEDCL or UI (Unscheduled Interchange) charges, whichever is higher. In case of

over injection, the units will be treated as lapsed and no payment will be effected whatsoever.

- 3.7 MSEDCL vide its letter dated 8 July, 2014 informed GEPL that, in case of under-drawal by PCKL the units remaining in system will be treated as per Final Balancing and Settlement Mechanism (FBSM) prevailing in Maharashtra. However, the Commission vide its Order dated 28 April 2015 in Case No.38 of 2015 has ruled that GEPL can't be treated as State Pool Participant (SPP) and as such the transaction can't be covered under FBSM. In view of the Commissions' Order the communication by the MSEDCL regarding the settlement in FBSM stands null and void, which the GEPL was well aware of.
- 3.8 The Commission ruled in the Order dated 27 April, 2015 in case No 181 of 2014 as below:
“...the Commission is of the view that MSLDC's contention that a Trader cannot be treated as a SPP in the FBSM, is in line with the Commission's ABT Order... In order to become a SPP in the present FBSM, GEPL would have to fulfill all the necessary preconditions set out in the ABT Order. The submissions of GEPL, a Trader, do not reflect that it has fulfilled the preconditions for Market Participants to be a SPP. If GEPL is not a SPP, the FBSM commercial settlement dispensation cannot be made applicable to it...”
- 3.9 MSEDCL further vide its letter dated 19 December, 2014 informed GEPL that commercial settlement for over-drawal by GEPL will be done at the temporary tariff of MSEDCL or UI Charges whichever is higher.
- 3.10 GEPL filed a Petition in Case No. 181 of 2014 dated 10 October, 2014 for directions to MSLDC for compliance with the Commission's Order dated 2 June, 2014 in Case No. 71 of 2014.
- 3.11 GEPL had filed a Petition in Case No. 38 of 2015 on 11 March, 2015 seeking issuance of directions for implementation of its Stand-by Power Agreement with the MSEDCL in line with the Commission's Order dated 2 June, 2014 in Case No. 71 of 2014.
- 3.12 Pursuant to the Standby Agreement dated 13 June, 2014 GEPL was required to submit Bank Guarantee equivalent to two days consumption which will be invoked if over-drawal payment, if any, is not affected in two days time.
- 3.13 GEPL submitted Bank Guarantee amounting to Rs.5, 78, 18, 200/- on 27 July, 2015. The Standby Power Supply Arrangement commenced from July 2014 and MSEDCL

had raised weekly bills during the period from July 2014 to April 2015 in accordance with provisions in agreement and as per the injection and drawal data made available by MSLDC. However, GEPL instead of honoring the bills in time kept on finding some excuses for not releasing the payment. MSEDCL has raised total invoices to GEPL amounting to Rs. 25.32 crores upto 12 April, 2015 for over-drawal of power. The outstanding arrears after adjusting the amount received from the GEPL were Rs.17.84 crores. As per the Standby Power Agreement, if the payment of invoices for over-drawal is not effected in two days, MSEDCL is entitled to invoke the bank guarantee provided by GEPL. MSEDCL from time to time requested GEPL to pay the outstanding bills amount otherwise, bank guarantee will be encashed.

- 3.14 The Commission passed its Order in Case No. 181 of 2014 on 27 April, 2015 whereby the Commission held that in order to become SPP in the Maharashtra FBSM, GEPL would have to fulfill all the necessary preconditions set out in the Availability Based Tariff (ABT) Order dated 11 May, 2007. If GEPL is not a SPP, the FBSM commercial settlement dispensation cannot be made applicable to GEPL. The Commission issued Order in Case No.38 of 2015 on 28 April 2015 by confirming the Order dated 27 April, 2015 passed in Case No.181 of 2014.
- 3.15 GEPL filed Appeal Nos.111 of 2015 and 112 of 2015 challenging these orders dated 27 April and 28 April, 2015. The Appellate Tribunal passed interim Order on 25 May, 2015 in Appeal No.112 of 2015 restraining MSEDCL from taking any coercive action and directed GEPL to pay the monthly installment of amount of Rs.3 crores to MSEDCL for invoices of over-drawal.
- 3.16 MSEDCL vide its letter dated 3 January, 2015 extended the validity of Standby Agreement dated 13 January, 2014 till 31 March, 2015 and thereafter vide its letter dated 16 March, 2015 extended validity period till 30 June, 2015 and vide letter dated 29 July, 2015 extended the validity till 31 August 2015 with the same terms and conditions of Standby Agreement dated 13 June, 2015.
- 3.17 GEPL has failed to pay the monthly installment of Rs.3 crores as agreed and also weekly bills. The outstanding arrears upto 30 June, 2015 were Rs.15.03 crores. GEPL vide its letters dated 1 August, 2015 and 28 August, 2015 intimated MSEDCL due to some cash flow issues the installment amount will be paid after few days.
- 3.18 GEPL requested MSEDCL to sign a fresh Standby Agreement. Accordingly MSEDCL and GEPL executed another Standby Power Agreement dated 29 August, 2015 with the following terms and conditions:

“2 In case of any Deviations from the drawal schedule by M/s. GEPL or the Karnataka Discoms, over-drawal and under-drawal settlement will be settled as under:

(a) The overdrawal upto 5MW or 12% of the Scheduled Quantum whichever is lower of the overdrawal units by GEPL shall be paid

by GEPL at all be paid by GEPL at the Total System Marginal price of MSEDCL (i.e. fixed cost + total variable cost) on 15 minute block basis.

(b) The overdrawal exceeding the limit mentioned at sub-point(a) above shall be settled and paid by GEPL at HT I (A) inclusive Continuous category tariff – Energy charges including FAC as applicable from time to time. At present HT I(A) category tariff is Rs.7.21 per Kwh.

(c) Underdrawal quantum will be treated as lapse and no payment will be effected by MSEDCL to GEPL for underdrawal from drawal schedule.

.....
4. M/s. GEPL will provide a Bank Guarantee (BG) equivalent to 7 days of overdrawal bill at 20% of the total requirement of GEPL (i.e. 20% of 200 MW) against this transaction, at total system marginal price of August 2015 i.e. Rs.5.11 per Kwh. This BG will be valid till one month after expiry of this agreement.

5. If bill is not paid within 7 days from the date of bill by GEPL, delayed payment charges shall be payable by GEPL at the rate of 15% per annum till the realization of dues. Further, if GEPL fails to pay the principal amount along with interest within 21 days from the date of bill then MSEDCL shall invoke the Bank Guarantee.

11. GEPL hereby agrees to withdraw unconditionally the Appeal No.111 and 112 of 2015 presently pending before the Hon'ble APTEL”.

3.19 GEPL failed to make payment of outstanding arrears and installment. Therefore MSEDCL had no option but to invoke the bank guarantee as per the provisions of standby agreement.

3.20 The Appellate Tribunal for Electricity (“ATE”) passed the order dated 28 October, 2015 in Appeal No.112 of 2015, the relevant para. is reproduced as below:

.....”since as per the Agreement of the parties both these Appeals are to be withdrawn unconditionally and there is no dispute between the rival parties regarding execution of this document. This document is accordingly accepted and both the Appeals being Nos.111 of 2015 and 112 of 2015 are hereby ordered to be withdrawn.....”

- 3.21 Due to failure to make payment of invoices the outstanding arrears as per the standby power agreement dated 13 June, 2014 extended upto 30 June, 2015 is Rs.4.21 crores as on 31st March 2016 and outstanding as per the agreement dated 29 August, 2015 is Rs.12.55 crores as on 31 May 2016 after adjusting the amount received from GEPL.
- 3.22 GEPL did not take steps to make payment of the outstanding bills therefore the MSEDCL vide its letter dated 13 September, 2016 invoked the Bank Guarantee of Rs.5,78,18,200/-
- 3.23 GEPL failed to make the regular payment of invoices and not made the payment of undisputed amount, therefore the MSEDCL vide its letters dated 10 February 2017 and 3 April 2017 requested to make the payment of undisputed amount immediately. However, GEPL has not made the payment therefore MSEDCL vide various letters dated 11 April 2017, 14 June 2017 and 23 June 2017 requested to make payment of outstanding arrears amount, otherwise the bank guarantee may be encashed.
- 3.24 GEPL vide its letter dated 20 April 2017 and 21 June 2017 had given the excuses on the ground that appeal filed by PCKL against Commission's Order in Case No.38 of 2015 is pending before Hon'ble the ATE and matter is subjudice. Further, GEPL had requested to reconcile the amount, on the so-called statement of accounts, wrongly charged for over-drawal quantum.
- 3.25 MSEDCL considered the request of GEPL, reconciled the accounts of all three agreements, and revised the bills. However, GEPL failed to make payment of outstanding arrears as per the Standby Power Agreements for supply of power. Therefore, MSEDCL vide its letters dated 14 June 2017, 23 June 2017 and 3 August 2017 requested to pay the outstanding amount and keep the Bank Guarantee alive till the final settlement of transaction.
- 3.26 Meanwhile, GEPL filed Commercial Petition No.429 of 2017 along with Notice of Motion No.477 of 2017 seeking direction for restraining MSEDCL to invoke bank guarantee dated 31 March 2017. Since the bank guarantee was already invoked and encashed by the MSEDCL, therefore notice of motion taken out by the GEPL disposed of by the Court on 28th September 2017 and the Petition was withdrawn by GEPL on 11 October 2017.
- 3.27 GEPL is disputing the temporary tariff and seeking modification/reconciliation in billing for which the GEPL had already mutually agreed. The billing at temporary tariff is not contradictory or violated to any Regulation. Thus, GEPL is liable to pay the bill raised by the MSEDCL in accordance with the Standby Power Agreement.

4. At the hearing held on 6 October 2018, the matter was adjourned for filing MSEDCL's rejoinder if any.
5. **In its Reply dated 6 October, 2018 , GEPL has submitted the brief facts in the matter and has stated as below:**
 - 5.1 MSEDCL claims towards the overdrawals are illegal, arbitrary and without any basis.
 - 5.2 GEPL has counter claims against MSEDCL emanating from the transaction which followed under the Standby Agreement, which are substantially in excess of the aforementioned claims of MSEDCL. GEPL had till now refrained from raising such counterclaims prior to the final outcome of the Appeal No. 244 & 245 of 2016 pending before Hon'ble the ATE owing to its respect for judicial process conducted before the Hon'ble the ATE. However, MSEDCL by filing the instant petition constrained the GEPL to defend itself and set forth its counterclaims.
 - 5.3 The deviations with respect to overdrawals and underdrawals are to be settled between the Petitioner and the GEPL not as per the rates specified under the Standby Agreement but as per the System Marginal Price (SMP) determined for the Petitioner towards underdrawals and Final Balancing and Settlement Mechanism (FBSM) for overdrawals. It is submitted that any overdrawl and underdrawl under the deviation settlement mechanism between licensees in the State of Maharashtra are settled on the basis of the either SMP or FBSM. Hence, the overdrawals and underdrawals between the Petitioner and the GEPL are also to be settled as per the above rates only.
 - 5.4 MSEDCL has raised invoices amounting to Rs. 48,63,22,138/- (Rupees forty eight crores sixty three lakh twenty two thousand one hundred and thirty eight) on the GEPL for the overdrawals at the rates specified under the Standby Agreement. GEPL has till date released payment of Rs. 42,30,52,651/- (Rupee forty two crores thirty lakh fifty two thousand six hundred and fifty one) in favour of MSEDCL against the invoices for overdrawals and balance pending amount has been sought by MSEDCL in the present petition completely ignoring it's obligation for payment of underdrawls amounting to Rs. 65,38,77,717/- (Rupees sixty five crores thirty eight lakhs seventy seven thousand seven hundred and seventeen).
 - 5.5 However, GEPL is only liable to make payment of Rs. 11,83,18,176/- (Rupees eleven crore eighty three lakhs eighteen thousand one hundred and seventy six) to MSEDCL as per FBSM rates for the overdrawals as per Order No. 71 of 2014 of the Commission dated 2nd June 2014. Hence, MSEDCL is entitled to refund of an amount of Rs. 30,47,34,475/- (Rupees thirty crore forty seven lakhs thirty four thousand four hundred and seventy five) from the Petitioner on account of excess

paid towards the overdrawals at the Standby Agreement rates. Further, GEPL is also entitled to receive an amount of Rs. 65,38,77,717/- (Rupees sixty five crores thirty eight lakhs seventy seven thousand seven hundred and seventeen) towards underdrawals at the SMP rate.

- 5.6 MSEDCL has under Standby Agreement 29 August, 2015 and 30 June, 2016 levied Total SMP of MSEDCL (fixed cost + variable cost) for overdrawals upto 5MW or 12% of the Scheduled Quantum, whichever is lower. The overdrawals exceeding the limit above are charged at HTI (A) Industries continuous category tariff.
- 5.7 Standby Agreement dated 13 June, 2014 read with the amendment effected vide letter dated 8 July, 2014, the under drawals are to be settled as per FBSM provided MSEDCL is revenue and procedural neutral. The deviations with respect to underdrawal are to be settled as per the SMP rate, which is the rate at which the deviations between the Licensees are to be settled. Hence, the GEPL is entitled to receive Rs. 653,877,717/- from the Petitioner towards underdrawals calculated at SMP. Without prejudice to the right of the GEPL to seek payment of underdrawals at the SMP, it is submitted that as per the case of the Petitioner itself to follow the terms of the Standby Agreement dated 13 June, 2014 for settlement of deviations, the GEPL is entitled to payment of Rs. 118,318,176/- calculated at the FBSM rate. However, MSEDCL has till date not effected any payment towards the underdrawals.
- 5.8 Under the Standby Agreement dated 29 August, 2015 and 30 June, 2016, the underdrawal quantum is to be treated as lapsed. The said treatment of the underdrawals as being lapsed is arbitrary and contrary to the manner in which underdrawals are to be settled between the licensees. MSEDCL itself that the deviations with respect to the GEPL has been settled on its account and that for settlement of underdrawals it shall be taking a revenue neutral position. Any undrawn units remaining in the system are settled at the SMP rate between the Licensees. Hence, MSEDCL has already received payments because of quantum underdrawn from other Licensees upon energy settlement, which MSEDCL is liable to pass on to the GEPL.
- 5.9 The concept of temporary tariff/HT Tariff/etc. applicable for overdrawals and lapsing of underdrawals, can only be made applicable to a consumer. EA defines a consumer to mean a person who consumes electricity for his "own use" (Section 2(15)), and one who would have a metered connection with a distribution licensee. GEPL is not a consumer; it does not consume any electricity for its own use. GEPL is a licensed trader under EA holding valid inter and intra state trading licenses. It does not have a physical metered connection with a Distribution Licensee. MSEDCL has itself recognized that it is a licensee and not a consumer by coercing an amendment dated

29 August 2015 allowing SMP as a part of the over drawl deviation settlement mechanism for the transaction.

6. At the hearing held on 19 December, 2018, the Advocate of MSEDCL and GEPL reiterated their submissions.

Commission Analysis and Ruling:

7. The issue raised by MSEDCL in the instant Petition is that GEPL has not paid it the charges because of overdrawals as per the terms and conditions under the standby agreement executed between MSEDCL and GEPL for open access transaction. MSEDCL has contended that GEPL is disputing the temporary tariff and seeking modification/reconciliation in billing for which the GEPL had already mutually agreed. MSEDCL has also sought interest on the charges not paid by GEPL because of overdrawals at the rate of 15% per annum from 31st December 2017 till payment
8. GEPL, on the other hand has contended that the deviations with respect to overdrawals and underdrawals are to be settled between MSEDCL and GEPL not as per the rates specified under the Standby Agreement but as per the System Marginal Price (SMP) determined for MSEDCL towards underdrawals and Final Balancing and Settlement Mechanism (FBSM) for overdrawals.
9. GEPL has further contended that it has refrained from raising its claims regarding underdrawals owing to its respect for judicial process prior to the outcome of the Appeal No. 244 and 245 of 2016 pending before Hon’ble the ATE. However, MSEDCL by filing the instant petition constrained the GEPL to defend itself and set forth its counterclaims.
10. The summary of the chronology of events in the matter is tabulated as below:

Dates	Particulars
17 May, 2007	The Commission issued ABT Order in Case No. 42 of 2006
3 February, 2014	GEPL applied for Open Access to MSLDC under STOA to supply power to PCKL (Quantum 75 MW-100 MW) on the 220 kV Kolhapur-Chikodi line
5 March, 2014	MSLDC rejected open access application stating “ neither Karnataka Discoms nor trader can be traded as SPP in the FBSM mechanism
7 March, 2014	GEPL filed the Petition in Case No. 71 of 2014 before the Commission seeking relief against refusal of grant of Open Access
2 June, 2014	The Commission issued Order in Case No. 71 of 2014 and directed MSLDC to grant open access permission to GEPL subject to various

Dates	Particulars
	conditions.
13 June, 2014	GEPL signed standby agreement with MSEDCL
8 July, 2014	MSEDCL vide its letter modified the clause no. (v) of MSEDCL letter dated 11.06.2014 as under <i>“In case of overinjection than the scheduled quantum, the units will be treated as lapsed and no payment will be effected whatsoever. Further, in Case of underdrawal by Karnataka Discom than the scheduled quantum , the units remained in the system will be treated as per prevailing FBSM in Maharashtra provided MSEDCL is revenue and procedural neutral.</i>
10 October, 2014	GEPL filed the Petition in Case No. 181 of 2014 before the Commission for directions to MSLDC for compliance of Order dated 2 June, 2014 in Case No. 71 of 2014
18 February, 2015	GEPL filed MA No. 1 in Case No. 181 of 2014 to take on record subsequent events concerning Case No. 181 of 2014, and for directions for compliance by MSLDC of the Commission’s Order dated 2 June, 2014 in Case No. 71 of 2014
11 March, 2015	GEPL filed the Petition in Case No. 38 of 2015 for implementation of standby Agreement with MSEDCL dated 13 June, 2014
24 April, 2015	The Commission issued the Order in MA No. 1 in Case No. 181 of 2014 and ruled that prayers were similar to prayers in case No. 181 of 2014 to be addressed in Case No. 181 of 2014.
27 April, 2015	The Commission issued the Order in Case No. 181 of 2014 and ruled that as GEPL is not SPP , the FBSM commercial settlement cannot be made applicable to it.
28 April, 2015	The Commission issued the Order in Case No. 38 of 2015 and noted that GEPL and MSEDCL had entered into the Agreement for stand-by power, with all its terms and conditions, by mutual agreement.
29 August, 2015	GEPL signed the standby agreement with MSEDCL
30 April, 2015	GEPL filed the Appeals (Appeal No. 111 of 2015 and 112 of 2015) before Hon’ble APTEL challenging the Commission’s Order in Case No. 181 of 2014 and 38 of 2015
28 October, 2015	Hon’ble the APTEL disposed of the Appeals as withdrawn (as GEPL had withdrawn the Appeals).Hon’ble the APTEL also disposed the Impleadment Applications (IAs) filed by PCKL as being infructuous as GEPL had withdrawn the Appeals.

Dates	Particulars
15 February, 2016	PCKL challenged the APTEL Judgment before hon'ble the Supreme Court. Further, PCKL sought withdrawal from hon'ble the Supreme Court and was accordingly allowed.
31 March, 2016	PCKL challenged the Orders of the Commission in Case No. 181 of 2014 and 38 of 2015 before Hon'ble the APTEL in Appeal No. 244 of 2016 and 245 of 2016 respectively.
30 June, 2016	GEPL signed the standby agreement with MSEDCL

11. The Commission notes that in pursuance of the Order dated 2 June, 2014 in Case No. 71 of 2014, a Stand-By Agreement with MSEDCL was mandated by MSLDC to GEPL for grant of open access. Accordingly, a Stand-By Agreement was executed between GEPL and MSEDCL and was amended from time to time. The main features of the Stand-By Agreement concerning the issues raised by GEPL in the instant Petition are as follows:

Relevant Terms and Conditions	Stand-By Agreement Dated 13 June, 2014	Letter dated 8 July, 2014 modifying terms and conditions for overinjection units	Amended Stand-By Agreement Dated 29 August, 2015 for the period 1 July, 2015 to 30 June, 2016	Amended Stand-By Agreement Dated 30 June, 2016 for the period 1 July, 2016 to 30 June, 2017
Overdrawal	In case M/s. GEPL/Karnataka Discom overdraws power from the grid, it will be charged at the temporary tariff of MSEDCL or UI charges, whichever is higher, for such overdrawal for any reason whatsoever.		<ol style="list-style-type: none"> The overdrawal upto 5 MW or 12 % of the scheduled quantum, whichever is lower, of the overdrawal units by GEPL shall be paid by GEPL at total system marginal price of MSEDCL(i.e fixed cost + total variable cost) on 15 minutes block basis. Overdrawal exceeding the limit mentioned at point 1 shall be settled and paid by GEPL at HT I (A) Industries Continuous category tariff – Energy Charges including FAC as applicable from time to time. At present HT I (A) category tariff is Rs. 7.21 per kwh. 	There is no change in terms and conditions as specified in Stand-By Agreement dated 29 August, 2015. except that the period is extended from 1 July, 2016 to 30 June, 2017

Relevant Terms and Conditions	Stand-By Agreement Dated 13 June, 2014	Letter dated 8 July, 2014 modifying terms and conditions for overinjection units	Amended Stand-By Agreement Dated 29 August, 2015 for the period 1 July, 2015 to 30 June, 2016	Amended Stand-By Agreement Dated 30 June, 2016 for the period 1 July, 2016 to 30 June, 2017
Underdrawal	In case of over-injection the units will be treated as lapsed and no payment will be effected whatsoever.	In case of over injection than the scheduled quantum, the units will be treated as lapsed and no payment will be effected whatsoever. Further in case of underdrawal by Karnataka Discom than the scheduled quantum, the units remained in the system will be treated as per prevailing FBSM in Maharashtra provided MSEDCL is revenue and procedural neutral.	Underdrawal quantum will be treated as lapsed and no payment will be effected by MSEDCL to GEPL for underdrawal from drawal schedule.	

12. The Commission in Case No. 181 of 2014 has held as follows:

“14. Considering the foregoing, the Commission is of the view that MSLDC’s contention that a Trader cannot be treated as a SPP in the FBSM, summarized at para. 12 above, is in line with the Commission’s ABT Order, and was also acknowledged by the Commission in its Order dated 2 June, 2014 in Case No. 71 of 2014. The Commission accepts MSLDC’s submission, and rules that, from the operational point of view, the Short Term OA transaction in the present matter could not have been accommodated in the existing Balancing and Settlement Code.

15. Hence, the Commission is of the view that MSLDC’s action to facilitate and accommodate this unique kind of Short Term OA transaction in the existing FBSM by way of a Stand-by Agreement between GEPL and MSEDCL was justified. Such adjustments by MSLDC, as a Market Service Provider under the ABT Order, which are appropriate for commercial settlements within the existing FBSM framework, are in line with the directions given in the Order dated 2 June, 2014 in Case No 71 of 2014. Thus, there is no case for invoking Sections 142 or 146 of the EA, 2003. GEPL’s prayer set out at para. 2(a) above is addressed accordingly.

*16. In order to become a SPP in the present FBSM, GEPL would have to fulfill all the necessary preconditions set out in the ABT Order. The submissions of GEPL, a Trader, do not reflect that it has fulfilled the preconditions for Market Participants to be a SPP. If GEPL is not a SPP, the FBSM commercial settlement dispensation cannot be made applicable to it. GEPL's prayers set out at para. 2(b) and (c) above are addressed accordingly..." (**Emphasis Added**)*

13. Also, the Commission in Case No. 38 of 2015 has held as follows:

"..8. These and the remaining prayers of GEPL are related to the issues involved and prayers made by GEPL in Case No. 181 of 2014. Indeed, while seeking a stay on the encashment of its Bank Guarantee by MSEDCL, GEPL had also submitted that such encashment would pre-empt the outcome of that Case, which was reserved for Order. The Commission had accordingly directed that no coercive action be taken until its Order in that Case or 30 April, 2015, whichever is earlier. The Order in Case No. 181 of 2014 has since been issued on 27 April, 2015, and the Commission has, inter alia, held as follows:

"14. ...the Commission is of the view that MSLDC's contention that a Trader cannot be treated as a SPP in the FBSM,... is in line with the Commission's ABT Order, and was also acknowledged by the Commission in its Order dated 2 June, 2014 in Case No. 71 of 2014. The Commission accepts MSLDC's submission, and rules that, from the operational point of view, the Short Term OA transaction in the present matter could not have been accommodated in the existing Balancing and Settlement Code.

15. Hence, the Commission is of the view that MSLDC's action to facilitate and accommodate this unique kind of Short Term OA transaction in the existing FBSM by way of a Stand-by Agreement between GEPL and MSEDCL was justified. Such adjustments by MSLDC, as a Market Service Provider under the ABT Order, which are appropriate for commercial settlements within the existing FBSM framework, are in line with the directions given in the Order dated 2 June, 2014 in Case No 71 of 2014...

16. In order to become a SPP in the present FBSM, GEPL would have to fulfill all the necessary preconditions set out in the ABT Order. The submissions of GEPL, a Trader, do not reflect that it has fulfilled the preconditions for Market Participants to be a

SPP. If GEPL is not a SPP, the FBSM commercial settlement dispensation cannot be made applicable to it...”

9.The Commission’s Orders, quoted above, fully address the basic issues underlying the present Petition. The Commission also notes that GEPL and MSEDCL have entered into the Agreement for stand-by power, with all its terms and conditions, by mutual consent. (Emphasis added)

14. From perusal of the Ruling of the Commission cited at Para. 12 and 13, the Commission by its Orders in Case No. 181 of 2014 and in Case No. 38 of 2015 had already held that GEPL and MSEDCL had entered into the Agreement, for stand-by power, with all its terms and conditions, by mutual consent. The Commission once again re-iterates that the GEPL and MSEDCL have entered into the Agreement for stand-by power, with all its terms and conditions, by mutual consent. Hence, both the parties shall adhere to terms and conditions of standby agreement as mentioned at para. 11 above.
15. As regards the contention raised by GEPL that matter is subjudice before Hon’ble the APTEL, the Commission is of the view that as there is no stay to the implementation of the Orders in Case No. 181 of 2014 and in Case No. 38 of 2015, the conduct of MSEDCL is valid as the Orders of the Commission are binding on both the Parties.
16. In view of the foregoing, the Commission finds merit in the contentions of MSEDCL and hence, is inclined to accept the MSEDCL’s prayers at Para.2 (a). The Commission directs GEPL to pay the bills raised by MSEDCL in accordance with the terms and conditions of the Standby Power Agreement amended from time to time. GEPL is also liable to pay interest as specified in the terms and conditions of the Standby Power Agreement amended from time to time. GEPL is directed to comply with the same within one month from the date of the Order. In case of failure on part of GEPL, appropriate penal proceedings will be initiated against it by the Commission. Hence the following Order:

ORDER

- 1. The Case No. 78 of 2018 is allowed.**
- 2. GEPL is directed to pay the bills raised by MSEDCL in accordance with the terms and conditions of the Standby Power Agreement amended from time to time.**
- 3. GEPL is directed to also pay interest as specified in the terms and conditions of the Standby Power Agreement amended from time to time.**

4. GEPL is directed to comply with the above directions within one month from the date of the Order.
5. In case of failure on part of GEPL, the Commission will initiate appropriate penal proceedings against it.

Sd/-
(Mukesh Khullar)
Member

Sd/-
(I. M. Bohari)
Member

Sd/-
(Anand B. Kulkarni)
Chairperson

