

**Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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CASE No. 147 of 2018

In the matter of

**Petition of Maharashtra State Electricity Distribution Company Limited for Review of
Order dated 27 March, 2018 in Case No. 85 of 2017**

Coram

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

Maharashtra State Electricity Distribution Co. Ltd.

.....Petitioner

Appearance:

For the Petitioner

: Shri. Ashish Singh (Adv.)

Authorised Consumer Representative

: Ms. Ashwini Chitnis, Prayas (Energy Group)

ORDER

Dated: 19 July, 2018

Maharashtra State Electricity Distribution Company Limited (MSEDCL) has filed a Review Petition on 11 May, 2018 citing Regulation 85 of Conduct of Business Regulations, 2004 read with Section 94(1)(f) of Electricity Act, 2003 seeking review of Commission's Order dated 27 March, 2018 in Case No. 85 of 2017.

2. MSEDCL's prayers are as follows:

- a) *Review the order dated 27.03.2018 in case no. 85 of 2017 by allowing the present review petition.*

- b) *Initiate a public consultation process in accordance with the Electricity Act, 2003 to review the present dispensation w. r. t. banking of renewable energy.*
- c) *Pass such further orders as this Hon'ble Commission deems fit and proper in the interest of justice and good conscience.*

3. The Petition states as follows:

3.1 MSEDCL has filed the Petition seeking Review of the Commission's Order dated 27 March, 2018 in Case No. 85 of 2017. MSEDCL has raised following issues in the Review Petition:

- (i) Whether the Commission has rightly evaluated the concept of settlement of banked energy in money terms instead of energy terms and the equity and fair play which it would seek to bring in a regulated sector like electricity.
- (ii) Whether the Commission has rightly appreciated and understood the intent behind the Petition?
- (iii) Whether the Commission was right in coming to a conclusion which it did even after appreciating that the present banking of Renewable Energy has a negative financial impact on MSEDCL?
- (iv) Whether the Order inadvertently promotes even a negligible negative financial impact to be suffered by MSEDCL which is revenue neutral and which could obviously be negated by a thorough public consultation process?
- (v) Whether the Commission has erred by holding that estimations of MSEDCL are on partial assumptions and do not fully reflect all aspects of impact of banked energy, including in favor of MSEDCL in four high-demand months or other relevant aspects?
- (vi) Whether reliance placed by the Commission on the "Draft Forecasting, Scheduling and Deviation Settlement Regulations" is incorrect?
- (vii) Whether there can be a situation to allow a dispensation which admittedly is causing a negative financial impact on an Entity and such impact can surely be curtailed/minimized through a thorough public consultation process?
- (viii) Whether mandating MSEDCL to purchase 10% banked energy at the end of financial year at Average Power Purchase Cost (APPC) rate without giving the benefit of accounting the same towards RPO compliance is an unjust restriction/imposition on MSEDCL?
- (ix) Whether allowing Renewable Energy generators to first bank their energy, then giving the benefit of purchase of such banked energy limited to 10% of the total

generation at APPC rate and also giving the benefits of REC on such 10% purchase unjustly enriches the Renewable Generators at the cost of MSEDCL?

(x) Has the Commission lost sight of the real intent and purpose of its own order dated 24.11.2003 in Case No. 17 (3), 3, 4, 5 of 2012?

3.2 The impugned Order is vitiated by error apparent as the Commission has failed to appreciate the real intent of the Petition filed by MSEDCL. The Petition was aimed to only bring forward the difficulties faced by MSEDCL and persuade the Commission to initiate a public consultative process.

3.3 MSEDCL had provided all the data, facts and figure related to banked energy and its adverse financial impact. There is an adverse financial impact of Rs. 11.02 Crores which is purely due to the seasonal variation of price difference between energy banked slot and energy credit slot. The direct financial impact is of Rs. 40 Crores considering Average Billing Rate (ABR) of Rs. 8.57 per unit for HT industrial consumers for FY 2016-17. The Commission has commented that, banking has “negligible impact on consumer tariffs”. RE is growing at rapid pace and subsequently the impact of banking will also be higher in upcoming years.

3.4 The impugned Order is vitiated by error apparent as the Commission has failed to appreciate that converting the banked energy in money terms would seek to neutralize the negative impact of such banking dispensation on MSEDCL.

3.5 The impugned Order is vitiated by error apparent as the Commission even after appreciating that the present dispensation w. r. t. banking has a negative financial impact on MSEDCL it has failed to appreciate that MSEDCL as a Distribution Licensee is only supposed to highlight the concerns and it is the for the Commission to address the concerns raised by the Licensees.

3.6 The impugned Order is vitiated by error apparent as the Commission has failed to appreciate that “Prayas (Energy Group) Pune” being a Consumer Representative strongly supported the Petition filed by MSEDCL and agreed for a fresh public consultation on the issues involved in banking.

3.7 The Commission being the guardian of the electricity sector in Maharashtra cannot let even a minute negative financial impact to be suffered by MSEDCL when such impact can surely be negated by a fresh dispensation.

3.8 The impugned Order is vitiated by error apparent as the Commission has failed to appreciate that the Petition was only an attempt to raise the issues faced by MSEDCL with a proposal to initiate a public consultation process so that, neutral and balanced system w. r. t. banking can be achieved.

- 3.9 The impugned Order is vitiated by error apparent as the Commission has failed to appreciate that the “Draft Forecasting, Scheduling and Deviation Settlement Regulations” does not address a situation like the present one. Moreover on one hand such Regulation seeks to penalize the Generators for “under-injection and over-injection” and the present banking dispensation on the other hand seeks to minimize such a penalty by giving unjust privilege of banking.
- 3.10 The impugned Order is vitiated by error apparent as the Commission has failed to appreciate that mandating 10% purchase at the end of the year at APPC rate by the concerned Distribution Licensee only causes a negative financial impact that too without allowing the same power to be accounted towards its RPO.
- 3.11 The impugned Order is vitiated by error apparent as the Commission has failed to appreciate that there cannot be a mandate to buy unadjusted banked power to the detriment of MSEDCL. A Generator should not be allowed to be benefitted because of its own miscalculations.
- 3.12 The present RE tariff as discovered in various bids is much lower than the APPC tariff. e. g. The solar tariff discovered at Bhadla bidding is Rs. 2.44 only; the wind prices discovered in SECI’s 3rd auction is Rs. 2.44 only, whereas the APPC rate of MSEDCL for 2017-18 is @ Rs. 4.01. Further, the wind generators are also eligible for REC. Thus by virtue of surplus banked energy the Open Access generators are doubly benefiting i.e. by way of receiving tariffs higher than the presently discovered RE tariffs and also getting REC for such surplus RE banked power.
- 3.13 The impugned Order is vitiated by error apparent as the Commission has failed to appreciate the real intent and purpose of its own order dated 24 November, 2003 in Case No. 17 (3), 3, 4, 5 of 2012. Banking was never a privilege which it now has become but was rather only a facility/cushion available with certain caveats. The Commission has completely lost sight of the said fact.
- 3.14 The impugned Order is vitiated by error apparent as the Commission has failed to appreciate that the present dispensation of banking is certainly against the financial interest of MSEDCL and causes continuing losses.
- 3.15 There is no delay in filing the Review Petition and the same is filed well within limitation.
4. At the hearing held on 27 June, 2018, Advocate of MSEDCL reiterated its submission as made in the Petition. Ms. Ashwini Chitnis, for Prayas (Energy Group) has stated that it broadly supports the issue of banking raised by MSEDCL. The written submission was made by Prayas (Energy Group) in Original Case No. 85 of 2017.

Commission's Analysis and Ruling:

5. Regulation 85(a) of the Commission's Conduct of Business Regulations, 2004 governing review specifies as follows:

“Review of decisions, directions, and orders:

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...”

Thus, the ambit of review is limited, and this Petition has to be evaluated accordingly.

6. The contentions of MSEDCL in its Review Petition are as follows :

- (a) MSEDCL had provided all the data, facts and figure related to banked energy and its adverse financial impact. There is an adverse financial impact of Rs. 11.02 Crores which is purely due to the seasonal variation of price difference between energy banked slot and energy credit slot. The direct financial impact is of Rs. 40 Crores considering Average Billing Rate (ABR) of Rs. 8.57 per unit for HT industrial consumers for FY 2016-17. The Commissions has commented that banking has “negligible impact on consumer tariffs”. RE is growing at rapid pace and subsequently the impact of banking will also be higher in upcoming years.
- (b) The impugned Order is vitiated by error apparent as the Commission has failed to appreciate that converting the banked energy in money terms would seek to neutralize the negative impact of such banking dispensation on MSEDCL.
- (c) The Commission being the guardian of the electricity sector in Maharashtra cannot let even a minute negative financial impact to be suffered by MSEDCL when such impact can surely be negated by a fresh dispensation.
- (d) The impugned Order is vitiated by error apparent as the Commission has failed to appreciate that mandating 10% purchase at the end of the year at APPC rate by the concerned Distribution Licensee only causes a negative financial impact that too without allowing the same power to be accounted towards its RPO.

- (e) The present RE tariff as discovered in various bids is much lower than the APPC. e.g. The solar tariff discovered at Bhadla bidding is Rs. 2.44 only; the wind prices discovered in SECI's 3rd auction is Rs. 2.44 only, whereas the APPC rate of MSEDCL for 2017-18 is @ Rs. 4.01. Further, the wind generators are also eligible for REC. Thus by virtue of surplus banked energy the Open Access generators are doubly benefiting i.e. by way of receiving tariffs higher than the presently discovered RE tariffs and also getting REC for such surplus RE banked power.
- (f) The impugned Order is vitiated by error apparent as the Commission has failed to appreciate the real intent and purpose of its own order dated 24 November, 2003 in Case No. 17 (3), 3, 4, 5 of 2012. Banking was never a privilege which it now has become but was rather only a facility/cushion available with certain caveats. The Commission has completely lost sight of the said fact.

7. In its impugned Order, the Commission has addressed these issues as follows:

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8. *Banking of non-firm RE in one form or the other was formally provided under policy dispensations of the Govt. of India, Govt. of Maharashtra and the erstwhile Maharashtra State Electricity Board from the 1990s, well before the Commission was established. The current DOA Regulations, 2016 were notified by the Commission after a due process of public consultation, and provide as follows with regard to banking:*

“2.1(4) “Banking” means the surplus Renewable Energy injected in the grid and credited with the Distribution Licensee after set off with consumption in the same Time of Day slot as specified in Regulation 20...

...20.1 Regulation 19.3 shall not be applicable in case Open Access consumer obtains supply from a Renewable Energy Generating Station identified as ‘non-firm power’ by the Commission in its Regulations governing the Tariff for Renewable Energy.

20.2 The surplus energy from a ‘non-firm’ Renewable Energy Generating Station after set-off shall be banked with the Distribution Licensee.

20.3 The banking year shall be the financial year from April to March.

20.4. Banking of energy shall be permitted during all twelve months of the year:

Provided that the credit for banked energy shall not be permitted during the months of April, May, October and November, and the credit for energy

banked in other months shall be as per the energy injected in the respective Time of Day ('TOD') slots determined by the Commission in its Orders determining the Tariffs of the Distribution Licensees;

Provided further that the energy banked during peak TOD slots may also be drawn during off-peak TOD slots, but the energy banked during off-peak TOD slots may not be drawn during peak TOD slots...

20.5. Banking charges shall be adjusted in kind @ 2% of the energy banked.

20.6. The unutilised banked energy at the end of the financial year, limited to 10% of the actual total generation by such Renewable Energy generator in such financial year, shall be considered as deemed purchase by the Distribution Licensee at its Pooled Cost of Power Purchase for that year:

Provided that such deemed purchase shall not be counted towards the Renewable Purchase Obligation of the Distribution Licensee, and the Generating Station would be entitled to Renewable Energy Certificates to that extent."

- 9. The Commission notes in passing that, by MSEDCL's own computations, the total quantum of banked energy is marginal as a proportion of its total power procurement, and it has estimated the financial impact as Rs. 11.02 crore in FY 2016-17. Apart from a negligible impact on consumer tariffs, these estimations are based on partial assumptions and do not fully reflect all aspects of the impact of the banked energy, including in favour of MSEDCL in four high-demand months, or other relevant aspects. Moreover, backing down of contracted generation is on account of many factors apart from RE injection. The Table at para. 3.7 is not meaningful to that extent. Moreover, that Table itself shows that, even in the low wind months of April and May and October onwards, the backing down by MSEDCL has been substantially higher or lower than the RE injected.*
- 10. MSEDCL has sought amendment of Regulation 20 of the DOA Regulations, 2016, essentially to do away with the existing ToD-based banking provisions applicable to non-firm RE. MSEDCL has proposed a banking facility in terms of 'currency settlement' instead of 'energy settlement in kind'. The rate proposed for such 'currency based settlement' is the lowest variable cost of backed-down power in each 15-minute time block for the surplus banked power; and the credit for drawal of banked energy is proposed at the highest variable on-bar cost or cost of power purchase through the Power Exchanges, whichever is higher. In effect, MSEDCL proposes to do away with ToD-based adjustment in kind and to undertake the commercial settlement for such wheeling transactions in each 15-minute time block in monetary terms. This would be in addition to the wheeling charges, wheeling losses, banking charges, Cross-Subsidy Surcharge and*

Additional Surcharge, if any, to which the Distribution Licensee is separately entitled in any case.

- 11. If the accounting and credit of energy is to be undertaken in monetary terms for each 15-minute time block, it would be more appropriate to track the cost of deviation (schedule vs. actual) at both ends (i.e., the injection end and the drawal end) since there would continue to be deviations at both ends irrespective of backing down or otherwise. Deviations at the injection end will continue due to the very nature of variable RE generation but can be minimised by better forecasting, scheduling and a deviation settlement mechanism (DSM). For this purpose, the Commission has recently issued draft Forecasting, Scheduling and DSM Regulations for Solar and Wind generation for public consultation. Deviations at the drawal end have to be seen in the context of the deviation treatment proposed for partial OA consumers. As most of these are embedded consumers, their demand forecast is in any case a part of the aggregate demand forecast of the Distribution Licensee, and any variation is supplied by it and accounted for and compensated through the consumer category-wise tariffs.*
- 12. Banking, on the other hand, is the energy credit adjustment of actual injection vis-à-vis the actual drawal by the consumer over a period. Banking is provided for non-firm RE considering the variable nature of such generation, but with appropriate qualifications to address the interests and concerns of both the Distribution Licensee and the consumer. In the DOA Regulations, 2016, these qualifications include ToD-based banking with adjustment of surplus injection of higher ToD slabs (peak) to lower ToD slabs (normal/off-peak), but not vice-versa; monthly carry-forward of surplus banked energy to annual settlement, but capped at 10% of total generation at the end of the year; restriction on banking credits for 4 months (viz. April, May, October and November, generally the peak demand months, as explained in the Statement of Reasons for the Regulations); levy of banking charges; etc. In the case of MSEDCL, Additional Surcharge in lieu of stranded capacity due to backing down is also being levied on RE OA wheeling transactions.*
- 13. As regards counting of the surplus RE (upto 10%) at the end of the year against the RPO of the Distribution Licensee, MSEDCL may refer to the Commission's conclusion in its Statement of Reasons for the DOA Regulations, 2016:*

“...since it will be difficult for Distribution Licensees to account the surplus RE in its annual renewable purchase planning to meet their RPO, RE Generators will be allowed to claim REC benefits on this power and Distribution Licensees will not be able to consider this power purchased against their RPO.”

14. In view of the foregoing, the Commission does not consider it necessary or appropriate at present to initiate amendment of the DOA Regulations, 2016 to the extent sought by MSEDCL.

8. In the impugned Order, the Commission has not considered to initiate amendment of DOA Regulation, 2016. However, in the Review Petition, MSEDCL raised the concerns due to having banking facility to RE.

9. APTEL in its Judgment dated 1 August, 2014 in Appeal No. 59 of 2013 stated that:

“34.....

(ii) Continuation of banking facility for wind energy generators

We do not find any infirmity in the State Commission continuing banking facility based on the various orders passed from November, 2003 to October, 2011. As regards financial implication of banking facility on the Distribution Licensee, the Appellant is at liberty to approach the State Commission with supporting documents before the State Commission for levy of charges for banking and the State Commission shall consider the same and decide as per law. ”

10. Further, APTEL in its Judgment dated 24 May, 2013 in Appeal No. Appeal Nos.197, 198, 200, 201 & 208 of 2012 AND 6 of 2013 stipulates that :

“170.....

(x) No doubt the wind energy has to be promoted but the promotion has to be balanced with the interest of the consumers of the distribution licensees.....

..... ”

11. In view of the forgoing, the Commission notes that the concerns raised by the MSEDCL cannot be overlooked due to changing RE scenario and having financial implications on the Distribution Licensees which ultimately affects all the consumers of Distribution Licensees. The Commission notes the MSEDCL’s contention that there is an adverse financial impact which is purely due to the seasonal variation of price difference between energy banked slot and energy credit slot and the present RE tariff and scenario, which is summarized at para. 6 above.

12. Regulation 85 (a) of Conduct of Business stipulates that for any other sufficient reasons, applicant may apply for a review of such Order. The Commission notes that MSEDCL has not sought amendment of the DOA Regulations, 2016 but raised its concerns through the Original Petition.

13. In view of forgoing, and considering the contentions of MSEDCL, the Commission notes that, due to changing RE scenario and having financial implications on the Distribution Licensees and also the fact that draft RE scheduling and forecasting regulation is also being separately considered to reduce the infirm nature of RE, it may undertake an exercise to examine the issues involved and the alternatives, keeping in view all these considerations.
14. Allowing the review petition of MSEDCL, the Commission directs its secretariat to take immediate steps for initiating regular public consultation to consider afresh the banking related regulations after duly considering the various issues raised by MSEDCL in the amended draft proposal.

The Review Petition of Maharashtra State Electricity Distribution Company Limited in Case No. 147 of 2018 stands disposed of accordingly.

Sd/-
(Mukesh Khullar)
Member

Sd/-
(I. M. Bohari)
Member

Sd/-
(Anand B. Kulkarni)
Chairperson

