

BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)

(Appointed by the Maharashtra Electricity Regulatory Commission
under Section 42(6) of the Electricity Act, 2003)

REPRESENTATION NO. 100, 101, 102 & 103 OF 2020

In the matter of
Refund of Transmission and Wheeling Charges, Transmission and Wheeling Losses
recovered on over injected units as per Distribution Open Access Regulations 2014.

- | | | |
|---------------------------------|-------------------------|------------|
| (i) Bramhacorp Limited | (Rep. 100 of 2020) | |
| (ii) Mutha Spherocast Pvt. Ltd. | (Rep. 101 of 2020) | |
| (iii) Mutha Founders Pvt. Ltd. | (Rep. 102 of 2020) | |
| (iv) Dhanashree Industries | (Rep. 103 of 2020)..... | Appellants |

V/s

Maharashtra State Electricity Distribution Co. Ltd. Satara (MSEDCL)..... Respondent

Appearances: -

For Appellant : (i) Mohan Tukaram Borole, Representative
(ii) Shital Narayan Pednekar, Representative

For Respondent : (i) Satappa Baburao Chougale, I/c. Executive Engineer
(ii) Madhavi Avinash Gaikwad, Manager (F&A)
(iii) Santosh Chandrakant Bhosale, Dy. Manager
(iv) Nisar Shabbir Shikalgar, Jr. Law Officer


Coram: Deepak Lad

Date of Hearing: 9th February 2021

Date of Order : 17th February 2021

ORDER

All these Representations are individually filed on 16th December 2020 under Regulation 17.2 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2006 (CGRF Regulations) against respective


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individual Orders dated 28th October 2020 passed by the Consumer Grievance Redressal Forum, MSEDCL Baramati Zone (the Forum).


2. The Forum has dismissed all these respective grievance applications, the details of which are as below: -

Rep. No.	Forum Case No.	Date of Forum's order	Remark
100 /2020	07/2020	28.10.2020	Dismissed
101 /2020	05/2020		
102 /2020	04/2020		
103 /2020	06/2020		

3. Aggrieved by the orders of the Forum, the Appellants have filed their individual representations. Details of individual representations are as tabulated below: -

Rep. No.	Appellant	HT Cons. No.	Address	Year of OA	Period of energy credit availed
100 /2020	Bramhacorp Ltd	194339025090	S.No. 211, 212 Shindoli, Mahabaleshwar, Satara	FY 2015-16	01.12.2015 to 31.03.2016
101 /2020	Mutha Spherocast Pvt. Ltd.	190569021160	K-1, Additional MIDC, Satara	FY 2015-16	01.09.2015 to 30.09.2015
102 /2020	Mutha Founders Pvt. Ltd.	190569006612	L-7, Additional MIDC, Satara	FY 2015-16	01.09.2015 to 30.09.2015
103 /2020	Dhanashree Industries	190569007392	D-12, Old MIDC, Satara	FY 2015-16	01.09.2015 to 30.09.2015

- (i) The Appellants have filed individual representations for refund of Transmission and Wheeling Charges, Transmission and Wheeling Losses recovered on Over-injected units by the Respondent under Maharashtra Electricity Regulatory Commission (Distribution Open Access) Regulations, 2014 (DOA Regulations 2014) and under Regulation 17.2 of the CGRF Regulations 2006 against the individual orders of the Forum.
- (ii) The Appellants availed energy credits from Renewable Energy Generator under DOA Regulations, 2014 for the period as shown in the table above.


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- (iii) The discrepancy faced by Generator and the Appellants due to arbitrary implementation of the Regulations 16 & 26.8 (2) of the DOA Regulations 2014 by the Respondent:-

The Regulations 16 of the DOA Regulations, 2014 which deals with the applicability of wheeling charges, have been reproduced for ready reference:

“16. Wheeling Charges

16.1 Open Access customer using Distribution system shall pay the wheeling or Dedicated Distribution facility charge, as the case may be, as under:

- a) Wheeling charges payable to the Distribution Licensee by an Open Access customer for usage of their system shall be determined under the Maharashtra Electricity Regulatory Commission (Multi Year Tariff) Regulations, 2011, as amended from time to time:*


Provided that the Wheeling charges shall be payable on the basis of actual energy flow at the consumption end:

.....”

The above Regulation provides for recovery of wheeling charges and transmission charges on the adjusted units i.e., on the actual energy drawn at the consumption end. However, practically, the wheeling charges & the transmission charges are levied on entire generation and not on actual energy consumed. The above Regulation provides for recovery of transmission & wheeling losses only on the actual energy flow basis at the consumption end. And that the transmission & wheeling losses cannot be recovered on over-injected units. However, MSEDCL has recovered transmission & wheeling losses on entire generation.

- (iv) Also, the Commission has issued Order in the Case No. 137 of 2015 on 17.05.2016, clarifying above provisions as below;

“6. GEPL is ostensibly seeking clarification of certain provisions of the DOA Regulations, 2014. The Commission is of the view that a plain reading of these provisions makes their meaning sufficiently clear. Regulations 15, 16, 19, 22.3 and 26.8 have been cited by GEPL. Regulation 15 merely lists the various charges payable in different circumstances of Open Access and requires that they be indicated in the bills raised. The 1st proviso to Regulation 16.1(a) specifies that wheeling charges are payable only on the actual energy flow at the consumption end. On the other hand, in case of sourcing of non-firm power from a RE Generator, Regulation 26.8(2) provides that the surplus (i.e., after set off with the OA


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consumer's consumption) power shall be purchased by the Distribution Licensee at the APPC rate. Thus, the relevant surplus power is that which is injected by the Generator into the Distribution Licensee's grid, and in respect of which wheeling, etc. charges would hence obviously not be applicable. As regards charges for stand-by supply, the 5th proviso to Regulation 19.1 provides that consumers sourcing non-firm power from a RE Generator pay a penalty on the quantum in excess of Contract Demand (instead of the temporary tariff category rate applicable to power from other generation sources, as provided in the 4 proviso). The penalty for exceeding Contract Demand has been stipulated by the Commission in the relevant Tariff Orders."

With above clarification Appellant approached MSEDCL for refund of wheeling and transmission charges and losses recovered on Over-injected units with various letters over a period of time but the Respondent has neither denied said recovery nor refunded till date.


- (v) Now, as per point No. 7 in the Order of Case No. 137 of 2015 under Commission's Analysis and direction of MERC, the consumer has approached Hon'ble Forum. The relevant extract is reproduced herewith for ready reference:

"If (as implied by GEPL) those of the above provisions which are relevant to its consumers are not being followed by MSEDCL, the consumers have recourse to the CGRF since such grievances would be in the nature of billing disputes which are to be addressed through that mechanism."

- (vi) Hence, as per procedure Appellant approached Internal Grievance Redressal Cell (IGRC) and the Forum in the subject matter. However, IGRC denied the said recovery saying that the subject matter does not come under their jurisdiction. Similarly, when approached the Forum, it also denied the said recovery by citing following reasons:


"The dispute relating to Open Access would be dealt only by commission as the said matter is not under The Forum jurisdiction. The present grievance is based on the provisions of DoA Regulations and practice Directions issued by commission."

- (vii) However, the Appellants have filed these representations in view of the Commission's Order in Case No. 137 of 2015 wherein it is clarified that billing disputes are to be referred to the grievance redressal mechanism. Hence, the Appellants pray for redressal of their grievances with suitable directions to the Respondent as below: -


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- a) To refund Wheeling, Transmission charges recovered on Over Injected units, without further delay.
- b) To purchase the over-injected units as per Regulation 26.8 (2) and release the payment, without further delay.
4. The Respondent filed separate replies in the four representations vide letters dated 07.01.2021. The common issues are stated briefly as under: -
- (i) It is an admitted position that the IGRC and the Forum have dismissed the grievance applications of the Appellants on the ground that the matter is outside the scope of their jurisdiction.
- (ii) The Respondent rely on the Judgment passed by Hon'ble Appellate Tribunal for Electricity (ATE) in its order dated 28.06.2011 in Appeal No. 36/2011. The Para No. 46 of the Judgment states as below:
- a. *"The dispute relating to open access would be dealt only by the commission as the act clearly provides that the commission must ensure fulfillment of the mandate provide such open access which would include issuing directions to grant Open Access which has rightly been given in the impugned order. This jurisdiction vested with the Commission cannot be usurped or taken away by the consumer grievance redressal forum. In other words the consumer grievance redressal forum establish by the distribution licensee will have no jurisdiction to entertain or decide a dispute where the statutory mandate to provide open access has been violatate by the distribution licensee. Therefore, the dispute in question can be resolved by the state commission alone and not by the Consumer Grievance Forum. As such there is no infirmity in impugned order."*
- (iii) Respondent also rely on the orders passed by Hon'ble Electricity Ombudsman, Mumbai in Rep. No. 234 of 2018 dated 15.03.2019 and 239 of 2018 dated 26.03.2019 wherein the Electricity Ombudsman has also rejected the appeals filed by Open Access Consumers on the same ground.
- (iv) Moreover, all these representations are time barred as per Regulation 6.6 of the CGRF Regulations 2006 which is reproduced as below:
- "6.6 The Forum shall not admit any Grievance unless it is filed within two (2) years from the date on which the cause of action has arisen."*


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- (v) Respondent once again submit that billing of open access consumer is dealt by Corporate Office of the Respondent on the basis of orders passed by the Commission. In the representations, the Appellants raised queries in respect of Regulations. Therefore, the Electricity Ombudsman does not have jurisdiction to entertain these representations and deserves to be rejected with cost.
5. The hearing was held on 09.02.2021 on e-platform through video conferencing due to Covid-19 epidemic.

Analysis and Ruling

6. At the outset, the undersigned informed the Appellants that the Forum has dismissed their grievances stating that the matter needs to be adjudicated by the Regulatory Commission. It therefore further ruled that it does not have powers to adjudicate upon it. In such circumstances, whether the Appellants would therefore like to take a fresh call. On this, the Appellants requested that the hearing be adjourned for a week to allow them to take a call. The Respondent also informed that they have no objection if the hearing is adjourned by a week. Therefore, the hearing on 09.02.2021 is adjourned for a week and it was decided to notify the parties about the next date of hearing in due course.
7. Before the next date of hearing could be scheduled, the office of the undersigned received emails on 12.02.2021 in respect of Representations No. 100, 101, 102 and 103 of 2020. In the said emails, the Appellants have said that they have reviewed the matter in view of the ATE Judgment dated 28.06.2011 in Appeal No. 36 of 2011, and Regulation 39.1 of DOA Regulation 2014 and therefore would like to approach the Commission to pursue their petitions in the said matter. Hence, prayed for withdrawal of these four representations.
8. In view of this, the Appellants are hereby allowed to withdraw Representations No. 100, 101, 102 and 103 of 2020 and as such, are disposed of as withdrawn.

Sd/-
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