

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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Case No. 21 of 2007

In the matter of
Petition filed by M/s Bajaj Auto Limited seeking clarification of Order dated
November 24, 2003 for procurement of wind energy and wheeling for third party-
sale and/or self-use

Dr. Pramod Deo, Chairman
Shri. A. Velayutham, Member
Shri. S. B. Kulkarni, Member

ORDER

Dated: November 7, 2007

M/s. Bajaj Auto Ltd. (BAL) filed a Petition on June 25, 2007 seeking directions upon MSEDCL to maintain status quo on BAL (being a self user of wind energy) in terms of the Order dated November 24, 2003 in Case No. 17(3), 3, 4 and 5 of 2002 in the matter of application filed by erstwhile MSEDCL, Shri. Pratap G. Hogade, Renewable Energy Developers Association of Maharashtra (REDAM), and Indian Wind Energy Association (InWEA) for procurement of wind energy and wheeling for third party-sale and/or self-use, and sought clarification of the said Order.

2. BAL, vide its Petition, referred to the Commission's Order dated November 24, 2003 in Case No. 17(3), 3, 4 and 5 of 2002 and submitted as under:

- a) MSEDCL has stopped issuing credit notes since April 2007 without prior notice to the project participants and MSEDCL has orally informed that as regards to the clause 1.6.3, Tenure of EPA, of the Tariff Order dated November 24, 2003, the tariff period, i.e., eight (8) years, is over for Group II wind projects (commissioned after December 27, 1999 and before April 1, 2003) irrespective of the option adopted for power sale to Electricity Board / Self user / Third party sale.

“Clause 1.6.3: Tenure of EPA

...For Group II projects, tenure of EPA/EWA shall be 8 years.”

- b) MSEDCL has incorrectly referred to Section 1 of the said Order, which was the proposal prior to the process of receiving objections, hearing and the Commission's ruling in the matter, instead of Section 3 of the Order

(Commission's decision on tariff), wherein no such eight (8) years limiting period is mentioned for EWA / Self user / Third party seller of wind power.

“Clause 3.2: Approach

..... Under the option of Third Party Sale /Captive consumptions no tariff has been determined and it is proposed to provide adjustment as per TOD meter installed at both generating and consumption points.

This shall ensure:

- no impact on net average cost*
- no cash transaction except for purchase of surplus energy banked with the utility at the end of the year*

The concept of adjustment as per TOD meter at different time slots shall be applicable for both past and future installations.”

- c) Credit notes are on hold for the projects that have completed eight (8) years. Stopping credit notes of wind power self user / third party seller without prior notice would increase banking of units and project owners would be unable to consume all units before year end.
- d) MSEDCL, vide its circular dated June 15, 2007, has informed wind power investors that credit would be given to Self user / Third party seller of wind energy at the rate of 90% of lowest HT Industrial Energy Tariff (Rs. 1.17 per unit) irrespective of Time of Day (ToD) adjustment, after deducting two percent (2%) Wheeling charges and five percent (5%) T&D loss (in terms of units), against submission of undertaking on Stamp paper of Rs. 100, indicating acceptance to MSEDCL's interim policy dated June 6, 2007.
- e) BAL has invested significant amount of around Rs. 300 Crore in Wind power projects, however, it has not received expected returns from energy generation because of ever-changing policies of MSEDCL and their poor services as far as grid connectivity, inadequate power evacuation system, administrative delay and deduction of 5% T&D losses which is more than the 1% that was assured by GoM.

BAL prayed as under:

“

- 1. Immediate Order may please be given to MSEDCL to maintain status quo and hold their interim policy dated 06.06.2007 applicable to Group II, self user / Third party seller wind power projects covered under MERC's wind power tariff order dated 24.11.2003.*
- 2. Clarification may please be given to MSEDCL that they should not stop wheeling of wind power for self user / third party seller those have completed 8 financial years of working till the life of project i.e. 20 years, and their interim policy is not applicable to the Group II, wind power projects opted option of self use / Third party sale and covered under MERC's wind power tariff order dated 24.11.2003. ”*

3. The Commission vide its Notice dated July 11, 2007, scheduled the hearing in the matter on July 24, 2007, and directed BAL to serve a copy of its Petition to MSEDCL and the four authorized Consumer Representatives.

4. At the hearing held in the matter on July 24, 2007, Shri. S.P. Shinde, In-charge (Wind Mill Project), BAL, submitted that MSEDCL has stopped releasing credit notes to BAL for its wheeled wind energy and requested the Commission to issue directions to MSEDCL to resume wheeling to BAL and further not restrain BAL from entering into an EWA with MSEDCL, since, in terms of the Order dated November 24, 2003, there is no fixed period for a self-user of wind energy to execute EWA with MSEDCL. Shri. Shinde further submitted that BAL has been wheeling wind energy for 100% self use only, and does not intend to sell such wheeled energy, however, MSEDCL has stopped issuing credit notes from April 2007, on the pretext that tariff for wheeling of wind energy post expiry of eight (8) years of the operation of plant needs to be determined afresh. Shri. Shinde submitted that MSEDCL should not be allowed to group BAL with third-party seller of wind energy as it wheels wind energy for 100% self-use.

5. Shri. Shinde submitted that MSEDCL has not been accounting for the wind energy consumption of BAL from April 2007 and has stopped issuing bills pursuant thereof.

6. Smt. Deepa Chawan, Counsel for MSEDCL, submitted that MSEDCL, vide its letter dated July 11, 2007 to BAL and all other wind energy developers under Group II category, has informed that credit notes shall be issued pursuant to wind energy wheelers submitting a written undertaking to abide by the directions that may be issued by the Commission, under a Petition filed by MSEDCL before the Commission.

7. Shri. A.J. Deshpande, Suptd. Engineer, MSEDCL, submitted that the said letter dated July 11, 2007 has been issued to all Group II wind energy wheelers irrespective of the purpose of wheeling, i.e., whether for self use or for third party sale, on the expiry of eight (8) years of operation of plant, as per the Order dated November 24, 2003. It is stated in the said letter that billing would resume on fixation of fresh tariff on settlement of connected issues on wind energy drawal, pursuant to another Petition filed by MSEDCL.

8. The Commission enquired of MSEDCL as to the necessity of requiring wind energy wheelers to submit a written undertaking to abide by the directions of the Commission, as persons wheeling wind energy would need to abide by the directions of the Commission in any case. Smt. Deepa Chawan submitted that the efficacy of the said written undertaking lies in avoiding multiplicity of proceedings, and the submission of said written undertaking would stop any wind energy wheeler from defaulting on the revised terms and conditions for energy wheeling on the pretext that such revisions are contrary to past trend. Smt. Deepa Chawan further submitted that,

under the said petition, MSEDCL has prayed for the retrospective effect to certain modalities concerning drawal of wind energy as MSEDCL expects no default from wind energy wheelers on the retrospective effect of such modalities, which are contingent upon the Commission's approval.

9. Having heard the parties at length, and after considering the materials placed on record, the Commission is of the view that as regards the specific case of BAL is concerned, wind energy generation project of BAL qualifies under 'Captive Generating Plant' as per Section 9 of Electricity Act 2003 (EA 2003), a fact that has not been denied by any party. As per sub-section(2) of Section 9 of EA2003, every person who has constructed captive generating plant has right to open access for the purpose of carrying electricity from his captive generating plant to destination of its use subject to availability of transmission capacity. Thus, not providing credit for energy wheeled by such captive generating plant would tantamount to denial of statutory right granted under EA 2003. MSEDCL is required to issue credit notes in favour of BAL, which is a captive user and its wheeling is duly metered. Under the existing laws, there is no time-bar on BAL to wheel wind energy from MSEDCL for self-use. MSEDCL should not discontinue the wheeling facility of BAL, as BAL is a captive consumer and is consuming wind energy solely for self-use. Though, BAL has been provided with benefits available during Group II project period, BAL cannot be billed in accordance with billing techniques ascertained for Group II projects selling wind power to MSEDCL, as BAL has neither sold wind energy to MSEDCL nor executed any EPA with MSEDCL to that effect. It is not necessary for MSEDCL to mandate wind energy wheelers to submit such a written undertaking since all wind energy wheelers would be, in any event, bound by the Orders of the Commission.

10. Hence, the Commission hereby directs MSEDCL to resume billing to BAL, upon providing appropriate credit for its drawal of wind energy, and provide for appropriate adjustments in future bills also.

Accordingly, Case 21 of 2007 stands disposed of.

Sd/-
(S.B. Kulkarni)
Member

Sd/-
(A. Velayutham)
Member

Sd/-
(Dr. Pramod Deo)
Chairman

(P.B.Patil)
Secretary, MERC