

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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Case No. 101 of 2008

**In the matter of
Petition filed by BF Utilities for release of credit notes for its projects.**

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

B.F. Utilities Ltd.
Mundhwa, Pune Cantonment,
Pune 411 036

.... Petitioner

Vs.

Maharashtra State Electricity Distribution
Company Ltd
Prakashgad, Bandra (East),
Mumbai 400 051.

.... Respondent

ORDER

Dated: July 10, 2009

M/s. B.F. Utilities Ltd., filed a Petition on 21.10.2008. The Petitioner has submitted that it has commissioned on 28.12.1999 a Wind Farm of the capacity of 6.90MW located at Satara, Maharashtra. The wind energy that is generated at the Petitioner's Wind Farm site in Satara is consumed at Pune by Bharat Forge Ltd. The energy is wheeled from the Petitioner's Wind Farm site in Satara to Bharat Forge Ltd., located at Pune using MSEDCL's lines/wires through an "Energy Wheeling Agreement" (EWA) with MSEDCL. The energy generated at the Petitioner's Wind Farm site in Satara is fed into the MSEDCL grid at Satara. The number of units fed by the Petitioner's Wind Farm into the grid is certified by MSEDCL (Satara) and a Credit Note is issued by MSEDCL to the Petitioner stating the number of units credited. The Petitioner submits this credit note to MSEDCL (Pune) where the monthly energy billing for the consumer that is Bharat Forge Ltd., is done. During the monthly energy billing of Bharat Forge Ltd., at Pune, the wind energy units (as per Credit Note) is



deducted from the total consumption of units by Bharat Forge Ltd., to calculate the net units consumed by Bharat Forge Ltd. The amount payable by Bharat Forge Ltd to MSEDCL is calculated on the basis of these net units. The transmission of energy through MSEDCL lines is subjected to wheeling and transmission losses. Hence, some units are deducted from the total gross energy fed into the grid and the net energy is arrived at. The Credit Note gives information on Gross units, wheeling /transmission loss units deducted, and the net units available for credit. It also gives the name of consumer in whose energy bill the energy is to be credited. The current month's generation is adjusted in the bill of the next month of the consumer due to the processing time. The Petitioner's case is that MSEDCL has stopped issuing the above Credit Notes from the date the tariff period of eight years as determined by this Commission under its Order dated 24.11.2003 in Case No. 17(3),3,4,5 of 2002, expired.

2. The prayers made in the Petition are as follows –

- 1) *That pending the final disposal of the present petition and the Petition in Case No. 67 of 2008, the Hon'ble Commission may kindly pass interim order urgently under Section 94 (2) of the Electricity Act, 2003 directing MSEDCL to release past and present Credit Notes for :-*
 - (i) *Wind Farm of 2.07 MW*
 - (ii) *Wind Farm of 2.76 MW*
 - (iii) *Wind Farm of 6.60 MW;*
 - (iv) *Wind Farm of 4.20 MW (developer – Bharat Forge Ltd.)*
- 2) *That the Hon'ble Commission be pleased to direct MSEDCL to give credit for the energy already supplied and to be supplied by the Petitioner by feeding the same into the grid and not to hold back the same and to give credit by continuing the wheeling of units;*
- 3) *That the Hon'ble Commission be pleased to direct MSEDCL that they should immediately resume wheeling and not stop wheeling of wind power, for self user / third party sale;*
- 4) *That the Hon'ble Commission be pleased to direct MSEDCL not to restrain the petitioner to execute Energy Wheeling Agreements with MSEDCL for wheeling of wind power, for self user / third party sale;*
- 5) *That the Hon'ble Commission be pleased to pass such further order or orders as this Hon'ble Commission may deem just and proper in the circumstance of the case.*

3. The Petitioner has stated that it is aggrieved with the manner in which Open Access charges are calculated by MSEDCL. The Petitioner feels that MSEDCL ought to levy Open Access charges at short term rates rather than long term rates because



once the tariff period of eight years as aforesaid is over, the balance of twelve years that remains out of the life of the wind farm entitles them to pay only short term open access charges. However, this has been taken up by the Petitioner under a separate Petition before the Commission. As such, being so aggrieved, the Petitioner pending the final disposal of the case as filed separately and numbered as Case No. 67 of 2008, stopped paying the Open Access Charges to MSEDCL for wheeling power from the aforesaid Wind Farm of the capacity of 6.90MW located at Satara for consumption at Pune by Bharat Forge Ltd. The fact regarding the filing of Case No. 67 of 2008 was brought to the notice of MSEDCL by the Petitioner. However, instead of maintaining status quo because the issue is sub judice, MSEDCL has chosen to withhold Credit Notes not only for the affected Wind Farm of 6.90 MW but also stopped release of Credit Notes for all other Wind Farms (viz 2.07 MW, 2.76 MW and 6.60 MW) including that of one related entity of the Petitioner (but not the same as the Petitioner) viz., 4.20 MW belonging to Bharat Forge Limited.

4. The entire case of the Petitioner is that it is not opposed to any action that MSEDCL may take with respect to non-payment of Open Access Charges by it for wheeling power from 6.90MW wind farm located at Satara. However, for non-payment of Open Access Charges rather than taking any adverse action with respect to the said Wind Farm of the Petitioner of the capacity of 6.90 MW located at Satara, Maharashtra, MSEDCL has stopped giving Credit Notes for four unrelated Wind Farm Projects viz.,

- (i) 2.07 MW
- (ii) 2.76 MW
- (iii) 6.60 MW
- (iv) 4.20 MW (Developer - Bharat Forge Ltd.)

It has been submitted by the Petitioner that there is absolutely no nexus between the Wind Farm of the Petitioner of the capacity of 6.90 MW located at Satara and the other four Wind Farm projects. There is no rationale whatsoever in the action of stopping of Credit Notes for the aforesaid unrelated four Wind Farm projects with that of non-payment of Open Access Charges with respect to wheeling of power for the Wind Farm of the Petitioner of the capacity of 6.90 MW located at Satara. Such an action is wholly mischievous, malafide and illegal, and is therefore liable to be quashed and MSEDCL is liable to be directed to forthwith cease and desist from stopping of release of Credit Notes for the aforesaid four Wind Farm Projects.

5. The Petitioner has submitted that MSEDCL has stopped issuing credit notes for all the wind farm projects of the Petitioner since the month of August 2008 and MSEDCL has orally informed that this action has been taken because the Petitioner herein has not paid the Open Access Charges for one of its Wind Farm projects which has on 27.12.2007 completed the tenure of 8 years under the Group II category specified by the Commission under its Order dated 24.11.2003 passed in Case No. 17(3), 3, 4 & 5 of 2002. This project had been commissioned on 28.12.1999. The fact



of the matter is that the Petitioner herein has not paid Open Access Charges for their one Wind Farm project viz., 6.90 MW located at Satara. The 6.90 MW project had completed its 8 years in December 2007 and since then the credit notes for this project were withheld by MSEDCL. The total units withheld during January-August 2008 by MSEDCL for this affected project are 1.18 crore units.

6. These actions, as contended by the Petitioner, are grossly illegal on the part of MSEDCL. The Petitioner has stated that it is suffering grave financial distress due such an arbitrary, illegal and unreasonable action on the part of MSEDCL. The adverse financial impact to the Petitioner due to the holding of credit notes of all the projects is Rs 6.80 crore, whereas the liability on account of Open Access Charges payable by the Petitioner is Rs 0.92 crore.

7. As per the Petitioner, the adverse financial impact to the Petitioner is enormous as mentioned below:-

- Value of Generated units held (from one Wind Farm project of 6.90 MW) – Rs 4.13 crore
- Amount of Open Access charges not paid by Petitioner - Rs 0.92 crore

As per the Petitioner, it may be seen that the amount held (by holding back Credit Notes) by MSEDCL is 4.5 times of the payable amount. Moreover, it submitted that the generated units have already been utilized by MSEDCL and MSEDCL has realized income on it. It has been further submitted that by holding the Credit Notes of other projects (viz., Wind Farm of 2.07MW, 2.76 MW, 6.60 MW and 4.20 MW) the adverse financial impact is as under:-

- Value of Generated units held (all projects) – Rs 6.80 crore
- Amount of Open Access charges not paid (same as for the project of 6.90MW) - Rs 0.92 crore

As per the Petitioner, it may be seen that the amount held by MSEDCL is 7.4 times of the payable amount. Moreover, the generated units have already been utilized by MSEDCL and MSEDCL realized income. In the current month of September 2008, the credit notes are still held by MSEDCL for all the projects. If the units are not released and not adjusted in the billing of October 2008 to be carried out in a few days, the financial impact will widen to Rs 8.25 crore against a demand of Rs 1.04 crore. This will give it a cover of 8 times of the demand. Whereas, if the credit notes of only the affected project of 6.90 MW is withheld, it will still give a cover of 4.4 times. This means that the Petitioner will already be penalized to the extent of 4.4 times, but if credit from all the projects are withheld the penalty is 8.25 times. In all cases, the units generated are already utilized by MSEDCL and MSEDCL has realized income on it.



8. The Petitioner is said to have contacted the concerned officials of MSEDCL in this regard. When contacted, MSEDCL authorities stated that the Credit Notes of other projects have also been held back as the accounting cannot be kept pending. It has been submitted by the Petitioner that the accounting system of MSEDCL has affected the Wind Farm projects of the Petitioner adversely by several crores of rupees. This illegal action on the part of MSEDCL has caused grave financial distress and it is imperative that the Commission directs MSEDCL to release Credit Notes.

9. MSEDCL filed its reply on 1.12.2008. It has been inter alia stated therein that credit notes have been withheld on the ground that the Petitioner was supposed to share with MSEDCL (being the purchasing agency) the capital subsidy amount it had received from the Government of Maharashtra in terms of the Order of this Commission dated 24.11.2003. MSEDCL has also submitted that generated units imported into the grid less export (i.e., energy supplied by MSEDCL) is to be taken as units offered for wheeling. The energy wheeled would be this quantum less wheeling charge and transmission loss. The net units for credit will be equivalent to the net quantum arrived at in this manner. MSEDCL has to recover the applicable wheeling charge and Transmission Charge. Thereafter the credit notes are to be issued by deducting applicable Wheeling Loss and Transmission Loss for giving credit for Self Use or Third Party Sale, as the case may be. MSEDCL has also contended that for Third Party Sale, a licence is required to be obtained under Section 14 of the Electricity Act, 2003.

10. A hearing was held on 20.1.2009. Shri. Harinder Toor, Counsel appearing for the Petitioner explained the facts of the case of the Petitioner as contained in the preceding paragraphs. He submitted that MSEDCL exercised a lien on four unrelated projects as against the non-payment of open access charges due to the position taken by the Petitioner of not paying open access charges for wheeling power from its 6.90MW wind farm due to mis-interpretation of the open access charges. Counsel submitted that MSEDCL has agreed to release the credit notes. MSEDCL had nothing further to say in the matter.

11. Subsequently, MSEDCL filed on 10.2.2009 a letter dated 28.1.2009 from its Chief Engineer (Comm) addressed to Chief Engineer, Pune Zone, stating therein that the Petitioner has paid applicable open access charges since January 2008 onwards and credit notes have been released by S.E. Satara. Chief Engineer, Pune Zone has been requested in terms of the aforesaid letter to give necessary credit adjustment in the energy bills of January 2008. It has been mentioned therein that wind generation units from April 2008 have been adjusted in the subsequent energy bills, as per credit report of S.E. Satara.



12. In view of the above, nothing remains in the matter. MSEDCL has agreed to release the credit notes that it had withheld. All other prayers are rendered infructuous. Accordingly, the case stands disposed of.

Sd/-
(S.B. Kulkarni)
Member

Sd/-
(A. Velayutham)
Member

Sd/-
(V.P. Raja)
Chairman



(P.B. Patil)
Secretary, MERC