

**Before the**  
**MAHARASHTRA ELECTRICITY REGULATORY COMMISSION**  
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**Case No. 67 of 2008**

**In the matter of**  
**Petition filed by M/s BF Utilities Limited, seeking clarification of the Commission's**  
**Order dated November 20, 2007, determining Open Access Charges on wind energy**  
**projects.**

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

**ORDER**

**Dated: August 4, 2009**

M/s BF Utilities Ltd., submitted its Petition before the Commission on August 4, 2008, seeking clarification of the Commission's Order dated November 20, 2007 in Case No. 33 of 2007 on the Petition filed by Maharashtra State Electricity Distribution Company Limited (MSEDCL), seeking directives in respect of issues connected with procurement of wind energy from Group-II Category wind energy projects post the expiry of eight years from the date of commissioning of the said projects for determining Open Access Charges for wind energy projects.

2. M/s BF Utilities Ltd., vide its Petition, made following prayers to the Commission:
  1. *"The Commission may kindly clarify and direct that wheeling charges if at all applicable to infirm power like wind shall be rates for short term open access as against long term open access being insisted by MSEDCL;*
  2. *The Commission may kindly clarify and / or issue necessary directions that Wheeling loss charges shall be either at injection point or at drawal point and not at both as is being interpreted by MSEDCL unless more than one utility is involved;*
  3. *The Commission may kindly clarify and / or issue necessary directions that it may direct not to levy wheeling charges and wheeling loss when the metering is carried out at the low tension (LT) side of the EHV substation located near the drawal point of the captive consumer or third party consumer as it amounts to duplication;*
  4. *The Commission may kindly clarify and / or issue necessary directions that it may direct to make appropriate provision for banking of wind energy which can be retained with the distribution agency concerned that will be the last link in the supply chain of transmission of wind power to the third party consumer or captive consumer as applicable. Broad guidelines of a typical banking agreement to be entered into between the wind power generator and the customer may also kindly be issued by the Commission;*



5. *Till such time the Commission disposes of the present petition, the utility may be specifically directed by the Commission to continue with the status quo practice of purchase of power, wheeling of power issue of credits, etc., as followed under Wind Power tariff Order dated November 24, 2003 in respect of all such cases where the period of EPAs / EWAs have expired or are expiring their 8 year period from the date of commissioning.”*
3. M/s BF Utilities Ltd., in its Petition, submitted as under:
- i. M/s BF Utilities Ltd. is aggrieved with the manner in which MSEDCL is claiming Open Access Charges on them and hence, they need clarifications/directions from the Commission.
  - ii. MSEDCL has levied long-term Open Access Charges as against short-term Open Access Charges on the captive/third party consumers. They further submitted that short-term Open-Access rates should be applicable to the wind energy projects since the tenure of Energy Purchase Agreement (EPA)/Energy Wheeling Agreement (EWA) is eight years and considering an average life of a wind energy farm being twenty years, only the balance twelve years are the effective period where the Open Access is required for Group-II wind energy projects. The impact due to difference in the short-term and long-term Open-Access Charges, affects the viability of the wind energy project.
  - iii. MSEDCL has adopted pan-caking method for levying the Open Access Charges. It has considered the charges both at injection point and at the point of drawal, which has resulted in the duplication of the charges. Further, BF Utilities Ltd. submitted that the charges should be levied either at the injection point or at the consuming end as stated in Table 1.3 under Clause 27 of the Wind Tariff Order dated November 24, 2003. Further, wheeling charges and wheeling losses are being levied by MSEDCL even when the metering is carried out at the Low Tension (LT) side of the Extra High Voltage (EHV) substation located near the drawal point of the captive consumer or third party consumer. BF Utilities Ltd. also submitted that the wheeling charges and the wheeling losses should not be applicable where the consumer avails the supply at High Tension (HT) side by installing suitable EHV substation with the same Utility.
  - iv. The Commission in Annexure 2 of the Order dated June 27, 2006 in Case No. 58 of 2005 on Development of Transmission Pricing Framework for the State of Maharashtra and other related matters directed the generators to submit daily report and submit the schedules of transfer of conventional power to Maharashtra State Load Dispatch Centre (MSLDC). BF Utilities Ltd. further submitted that since wind power is highly erratic and does not follow any pattern therefore, it should be exempted from the daily reporting and schedule submission exercises.



- v. M/s BF Utilities Ltd. submitted that Annexure 2 of the aforesaid Order does not specify any banking facility for wind energy, which is an essential requirement for the wind power generation to be effectively utilised. Banking is required for captive consumption or for third party sale during low wind season. Therefore, the concerned Distribution Utility should provide suitable banking facility and liquidation of such banked power for consuming party shall be based on banking and wheeling agreement to be finalised.

4. MSEDCL, under affidavit dated September 26, 2008, submitted its reply on the various issues raised by BF Utilities Ltd., as under:

- i. MSEDCL submitted that after the expiry of the EPA/EWA, the wheeling charges shall be levied in accordance with the MERC Order dated November 20, 2007.
- ii. MSEDCL submitted that Clause No. 3.2.1 of the Commission's Order dated June 27, 2006 in Case No. 58 of 2005 on Transmission Pricing framework, states:

*“CERC in its regulations for Open Access notified on January 30, 2004 and subsequent amendment thereof, for the purpose of inter-State transmission using CTU network has classified customers into two broad categories (a) long term customers with tenure of transmission agreement equal to twenty five years or more and (b) short term customers, where tenure of transmission agreement shall not exceed one year. Further, as per First amendment to Open Access regulations, the reservation of transmission capacity in case of **short-term Open access transactions have been permitted upto period of three months at a time.**” emphasis added.*

MSEDCL further submitted that aforesaid Clause states that in case of short-term Open-Access transactions, the tenure of Transmission Agreement should not exceed one year. Hence, the wind power transactions under Group-II projects, after expiry of validity period have been treated as long-term Open-Access transactions.

- iii. MSEDCL submitted that the Commission, in Para 26 of its Order dated November 20, 2007, has stated:

*“In this context, the Commission clarifies that it has determined applicability of wheeling charge, wheeling loss, transmission charge and transmission loss for Open Access wheeling transactions, through various MYT Orders for each licensee separately. However, depending on nature of open access wheeling transactions, the injection point(s) and drawal point(s) for the open access wheeling transactions could lead to use of distribution assets of multiple distribution licensees and/or use of intra-State transmission system. Even in case of particular distribution licensee, the wheeling charges applicable for a*

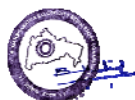


*particular open access transaction shall depend on voltage level at injection point(s) and drawal point(s), as wheeling charges are determined in accordance with voltage level. Accordingly, transmission charges, transmission losses, wheeling charges and wheeling losses applicable for a particular transaction have to be ascertained on the basis of extent of use of assets of the concerned licensee and extent of use at a particular voltage level.”*

Thus, the applicability of wheeling charge, wheeling losses, transmission charge and transmission losses have been ascertained on the basis of extent of use of assets at a particular voltage level at injection point(s) and drawal point(s).

- iv. MSEDCL submitted that the Commission, in its Order dated June 27, 2006 in Case No. 58 of 2005 on Transmission Pricing Framework, has directed the wind energy developers to follow the grid code and to install Time of Day (ToD) meter with online reading features. Further, they should submit the generation data to electrical inspector.
- v. MSEDCL submitted that the Commission in its Orders dated November 20, 2007, in Para. 34(b) for the option for self use (captive consumers) and third party sale cases after expiry of validity period, directed the field officers to provide energy credit as per Open Access wheeling transaction upon adjusting applicable wheeling charge, wheeling loss, transmission charge and transmission loss. In case of self use and third party sale cases, wind developer should pay the applicable wheeling charges, wheeling losses, transmission charges and transmission losses for the nodal officer to give necessary credit adjustment of wind generation against monthly energy bills. MSEDCL further submitted that the credit of wind energy shall be provided on the basis of ToD tariff slots and the surplus energy if any will be settled in accordance with the Banking Policy at the end of the financial year.
- vi. MSEDCL submitted that the cases of self use and third party sale (prior to expiry of validity period) were dealt in accordance with the MERC Order (Tariff for procurement of wind energy & wheeling for third party-sale and/ or self-use) dated November 24, 2003, accordingly credits notes were issued to the wind energy developers. Further, MSEDCL, vide its letter dated December 31, 2007 directed its nodal officer to recover the applicable charges (wheeling charges, transmission; charges, wheeling loss, transmission loss) at injection point and drawal point and release credit reports to wind developer.

5. The Commission, vide Notice dated September 4, 2008, scheduled the Hearing in the matter on September 30, 2008, but BF Utilities Limited vide their letter dated September 27, 2008 requested the Commission to postpone the aforesaid matter by two weeks on the ground that they have received the reply of MSEDCL on September 27, 2008, and they require time to scrutinize the reply and prepare their comments on the same. The Commission rescheduled the Hearing on October 22, 2008. BF Utilities Ltd., vide their letter dated October 20, 2008, requested the Commission to again postpone the Hearing in the aforesaid matter, by about



two weeks, on the ground of unavailability of Senior Counsel. BF Utilities Ltd. also mentioned that they are in a process of filing one more similar Petition against MSEDCL related to Open Access.

6. The Commission vide its letter dated October 21, 2008, rescheduled the Hearing for December 2, 2008. M/s BF Utilities vide email dated December 1, 2008 requested the Commission to postpone the Admissibility Hearing by one week, citing the reason that they could not brief the Senior Counsel, who would represent the matter before the Commission, due to the disturbed conditions prevalent in Mumbai during that period. The Commission vide its letter dated December 1, 2008 postponed the Hearing, which was scheduled on December 2, 2008, and rescheduled it on December 24, 2008.

7. MSEDCL vide its letter dated December 11, 2008, requested the Commission to postpone all the Cases where MSEDCL is a party, which was scheduled for Hearing during the period from December 15, 2008 to December 30, 2008, due to commencement of the Session of Maharashtra Legislative Assembly from December 15, 2008, for at least two weeks. The Commission postponed the Hearing, which was scheduled on December 24, 2005 and rescheduled it on January 20, 2009.

8. During the Hearing held on January 20, 2009, BF Utilities' counsel, Shri. Harinder Toor submitted that the Petitioner ought to be charged short-term open access charges and not long-term open access charges because out of a total project life of 20 years, 8 years of tariff period are already over and the balance remaining life is 12 years. In support of his stand, Counsel referred to the Commission's Order dated June 27, 2006 in Case No. 58 of 2005 and read out the following portion:

*“3.2.5 Accordingly, the Commission rules as under:*

*3.2.5.1 The persons availing or intending to avail access to intra-State transmission system for period of twenty five years or more shall be termed as 'long term transmission system users' Provided that the existing users of intra-State transmission system (including distribution licensees) shall be deemed to be long term transmission system users for the duration equal to the balance tenure contained in the agreements, if executed.*

*3.2.5.2 All other transmission system users other than long term transmission system users shall be termed as short term transmission system users. However, duration for grant of short term open access shall not exceed three months at a time; to begin with.”*

9. According to Counsel, the Petitioner is not availing or intending to avail access to intra-State transmission system for period of twenty five years or more to be termed as 'long term' transmission system user. Clearly, as per Clause 3.2.5.2 above, “All other transmission system users other than long term transmission system users shall be termed as short term transmission system users”. Thus, the Petitioner, whose wind farm has a balance life of 12 years is to be termed as short term transmission system user and charged accordingly.

10. Counsel thereafter referred to Commission's Order dated April 2, 2007 in Case No. 86 of 2006, wherein the Commission has held as under –



*“12. Further, it is clarified that Transmission Tariff in case of short term open access transactions shall be 25% of that applicable for long term open access transactions as stipulated under Para 3.2.5.6 of the Commission’s Order dated June 27, 2006 (Case 58 of 2005).”*

11. Counsel also referred to Commission’s Order dated May 31, 2008 in Case No. 104 of 2007 and relied on the following portion of the said order –

*“11. Accordingly, Transmission Tariff for short-term open access transactions for FY 2008-09, shall be Rs 1236.00 per MW per day or Rs 51.50 per MW per hour Further, it is clarified that as stipulated under Para 3.2.5.6 of Order on Transmission Pricing Framework, the short-term transmission charges shall be payable for minimum 6 hours duration within a day and shall be accordingly 1/4<sup>th</sup> of short term transmission open access charge per day. The recovery from short term transmission open access charges shall be used to reduce total transmission system charge (TTSC) for the intra-State transmission system and in turn benefit long term transmission system users.”*

12. Counsel submitted that the Petitioner is facing practical day to day problems due to the mis-interpretation of applicable open access charges by MSEDCL. Counsel thereafter submitted that presently open access charges are being levied both at the injection point and the drawal point resulting in duplication of charges. He submitted that charges should be levied either at the injection point or at the consuming end. In this regard, the Counsel referred to the following portion of the Commission’s Order dated November 20, 2007 in Case No. 33 of 2007:

***“B] Self use and third party wheeling under Group-II category***

*26. In this context, the Commission clarifies that it has determined applicability of wheeling charge, wheeling loss, transmission charge and transmission loss for Open Access wheeling transactions, through various MYT Orders for each licensee separately.*

*However, depending on nature of open access wheeling transactions, the injection point(s) and drawal point(s) for the open access wheeling transactions could lead to use of distribution assets of multiple distribution licensees and/or use of intra-State transmission system. Even in case of particular distribution licensee, the wheeling charges applicable for a particular open access transaction shall depend on voltage level at injection point(s) and drawal point(s), as wheeling charges are determined in accordance with voltage level. Accordingly, transmission charges, transmission losses, wheeling charges and wheeling losses applicable for a particular transaction have to be ascertained on the basis of extent of use of assets of the concerned licensee and extent of use at a particular voltage level.”*

13. Counsel submitted that when only one distribution licensee’s assets are being used, then there should be no duplication of charges. He submitted that MSEDCL is mis-interpreting the following portion of the aforesaid order “the wheeling charges applicable for a particular open access transaction shall depend on voltage level at injection point(s) and drawal point(s)...”. According to Counsel, charges cannot be both at injection point(s) and drawal point.



14. Shri. Ravi Prakash, Counsel appearing for MSEDCL along with representative of MSEDCL, submitted that wheeling charges at injection and drawal points depend on voltage level. Shri. Ravi Prakash submitted that on a conjoint reading of the various Orders of the Commission, it would appear that any usage for more than one year would amount to Long-Term Open Access (LTOA) and accordingly such charges are being levied on the Petitioner. However, he said that he would leave it to the Commission to decide this point. If the Consumer is connected at LT side, charges would be applicable but no charges are levied if it is connected to EHV system. It was confirmed by MSEDCL that no charges are levied on the drawal point as the Petitioner is directly metered at 132 kV. MSEDCL also submitted that issues related to banking of energy may be dealt with by the Commission as it deems fit.

15. Having heard the Parties and after considering the material placed on record, the following issues need to be addressed:

- a. Whether the Clarificatory Petition filed by the Petitioner is admissible in accordance with the Regulations?
- b. Differential treatment for applicability of Transmission charges, transmission losses, wheeling charges and wheeling losses for wind energy wheeling transactions.
- c. Multiple application of wheeling charges at injection as well as drawal end even for OA transaction within single distribution licensee area
- d. Applicability of Transmission charges and transmission losses for wind energy wheeling transactions
- e. Clarification regarding banking and energy accounting of wind energy transactions entailing multiple distribution licensees.

16. The Commission observes that the issues referred at (a), (b), (c) and (d) above have already been addressed in other Orders issued by the Commission, and the Commission had passed appropriate ruling under its Order dated March 9, 2009 in Case No. 80 of 2008 on the Petition filed by M/s Bajaj Finserv Ltd seeking clarification of Commission's Order dated November 20, 2007 in Case No. 33 of 2007. The para 14 to para 26 of the said Order (Case No. 80 of 2008) elaborates the Commission's views and ruling in the matter. In view of above, the Commission hereby rules that directions and rulings contained in the said Orders shall apply *mutatis mutandis* in this case as well.



17. As regards the issue of banking, the Commission has already dealt with this issue under its Order dated November 24, 2003 (Case 17(3), 3,4&5 of 2002) under para 1.6.10, para 2.4.3, and para 3.4.9 of said Order.

With the above clarifications and necessary directions, the Commission disposes of the Petition filed by BF Utilities in Case No. 67 of 2008.

Sd/-  
(S. B. Kulkarni)  
Member

Sd/-  
(A. Velayutham)  
Member

Sd/-  
(V.P. Raja)  
Chairman



(P.B. Patil)  
Secretary, MERC