

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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CASE No. 163 of 2017

In the matter of

Petition of Cleanmax Enviro Energy Solutions Pvt. Ltd. seeking clarification regarding the Net Metering arrangements for Open Access consumers under the MERC (Net Metering for Roof-Top Solar Photo Voltaic Systems) Regulations, 2015 and issues pertaining to connection of Roof Top Solar Power Plant.

Coram

Shri Anand B. Kulkarni, Chairperson
Shri Mukesh Khullar, Member

Cleanmax Enviro Energy Solutions Pvt. Ltd. Petitioner

Maharashtra State Electricity Distribution Co. Ltd. Respondent

Appearance

For the Petitioner : Ms. Dipali Sheth (Adv.)

For the Respondent : Shri Ashish Singh (Adv.)

Authorized Consumer Representative : Dr Ashok Pendse (TBIA)

ORDER

Dated: 12 June, 2018

Cleanmax Enviro Energy Solutions Pvt. Ltd. (Cleanmax) 33, Ashoka Apartments, Rungta Lanes, Off Napeansea Road, Mumbai – 400006 has filed a Petition on 15 November, 2017 citing Regulation 94 of the MERC (Conduct Of Business) Regulations, 2004 and MERC (Net Metering for Roof-top Solar Photo Voltaic Systems) Regulations, 2015 (Net Metering Regulations, 2015) read with MERC (Distribution Open Access) Regulations, 2016 (DOA
MERC Order in Case No. 163 of 2017

Regulations, 2016) and Section 42 of the Electricity Act 2003 (EA, 2003) seeking clarification regarding the Net Metering arrangements for Open Access consumers under the MERC (Net Metering for Roof-Top Solar Photo Voltaic Systems) Regulations, 2015 and issues pertaining to connection of Roof Top Solar Power Plant.

2 Cleanmax's prayers are as follows:

- (a) to clarify that a consumer availing open access is not in any manner restricted from availing of net metering arrangements for rooftop solar PV plant and to direct MSEDCL to grant net metering permission to Asahi;*
- (b) issue practice directions or guidelines to MSEDCL for processing of such requests of OA consumers for availing net metering arrangement for roof top solar PV plants in a timely manner;*
- (c) to clarify what permissions will be required if the consumer does not wish to avail net-metering arrangement permissions and a protection system is installed in place which would ensure that there is no reverse flow in the grid in case of non-consumption of solar power.*
- (d) to clarify if a roof top solar PV power plant is above 1 mw and does not wish to avail net metering, then can such roof top solar PV power plant be operated a protection system is installed in place which would ensure that there is no reverse flow in the grid in case of non-consumption of solar power once CEIG permission is sought to ensure grid safety;*
- (e) pass an ad-interim ex-parte order directing Respondent to grant permission to operate the Roof-top Solar PV Plant installed at Asahi's premises till disposal of the Petition;*
- (f) confirm the ex-parte orders after notice to the Respondent;*
- (g) award costs of these proceedings against MSEDCL and in favour of the Petitioner; and*
- (h) to pass any other order as the Hon'ble Commission may deem fit and appropriate under the circumstances of the case and in the interest of justice.*

3 The Petition states as follows:

3.1 Cleanmax is a company incorporated under the Companies Act, 1956 and set up a Roof-top Solar PV Plant with a capacity of 991 kWp for one of its clients Asahi India Glass Limited (Asahi) which is situated at MIDC- Talaja, Dist. – Raigad.

3.2 Asahi has its manufacturing plant at MIDC, Talaja District Raigad and is a consumer of Maharashtra State Electricity Distribution Co. Ltd (MSEDCL) with Contract Demand of 7500 kVA and connected at 100 kV with a connected load of 23006 kVA. Asahi also avails Open Access of 3000 kVA from conventional source under Group captive arrangement since February 2017 from Sai Wardha Power Generation Limited (SWPGL). The issues pertaining to denial of Open Access to Asahi for availing power

from SWPGL are part of separate petition in Case No. 97 of 2017 which is pending before the Commission and such issues are not dealt in herewith.

- 3.3 Net Metering Regulations, 2015 notified by the Commission on 10 September, 2015. The term “Eligible Consumer” as defined in Regulation 2(g) of the Net Metering Regulations, 2015 is any consumer who intends to use the Solar Photo Voltaic generating system having capacity of less than 1 MW. The relevant Regulation 2(g) of the Net Metering Regulations, 2015 is reads as below:

“(g) “Eligible Consumer” means a consumer of electricity in the area of supply of the Distribution Licensee who uses or intends to use a Solar Photo Voltaic (‘PV’) generating System having a capacity less than 1 MW, installed on a rooftop or any other mounting structure in his premises, to meet all or part of his own electricity requirement, and includes a Consumer catering to a common load such as a Housing Society:

Provided that such generating System may be owned and/or operated by such Consumer, or by a third party leasing such System to the Consumer...”

- 3.4 On 9 May, 2017, Asahi made an application for net metering for the Rooftop Solar PV Plant to the office of Superintending Engineer, MSEDCL, Vashi Circle (SE, MSEDCL, Vashi) seeking permission for Net Metering as per the provisions of Net Metering Regulations, 2015.
- 3.5 SE, MSEDCL, Vashi vide internal letter dated 17 May, 2017 forwarded Asahi’s Rooftop Solar Application to the Chief Engineer (Commercial), MSEDCL (CE, MSEDCL) on the basis that Asahi being an Open Access consumer, and requested to approve by CE, MSEDCL.
- 3.6 As no reply was received by Asahi to the aforesaid application, Asahi and the Cleanmax (being lessor of the Rooftop Solar PV Plant) followed up with MSEDCL on the Rooftop Solar Application and letter dated 17 May, 2017. Regulation 8.3 read with provisions of Annexure-1 of the Net Metering Regulations, 2015 lay down timelines wherein the application for Net Metering has to be acknowledged in a fixed period of 3 days or in case of deficiency the same needs to be intimated to applicant thereof 3 days, after which the feasibility study has to be undertaken within 15 days. Further, in case of rejection of the application, the applicant has to be intimated vide a notice and given a period of 15 days to rectify any deficiencies. The same timelines have also been incorporated in MSEDCL’s Commercial Circular No. 258 dated 25 January, 2016.
- 3.7 Despite repeated follow ups, no official communication has been received by Asahi in regards to the Rooftop Solar Application till date. MSEDCL has failed to adhere to the

provisions of the Net Metering Regulations, 2015 and its own circular. Regulation 8.3 of the Net Metering Regulations 2015 is reproduced as below:

“Before rejecting any application for setting up a Roof-top Solar PV System at a particular Distribution Transformer, the Distribution Licensee shall serve the applicant with a notice to rectify, within 15 days or such longer period as may be necessary, the deficiencies. In case approval cannot be granted due to inadequate Distribution Transformer capacity, the application may be considered, in chronological order of seniority and if the consumer so opts, after such capacity becomes available.”

3.8 The relevant extract of Annexure 1 of the Net Metering Regulations, 2015 is reproduced as below:

- “(b) The Distribution Licensee shall register the Application and acknowledge its receipt within three working days; or intimate the Applicant within that period of any deficiency or incompleteness.*
- (c) The Distribution Licensee shall conduct a technical feasibility study within 15 working days from the registration of the Application considering the following aspects :—*
- (i) AC Voltage level at which connectivity is sought;*
 - (ii) Sanctioned Load / Contract Demand of the Applicant;*
 - (iii) Rated Output AC Voltage of the proposed Roof-top Solar PV System;*
 - (iv) Available cumulative capacity of relevant Distribution Transformer;*
- (d) Before rejecting any application for setting up a Roof-top Solar PV System at a particular Distribution Transformer, the Distribution Licensee shall serve the Applicant with a notice to rectify, within 15 days or such longer period as may be necessary, the deficiencies.*
- (e) If found technically feasible, the Distribution Licensee shall, within 7 working days of the completion of the feasibility study, convey its approval for installing the Roof-top Solar PV System. The approval shall indicate the maximum permissible capacity of the System, and shall be valid for a period of 6 months from the date of approval, or such extended period as may be agreed to by the Distribution Licensee.”*

3.9 Cleanmax along with Asahi approached MSEDCL officials for a meeting on 21 June, 2017. During the said meeting, MSEDCL officials orally informed Asahi that there was no clear billing guidelines in the existing Net Metering Regulations, 2015 for Open Access consumers and MSEDCL would face problems in billing as to segregation of units due to mixing of solar energy generated units with the Open Access injected units.

The metering of Asahi's plant is done as per applicable laws which unambiguously show consumption of Asahi. Further, as far as the consumption under captive power arrangement is concerned the same can be monitored from the credit notes issued by MSEDCL. It is therefore submitted that such stance of MSEDCL is absolutely unjustified as electricity is transmitted by displacement; once an electron is injected in the grid the source thereof cannot be identified. Despite MSEDCL having advanced software for billing it cannot bill a consumer availing Open Access as well as Net Metering. Neither the DOA Regulations nor Net Metering Regulations or EA, 2003 restricts availing of Net Metering, if a consumer is availing Open Access. The simple illustration below can establish that such billing can be done:

| | |
|---|--|
| Total consumption of consumer: | X |
| Total supply from CPP: | Y |
| Units received by MSEDCL From Rooftop Solar: | Z |
| If X is greater than Y + Z | MSEDCL has to bill consumer for the difference i.e. $X - (Y + Z) = A \times$ MSEDCL tariff |
| If X is lesser than Y + Z | MSEDCL has to pay the consumer $(Y+Z) - X = B$ units will be credited to consumers account and settled at the end of FY at APPC within first month of following financial year |

3.10 MSEDCL informed the same orally to Asahi and no formal communication has been sent by MSEDCL till date in respect thereof. Asahi vide a letter dated 24 June, 2017 once again requested MSEDCL to approve the application made for the Rooftop Solar PV Plant. In that letter, Asahi also expressed its willingness to surrender the banked energy generated free of cost to MSEDCL till such clarity on billing guidelines is obtained for metering of rooftop solar PV systems for OA consumers, in order to overcome difficulties that were posed by MSEDCL in granting approval for the Rooftop Solar PV Plant.

3.11 Despite such suggestion to surrender the banked units, MSEDCL has till date not granted the Net Metering permission. It is not out of place that though the reason given by MSEDCL is billing issue on account of Asahi availing Open Access, Asahi has not received Open Access permissions under captive arrangement for the months of June to October 2017 which this Commission is apprised in Case No. 97 of 2017.

- 3.12 Asahi despite being an Eligible Consumer as defined in the Net Metering Regulations, 2015 has not been granted the permission for setting up the Rooftop Solar PV Plant. Earlier the installed capacity was 1027 KW which did not fall in eligibility criteria and hence, the Cleanmax reduced the capacity to make Asahi eligible for Net Metering. Despite such efforts of the Cleanmax, MSEDCL is not granting net metering permission to Asahi and similarly placed lessees of the Cleanmax.
- 3.13 Open Access to the Distributions Licensees' network and other networks is an option to or right of the consumer. The Ministry of Law and Justice further opines that entities opting for Open Access have to merely give notice of their intention of use of network and upon such notice the Distribution companies are duty bound to provide non-discriminatory OA to its network. The salient scheme of the EA, 2003 is to liberalize generation, provide OA and captive generation. OA was not allowed under the earlier regime. This position stands completely changed under the current EA, 2003 with provisions of OA and subsequent framing of OA Regulations.
- 3.14 Regulation 3.1 of the Net Metering Regulations, 2015 provides that the Distribution Licensee is mandated to provide the net metering arrangement on a non-discriminatory basis to the 'Eligible Consumers.
- 3.15 Regulation 8.3 of the Net Metering Regulations, 2015, stipulates that in case of rejection of application of any applicant at a particular distribution transformer, it is the Distribution Licensee's obligation to serve a notice to the applicant and grant a period of 15 days to rectify the deficiencies in the application therein. It is further submitted that no opportunity has been granted to Asahi to rectify deficiency if any and therefore it seems that MSEDCL does not have sufficient or justified reason to deny such net metering permission to Asahi. MSEDCL even after a period of approximately 5 months since the Rooftop Solar Application of Asahi has neither replied nor rejected Asahi's Rooftop Solar Application.
- 3.16 Such stand of MSEDCL in non- granting of permissions for net metering of rooftop solar power plants to OA consumers is discriminatory and is also contrary and in gross violation of the provisions of the EA, 2003, Net Metering Regulations, 2015 as well as DOA Regulations, 2016.
- 3.17 Therefore, Cleanmax requested the Commission to provide a clarification that no such limitation is placed on the Distribution Licensee for granting permissions to Open Access consumers for availing net metering arrangements for rooftop solar PV plants.
- 3.18 Through its various schemes and policies, the Commission and MNRE have been promoting increased usage of the widely and cleanly available solar energy which can

be done by using the Photovoltaic (PV) technology. Under the Jawaharlal Nehru National Solar Mission of the Government of India, the Government of India has set a target of installing solar power generation capacity up to 100 GW by the year 2022. However such non-granting of permissions to OA consumers for availing net metering arrangements for rooftop solar PV plants proves to be a serious impediment in installation and usage of solar PV plants which are very cost effective and which promote the use of the clean solar energy, which is in the line with the policies of the Commission and the Government of India.

3.19 Regulation 3.1 of the Distribution Open Access Regulations, 2014 provides that OA consumers could avail OA from multiple sources only to the extent of meeting their Renewable Purchase Obligation (RPO). This provision has now been done away with in the DOA Regulation, 2016 in order to encourage more and more entities from availing OA from various sources and choice to have their sources of power. Thus, such non- granting of net metering permission to the OA consumers is detrimental to the purpose of the DOA Regulations, 2016 framed by the Commission, Policies of the Government as well as applicable laws.

3.20 Once a Roof-top Solar PV power plant is installed which does not supply power to grid and thereby do not avail of net metering, there should not be any indirect restriction placed by requiring any permission from Discom, it being understood that necessary permission from electrical inspector/CEIG is availed to ensure grid stability and grid safety and also installation of necessary protection devices to ensure no power flows from such plant to the grid.

3.21 As Net Metering Regulations permit only roof top solar PV plant below 1MW, the Cleanmax further wishes to seek clarification in the present petition that in case if the Cleanmax installs protection systems in place for the Roof-top Solar PV Plant which may be below or above 1MW wherein it would be ensured that there is no reverse flow in the grid in case of no solar power consumption, would the consumer be allowed to operate the Roof-top Solar PV Plant without seeking net metering permissions from the MSEDCL.

3.22 Cleanmax has complied with the Net Metering Regulations and the Rooftop Solar Application installed now at Asahi's premises is below 1 MW, however MSEDCL has till date not issued the necessary permissions for setting the net metering arrangement of the Rooftop Solar PV Plant which is arbitrary and unjustified and is causing irreparable loss and injury.

4 In its submission dated 8 January, 2018, MSEDCL has stated as below:

- 4.1 Cleanmax has no locus to file the present Petition. The pleadings in the Petition clearly demonstrate that the alleged affected party is not the Cleanmax but Asahi. Moreover, the Cleanmax is also not a consumer. It is an established rule of law, that a person seeking a relief shall first establish as to how he is an affected party. In the present case except for the fact that the Cleanmax is a developer of roof-top solar units, no other facts or allegations are attributable to the Cleanmax.
- 4.2 Cleanmax has pleaded the false case on behalf of Asahi without authority and completely in violation of legal principles. Cleanmax's case is completely baseless and the Cleanmax is actually in contempt by agitating issues and completely raising false claims on behalf of a third party when such issues have been reserved for Orders by the Commission. It is further submitted that:
- a. Asahi case was argued and contested before the Commission in Case No. 97 of 2017 and said case has been reserved for Orders
 - b. Issues of denial of Open Access, reasons for said denial, connecting roof top solar to MSEDCL grid without valid permissions have all been argued with documentary proof.
 - c. Reliance placed on denial of Open Access under the DOA Regulations, 2016 is incorrect more so that Cleanmax is not even a consumer of electricity.
- 4.3 Net Metering Regulations, 2015 defines eligible consumer: Hence, it is only an eligible consumer which can allegedly sue or ask for any reliefs against MSEDCL and not any other entity.
- 4.4 Cleanmax has filed the present Petition under incorrect provisions of law and hence the same is not maintainable. The Cleanmax shall be put to strict proof as to how the Cleanmax is entitled to reliefs under the provisions of law for which the Petition has been filed.
- 4.5 The Cleanmax under the garb of the present Petition is trying to seek review of a Regulation which has been framed by the Commission after public consultation, prior publications and as mandated by law.

5 At the hearing held on 9 January, 2018

- 5.1 Cleanmax reiterated the submissions in its Petition and stated that:
- i. Cleanmax has set up a Roof-Top solar PV Plant with a capacity of 991 kWp for one of its clients Asahi which is situated at Plot No. T-7, MIDC, Taloja, Dist. – Raigad.
 - ii. Asahi is a consumer of MSEDCL with contract demand of 7500 kVA and connected at 100 kV. It also avails partial Open Access from conventional source under Group

Captive arrangement from Sai Wardha Power Generation Limited to the tune of 3000 kVA.

- iii. On 9 May, 2017, Asahi made an application to MSEDCL for Net Metering arrangement for the Rooftop Solar PV Plant under Net Metering Regulations, 2015.
- iv. Despite repeated follow ups, no official communication has been received by Asahi in regards to the Rooftop Solar Application till date.
- v. MSEDCL has failed to adhere to the provisions of the Net Metering Regulations, 2015. Regulation 8.3 read with provisions of Annexure-1 of the Net Metering Regulations, 2015 lay down clear timelines wherein the application for net metering has to be acknowledged in a fixed period of three (3) days or in case of deficiency the same needs to be intimated to applicant thereof three (3) days, after which the feasibility study has to be undertaken within fifteen (15) days. Further, in case of rejection of the application, the applicant has to be intimated vide a notice and given a period of fifteen (15) days to rectify any deficiencies.
- vi. Cleanmax along with Asahi approached MSEDCL officials for a meeting on 21 June, 2017 wherein the officials of Asahi and Chief Engineer (Power Purchase), MSEDCL were present. During the said meeting, MSEDCL officials orally informed Asahi that there was no clear billing guidelines in the existing Net Metering Regulations, 2015 for Open Access consumers and MSEDCL would face problems in billing as to segregation of units due to mixing of solar energy generated units with the Open Access injected units.

5.2 MSEDCL stated that:

- i. Cleanmax has no locus to file the present Petition. It is neither a generator nor a consumer in the matter.
- ii. It is an established rule of law, that a person seeking a relief shall first establish as to how he is an affected party. In the present case except for the fact that the Cleanmax is a developer of roof-top solar units, no other facts or allegations are attributable to Cleanmax.

5.3 The Commission directed MSEDCL to submit its say on the clarification sought in the Petition within a week time. Cleanmax was allowed to submit its Rejoinder within a week, thereafter.

6 In its Rejoinder dated 15 January, 2018, Cleanmax stated that:

- 6.1 Cleanmax is engaged into the business in setting up of rooftop solar photo voltaic plants and also owns, operates, installs, and maintains the rooftop solar photo voltaic plants and Asahi is amongst the many consumers/lessees of the Cleanmax. The

provisions in respect of, Net Metering Regulations, 2015 would have an effect on the Cleanmax's business and the Cleanmax's consumers and it is the Cleanmax's responsibility to safeguard the interests of its consumers/lessees. Further, Regulation 94 of Conduct of Business Regulations, 2004 grants power to the Commission to deal with any matters for which no Regulations have been framed. The relevant Regulation is reproduced as below:

“94. Nothing in these Regulations shall bar the Commission to deal with any matter or exercise any power under the Act for which no regulations have been framed, and the Commission may deal with such matters, powers and functions in a manner it thinks fit.”

6.2 Therefore, the contention of MSEDCL that the case by Cleanmax is being pleaded on behalf of one of the consumers of the Cleanmax is ill-founded and devoid of any merits.

6.3 It is reiterated that Cleanmax in their individual capacities and within their rights as entitled by law, has filed the present clarificatory Petition seeking clarification on the Regulations of metering for Rooftop Solar Photo Voltaic plants. The Regulation 16 of the Net Metering Regulations, 2015 has conferred rights on the Commission to remove difficulties arising in giving effect to the Net Metering Regulations, 2015. The relevant Regulation is reproduced as below:

“16. Power to remove difficulties

If any difficulty arises in giving effect to the provisions of these Regulations, the Commission may, by general or specific Order, make such provisions not inconsistent with the provisions of the Act as may appear to it to be necessary for removing such difficulty.”

6.4 In view of this, the objection of MSEDCL on locus of Cleanmax is without any merit. The present Petition is seeking clarification on the stand taken by MSEDCL's officials that if the consumer is availing Open Access, then Net Metering facility cannot be allowed. The Solar Roof top installed at the premises is lying idle due to lack of understanding on the part of MSEDCL on the current regime which has compelled the Cleanmax to file the present Petition and seek clarification. It is not out of place to state that if MSEDCL had some difficulty, it is MSEDCL being the Licensee, who should have approached the Commission rather than forcing the Cleanmax to seek clarification by wrongfully withholding permission for Net Metering.

6.5 Under the Net Metering Regulations, 2015 there are set timelines in which MSEDCL is required to operate while dealing with permissions relating to granting of permissions by MSEDCL. However, it is clear from many instances that MSEDCL has miserably failed to comply with such provisions as mandated by the Regulations of the

Commission and hence MSEDCL instead of clarifying its stand and following the processes, is merely trying to make irrelevant arguments.

6.6 The Notice was issued by the Commission on 7 December, 2017 and a copy of the Petition was also served upon MSEDCL 23 November, 2017. The Notice unambiguously provided time to file reply which MSEDCL chose to file just a day before hearing and on limited ground of locus. MSEDCL has failed to file the reply and no further time be given to MSEDCL as it will lead to delay in deciding the matter.

7 In its additional submission dated 23 January, 2018 , MSEDCL stated that:

7.1 MSEDCL has raised the following issues :

- (a) Can Open Access and Net Metering be availed simultaneously?
- (b) Can a Protection system safeguard intermingling of Open Access and Net Metering availed together by one consumer?

(a) Can Open Access and Net Metering be availed simultaneously?

7.2 The provision of the DOA Regulations, 2016 and Net Metering Regulations, 2015 reflects the intention of the Commission behind framing of the two Regulations.

Net Metering Regulations, 2015

2.1 (g) “Eligible Consumer”

means a consumer of electricity in the area of supply of the Distribution Licensee who uses or intends to use a Solar Photo Voltaic (‘PV’) generating System having a capacity less than 1 MW, installed on a roof-top or any other mounting structure in his premises, to meet all or part of his own electricity requirement, and includes a Consumer catering to a common load such as a Housing Society:

Distribution Open Access, Regulations, 2016

3.2. Subject to the provisions of these Regulations, a Consumer having Contract Demand of 1 MW and above with a Distribution Licensee shall be eligible for Open Access for obtaining supply of electricity from one or more

7.3 The above provisions reflects the intent behind the above two Regulations was that both the Regulations would operate on two different platforms and cannot be intermingled.

7.4 While on one hand the Net Metering Regulations, 2015 restricts an “eligible consumer” upto 1 MW, on the other hand the DOA Regulations, 2016 allows Open Access to a

consumer above 1 MW meaning thereby that the intent behind such legislation was to keep the Open Access consumer and a Net Metering consumer distinct and separate.

7.5 Moreover, the words used “*less than 1 MW*” in Net Metering Regulations, 2015 and *1 MW and above in DOA Regulations, 2016* also clarify the intent of the Commission.

7.6 The billing mechanism for Open Access and Net Metering is completely different and the accounting principles are also different.

(b) Can a Protection system safeguard intermingling of Open Access and Net Metering availed together by one consumer?

7.7 A protection system cannot safeguard in any manner the intermingling of energy consumed under net metering and Open Access.

7.8 Import and Export of energy happens in real time and any intermingling of energy consumed under Net Metering and Open Access would cause irreparable and irretrievable losses to MSEDCL.

7.9 This intermingling would also be hard to be compensated on a later date as the data for such intermingling would never be available for segregation by MSEDCL.

7.10 Connection of single premises connected to the grid of MSEDCL availing both Net metering and Open Access simultaneously would lead to a catastrophic situation.

7.11 MSEDCL suggested that an Open Access consumer who wishes to avail Open Access and Net Metering together has to isolate his premises completely for both the use meaning thereby that both premises cannot in any manner be intermingled by means of a common connection. The two separate premises have to be separately connected to the grid and not by a joint means.

7.12 The electricity is an evolving and a dynamic subject. Big consumers are finding out new measures to save cost, be it legally or at times through illegal means as well. An attempt to intermingle two distinct issues is nothing but to further the cost saving by first saving on Open Access, then by Net Metering and then probably be causing unavoidable losses on account of intermingling of the two energy which might go under accounted causing losses to MSEDCL and unjust enrichment of consumer.

7.13 The Case No. 133 of 2016 and the daily Orders passed therein, which has been reserved by the Commission also sheds some light on these issues more particularly the commercial benefits which people wish to avail under the Net Metering Regulations, 2015.

8 In its submission dated 10 June, 2018, Prayas (Energy Group) Stated that:

- 8.1 Prayas Energy Group does not see any in- principle contention in Open Access consumers simultaneously availing services or installing their own solar projects under the Net Metering Regulations.
 - 8.2 However, the issues raised by MSEDCL related to metering, energy accounting, and billing are appreciable as there is no clarity on many issues.
 - 8.3 The energy accounting for Open Access and net metering should be done separately or should be combined is not clear.
 - 8.4 This would even get complicated if the Open Access is from some renewable energy source as the issue of banking comes into picture which has different treatments under Open Access and the Net Metering.
 - 8.5 The prices of electric battery storage are sharply dropping, Prayas energy group envisage that consumers with rooftop solar (with or without Net Metering) would soon likely adopt use of battery storage to optimize energy usage and costs. This would further complicate energy accounting.
 - 8.6 There could also be the possibility of partial Open Access or captive off-set projects in combination with on-site rooftop solar (in Net Metering or captive mode).
 - 8.7 Considering all these aspects, Prayas (Energy Group) suggest the Commission to come out with white paper on these issues.
- 9 The Case was heard by Single Member Bench i.e. by Chairperson Shri. Anand B. Kulkarni. However final Order could not be passed in this Case. In view of the High Court (Nagpur Bench) Order regarding constitution of the Bench, this Case was reheard De novo on 11 June, 2018.
- 10 At the hearing held on 11 June, 2018, Cleanmax and MSEDCL reiterated their submissions from the Petition.

Commission's Analysis and Ruling:

- 11 **Cleanmax through this Petition prayed for clarification that a consumer availing Open Access is not restricted from availing of Net Metering arrangements for rooftop solar PV plant. The facts stated by Cleanmax are as follows :**
- (a) Cleanmax has set up a Roof-top Solar PV Plant with a capacity of 991 KWp for one of its clients Asahi which is situated at MIDC- Taloja, Dist. – Raigad.**
 - (b) Asahi is a consumer of MSEDCL with Contract Demand of 7500 kVA and connected at 100 kV. It also avails partial Open Access of 3000 kVA from conventional source under Group Captive arrangement from SWPG.**
 - (c) On 9 May, 2017, Asahi made an application to MSEDCL for Net Metering arrangement for the Rooftop Solar PV Plant under Net Metering Regulations,**

2015. Despite repeated follow ups, no official communication has been received in regards to the Rooftop Solar Application.

- 12 The Commission in its Order dated 16 January, 2018 in Case No.133 of 2016 elaborately explained the historical background about the Solar Rooftop Net Metering Regulations in Maharashtra and consideration of solar Rooftop Net metering below 1 MW and held that :

“16. In this context, the Commission notes that the gross metering dispensation is available for Solar PV and other RE Projects with capacity of 1 MW and above. In fact, the earlier RE Tariff Regulations, 2010 had provided for sale of energy at the preferential rate to Distribution Licensees through gross metering only for RE Generators with a capacity of 3 MW and above. This limit was reduced by the Commission to 1 MW in its subsequent RE Tariff Regulations, 2015, which were notified shortly after the Net Metering Regulations. Moreover, RE Generators with a capacity of 1 MW and above to whom the Net Metering dispensation is not available can also obtain Open Access for third-party sales.”

17. As far as relaxation of the provisions of Regulations for MMRCL is concerned, the Commission notes that MMRCL is not unique in providing public services or performing public functions: there are many others, and discrimination between them cannot be justified. The question of the Commission invoking its power to remove difficulties also does not arise: that is a limited power which is intended to address problems that arise in the implementation of the Regulations as they stand. In any case, considering the earlier discussion, the Commission is of the view that no modification or relaxation of the capacity limit in the Net Metering Regulations, 2015 is called for at the present time.

- 13 The Net Metering Regulations, 2015 (as amended in 2017 to cover both Solar and other RE) are applicable to an Eligible Consumer who uses a RE Generating System with capacity below 1 MW in his premises to meet all or part of his own electricity requirement through a Net Metering Arrangement. In such an Arrangement, a RE Generating System with a Net Meter at a consumer’s premises delivers surplus electricity to the Distribution Licensee after setting off the electricity supplied to the consumer by the Licensee. The Regulations define ‘Eligible Consumer’ as follows:

“2.....

(g) Eligible Consumer” means a consumer of electricity in the area of supply of the Distribution Licensee who uses or intends to use a Solar Photo Voltaic (‘PV’) generating System having a capacity less than 1 MW, installed on a roof-top or any other mounting structure in his premises, to meet all or part of his own

electricity requirement, and includes a Consumer catering to a common load such as a Housing Society:

Provided that such generating System may be owned and/or operated by such Consumer, or by a third party leasing such System to the Consumer...”

14 Regulation 5 specifies the eligibility criteria for a Net Metering Arrangement:

“Eligible Consumer and individual Project capacity

5.1. *The capacity of the Roof-top Solar PV System to be connected at the Eligible Consumer’s premises shall not exceed his Contract Demand (in kVA) or Sanctioned load (in kW):*

5.2. *The capacity limits for the connectivity of a Roof-top Solar PV System to the Network of the Distribution Licensee shall be as specified in Regulation 5.3 of the MERC (Standards of Performance of Distribution Licensee, Period of giving Supply and Determination of Compensation) Regulations, 2014, which are presently as follows, or as may be specified in future:*

| <i>Sr. No.</i> | <i>AC Voltage level at which Roof-top Solar PV System is to be connected to the Distribution Network</i> | <i>Maximum limit for Roof-top Solar PV System</i> |
|----------------|--|--|
| <i>1</i> | <i>230/240 V (Single Phase)</i> | <i>Less than 8 kW/40 A</i> |
| <i>2</i> | <i>400/415 V (Three Phase)</i> | <i>Less than 150kW/187 kVA (in Municipal Corporation areas) Less than 80kW/100 kVA (in other areas)</i> |
| <i>3</i> | <i>11kV and above</i> | <i>Above 150kW/187 kVA and less than 1000 kVA (in Mumbai Metropolitan Region) Above 80kW/100 kVA and less than 1000 kVA (in other areas)</i> |

15 The DOA Regulations, 2016 provides the eligibility criteria for Open Access as below:

“

3. *Subject to the provisions of these Regulations, a Consumer having Contract Demand of 1 MW and above with a Distribution Licensee shall be eligible for Open Access for obtaining supply of electricity from one or more*
- a) *Generating Plants or Stations, including Captive Generating Plants;*

- b) *Trading Licensees*
- c) *Power Exchanges*
- d) *Other Distribution Licensees*
- e) *any other sources,*
or a combination thereof, and all collectively called ‘Sources’:”

16 The Commission notes that there is different arrangements for different set of consumers and provisions under Net Metering Regulations, 2015 and Open Access Regulations , 2016 for sourcing power and analyzed as under :

| Sr.No. | Particulars | Net Metering Regulations, 2015 | DOA Regulations, 2016 |
|--------|------------------------|--|---|
| 1 | Eligible consumer | For Net Metering the eligibility is that the capacity of solar roof top should be below 1MW. | The contract Demand of consumer should be above 1MW. |
| 2 | Billing | The billing is not on 15 minutes time block. | The billing is on 15 minutes time block. |
| 3 | Surplus Power purchase | For Net Metering the surplus injection is purchased at Average power purchase Cost (APPC) rate at the end of year. | For Open Access consumers, conventional surplus power is not purchased by the Distribution Licensee. However, surplus injection of RE sources is being purchased at APPC at the end of year limited to 10%. |
| 4 | Banking of RE power | Netting up of the energy. No banking of energy | There is banking facility available to RE sources in TOD slots. |

17 The Commission also notes the submission of MSEDCL and Prayas regarding issues related to metering, energy accounting, and billing. Definitely, the billing methodology and settlement principles are different for the net metering and Open Access consumers. As rightly pointed out by Prayas (Energy Group), that if the Open Access is taken for the RE sources in addition to net metering arrangement, the billing and settlement will be further more complex.

18 The Commission observed that the issues raised by the MSEDCL regarding their utmost concern for the Grid security which just cannot be overlooked and for this reason, Distribution Licensees have to go into the Distribution network contingencies and other related aspects while granting Open Access and Net Metering simultaneously.

19 In fact, during the public consultation process of the Net Metering Regulations, 2015, the issue that Open Access and Net Metering should not be allowed simultaneously, was raised by one of the Distribution Licensee (Reliance Infrastructure Ltd). R Infra-D 's Comments were as below:

“1.12the Hon’ble Commission may consider adding a proviso to the above definition and allow consumer eligible for Open Access (consumer with CD of 1 MVA and above) to opt either net metering as per present Regulations or avail open access i.e. consumer may avail only one facility at a time.....”

20 While finalising the Net Metering Regulations, the Commission has consciously taken the decision not to add the proviso to the definition as suggested by R Infra –D in the notion that Open Access is not allowed in the Net Metering arrangement.

21 The Commission further notes that Net metering and Open Access are two different sets of arrangements for different eligible consumers and its Regulatory framework also has been provided by the two different Regulations. If these two arrangements are mixed up then there are various issues related to Grid security, accounting, billing, settlement etc. Hence, the Commission has made Net Metering Regulations for “below 1 MW” and Open Access for “1 MW and above” and cannot avail simultaneously by same consumer.

22 In view of above, the Commission is not inclined to accept the prayers of Cleanmax.

The Petition of Cleanmax Enviro Energy Solutions Pvt. Ltd. in Case No. 163 of 2017 stands disposed of accordingly.

Sd/-
(Mukesh Khullar)
Member

Sd/-
(Anand B. Kulkarni)
Chairperson


(Dr. Rajendra Ambekar)
I/c Secretary

