

**Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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Case No. 06 of 2010

**In the matter of
Petition filed by M/s. Sunfresh Agro Industries Pvt. Ltd. under Sections 42(3) and 43
of the Electricity Act, 2003 and Regulations 3 and 18(2) of the MERC (Distribution
Open Access) Regulations, 2005 and Regulations 92-94 of the MERC (Conduct of
Business) Regulations, 2004**

**Shri V. P. Raja, Chairman
Shri S. B. Kulkarni, Member
Shri V. L. Sonavane, Member**

M/s. Sunfresh Agro Industries Private LimitedPetitioner

V/s

1. Mula Pravara Electric Co-operative Society Ltd.Respondent No. 1

2. Maharashtra State Electricity Distribution Co. Ltd.Respondent No. 2

ORDER

Date: 21st July, 2010

M/s. Sunfresh Agro Pvt. Ltd., the Petitioner herein filed a Petition on affidavit under Sections 42(3) and 43 of the Electricity Act, 2003 (“EA 2003”) and Regulations 3 and 18(2) of MERC (Distribution Open Access) Regulations, 2005, Regulations 92-94 of the MERC (Conduct of Business) Regulations, 2004 seeking direction for electric supply either from Mula – Prawara Electric Co-Op. Society Ltd. (hereinafter referred to as “MPECS”) or Maharashtra State Electricity Distribution Company Ltd. (hereinafter referred to as “MSEDCL”).



2. The Petitioner in the Petition has prayed as under:

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- a) *Maharashtra Electricity Regulatory Commission may pass the order that the bill of the additional consumption consumed by Mula – Prawara Electric Co-Op. Society Ltd. in Mamdapur substation should be paid to Maharashtra State Electricity Distribution Company Ltd. by Mula – Prawara Electric Co-Op. Society Ltd. at the rate ordered by Hon’ble Maharashtra Electricity Regulatory Commission; for which Mula – Prawara Electric Co-Op. Society Ltd. & Maharashtra State Electricity Distribution Company Ltd. should enter in to an special agreement for above and Mula – Prawara Electric Co-Op. Society Ltd. should give an undertaking that it will pay the amount to Maharashtra State Electricity Distribution Company Ltd. at the rate ordered by Hon’ble Maharashtra Electricity Regulatory Commission.*

OR

If Mula – Prawara Electric Co-Op. Society Ltd. will not solve the problem then Maharashtra Electricity Regulatory Commission may issue the order to release electric supply to the applicant under “OPEN ACCESS MODE” from nearest sub – station by Maharashtra State Electricity Distribution Company Ltd. with existing rates. Sunfresh Agro Industries may be permitted for Additional Submissions, if any.”

The Petitioner has made some additional prayers in its amended Petition dated 19.03.2010, which are as follows:

- “ a) *The Petitioner humbly prays that, in view of the instant reply to the Hon’ble Commission’s letter dated 3rd December 2009 and rectifications made hereby to remove the deficiencies in the said Petition; the Petition may be allowed for the ends of justice.*
- b) *And the additional submissions made by the petitioner in the instant reply including prayers, be allowed and treated as the part of the original petition.*
- c) *The Respondent No.1 may be directed to provide an additional electric supply of 1000 KVA to the Petitioner at the tariff decided by the Commission in this regard, or*



- b) *In the event, if Respondent No.1 is unable to supply the said additional load of 1000 KVA to the petitioner; Respondent No.2 may be directed to supply the said additional load of 1000 KVA to the Petitioner under Open Access mode and Respondent No. 1 may be directed to give an Open Access to its distribution system and/or transmission lines and/or associated facilities to the Respondent No. 2 for supply of the said additional load of 1000 KVA through it to the petitioner, and*
- e) *Respondent No.1 and/or Respondent No. 2 may be directed to do all those needful things including provision of NOC, necessary documentation, execution of agreements, provisions of suitable facilities etc, in order to provide the said additional load to the Consumer petitioner expeditiously and in a time bound period.*
- f) *Any other relief(s), this Hon'ble Commission deems fit, in order to do the justice to the petitioner."*

3. The Petitioner in its Petition has submitted that they are availing electric supply contract demand/load of 300KVA for their industry from MPECS Shrirampur, as the Petitioner comes under the area of operations of MPECS. The Petitioner has requested MPECS to release an additional load of 1000KVA vide their letter dated 25.05.2009.
4. It has been further submitted that MPECS vide letter dated 28.05.2009 have informed the Petitioner that there is no spare capacity available at existing substation and as such the additional load requirement cannot be sanctioned. However, the additional load can be released only after approval from MSEDCL for Commissioning of 3.15 MVA Power Transformer at 33/11kV Mamdapur substation. Accordingly, Petitioner on 9th June 2009 vide its letter to MD, MSEDCL and Chief Engineer (Commercial), MSEDCL on 11th June 2009 requested grant of Open Access. The Chief Engineer (Commercial), MSEDCL had replied vide its letter dated 15.07.2009 requesting the Petitioner to submit a NOC from MPECS, the latest energy bill, and consent for bearing the infrastructure cost against the arrangement if any, involved in release of 1 MW Power under Open Access.



5. The Petitioner has further averred that they have further approached MPECS on 26.07.2009 for issuance of NOC for availing the additional load from MSEDCL under Open Access. But MPECS has not issued any NOC. Thereafter, vide letter dated 31.08.2009, the Petitioner again had requested both MSEDCL and MPECS to resolve the issue of supply of additional load with a specific mention that in the alternative, the Petitioner will approach the Commission. It has been further submitted that the Petitioner has completed the expansion project for which additional electric supply is a necessity, and that if the electric supply is not given by MSEDCL the Petitioner will not be able to meet the commitments of supply of its products to the parties, which would put the Petitioner in financial losses amounting to crores of rupees. The Petitioner has also submitted copies of the Detailed Project Report for reference. As the Petitioner did not receive any response from the respondents, and being so aggrieved, the Petitioner has filed the present Petition seeking the aforesaid reliefs.
6. The Commission vide its notice dated 11th May 2010, scheduled an admissibility hearing in the matter, on 22nd June, 2010. The Commission also directed the Respondents to file their replies, if any, to the Petition with a copy served to the Petitioner and consumer representatives. The respondent No.2 filed a reply on the date of hearing. No reply has been filed by Respondent No.1.
7. In the admissibility hearing held on 22nd June 2010, Shri Amit Jajoo Advocate represented the Petitioner and Shri Mridul Chakravarty Advocate, with Shri Sunil Galande, Shri V.K. Pandit, and Shri R.V. Dandapur represented the respondent No.1 and Shri R.G. Sonwane, SE (Commercial) was present on behalf of Respondent no.2. During the hearing the Petitioner's advocate reiterated the facts and submissions made in the petition. The Petitioner submitted that they are expanding the project and to start the operations of the said expansion of the plant, they are in urgent need of additional supply of electricity.
8. The Respondent No.2 , MSEDCL, in its reply dated 21.06.2010 admitted that, they are ready to supply power through Open Access as desired by the Petitioner in accordance



with MERC (Distribution Open Access) Regulations, 2005 and the directives of the Commission in this behalf.

9. Having heard the Parties and after considering the materials placed on record, the Commission's decision and findings are as follows:

1) The present petition has been filed by a consumer of MPECS i.e M/s Sunfresh Agro Industries Pvt. Ltd, the Petitioner herein, raising a grievance for supply of electricity either by the existing Distribution Licensee i.e. MPECS or through Open Access from the another Distribution Licensee i.e MSEDCL. The Commission is of the view that the Commission requires to go into these issues where Section 42 (3) and 43 of the EA2003, laying down the duty of distribution licensees with respect to supply to be of a common carrier providing non-discriminatory open access, and duty to supply on request, respectively, has been invoked and the Commission has been called upon to enforce the provisions thereof. It is obligatory for MPECS, being a Distribution Licensee, to give additional supply of electricity on application to such premises within the timeframe stipulated in Section 43 of the Electricity Act, 2003.

2) In accordance with the Regulation 3 of the MERC (Distribution Open Access) Regulations, 2005, notified on 21st June 2005, a consumer of a Distribution Licensee shall be eligible for Open Access to the distribution system of such Distribution Licensee for obtaining supply of electricity from a Licensee other than such Distribution Licensee if the Contract Demand of that consumer is more than 1 MVA effective from 1st April 2007. It is also clear from the Regulation 2.1 (b) of MERC (Electricity Supply Code and Other Conditions of Supply) Regulations, 2005 that Applicant means a person who makes an application, including for increase or reduction in contract demand / sanctioned load. The Applicant herein, M/s Sunfresh Agro Industries Pvt. Ltd. has applied for increase of additional 1000 kVA contract demand in addition to the existing 300 kVA. Therefore, the applicant is eligible to seek open access in terms of MERC (Distribution Open Access) Regulations, 2005.

3) In accordance with Regulation 4 of MERC (Distribution Open Access) Regulations, 2005, an application for Open Access to the distribution system of a distribution licensee shall be made in the manner provided in the said Regulations. Therefore, it



is clear that the applicant was required to approach MPECS, that is the concerned Distribution Licensee, for seeking open access to its distribution system in the manner specified under the Regulations.

- 4) The relevant Regulation 4.2.4 of MERC (Distribution Open Access) Regulations, 2005 stipulates as under;

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4.2.4 Where the consumer has made, at any time prior to his application under Regulation 4.2.1 or Regulation 4.2.2 above, an application for increase in contract demand/ sanctioned load and such application is pending the completion of works relating to extension of distributing mains or commissioning of new sub-stations, the Distribution Licensee shall complete such works within the time limits contained in the Standards of Performance Regulations:

Provided that the Distribution Licensee shall continue to give supply of electricity at the existing level to the applicant until such time as the works are completed and thereafter open access shall be provided to the applicant:

Provided further that the Distribution Licensee shall be entitled to recover from the applicant such charges for the works carried out under this Regulation 4.2.4 in accordance with the principles specified by the Commission for recovery of charges in the Electricity Supply Code.

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If as per MPECS there is no spare capacity available at existing substation and as such the additional load requirement cannot be sanctioned, then, in terms of the above provisions of the regulations, it is clear that it is the duty of MPECS to complete the works related to extension of distributing mains or commissioning of new substations and provide the required Open Access to its distribution system within the time frame contained in the MERC (Standards of Performance of Distribution Licensees, Period for Giving Supply and Determination of Compensation) Regulations, 2005 (“Standard of Performance Regulations”). The Commission directs MPECS to facilitate Open Access arrangements to the Petitioner immediately and within the time frame specified in the Standard of Performance Regulations, failing which the provisions of compensation provided in Standard of Performance Regulations will be attracted. As regards the wheeling



charges for Open Access, MPECS may file a Petition before the Commission for determination of wheeling charges. Non finalisation of wheeling- charges cannot be the reason or excuse for not providing Open Access to the Consumers/Applicant. However, MPECS is bound by Regulation 4.7 of MERC (Standards of Performance of Distribution Licensees, Period for Giving Supply and Determination of Compensation) Regulations, 2005 in terms of the timelines as mentioned in the said Regulations. Also MSEDCL, being a power supplier through Open Access and also an embedded licensee, should provide all help and assistance to the Petitioner and must ensure that the relevant substation/infrastructure are connected electrically to the concerned Distribution licensee i.e. MPECS through which power supply to the Petitioner can be wheeled.

There are directions to both the Respondents, compliance of which shall be reported to the Commission within thirty days from the date of this Order.

With the above, the present petition stands disposed of.

Sd/-
(V. L. Sonavane)
Member

Sd/-
(S.B. Kulkarni)
Member

Sd/-
(V.P. Raja)
Chairman



(K. N. Khawarey)
Secretary, MERC