

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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CASE No. 100 of 2020 and MA No 42 of 2020

Case of Orange Maha Wind Energy Pvt. Ltd. seeking quashing of the communication / e-mail dated 5 June 2020 issued by Maharashtra State Electricity Distribution Co. Ltd. and stay on disconnection of its 2 MW Wind Turbine Generator

Orange Maha Wind Energy Pvt. LtdPetitioner

V/s

Maharashtra State Electricity Distribution Co. Ltd..
Maharashtra State Load Despatch Centre
Maharashtra Energy Development AgencyRespondents

Appearance

For the Petitioner	:Shri M.G.Ramchandran (Adv.)
For the Respondent No-1	:Shri Harinder Toor (Adv.)
For the Respondent No-2	:Shri Eknath Dengale (Rep.)
For the Respondent No-3	:Shri Manoj Pise (Rep.)

Coram

I.M. Bohari, Member
Mukesh Khullar, Member

ORDER

Date: 11 July 2020

1. M/s Orange Maha Wind Energy Pvt. Ltd. (OMWEPL) has filed this Case dated 9 June 2020 seeking directions against Maharashtra State Electricity Distribution Co. Ltd (MSEDCL) quashing of the communication / e-mail dated 5 June 2020 issued by MSEDCL and stay on disconnection of its 2 MW Wind Turbine Generator (WTG).

2. Main Prayers of OMWEPL are as follows:

- a) *Declare that the Impugned Communication dated 05.06.2020 issued by the Respondent No. 1 is arbitrary, illegal and without any authority of law and consequently be pleased to quash and set aside the same;*
- b) *Direct the MSEDCL to issue Credit Notes to the Petitioner for the energy supplied from the subject WTG till date and for the future period as well towards supply of wind energy by the Petitioners;*
- c) *Grant ex-parte ad-interim relief against the Respondents by staying the operation of the Impugned Communication dated 05.06.2020 and restraining the Respondents, their servant or agents from taking any coercive steps against the Petitioner, including disconnecting the subject WTG, during the pendency of the present proceedings;*

3. OMWEPL in its Petition has stated as under:

- 3.1 The instant Case is filed for quashing the communication dated 5 June 2020 from MSEDCL for disconnecting OMWEPL's 2 MW WTG in Tasgaon Taluka of Sangli District. OMWEPL owns and operates 34 MW at different locations in Sangli district.
- 3.2 Pursuant to the Government of Maharashtra (**GoM**) RE Policy 2015, and its Methodology for the installation of projects, dated 9 September 2015, wind projects were required to be registered with Maharashtra Energy Development Agency (**MEDA**) and then execute Energy Purchase Agreement (**EPA**) with MSEDCL or seek open access approval for sale of power to others including getting benefits of Renewable Energy Certificates (**RECs**).
- 3.3 OMWEPL applied to MEDA for registration for its WTG on 23 September 2015. Joint inspection was undertaken on 15 October 2015 in the presence of Representatives of OMWEPL, MEDA, MSEDCL and Maharashtra State Electricity Transmission Company Limited (**MSETCL**). MEDA on 29 October 2015 informed about successful installation of WTG; MSEDCL issued PTC on 30 October 2015 subject to submission of MEDA's clearance certificate. After submitting MEDA's clearance certificate dated 31 October 2015 the WTG was commissioned on 31 October 2015.
- 3.4 Out of 34 MW, EPAs for 32 MW were signed in 2017 (EPAs for 22 MW on 22 March 2017, for 8 MW on 4 August 2017 and for 2 MW on 4 August 2017). The EPA for disputed 2 MW was not executed because registration was pending with MEDA. However, total power generated from the entire project of 34 MW is being scheduled and supplied to MSEDCL for the last several years. MSEDCL is not issuing credit notes for the energy supplied from 2 MW WTG from the date of its commissioning.
- 3.5 Despite compliance of all these permissions, MEDA is yet to register the subject WTG. In 2016 MEDA communicated regarding proceedings pending in PIL 129 of 2013 and the

Order dated 9 July 2014 passed by the Hon'ble Bombay High Court restraining MEDA from implementing the amended Micro-siting Guidelines. OMWEPL replied to MEDA stating that the Project of OMWEPL was developed in accordance with law including in accordance with the existing Micro-siting Guidelines. OMWEPL filed an application for impleading itself in the said PIL proceedings and the matter is sub-judice before the Hon'ble Bombay High Court. Further there has been no Order passed by the Hon'ble High Court which directs MSEDCL to cancel the arrangement for procurement of power from the WTG, withhold the issuance of credit notes or resorting to arbitrary action of disconnection of WTG.

- 3.6 Credit notes are issued for 32 MW only and payment has been made accordingly till December 2019. However, MSEDCL has not made any payment for 20.17 MUs supplied from disputed 2 MW WTG. The power supplied from that WTG is also in compliance with the scheduling process prescribed under the F&S Regulations and that it abides by the grid discipline in the interest of grid safety and stability. OMWEPL not only submitted Qualified Coordinating Agencies (QCA) for 34 MW but regularly submit forecast and generation schedule for the entire project to their QCA, including for the disputed WTG, which in turn submits to MSEDCL.
- 3.7 MSEDCL without any reasoning and/or justification issued notice for disconnection. It appears that MSEDCL disconnected the WTG on the intimation from MSLDC. Non-signing of the power purchase agreement has no relation whatsoever with the grid stability and therefore the action taken by MSEDCL is arbitrary and illegal. MSEDCL failed to take any action for disconnecting generators who do not have EPA since 1 January 2020 i.e. when the F&S Regulations was put into operation or at least immediately after 2 May 2020 i.e. when it received instruction from MSLDC to disconnect wind generators without valid EPA. There is no co-relation between the execution of EPA and safety of the grid as long as power is supplied following the due process of forecasting and scheduling. At no point in time MSLDC or MSEDCL, raised any grievance in relation to non-adherence to F&S Regulations by OMWEPL for supply of power from the subject WTG.
- 3.8 The Hon'ble APTEL in Appeal no. 279 of 2013 has construed application of Promissory Estoppel along with Legitimate Expectation. OMWEPL has been supplying power following all the applicable Regulations relating to grid safety to MSEDCL and MSEDCL has been receiving such power on the mutual understanding of parties that there exists a power procurement arrangement between them.
- 3.9 In view of the recent COVID-19 pandemic situation in the country, Ministry of New and Renewable Energy (MNRE) vide its Office Memorandum dated 1 April 2020 while noting the issue regarding curtailing of RE power by certain States, clarified that RE generating station have been granted 'must-run' status and this status of 'must run' remains unchanged during the period of lockdown.

4. OMWEPL filed an application 9 June 2020 for urgent listing and Miscellaneous Application (MA) No 42 of 2020 filed on 12 June 2020 and made following submission:

4.1 MSEDCL orally communicated to OMWEPL's representatives that they would be coming to visit the site for disconnection. OMWEPL brought to MSEDCL's notice the fact that it had already filed the Petition and in light of the same no coercive steps should be taken pending hearing of the said Petition.

4.2 Despite the above request and pending proceedings, on 11 June 2020 at 1:30 PM MSEDCL forcibly entered the site premises of OMWEPL and disconnected the subject WTG. MSEDCL has willfully and with the intention to circumvent the jurisdiction of the Commission, gone ahead and disconnected the Project. OMWEPL is regularly scheduling power availability in terms of the F&S Regulations with the grid. Such sudden and illegal disconnection by MSEDCL is arbitrary and for grid security it is imperative that the OMWEPL's subject WTG be reinstated/re-connected back to the grid. However, unless interim reliefs as prayed for are not granted by the Commission, the Project of OMWEPL will suffer irreparable loss.

4.3 OMWEPL is seeking following relief in its MA dated 12 June, 2020:

(a) Pending the hearing and final disposal of the Petition, direct MSEDCL to reconnect the 2MW subject WTG of the Petitioner and allow for power to be supplied from the Project;

(b) Pending the hearing and final disposal of the Petition declare that the action and operation by the Respondents in terms of Impugned Communication dated 05.06.2020, is illegal and arbitrary;

5. MSEDCL in its reply dated 24 June 2020 has stated as under:

5.1 There is no valid agreement concluded between OMWEPL and MSEDCL for the purchase of power. OMWEPL has failed to comply with GoM RE Policy, 2015 and its Methodology and till date OMWEPL has not received registration from MEDA.

5.2 The PTC issued to OMWEPL's projects was with a caveat that MSEDCL does not guarantee purchase of power. Further MSEDCL had clarified that PTC is subject to submission of MEDA clearance for commissioning within 15 days. The relevant portion of the said letter is reproduced as under:

"In view of the above, the permission for commissioning of New WTGs is being issued herewith and the same will be valid for 15 days from the date of issue of this letter. This permission for commissioning of New WTGs will be subject to MEDA clearance for commissioning..... MSEDCL does not guarantee purchase of this power."

OMWEPL has itself stated that as 2 MW WTG is not registered till date and thus, a EPA

with MSEDCL could not be effected, which means that OMWEPL was aware that MSEDCL will not be accepting any agreement or power therein from any RE generator in absence of a valid EPA. After December 2017, MSEDCL in compliance with GoM directives is entering into EPA only through a competitive bidding process.

5.3 MSEDCL has never been using any power other than that of contracted power from RE generators through EPA. As far as joint meter reading (**JMR**) is concerned, being a common evacuation meter for energy accounting purpose meter reading is being carried out. Further, it is a settled position of law that generators do not have any right to pump the power into the grid without any valid EPA or Open Access Permission. The Commission has upheld in its Order dated 11 April 2018 in Case No. 86 of 2016 and has categorically held that:

3) *In pursuance of this notice, Gopani should have stopped injecting power from its CPP into the grid of MSEDCL after 4 March, 2016, but did not. Hence, Gopani is not entitled to any payment for the power injected thereafter, when the EPA no longer subsisted. This principle has been recently reiterated by the APTEL in its Judgment dated 8 May, 2017 in Appeal No. 120 of 2016 as follows:*

“10. I (iv) ...The crux of these two judgments is also that a generator cannot inject electricity into the grid without having consent/ contractual agreement with the distribution licensee and without the approval/scheduling of the power by the SLDC. Injection of such energy by a generator is not entitled for any payments.”

The above principle has again been reiterated and upheld by the Commission in its Order dated 25 July 2018 in Case No. 120 of 2018. Relevant part of the Commission’s Order is reproduced as under:

21. *The Commission notes that merely on the basis of the MSEDCL’s willingness to accept the proposal for execution of Long term EPA, GIE has injected power in the MSEDCL’s grid without any valid EPA or formal contract. In fact, no valid EPA has eventually materialized between MSEDCL and GIE. The Commission while noting this fact rules that in line with the principle as set out in APTEL Judgment dated 8 May, 2017 in Appeal No. 120 of 2016 GIE is not entitled to any payment for the power injected, if any, other than that injected during FY 2014-15 for which MSEDCL has already made payment to GIE. In order to maintain the grid discipline the Commission rules that GIE and for that matter any other RE Generator should not inject its power into the grid of MSEDCL or any Distribution Licensee without any valid contract or EPA.*

In similar such matter in Case No. 121 of 2018 dated 23 July 2018 filed by M/s Ultra mega Power Private Limited the Commission has ruled as under:

“11. In view of foregoing the Commission rules that MSEDCL cannot be directed to sign an EPA with any particular RE Generator, UMPPL in this Case or the other, for purchase of power at the generic tariff of Rs. 5.74 per unit.

12 The Commission notes the submission of MSEDCL that it has not given any consent in respect of signing of an EPA to UMPPL and admittedly no EPA has been executed between them. Accordingly, in light of the discussion as set out at para 9,10 above, the Commission rules that signing of EPA by MSEDCL with a particular RE generator or with any other generator is entirely its own prerogative/right.

5.4 Hon’ble APTEL in its catena of judgments has held that injection of power without any contractual agreement could lead to damaging consequences and, therefore, the same should be discouraged. MSEDCL relies upon the paragraph no. 7.6 of the Judgment dated 8 February 2019 passed by the Hon’ble APTEL in Appeal no. 37 of 2016 in the matter of *Lalpur Wind Energy Private Limited vs. Karnataka Power Transmission Corporation Ltd. and ors.*

5.5 MSEDCL under Section 33 (1) (2) and (4) of EA is duty bound to comply with the instructions issued by the MSLDC. Further, the said provisions do not provide for any hearing as alleged by OMWEPL either by the MSLDC or MSEDCL. Further, illegality cannot be allowed in perpetuity, accordingly, the action taken by the MSLDC and MSEDCL is in conformity with the law.

5.6 As far as provisions of Promissory estoppel and Legitimate expectation is concerned, as stated earlier in reference to PTC letter, MSEDCL never made any promise to OMWEPL regarding entering into EPA with it at any point of time. Further, MSEDCL had never used its electricity as well which was not under the EPA.

6. MSLDC in its reply dated 25 June 2020 has stated as under:

6.1 As all the prayers in the Petition and in M.A. are related to MSEDCL, response to these prayers does not come under the purview of MSLDC.

6.2 MSLDC being a system operator for the State of Maharashtra, it has to ensure adherence by the utilities to Regulations and Orders issued by the Commission. Recently the Commission has notified MERC (Forecasting, Scheduling and Deviation Settlement for Solar and Wind Generation) Regulations, 2018 on 20 July 2018 and the same is being commercially implemented from 6 January 2020. This Regulation is applicable to OMWEPL and it should abide the Scheduling and Despatch Code and DSM Procedure approved by the Commission.

6.3 As per Regulation No 5.14 of MERC (F&S) Regulations, 2018, no Wind and Solar power shall be considered by the SLDC if it is not scheduled by the QCA on behalf of the

generators. Accordingly, as per the Clause No 6.3 of the amended F&S Procedure dated 19 December 2019 prepared by MSLDC and approved by the Commission, MSLDC is collecting Pooling Sub-Station (**PSS**) wise details of power contracted by Discoms and their embedded consumers from various Discoms in the State on monthly basis. Based on the information, PSS-wise power is scheduled to respective Discoms based on the quantum received. On analysing the information for the month of May 2020 it is observed that out of total capacity of 6305 MW considered under F&S Regulations, contract details are available only for 5124 MW capacity while the contract details for 1181 MW capacity are not available.

6.4 Hence, if the total non-contracted capacity (1103 MW) is still connected to the grid then there may be additional injection of around 750 MW to the scheduled power. This shall create heavy mismatch at the State periphery and also create issues in real time operation during peak injection scenario. This unscheduled and non-contracted RE penetration shall hamper grid stability and reliability. Hence, MSLDC vide its letter dated 2 May 2020 has intimated the list of PSS with quantum having mismatch in the contracted capacity and asked to confirm whether such capacity of 1181 MW is connected to the grid or disconnected and ensure disconnection prior to commencement of high wind season.

7. OMWEPL in its Rejoinder dated 25 June 2020 has stated as under:

7.1 MSEDCL has failed to bring anything on record, to show any actual detriment to grid safety, or to deny the fact that MSEDCL has been, in fact, issuing credit notes recognizing the injection of energy by OMWEPL into the grid. MSEDCL has not denied the fact, that OMWEPL has been complying with the F&S Regulations, and therefore, cannot be said to endanger the grid.

7.2 Regarding the issue of registration of subject WTG pending with MEDA, all technical requirements and formalities prescribed under the RE Policy and its Methodology as well as pre-2013 Micro-siting Guidelines, in respect of the subject WTG have been complied in letter and spirit and accordingly permissions were granted by MSEDCL, MEDA and other authorities and the WTG was commissioned on 31 October 2015. The issue of registration of WTG is pending with MEDA and according to MEDA the registration is pending in view of Order dated 9 July 2014 passed by the Hon'ble Bombay High Court in PIL No. 129 of 2013 and proceedings pending therein.

7.3 The proceedings before the Hon'ble Bombay High Court in PIL 129/2013 pertain to allegations against two different Wind Projects located in a different location in the State and also about allegations as to the validity of amendments to Micro-siting Guidelines in 2013. OMWEPL has however filed its Civil Application and shall endeavor to place whatever documents are available with it if directed by the Commission. The interim order passed by the Hon'ble High Court relates to projects that were registered under the provisions of the 2013 amendment of the Micro-siting Guidelines. In this regard, para 8 of the order dated 9 July 2014 is extracted below:

“8) As it is admitted position that modification to the existing guidelines proposed on 8th March 2013 was never approved by the Governing Council of the said Agency. Hence, we restrain 3rd to 5th respondents from acting upon the guidelines allegedly modified on 8th March 2013 till further orders. This ad interim order will operate from today till further orders. It will not apply to the permissions already granted.”

- 7.4 OMWEPL also filed Civil Application being CA No. 31880/2017 and requested for vacation of interim orders /or to clarify that Orders. The subject WTG belonging to OMWEPL has been developed in accordance and compliance with the Micro siting Guidelines.
- 7.5 With regard to the contention that there is no valid agreement between OMWEPL and MSEDCL, the RE Policy relied upon by the MSEDCL, ensures sale of power from the wind projects set up under such policy, once the same are registered with MEDA. In fact, the consistent sale and purchase of power from the subject 2 MW WTG since the commissioning on 31 October 2015 for about five years establishes a clear agreement to procure electricity from 2 MW WTG with MSEDCL.
- 7.6 OMWEPL has been injecting power into the grid since 2015 and is also providing forecasting and scheduling details without any obstruction/restriction from either of MSEDCL. It is denied that there is any unauthorized injection of RE power into the grid as is sought to be alleged.
- 7.7 The present Petition is from limited purview of the abject irrationality and illegality in which the Impugned Communication has been issued and MSEDCL has acted to disconnect the subject WTG and seeking consequential reliefs. Moreover, MSEDCL is completely silent on the disconnection of the subject WTG done after filing of the present Petition along with the Miscellaneous Application for urgent reliefs and despite having due notice of the same, which itself goes to show its utter high-handedness.

8. OMWEPL in its Notes of Argument dated 25 June 2020 has stated as under:

OMWEPL has reiterated its earlier submission except some new additional facts/information which are summarized below:

- 8.1 As per the recent MSEDCL's MYT Order dated 30 March 2020 in Case No. 322 of 2019, MSEDCL is facing shortfall in available generation as a result of which it is procuring power from other sources available via short term markets/power exchanges. Considering the demand of the State and requirements of MSEDCL, power supplied by OMWEPL is in fact supporting the grid and is resulting in overdrawing of power from the central grid. OMWEPL being compliant with the F&S Regulations in respect of forecasting and scheduling requirements, any concern of MSEDCL with respect to grid safety is automatically addressed and allayed, while OMWEPL is in fact supporting the grid.

- 8.2 As per the Proviso to Regulation 4.1 of the F&S Regulations, these regulations are being made applicable to those Solar or Wind Generators whose combined installed capacity connected to a particular Pooling Sub-Station is not less than 5 MW. This shows that any generator whose installed capacity is less than 5 MW is not considered as it will not have an impact on the grid. The supply of power from 2 MW, being a renewable source, needs to be promoted as envisaged under the Electricity Act, 2003 and the policies of the Government of India and the Government of Maharashtra.
- 8.3 Principle of ‘Actus curiae neminem gravabit’ i.e. an act of the court shall prejudice no man is applicable in the present case. Due to the present difficulty in reaching out to the Commission on urgent basis, the matter could not be mentioned before the Commission on 9 June 2020. MSEDCL, taking advantage of the situation, proceeded to disconnect the turbine on 11 June 2020. It is thus the bounden duty of Courts to see that if a person is harmed by a mistake of the court, he should be restored to the position he would have occupied but for that mistake. Thus, subject WTG should be reinstated/reconnected back to the grid (*Neeraj Kumar Sainy & Ors. Vs. State of U.P & Ors. (2017) 14 SCC 136 @ Paras 26 to 31*].
9. At the e-hearing through video conferencing held on 26 May 2020, the Advocate of OMWEPL reiterated its submissions in the Petition, MA and its Rejoinder to MSEDCL’s reply. The Advocate of MSEDCL reiterated its submissions in its reply. In reply to clarification sought by the Commission for not granting registration as per the methodology, the representative of MEDA sought one-week time to submit its reply. The representative of MSLDC stated that its written reply should be considered.
10. **MEDA in its submission dated 30 June 2020 has stated that:**
- 10.1 The wind project of OMWEPL was erected near the road. MEDA had sought explanation from OMWEPL regarding the placing of windmills near road. The registration of wind power project of OMWEPL was kept on hold. The details of major events took place from the date of application made by OMWEPL for registration till January 2017 as under:

Sr. No.	Event	Date	Remark
1	Application for registration Gut No. 187 of village- Kacharewadi,, Tal.- Tasgaon, Dist.- Sangli	23/09/2015	Letter received on 23/09/2015
2	Joint Inspection By MEDA, MSEDCL, MSETCL & of M/s. Orange Maha Wind Energy Pvt. Ltd.	15/10/2015	Joint inspection for 16 marks was carried out as per methodology dated 9 September, 2015

3	Recommendation for Permission to Commissioning (PTC) issued date	29/10/2015	PGN-I/PTC/Orange/2.0MW/2015-16/3663
4	PTC issued by MSEDCL date	30/10/2015	Comm/CP/Wind/New Comm./ orange/ 38057
5	Clearance for commissioning given by MEDA	31/10/2015	PGN-1/CC/orange/2.0MW/2015-16/3722
6	Project commissioning date	07/11/2015	SE/SC/Addl.EE/Wind Mill/11122
7	Projects files were sent for approval of GoM	22/01/2016	---
8	Files received from GoM	25/01/2016	File received from GoM with remark approved as examined by DG, MEDA
9	Micro-siting Inspection date	06/02/2016	Wind power project of M/s. Orange Maha Wind Energy Pvt. Ltd. was found erected near road and not as per micro sitting guidelines dated 16 February 2008.
10	DG of MEDA ordered to reinspect all Wind Projects for which PTC had been issued and resubmit with Scrutiny Committee report	08/02/2016	----
11	Scrutiny Committee Meeting	09/02/2016	Scrutiny committee not recommended for registration because of not as per micro-siting guidelines dated 16 February 2008.
12	Project registration kept on Hold	09/02/2016	DG, MEDA submitted file to GoM with remark that registration for time being kept on hold and policy decision will be taken for similar matter.
13	By GoM	09/02/2016	Registration process kept on hold
14	MEDA asked M/s Orange Maha for clarification on violation of micro-siting guidelines	25/02/2016	Letter No PGN-1/Wind Power Project/Scrutiny Committee/2015-16/810
15	Letter from M/s Sri Maruti Wind Park Developers	18/03/2016	Maruti/Wind-Micro-siting Guidelines/ 2016-2017/187 mentioning that they had followed the micro-siting guidelines while installation of said project and the distance between WTG and road is 330 meters
16	Letter from M/s Orange Maha Wind Energy Pvt. Ltd.	21/03/2016	MEDA/HC 09 mentioning that they had followed the micro-siting guidelines while installation of said project and the distance between WTG and PWD road is 330 meters

17	MEDA directed to their developer M/s Sri Maruti Wind Park Developers for submission of explanation/clarification on violation of micro-siting guidelines	09/05/2016	PGN-1/Micro-siting/2016/17/2167
18	M/s Sri Maruti Wind Park Developer has submitted the letter	09/05/2016	Maruti/Wind-Micro-siting Guidelines/2016-2017/189, letter from Panchayat Samittee, Tasgaon mentioning that the distance between WTG & village road is 185 meters
19	Letter from M/s Sri Maruti Wind Park Developer	19/05/2016	SMWPD/MEDA/Micro-sitting/2016-17/187 mentioning that they are following micro-siting guidelines & requested to issue the registration letter
20	MEDA officer has visited to project site date	28/11/2016 & 29/11/2016	Project once again inspected but found that Project was installed near road.
21	Letter from M/s Orange Maha Wind Energy Pvt. Ltd.	ONWEPL/2016-17/49 dated 09/12/2016	Letter mentioned that Kacharewadi-Kinderwadi village road is subject matter of dispute, and land owners disputed existence of such road and alleged that the plaintiff M/s Maruti Wind Park Developers is trying to make new road illegally from the lands which belonged to defendants.
22	Letter from M/s Orange Maha Wind Energy Pvt. Ltd.	ONWEPL/2016-17/50 dated 23/01/2017	In this letter, they have argued that nonexistence of Kacharewadi to Kinderwadi village road.

Commission's Analysis and Ruling:

11. OMWEPL has filed this case requesting stay on the communication dated 5 June 2020 issued by MSEDCL for disconnection of its 2 MW WTG. Further OMWEPL in its MA has requested the Commission to direct MSEDCL to reconnect its 2 MW WTG and allow its generated power for supply to MSEDCL.
12. OMWEPL owns and operates 34 MW wind projects at different locations in Sangli district. Out of 34 MW, EPAs for 32 MW projects have been signed between March 2017 to August 2017. However, the EPA for disputed 2 MW WTG has not been signed because registration from MEDA is yet to be received. Disputed WTG of 2 MW has been commissioned on 7 November 2015 as per report of MEDA (OMWEPL has erroneously mentioned the commissioning date as 31 October 2015).

13. OMWEPL in its submission has stated that under RE Policy 2015, registration of projects with MEDA is mandatory for signing EPA with MSEDCL or for seeking open access approval for sale of power to others including getting benefits of RECs. Thus, OMWEPL has not disputed mandatory requirement of MEDA registration before sale of power either to MSEDCL or under Open Access or under REC mechanism. However, OMWEPL contends that it has been injecting power from 34 MW wind projects including disputed 2 MW WTG since commissioning and is also providing forecasting and scheduling details without any restriction from MSEDCL. As per OMWEPL, injection of power from its disputed WTG of 2 MW capacity based on schedule provided under RE F&S Regulations would not affect grid security and hence its 2 MW WTG should not be disconnected from the grid.
14. While opposing above contention of OMWEPL, MSEDCL has stated that it has never given any consent for procurement of power from OMWEPL's 2 MW WTG. Further, MSEDCL has disconnected the said WTG on the instructions from MSLDC which are mandatory in nature. MSLDC in its reply has stated that in order to comply with provision of MERC (F&S) Regulations, 2018 and in order to maintain grid security and stability, vide its letter dated 2 May 2020, it has directed MSEDCL to disconnect RE generators who do not have valid contract.
15. The Commission notes that main contention of OMWEPL is that as it is scheduling power from its 34 MW project including disputed 2 MW WTG based on RE F&S Regulations, that its 2 MW WTG does not pose any harm to the Grid and that it should be allowed to continue to be connected and injecting power into the Grid. In this regard, the Commission notes, that for safe and secure operation of power system, any power flow must have identified generator who injects power into the Grid and Consumers (Distribution Licensee, OA consumers or self-consumption) who draws such power from the Grid. Without having these two important parties to power flow / transaction, it would be impossible to run the power systems in safe and secure manner.
16. Further, APTEL in its Judgment dated 16 May 2011 in M/s Indo Rama Synthetics Vs MERC has explained the importance of PPA for injecting power into the Grid. Relevant part of the APTEL Judgment is reproduced below:

“11 In our opinion the Section 70 and 72 of the Indian Contracts Act, 1872 will not be applicable in the present case. The present case is governed by the Electricity Act, 2003 which is a complete code in itself. In the electricity grid, the SLDC, in accordance with Section 32 of the Act is responsible for scheduling and dispatch of electricity within the state, to monitor the grid operations, to exercise supervision and control over the intrastate transmission system and to carry out grid control and dispatch of electricity though secure and economic operation of the State Grid. All the generators have to generate power as per the schedule given by the SLDC and the grid code in the interest of secure and economic operation of the grid. Unwanted generation can jeopardize the security of the grid. Moreover, in this case the injection of electricity was without the

consent or knowledge of the distribution licensees and the energy generated by the appellant was booked to the distribution licensees for balancing the energy generated/injected with energy consumption in the energy accounting. Accordingly, the decision in Haji Mohammed Ishaq WD. S.K.Mohammed and others vs. Mohamad Iqbal and Mohamed Ali & Co. Reported in (1978) 2 SCC 493 relied upon by the appellant will also not be of any relevance.

13 Thus, we do not find any substance in the claim of the appellant for compensation for the power injected into the grid without any schedule and agreement”.

Further, the APTEL in its Judgment dated 8 May 2017 in Appeal No 120 of 2016, has interpreted its earlier two judgments and concluded as follows:

iv. The Respondent No. 1 had also quoted two more judgements of this Tribunal in appeal nos. 267 of 2014 and appeal no. 68 of 2014. In the judgement dated 15.4.2015 in appeal no. 267 of 2014 this Tribunal has held that the Appellant (M/s Cauvery Power Generation Pvt. Ltd.) is not entitled to claim payment of infirm power injected into the grid without the approval from the Respondent (TANGEDCO) for specific duration as mentioned in the judgement till TANGEDCO conveyed its consent to purchase infirm power. In the judgement dated 30.5.2016 in appeal no. 68 of 2014 this Tribunal has disallowed the payment by Respondent (TANGEDCO) towards injection of power from COD of the Appellant (M/s OPG Power Generation Pvt. Ltd.) till approval of third party sales by TANTRANSCO as the energy was injected to the grid without the consent/knowledge of the distribution licensee and SLDC. The crux of these two judgments is also that a generator cannot pump electricity into the grid without having consent/ contractual agreement with the distribution licensee and without the approval/scheduling of the power by the SLDC. Injection of such energy by a generator is not entitled for any payments.

17. The Commission is of the opinion that spirit of these Judgments is important to understand, as it discourages injection of power into the Grid without valid contract. The Commission would like to specifically mention that the infirm nature of Wind creates more problem for the procurer when it is being injected without any identified buyer. As stated by the APTEL, such injected power without valid contract would lead to deviation in drawal or injection into grid and levy of corresponding penalty under Deviation Settlement Mechanism (DSM) in force for ensuring grid discipline. Further in States like Maharashtra where multiple Distribution Licensees and Open Access users are connected to an interconnected Intra-State Transmission network, it would be difficult to identify or pinpoint a single Distribution Licensee / OA user who has consumed such power injected into the grid. Therefore, to maintain grid discipline and grid security, such injection of power without any valid EPA or a contract needs to be discouraged.
18. In present matter, as agreed by OMWEPL, EPA for disputed 2 MW WTG has not been signed on account of non-registration of WTG with MEDA. However, OMWEPL has

contended that MSEDCL has been accepting such power since commissioning of the project. In this regard, the Commission notes that MSEDCL in its PTC dated 30 October 2015 issued few days prior to commissioning of the disputed WTG has clearly communicated OMWEPL that MSEDCL does not guarantee purchase of this power. Thus, it would be incorrect to state that MSEDCL was in agreement with OMWEPL for purchase of power from disputed 2 MW WTG.

19. In absence of any valid EPA or agreement, even though generator provides forecast / schedule as per RE F&S Regulations, said schedule cannot be accepted as there is no identified counter party to use such energy injected into the Grid. Under such circumstances, when SLDC in its role as system operator issues instructions to MSEDCL to disconnect those WTGs from Grid that do not have valid contract, MSEDCL is duty bound to follow such instructions. Hence, the Commission does not find anything wrong in disconnection of OMWEPL's 2 MW WTG which does not have valid EPA. As regards non applicability of F&S regulations for projects having capacity less than 5 MW, Commission notes that the Petitioner has installed total capacity of 34 MW wherein 2 MW disputed WTG is also a part. As per regulations, capacity of the entire project is considered for applicability, and not in parts thereof. Besides, Petitioner has duly appointed under the regulations, a QCA for the entire project including the disputed WTGs of 2 MW capacity for scheduling and forecasting of the electricity generated. Clearly, such arguments of Petitioners on applicability of the regulations are not tenable.
20. OMWEPL also contended that it had applied for registration for its WTG on 23 September 2015 and despite complying all technical requirements and formalities prescribed under the GoM RE Policy 2015, its Methodology as well as pre-2013 Micro-sitting Guidelines, registration certificate has not been issued by MEDA till date. However, MEDA in its reply has stated that the registration is kept on hold because OMWEPL's WTG is erected near the village road hence is not complying with the Micro-sitting guidelines dated 16 February 2008. As per Panchayat Samittee, Tasgaon's letter the distance between WTG and village road is 185 meters as against the 330 meters claimed by OMWEPL. According to OMWEPL the registration is pending in view of Order dated 9 July 2014 passed by the Hon'ble Bombay High Court in PIL No. 129 of 2013 for which it has also filed Civil Application CA No. 31880/2017 and has requested for vacation of interim orders/or to clarify that Orders. The Commission notes that Hon'ble Bombay High Court in its Ad-interim Order dated 9 July 2014 has directed to restrain from acting upon the modified Micro-sitting guidelines dated 8 March 2013 which was not approved by the Governing Council of MEDA. But in present case, registration is not yet issued by MEDA because OMWEPL's WTG is not complying with the Micro-sitting guidelines dated 16 February 2008. As OMWEPL has not sought any specific relief against MEDA and as matter is pending with Hon'ble Bombay High Court, the Commission is not dealing with issue of delay in issuing WTG registration.
21. Without registration of project with MEDA, Wind generator cannot sell electricity to Distribution Licensee or OA consumer or under REC mechanism. As OMWEPL does not

have MEDA registration for disputed WTG of 2 MW, it would be premature to deal with any claim arising out of power injected from this 2 MW WTG. At the same time, the Commission would like to refer to its recent Order dated 4 July 2020 in Case No 66 of 2020 relevant extract of which is reproduced as under:

“ 20.10 The Commission also notes that in the present Petition, KWEPL has not sought any relief against 2 WTGs of 1.6 MW for which it is yet to receive registration from the MEDA. Whenever, it gets such registration, KWEPL would again approach this Commission seeking compensation. To avoid such un-necessary procedural formalities when Commission has clearly ruled on the issue of compensation as above, the Commission rules that whenever, KWEPL gets registration for its balanced 1.6 MW capacity from MEDA under 1500 MW capacity of RE Policy 2015, KWEPL may raise its bills with all supporting documents to MSEDCL as per the above dispensation. After scrutinizing such claim, MSEDCL shall pay such compensation for period of FY 2014-15 to FY 2016-17 without any carrying cost.

The above dispensation would squarely be applicable under the instant Case, if OMWEPL receives MEDA registration for disputed 2 MW WTG and OMWEPL raises the bills with all supporting documents, assuming that MSEDCL has counted the generated energy from the disputed WTGs in its RPO achievement for the aforesaid period, which will be scrutinized by the MSEDCL.


22. In view of the above rulings in the matter, MA filed by OMWEPL seeking immediate reconnection of disconnected WTG of 2 MW becomes infructuous.
23. Hence the following Order

ORDER

The Case No. 100 of 2020 is rejected. Accordingly, MA filed in the matter is also disposed of.

**Sd/-
(Mukesh Khullar)
Member**

**Sd/-
(I. M. Bohari)
Member**


**(Abhijit Deshpande)
Secretary**

