

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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CASE No. 101 of 2020

Case of WinIndia Ventures Pvt Ltd seeking restitution/compensation from Maharashtra State Electricity Distribution Company Limited for loss of generation on account of illegal disconnection of its Wind Turbine Generator.

WinIndia Ventures Pvt LtdPetitioner

V/s

Maharashtra State Electricity Distribution Co. Ltd..
Maharashtra State Load Despatch Centre ...Respondents

Appearance

For the Petitioner :Shri Roshan Tanna (Adv.)
For the Respondent No-1 :Shri Harinder Toor (Adv.)
For the Respondent No-2 :Shri Eknath Dengale (Rep.)

Coram

I.M. Bohari, Member
Mukesh Khullar, Member

ORDER

Date: 7 July 2020

1. M/s WinIndia Ventures Pvt Ltd (**WIVPL**) has filed this Case dated 9 June 2020 seeking directions against Maharashtra State Electricity Distribution Co. Ltd (**MSEDCL**) for restitution/compensation for loss of generation on account of illegal disconnection of its 1.5 MW Wind Turbine Generator (**WTG**).

2. **Main Prayers of WIVPL are as follows:**

a) *Hold and declare that the disconnection of wind turbine of the Petitioner by MSEDCL is illegal and bad in law, in the specific facts and circumstances of the case;*

- b) *Direct MSEDCL to compensate/restitute the Petitioner @ 5.70 per unit from the date of disconnection till reconnection, in case the Petitioner succeeds in Case No. 24/2020 towards unwarranted loss of generation*
- c) *In the alternative, direct MSEDCL to compensate/restitute the Petitioner @ 2.52 per unit from the date of disconnection till reconnection, in case the Petitioner is not successful in Case No. 24/2020 towards unwarranted loss of generation;*
- d) *Initiate appropriate enquiry in the conduct and manner in which the “Renewable Department” of MSEDCL has carried out disconnections by violating the principles of natural justice;*

3. WIVPL in its Petition has stated as under:

3.1 WIVPL commissioned 1.5 MW WTG at Gat No. 488/3, Village-Devikhindi, Tal-Khanapur, District- Sangli on 11 November 2014. WIVPL has filed a Petition in Case No 24 of 2020 regarding MSEDCL’s denial to sign EPA under GoM RE Policy, 2015 and its Methodology dated 9 September 2015.

3.2 For safeguarding its financial interest, WIVPL vide its email dated 31 March 2020 under protest and without prejudice to Case No 24 of 2020 exercised the option of sale of power under competitive bidding to MSEDCL for FY 2020-21. WIVPL in its email dated 31 March 2020 has communicated MSEDCL as under:

- i) *For the last 6 years since 23 December 2014, WIVPL supplying power to MSEDCL without being paid for the same. This has caused WIVPL huge financial loss and has made the entire project unviable. The financial crisis faced has led WIVPL to a situation where it is not even able to service its debt/loan taken towards the said project. This forced WIVPL to file Case No. 24 of 2020 before the Commission to seek appropriate reliefs against the illegal actions of MSEDCL and MEDA.*
- ii) *Since the date of filing of Case No. 24 of 2020 till date, the Commission has not been able to list the said Case for hearing on account of the pandemic of Coronavirus. In order to mitigate future mounting losses, WIVPL left with no other option and are constrained to sale the power generated through the said wind project under the competitive bidding route to MSEDCL for Financial Year 2020-2021 at a Tariff of Rs. 2.52 Per Unit or any other rate decided by the Commission for the said competitive bidding for Financial Year 2020-2021.*
- iii) *The present step is taken by WIVPL under protest and without prejudice to Case No. 24 of 2020 pending before the Commission. The decision to participate in the competitive bidding route for Financial Year 2020-2021 is out of compete financial distress and to mitigate the future losses and in no way should be seen to either dilute our stand in Case No. 24 of 2020 pending the Commission or be seen to be a waiver/ modification/ relinquishment of our reliefs sought in Case No. 24 of 2020.*

iv) *In case, the Commission decides the matter in WIVPL's favor, then MSEDCL would be liable to either enter into a EPA since 23 December 2014 for a period of 13 Years at a tariff of Rs. 5.70 Per Unit applicable to Wind Zone-1 projects, which was determined under the Generic tariff for renewable energy sources applicable for Financial Year 2014-2015. In case, the Commission decides Case No. 24 of 2020 in favor of MSEDCL, then at least WIVPL's ongoing mounting future losses and financial difficulties would continue to be mitigated to a certain extent till such time the said Order passed by the Commission attains finality by Higher Courts/Forums.*

v) *We believe that in view of the epidemic of "Coronavirus" all your offices are closed and delivery of hard copy of the present letter would not be possible. Hence, we are sending the present request on email for your kind and favorable action. We would keep injecting power into the Grid and expect payment from MSEDCL at a Tariff of Rs. 2.52/ Per Unit in the interregnum or any other tariff decided for competitive bidding for Financial Year 2020-2021 by the Hon'ble Maharashtra Electricity Regulatory Commission. We are simultaneously also completing the procedure of competitive bidding online as floated by MSEDCL on its website.*

MSEDCL willfully accepted the said power under competitive bidding and never objected to the same till the date of disconnection of WTG.

- 3.3 When the Registry of the Commission issued the Notice dated 26 May 2020 for hearing scheduled on 3 June 2020 in Case No 24 of 2020, on or about 28 May 2020, WIVPL's WTG was disconnected by MSEDCL.
- 3.4 Period of Dispute is approximately from 28 May 2020 till restoration/ reconnection of WTG and amount involved is loss of generation from date of disconnection i.e. 28 May 2020 till restoration either at Rs. 5.70 per unit in case WIVPL succeeds in Case No. 24 of 2020 or at Rs. 2.52 per unit under competitive bidding rate in case WIVPL fails in Case No. 24 of 2020.
- 3.5 The disconnection of WIVPL's WTG is illegal, bad in law and without any basis, violating the principles of "Natural Justice" as MSEDCL has neither given any notice nor intimated WIVPL about its intention to disconnect along with the grounds to disconnect.
- 3.6 For all last 6 years, MSEDCL has been enjoying the power supplied to it and never raised any issue. MSEDCL has utilized WIVPL's power for compliance of RPO. Hence such urgency to disconnect the windmill after the Petition was filed and notice for scheduled hearing was issued by the Registry of the Commission, only reeks of ulterior and malafide motives.
- 3.7 The Commission in an identical matter in Case No. 28 of 2020 (Bothe matter), vide its daily Order dated 27 January 2020 had directed MSEDCL not to take any coercive action in the matter till final disposal of the Petition. Propriety demanded MSEDCL, to treat WIVPL in

the same manner when in fact WIVPL's case was pending before the Commission on identical issues.

- 3.8 During the course of the hearing dated 3 June 2020 in case no. 24 of 2020, WIVPL informed the Commission about illegal disconnection of its WTG to which the Commission directed WIVPL to include the said issue in its additional submissions so that the Commission can take holistic decision in the matter while passing final Order.
- 3.9 Therefore, WIVPL requests the Commission to take up the present main matter after the Final Order in Case No. 24 of 2020 is pronounced. If the Commission allows Case No. 24 of 2020 in favor of WIVPL, then there would be no need for further adjudication of the present matter. However, in case the Commission does not allow Case 24 of 2020 in favor of WIVPL, then the present Petition would be required to be adjudicated on the additional specific fact of "Under protest and without prejudice to Case No. 24 of 2020, exercising option of Sale to MSEDCL under competitive bidding for FY 2020-21".
- 3.10 WIVPL filed a separate Miscellaneous Application (MA) seeking urgent direction to MSEDCL for restoration of its disconnected WTG.

4. WIVPL in its MA dated 9 June 2020 has stated as under:

WIVPL along with its Petition has submitted the MA and letter for urgent listing and hearing of the Case. WIVPL has reiterated its earlier submission in the Petition and has made the following prayer in its MA:

Pass ad-interim ex-parte orders in the form of direction to MSEDCL to immediately restore the wind turbine of Petitioner as the Petitioner has "under protest and without prejudice to Case no. 24/2020, exercised option of sale to MSEDCL under competitive bidding for FY 2020-2021" vide its email dated 31.03.2020.

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

- 5.1 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.
- 5.2 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 WIVPL and it should abide the Scheduling and Despatch Code and DSM Procedure approved by the Commission.
- 5.3 As per Regulation No 5.14 of MERC (F&S) Regulations, 2018, no Wind and Solar energy shall be considered by the SLDC if it is not scheduled by the Qualified Coordinating

Agencies (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.

5.4 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.

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

6.1 WIVPL has no legal or valid agreement with MSEDCL for buying/purchasing of RE power and thus, its mere injection in the system does not tantamount to MSEDCL being liable to pay for the same or now enter into EPA with WIVPL with retrospective effect.

6.2 MSEDCL till date has entered into EPA for 3273 MW RE power through competitive bidding under the guidance of the Commission and thus, certainly not using its dominant position to effect competition in electricity industry as alleged.

6.3 The disconnection was done in compliance of the letter dated 2 May 2020 issued by the State Load Dispatch Centre, directing MSEDCL to disconnect those Wind and Solar generators who do not have a valid PPA or Open Access permission to maintain grid security especially in the wake of high monsoon season ahead when wind energy generation is at its peak.

6.4 WIVPL does not have a PPA or Open access permission at any point of time earlier or even now. MSEDCL or any distribution licensee is under obligation to follow the directions of the SLDC under Section 33(2) and 33(4) of EA. Accordingly, MSEDCL is not bound to give any reason for disconnection nor any opportunity to WIVPL for a hearing as grid security is of paramount importance and also non-compliance with SLDC directions, which are given in pursuance of the provisions of EA, will attract Section 142 and Section 146 of the Electricity Act, 2003.

6.5 All the grounds of challenge in the instant Case are very much part of the Case No. 24 of 2020 and its arguments and thus, MSEDCL after denying the same relies upon the submissions made in its written arguments in that case.

6.6 Even the allegation and statements made on oath by WIVPL that it has completed all formalities related to sale of power under competitive bidding to MSEDCL on 31 March 2020 and that MSEDCL has willfully accepted that power under competitive bidding and not objected to the same till date of disconnection of WTG are made deliberately to prejudice the Commission against MSEDCL. WIVPL vide its email dated 31 March 2020 had made an online application for sell of its wind power on online portal for 'Short term power procurement' which was not allowed by MSEDCL. MSEDCL vide email dated 31 March 2020 had informed WIVPL that MSEDCL has opened its short term procurement online portal in the prevailing lockdown situation due to Covid-19 Pandemic so that small generator does not suffer. Relevant portion of email from MSEDCL is reproduced as under:

In reply to your email, MSEDCL hereby refutes your statement that it is compelled to sell power to MSEDCL. No one can compel you to sell your power to anybody. It is yours and only yours prerogative to sell power to anybody.

Kindly note that the matter before the Hon MERC in case no. 24 of 2020 which is sub-judice is altogether different.

MSEDCL has opened its short term procurement online portal in the prevailing lockdown situation due to Pandemic Coved-19 so that small generator shall not suffer.

Further, MSEDCL in its discretion will decide to procure short term power from interested wind generators.

However, WIVPL chose not to bring this fact on records, just to create a prejudice against MSEDCL.

6.7 The said application was rejected by MSEDCL vide its system generated email dated 12 June 2020 because of erroneous application and the matter being sub-judice, which has deliberately not been produced or in fact not at all referred to by WIVPL till date. This itself shows the conduct/approach of WIVPL in the matter. WIVPL has not only stated falsely on oath but has approached the Commission with unclean hands. Though WIVPL has approached the Commission with unclean hands and frivolous statement, has sought an action against the Chief Engineer (Renewable) of MSEDCL without an iota of any documentary proof against the alleged allegations.

6.8 WIVPL is under some illusion and is seeking multiple treatments as regards the tariff. This shows the lack of clarity from WIVPL's end for seeking two tariffs at the same time. While applying on the MSEDCL short term on-line portal the matter regarding payment at preferential tariff was sub-judice before the Commission and still WIVPL applied for short term arrangement on online portal. Under this circumstances, if there had been a definite commitment from WIVPL that it is ready to sell power to MSEDCL at the tariff applicable as per the terms and conditions of the short term online portal then MSEDCL would have been itself clear that WIVPL was liable to be paid tariff as per the terms and conditions of short term on-line portal. However, WIVPL's conduct never indicated that it on its own will

and without any conditions was ready to sell power to MSEDCL on short term online portal. Hence, in the absence of any contract with MSEDCL, WIVPL was disconnected while complying with the MSLDC directions.

- 6.9 As far as the contention of WIVPL with reference to payment of alleged use of RE power at 5.70 per unit in case WIVPL succeed in Case No. 24 of 2020 and if it fails there at 2.52 per unit under competitive bidding rate from the date of disconnection till date of reconnection is not only devoid of merits but is also beyond the scope of law.
7. At the e-hearing through video conferencing held on 26 June 2020, the Advocate of WIVPL reiterated its submissions in the Petition and the MA. The Advocate of MSEDCL reiterated its submissions in its reply and further added that WIVPL's application for sale of short-term power was rejected on account of incomplete / incorrect details. The representative of MSLDC stated that the prayers made by WIVPL are related to it, however the written reply submitted by MSLDC should be considered.
8. **In reply to the issues argued by MSEDCL during the Hearing, WIVPL in its Notes of Argument dated 27 June 2020 in addition to its Petition and MA , has made following submission:**
- 8.1 MSEDCL has failed to understand the contents of email dated 31 March 2020 and 7 June 2020 sent by WIVPL. MSEDCL never rejected the "Competitive Bidding" offer of WIVPL on 31 March 2020. There is no formal rejection by MSEDCL till date. The emails dated 31 March 2020 and 12 June 2020 issued by MSEDCL in no way is a rejection of Competitive bidding offer of WIVPL by its email dated 31 March 2020.
- 8.2 The issue of 'submission of incorrect detail by WIVPL in Competitive bidding while uploading the document online' was never intimated to WIVPL by MSEDCL and is a mere afterthought and hence needs to be rejected by the Commission as the same also does not find its place in the defense taken by MSEDCL in its reply dated 25 June 2020. It was MSEDCL's bounden duty to inform the same to WIVPL immediately after 31 March 2020. But till date MSEDCL has not submitted as to what was the minute incorrect detail.
- 8.3 Moreover, from 'Letter of Intent'(LoI) issued to various similarly placed Generators during the time of Pandemic by MSEDCL, it is clearly stated that relaxation was granted to the respective RE Generators for uploading requisite undertakings and documents with a condition of formal submission of the same at the time of agreement. And on the other hand, MSEDCL takes the objection at this belated stage about submission of minute incorrect detail by WIVPL.
- 8.4 It is seen that MSEDCL issues LoI to other RE Generator with retrospective date i.e. LoI dated 30 May 2020 is issued for purchase of power from 1 April 2020 till 30 June 2020. MSEDCL in the present case has been utilizing the energy under Competitive bidding since 1 April 2020 till date of disconnection and then takes an objection at a later date that the compensation for the same cannot be paid as there is no EPA.

- 8.5 If MSEDCL is allowed to perpetrate this illegality of false claims of no subsisting EPA and continue using power offered under a valid Competitive bidding free of cost then there would never be a formal EPA in place as MSEDCL after utilizing the said power would always take a stand that no formal EPA is in place as it follows a procedure of entering into an EPA/LOI in all cases with retrospective effect. MSEDCL entering into EPAs with retrospective effect is well known to the Commission also.
- 8.6 If MSEDCL had a problem with the Competitive bidding application of WIVPL, then MSEDCL should have informed WIVPL about the same immediately after 31 March 2020 so as to enable WIVPL to rectify the said alleged error. However, the same was never done even till date. Having used the power under a valid Competitive bidding and after selling the same to its consumers and recovering money, now MSEDCL at this belated stage cannot state that there is no formal EPA.
- 8.7 MSEDCL's reliance on the SLDC letter dated 2 May 2020 stating that it was merely following SLDC's direction is baseless as SLDC letter was issued based on data submitted by MSEDCL. At the very first instance, MSEDCL's data submitted to SLDC was devoid of merits in view of Competitive bidding application made without prejudice and under protest to Case No. 24 of 2020 which has been deliberately concealed and misrepresented by MSEDCL to SLDC. Hence, it is not open for MSEDCL to contend that it was merely following SLDC's directions. MSEDCL has contended that SLDC's directions are mandatory to be complied with and in an urgent manner or else non-compliance proceedings would be initiated against MSEDCL. However, it is a matter of fact that the wind turbine was disconnected only in the last week of May 2020 after more than 28 days of issuance of SLDC's letter and immediately before the hearing in Case No. 24 of 2020.
- 8.8 MSEDCL has contended that WIVPL cannot avail its alternate remedies without prejudice and under protest and has to necessarily give up its claims under Case No. 24 of 2020 for MSEDCL to start purchasing power its power under Competitive bidding. Such approach is not only discriminatory but illegal as such submissions/defense is without the force of law. Moreover, the entire disconnection is illegal in view of WIVPL legally applying to sell its power under Competitive bidding on 31 March 2020. The said Competitive bidding was never rejected by MSEDCL and hence it was not open for MSEDCL to disconnect WIVPL's WTG.
- 8.9 WIVPL requests the Commission to direct MSEDCL to immediately reconnect WTG of WIVPL and pay WIVPL since 1 April 2020. The loss of generation on account of illegal disconnection by MSEDCL needs to be compensated by MSEDCL from the date of disconnection till reconnection as the authorities in MSEDCL have failed to understand the consequences of its illegal acts.
- 8.10 MSEDCL needs to be held accountable and appropriate proceedings should be initiated against responsible officers including but not limited to the Chief Engineer (Renewable) of MSEDCL under whose instructions, such illegal disconnections are carried out without understanding the facts of a given case that too by completely violating the principles of

natural justice. The compensation for loss of generation from date of disconnection till reconnection needs to be recovered from erring officers including the Chief Engineer (Renewable) as common consumers shall not be saddled with unwarranted costs.

Commission's Analysis and Ruling:

9. The Commission notes that WIVPL has filed a separate Petition in Case No 24 of 2020 on 23 January 2020 seeking direction to MSEDCL for signing of EPA at generic tariff of Rs. 5.70 per unit for its 1.5 MW WTG which was commissioned on 11 November 2014, under RE policy of 2008 and registered as per Clause 11 and 15.1 of the Methodology for registration of projects dated 9 September 2015 issued by the GoM. Pending proceeding in that matter and in order to mitigate its financial losses, on 31 March 2020, without prejudice to its claim under Case No. 24 of 2020, WIVPL applied on MSEDCL's web portal for short-term sale of power at Rs. 2.52 per unit. Thereafter on 28 May 2020, MSEDCL disconnected WIVPL's 1.5 MW WTG on the ground that it did not have any valid EPA or OA permission. The said fact was mentioned during the hearing held in Case No. 24 of 2020 on 3 June 2020. On 3 July 2020 the Commission has issued Order in Case No. 24 of 2020 granting partial relief to WIVPL but has rejected its request directing MSEDCL to sign EPA at generic tariff of Rs. 5.70 per unit.

10. Before issuance of the above Order in Case No. 24 of 2020, WIVPL has approached the Commission through a separate Petition in present matter and MA on 9 June 2020 seeking reconnection of its disconnected WTG. WIVPL has linked Case No 24 of 2020 with the instant Case and has requested consideration of following two options while adjudicating the present matter particularly on the issue of compensation from MSEDCL on account of disconnection of its WTG from the date of disconnection till the restoration of the connection:
 - i) If the outcome of Case No. 24 of 2020 is in favor of WIVPL, then MSEDCL needs to compensate/restitute WIVPL at the Tariff of Rs. 5.70 per unit from the date of disconnection till the date of reconnection of WTG and there would be no need for further adjudication in the instant Case.
 - ii) If the outcome of Case No. 24 of 2020 is not in the favor of WIVPL, then instant case would be adjudicated on the specific fact that WIVPL has exercised the option of selling its power to MEDCL under competitive bidding route for FY 2020-21. Hence MSEDCL needs to compensate/restitute WIVPL at the Tariff of Rs. 2.52 per unit from the date of disconnection till the date of reconnection.

11. As already stated earlier, the Commission has issued Order dated 3 July 2020 in Case No 24 of 2020 and has categorically dealt with issues such as signing of EPA, WIVPL's entitlement for the compensation of energy injected by it since commissioning and options available with WIVPL in absence of EPA for selling the energy from its WTG. The relevant portion of the dispensation provided by the Commission in Case No 24 of 2020 is reproduced as under:

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19.11 *In view of the above detailed analysis of relevant applicable policies, the Commission notes that it cannot be concluded that WIVPL has set up its project solely on the assurance of MSEDCL's Wind Policy, 2014. Further, provision of RE Policy 2015 of including around 1350 MW capacity commissioned post completion of 2000 MW targets is just an enabling provision with mandatory condition of registration of project with MEDA. WIVPL has failed to comply with such mandatory condition of registration for a long period, and in the meanwhile based on subsequently notified Tariff Policy 2016 and competitive bidding guidelines, MSEDCL with the approval of the GoM which had notified RE Policy 2015 has started procurement of Wind Power through competitive bidding since December 2017. Therefore, in the opinion of the Commission, MSEDCL cannot be directed to sign EPA for 1.5 MW WTG by relying on MSEDCL's Wind Policy 2014 and RE Policy 2015.*

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20.7 *In view of the foregoing, in the opinion of the Commission, MSEDCL has communicated to WIVPL in clear terms before commissioning of the project that MSEDCL does not guarantee purchase of power, and post commissioning, as per the mandatory provision of GoM RE Policy, 2015 and its Methodology, that EPA can be signed only after registration of project with MEDA. Therefore, it cannot be considered that MSEDCL has provided free consent for procurement of power from WIVPL's project under dispute. Therefore, WIVPL's contention of signing of EPA as per sovereign promises guaranteed under GoM RE Policy and its Methodology cannot be accepted.*

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21.4 *MSEDCL has confirmed that it has considered the energy injected from WIVPL's 1.5 MW, towards fulfilment of Non-Solar RPO targets for FY 2014-15, 2015-16 and FY 2016-17 only. Therefore, in view of above quoted ruling in BWDPL's matter, MSEDCL shall compensate WIVPL for energy injected from its 1.5 MW WTG in the year FY 2014-15 to FY 2016-17 at the rate of APPC (excluding RE) plus floor price of non-solar REC applicable for respective year. However, such compensation would be without any carrying cost as MSEDCL was not responsible for delay in raising bills for FY 2014-15 to FY 2016-17*

21.5 *Energy injected by WIVPL from FY 2017-18 which has not been utilized by MSEDCL for its RPO cannot be considered for any compensation in absence of valid EPA*

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22.3 *However, the Commission observes that from the various options available such as sale to Open Access consumer, sale to Other Distribution Licensee in the State or opt for REC mechanism, WIVPPL may also consider the option provided under MERC RE Tariff Regulations, 2019. Regulation 7.3 of RE Tariff Regulations, 2019 which enabled signing of PPA with distribution licensee at recently discovered tariff if such project capacity is below the threshold limit specified for competitive bidding process. In the opinion of the Commission, MSEDCL may provide such*

option if the eligible party applies for the same, so that it can utilize this provision of Regulations for signing long term agreement at a rate recently discovered and adopted by the Commission on same terms and conditions which are applicable to such competitively bid PPA. This will end uncertainty about EPA for the generator, at the same time MSEDCL gets energy at competitively discovered rate.

12. Thus, although in its Order dated 3 July 2020 in Case No. 24 of 2020, the Commission has allowed some compensation towards the energy injected by WIVPL's 1.5 MW WTG for the period of FY 2014-15 to FY 2016-17, it has rejected WIVPL's request for EPA at generic tariff of Rs. 5.70 per unit and has further directed that no compensation shall be paid for energy injected into the Grid without a valid EPA from FY 2017-18 onwards. Therefore, in terms of WIVPL's request, present Petition needs to be adjudicated on the specific point whether WIVPL has exercised the option of selling its power to MSEDCL under competitive bidding route for FY 2020-21 and whether MSEDCL needs to compensate/restitute WIVPL at the Tariff of Rs. 2.52 per unit from the date of disconnection till the date of reconnection.
13. On these specific issues, WIVPL has contended that in order to safeguard its financial loss, through its email dated 31 March 2020, WIVPL had submitted application with an intention to sell power generated through its WTG to MSEDCL on online portal of 'short term procurement' of MSEDCL under Competitive Bidding Route for FY 2020-21 at the rate of Rs. 2.52 per unit. WIVPL has further contended that till date MSEDCL has not formally rejected Competitive bidding offer of WIVPL made on 31 March 2020 and has used such power till disconnection of WTG on 28 May 2020. It has also contended that without providing any prior notice, MSEDCL has disconnected its WTG. MSEDCL in its reply has opposed all these allegations. 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 reliability, vide its letter dated 2 May 2020, it has directed MSEDCL to disconnect RE generators who do not have valid contract.
14. Having heard the parties and after taking on record various submissions filed by all parties, the Commission frames following issues for its consideration in the present matter:
 - a) Whether WIVPL's bid for short-term sale was a valid bid and so accepted by MSEDCL?
 - b) Whether MSEDCL has correctly disconnected WIVPL's WTG?
 - c) Whether WIVPL is eligible for compensation?

The Commission has dealt with all the above issues in the following paragraphs.

15. **Issue a) Whether WIVPL's bid for short-term sale was a valid bid and accepted by MSEDCL?**

15.1 WIVPL has contended that to mitigate its financial loss and without prejudice to its claim in Case No. 24 of 2020, vide its email dated 31 March 2020 it had communicated to MSEDCL that power generated through its 1.5 MW wind project should be considered as sale under the competitive bidding route to MSEDCL for Financial Year 2020-2021 at a Tariff of Rs. 2.52 per unit and it would submit the bid for the same on MSEDCL's web portal. WIVPL's email dated 31 March 2020 is reproduced at para 3.2 above. WIVPL has further contended that till date MSEDCL has not formally rejected its bid submitted on web portal and hence it is deemed to be accepted and power injected from 1 April 2020 till disconnection of WTG on 28 May 2020 is deemed to be used by MSEDCL.

15.2 While opposing above contention of WIVPL, MSEDCL has stated that it had replied to WIVPL's email dated 31 March 2020 on the same date itself. The relevant para of MSEDCL email is produced as under:

Kindly note that the matter before the Hon MERC in case no. 24 of 2020 which is sub-judice is altogether different.

MSEDCL has opened its short term procurement online portal in the prevailing lockdown situation due to Pandemic Coved-19 so that small generator shall not suffer.

Further, MSEDCL in its discretion will decide to procure short term power from interested wind generators.

MSEDCL has also stated that the online application submitted by WIVPL on 31 March 2020 was rejected because it was an erroneous application and a system generated email dated 12 June 2020 was sent accordingly.

15.3 The Commission notes that although MSEDCL has contended that WIVPL's application dated 31 March 2020 for short term sale of power was rejected on account of erroneous application, exact details of such error and email sent in this regard on 12 June 2020 has not been placed on record. The Commission also notes the fact that system generated email rejecting application on account of deficiencies in application was sent on 12 June i.e. almost after one and a half month and that too when scheduling of power was to be started from the next date of application itself. This might be due to constraints in scrutiny of application due to lower availability of staff during lockdown. The Commission expects MSEDCL to be more responsive by making appropriate improvement in its system to avoid such delay in future.

15.4 However, this delayed response does not mean that MSEDCL has accepted WIVPL's short-term bid. As reproduced in para 15.2 above, MSEDCL in reply to WIVPL's email has clearly stated that matter *sub judice* before the Commission in Case No. 24 of 2020 is completely different, online portal for short-term procurement was started in view of COVID-19 pandemic for protecting small wind generators and MSEDCL at its discretion would decide to procure short-term power from interested wind generators. The Commission notes that MSEDCL in Case No 92 of 2020 (Indian Wind Power Association Vs MSEDCL) has submitted that such online portal facility is made available to small generators who do not have valid EPA or who may not be able to schedule electricity to its

consumers under Open Access due to lockdown of consumer premises under COVID-19 circumstances. In normal course, MSEDCL is not expected to use any discretion while procuring power through web portal from any wind generators. But at the same time, it is also expected that the bid submitted on the web portal are un-conditional. Rejection of conditional bids is a normal clause in any tender process.

- 15.5 In the present case, WIVPL vide its email dated 31 March 2020 (reproduced at para 3.2 above) has submitted conditional offer to MSEDCL for sale power under Short-term at Rs 2.52 per unit while keeping its claim for long term EPA at generic tariff of Rs. 5.70 per unit. MSEDCL vide its reply dated 31 March 2020 (reproduced at para 15.2 above) has refuted the contentions of WIVPL. Although, MSEDCL in its said email has not clearly rejected the offer of WIVPL, but at the same time, MSEDCL has also not accepted the offer in clear terms. Hence, before starting injection of power from 1 April 2020 under short-term route, WIVPL should have confirmed with MSEDCL whether it had agreed with the offer or not and it should have been culminated in a contract between the two parties.
- 15.6 In view of the above analysis and considering the fact that WIVPL submitted a conditional bid for sale of short-term power and MSEDCL's statement that bid was rejected because the application was also incomplete, the Commission is of the opinion that MSEDCL not accepting the short term bid offered by WIVPL is appropriate.

16. Issue b) Whether MSEDCL has correctly disconnected WIVPL's WTG?

- 16.1 WIVPL has contended that disconnection of its WTG without giving any notice or intention to disconnect along with the grounds to disconnect is a violation of the principles of "Natural Justice" and hence is not legally correct. Whereas as MSEDCL has contended that it has disconnected the WTG under direction from MSLDC.
- 16.2 The Commission notes that WIVPL does not have any valid EPA or OA permission. Further, the Commission in its Order dated 3 July 2020 in Case No. 24 of 2020 has made its observations on injection of energy into the Grid without valid contract as follows:

"21.4 Although, BWDPL has objected that above cited judgments of the APTEL are not applicable in the matter, the Commission is of the opinion that spirit of these Judgments are important to understand, as it deals with injecting energy 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 energy 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 energy injected into the grid. Therefore, to maintain grid discipline and grid

security, such injection of energy without any valid EPA or a contract needs to be discouraged. Hence, such injected energy should not get any compensation due to the reasons explained above including the fact that in the interconnected system, any single entity cannot be identified as a user of such uncontracted injected energy.”

16.3 In the present case, disconnection of WIVPL’s 1.5 MW WTG was on account of direction of MSLDC and not on MSEDCL’s own cause. Hence, MSEDCL cannot be held responsible for such disconnection. Further as MSLDC has issued direction for maintaining grid security in compliance of the provision of MERC (F&S) Regulations, 2018, by asking MSEDCL to disconnect such RE generators who do not have valid contract, the Commission does not find any error in disconnecting 1.5 MW WTG of WIVPL since they did not have valid EPA or OA permission for consumption of injected power.

16.4 WIVPL has also referred to ad-interim order issued in Case No. 28 of 2020 (Bothe Windfarm matter) restraining MSEDCL from disconnecting WTG of Bothe Windfarm and stated that MSEDCL should have provided same treatment to WIVPL. In this regard, the Commission notes that said ad-interim order was specific to M/s Bothe Windfarm and cannot be made generic without dealing with specific facts of any particular case.

17. Issue c) Whether WIVPL is eligible for compensation?

17.1 WIVPL seeks compensation from the date of disconnection till reconnection of its WTG. MSEDCL has opposed such claim of compensation.

17.2 In this regard, as ruled earlier, the Commission notes that there is no valid EPA or OA permission with WIVPL for injecting energy from its 1.5 MW WTG into the grid. In Case No. 24 of 2020, the Commission has already ruled that no compensation is payable for energy injected into the grid without valid contract. Hence, WIVPL would not be eligible for any power injected or deemed to be duly injected under alleged short-term sale.

18. Under such circumstances, the Commission in its Order dated 3 July 2020 in Case No. 24 of 2020 has suggested following option to WIVPL for future sales of energy:

22.3 However, the Commission observes that from the various options available such as sale to Open Access consumer, sale to Other Distribution Licensee in the State or opt for REC mechanism, WIVPPL may also consider the option provided under MERC RE Tariff Regulations, 2019. Regulation 7.3 of RE Tariff Regulations, 2019 which enabled signing of PPA with distribution licensee at recently discovered tariff if such project capacity is below the threshold limit specified for competitive bidding process. In the opinion of the Commission, MSEDCL may provide such option if the eligible party applies for the same, so that it can utilize this provision of Regulations for signing long term agreement at a rate recently discovered and adopted by the Commission on same terms and conditions which are applicable to such competitively bid PPA. This will end uncertainty about EPA for the generator, at the same time MSEDCL gets energy at competitively discovered rate.

WIVPL may exercise above option for sale of its electricity on long term basis.

19. In view of above ruling, the Commission rejects WIVPL's prayer seeking enquiry into the conduct of 'Renewable Energy Department' of MSEDCL in disconnecting its WTG.
20. Further, in view of the above rulings in the matter, MA filed by WIVPL seeking immediate reconnection of disconnected WTG of 1.5 MW becomes infructuous.
21. Hence the following Order

ORDER

The Case No. 101 of 2020 is rejected. Accordingly, MA filed in the matter is also disposed of.

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

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

