

Before the  
**MAHARASHTRA ELECTRICITY REGULATORY COMMISSION**  
World Trade Centre, Centre No.1, 13th Floor, Cuffe Parade, Mumbai 400005  
Tel. 022 22163964/65/69 Fax 22163976  
Email: mercindia@merc.gov.in  
Website: [www.merc.gov.in](http://www.merc.gov.in)

**Case No. 115 of 2020**

**Case of AMJ Land Holdings Limited for removal of difficulties in implementation of  
Regulation 20.3 of the MERC (Distribution Open Access) (First Amendment)  
Regulations, 2019 related to banking issue due to Force Majeure situation prevailing in  
Maharashtra State on account of COVID-19 outbreak and lockdown**

**Coram**

**I. M. Bohari, Member  
Mukesh Khullar, Member**

AMJ Land Holding Ltd.	.....Petitioner
V/s	
Maharashtra State Electricity Distribution Co. Ltd. (MSEDCL)	.... Respondent

**Appearance:**

For the Petitioner : Shri Lalji Dwivedi (Rep.)

For MSEDCL : Shri Ashish Singh (Adv.)

**ORDER**

**Dated: 15 August, 2020**

1. AMJ Land Holding (AMJ) has filed a Case on 30 May 2020, under Regulation 37 of MERC (Distribution Open Access) Regulations, 2016 (**DOA Regulations, 2016**) for removal of difficulties in implementation of Regulation 20.3 of the MERC (Distribution Open Access) (First Amendment) Regulations, 2019 (**DOA First Amendment Regulations**) related to banking issue due to Force Majeure situation prevailing in Maharashtra State on account of COVID-19 outbreak and lockdown declared by the State Government. Through this Petition, the Petitioner is seeking rollover of banking of

wind energy injected into the grid in FY 2019-20 and FY 2020-21 to FY 2021-22 and adjustment of such banked energy in Open Access (OA) consumer's monthly energy bills.

**2. Petitioner's main prayers are as follows:**

- a. Admit the petition for removing difficulties faced by the Petitioner in giving effect to provisions of the Regulation 20.3 of MERC (Distribution Open Access (First Amendment) Regulation, 2019.*
- b. Issue necessary direction to the Respondent to consider COVID 19 AS Force Majeure and rollover banked wind energy injected into the grid for 2019-2020 and 2020-2021 to 2021-2022 and give adjustment of banked energy in open access consumer's monthly energy bills.*
- c. Provide such other relief/reliefs which the Petitioner may be entitled to in facts and circumstances of this case for removing difficulties faced by the Petitioner in implementation to the provisions of the Regulation 20.3 of MERC (Distribution Open Access (First Amendment) Regulation, 2019.*

**3. Petitioner has stated as follows:**

- 3.1 The Petitioner has three Wind Generating Plants located at Satara and Sangli District which have been commissioned in FY 2011. The Petitioner is selling power under Short Term Open Access (STOA) and Medium Term Open Access (MTOA) through captive and third party route.
- 3.2 MSEDCL has granted MTOA permissions to the Petitioner's consumers for the period from 1 April 2020 to 31 March 2021 from its three Wind Generating Plants.
- 3.3 The Central and the State Government declared lockdown from 3rd week of March 2020 due to COVID-19 pandemic situation and whole industrial activity in Pune region has come to a standstill.
- 3.4 On 31 March 2020, the Petitioner informed MSEDCL about closure of its consumer's industries. The Petitioner also informed MSEDCL that wind mills are kept in operation and energy generated is being injected into the grid. The Petitioner further requested MSEDCL to adjust the units in the consumer's monthly bills when the consumer's plant resumes operation after the lockdown is lifted.
- 3.5 On 14 May 2020, MSEDCL replied that there is no energy sale agreement between the Generators and MSEDCL and therefore, force majeure condition is not applicable to MSEDCL. Hence, the Petitioner's request for banking of wind energy cannot be considered.
- 3.6 On 25 May, 2020, the Petitioner informed MSEDCL that power supply agreement with consumer was executed under third party sale for which MTOA permission was issued by MSEDCL. The Petitioner, MSEDCL and consumer are required to execute the agreement within 30 days from MTOA permission.
- 3.7 The Petitioner received MTOA permissions on 2 March 2020 and 27 April 2020.

Agreement could not be done due to lockdown situation and MSEDCL was informed accordingly. The execution of OA Agreement was withheld due to force majeure condition of Covid-19.

- 3.8 All the industries were forced to remain under shutdown till further notice of the Central and the State Government. Wind projects cannot shut down as RE projects are Must Run projects. Wind Generators are injecting energy into the grid but the same is not being consumed by their respective consumers due to lockdown of industries.
- 3.9 The Petitioner is already burdened due to significantly high OA charges and other expenses in installation and operation of its Wind Generation Plant. The Petitioner cannot bear any additional losses due to lapsing of such over-injected Units and partly purchase thereof at APPC rate.
- 3.10 The Commission has taken various measures to support the consumers by considering the disruption of supply chain due to COVID-19 such as deferment of maximum demand charges, monthly reduction of Contract Demand etc. The present situation is likely to continue for another few months until the industrial production returns to normal. Hence, the Commission may consider COVID -19 as a force majeure and protect the Petitioner's interest by allowing rollover of banked energy injected into the grid.
- 3.11 Ministry of New and Renewable Energy (**MNRE**) has also issued various notifications/advisories to the State Governments for providing all necessary support to keep RE generation un-interrupted. MNRE vide its circular dated 26 March 2020 has emphasized on the essential operation of RE generation.

**4. MSEDCL filed its reply on 8 June, 2020 stating as under:**

- 4.1 The Petitioner has not joined other Distribution Licensees (Adani Electricity Mumbai Ltd., Tata Power Co. Ltd., BEST, other Deemed Distribution Licensees) as well as Maharashtra State Load Dispatch Centre as Respondent parties to the present proceedings which are essential and important parties to whom the MERC DOA Regulations, 2016 and the DOA First Amendment Regulations, 2019 strictly apply.
- 4.2 Power to Remove difficulties cannot be exercised ex-parte and without hearing all the affected Parties. Power to Remove difficulties should be exercised in a manner consistent with the provisions of the Regulations/Act and for the purpose for which it is conferred. It does not contemplate removal of hardships that may arise as a result of giving effect to the Regulation.
- 4.3 The present Petition is nothing but another attempt to extend the period of "Banking" throughout the year. Several Writ Petitions have been filed before the Hon'ble High Court challenging the DOA First Amendment Regulations, 2019 on this issue. However, the Writ Petitioners have not been able to secure any favorable Order till date from the Hon'ble High Court.
- 4.4 The Order dated 24 November, 2003 in Case Nos. 17(3), 3, 4 & 5 of 2002 (Wind Tariff Order) states that a generator cannot bank any excess power more than 10% generation from the plant "at any point in time".

- 4.5 DOA First Amendment Regulations, 2019 was notified in the backdrop of difficulties highlighted by MSEDCL about negative impact of the unchecked Banking and the same is highlighted in the Statement of Reasons (SOR) of DOA First Amendment Regulations, 2019.
- 4.6 Acknowledging the Must Run Status of RE Generators and taking into consideration the present satiation of COVID-19, MSEDCL has taken an initiative of providing an “Option of Short Term Sale to MSEDCL” to all willing Wind and Solar Generators through online portal @ Rs. 2.52 Per Unit and @ Rs. 2.50 Per Unit respectively. Many RE Generators have availed this option. However, inspite of such dispensation and inspite of being fully aware of the fact that its OA consumer will not be able to consume power, the Petitioner still continued to avail OA which is a pure commercial call and risk of the Petitioner.
- 4.7 The Petitioner through the present Petition is seeking to adjust its entire generation injected into the grid when in fact, there has been no consumption during such time. This is not the intent of Banking which is essentially to adjust unadjusted energy which after consumption, remains in surplus. The onus of consuming energy under OA is on OA consumer once OA is granted.
- 4.8 The Petitioner would have surrendered its OA during the time of COVID-19 and explored other possibilities for sale of power.
- 4.9 There is no dispute about the “Must Run” status of the Petitioner. However, “Must Run” status does not give a right to Petitioner to manipulate the system to achieve its malicious intent at the cost of common consumers. When during the time of COVID-19, MSEDCL created the option to sell “Short Term Power” to MSEDCL for all Wind Generators, there arises no occasion for the Petitioner to claim any “loss” occasioned on account of “Must Run” status. All alternate options were available to the Petitioner which were not exercised by it after taking a commercial call and risk to avail OA.
- 4.10 The entire case of Petitioner is based on COVID-19 acting as Force Majeure and for seeking adjustment of the injected Units. There is no Force Majeure w.r.t MSEDCL and the Petitioner. The Generator had sought OA which has been provided by MSEDCL as per law even during the COVID-19 pandemic.
- 4.11 The issue of Force Majeure is subject to Contract/Agreement between the Parties. The Contract/Agreement for OA is between the Generator and the Consumer which is not within the jurisdiction of the Commission. Moreover, through the present Petition an event of Force Majeure is sought to be argued on behalf of OA consumers which is strictly amendable to the jurisdiction as per the Contract/Agreement entered between the Generator and the Consumer.
- 4.12 The notifications as relied upon by the Petitioner on the issues of Force Majeure does not aid the Petitioner in any manner, as the conduct of Petitioner in still availing OA after knowing fully well that the power would not be consumed by the consumer clearly shows that there was no Force Majeure event. Moreover, the said notification dated 26 March, 2020 justifies the stand and efforts taken by MSEDCL in providing Option of Short Term Sale to MSEDCL.

- 4.13 Various dispensations have been provided by the Commission in the interest of Industrial and Commercial consumers which will help them to mitigate the impact of COVID-19 to a large extent. However, these measures will definitely have adverse financial impact on MSEDCL. During challenging times like the present, more robust and balancing act is required to safeguard interest of all consumers. However, through the present petition, the Petitioner in effect is seeking to enrich itself at the cost of common consumers without any mechanism for restituting the common consumers in future. Hence, Petitioner's prayer should not be granted.

**5 AMJ filed its rejoinder on 8 June, 2020 stating as under:**

- 5.1 Indian wind Power Association (IWPA) has challenged DOA First Amendment Regulations 2019 before Hon'ble Bombay High Court vide Writ Petition No. 2564 of 2019. The Case was heard on 16 December, 2019 and the Hon'ble High Court directed MSEDCL not to take any coercive action till further order.
- 5.2 Without waiting for final Judgment of the Hon'ble High Court, MSEDCL has already implemented DOA First Amendment Regulations 2019 by discontinuing rollover of non-consumed monthly wind units and levying other unbearable OA charges.
- 5.3 The present Petition has been filed under the Regulation 37 of the DOA Regulations 2016 to remove difficulties of giving effect to provision 20.3 of DOA First Amendment Regulation 2019. On one hand, the Regulation 20.3 of DOA First Amendment Regulation 2019 is permitting banking of energy only on monthly basis and on the other hand due to Force majeure declaration of lockdown, the consumer's plant is not operating to consume any energy.
- 5.4 COVID-19 pandemic is worldwide and it cannot be predicted as to when the situation would return to normalcy. The Central Government and State Governments have realized the criticality of pandemic and Ministry of New Renewable Energy (MNRE) has already issued advisory to various States for rolling over RE energy. The Petitioner has relied on Office Memorandum dated 1 April, 2020, 4 April, 2020 and 16 April, 2020 issued by MNRE. The Petitioner would not have approached the Commission if the consumer's plant was not under shutdown due to lockdown under Force majeure COVID-19 pandemic.
- 5.5 As per GoM Wind Power Policy 1996 and 1998, the wind power being infirm in nature, banking was allowed and the same is continued in Wind Tariff Order.
- 5.6 In its Wind Tariff Order, the Commission has ruled that in excess of 10% of the energy fed into the grid during the year due to force majeure conditions shall be purchased by MSEDCL but never ruled for lapsing of wind energy.
- 5.7 Energy injected by the Petitioner is not even 3% of its consumer's monthly requirement and hence the Petitioner was sure that its energy would be consumed even if the consumer is allowed to operate its plant for a week in the month of April 2020.
- 5.8 In accordance with the Practice Direction dated 21 May, 2020 issued by the Commission, the consumer of the Petitioner sought to reduce its Contract Demand. However, MSEDCL stated that the partial OA consumers cannot reduce their Contract Demand

below OA. This has restricted all partial OA consumers to reduce their Contract Demands during lockdown period.

5.9 MSEDCL has never issued any OA Permission before the commencement date of OA. Further, had the MTOA permission been surrendered by the Petitioner, it would have to wait for almost three months to obtain new MTOA permission and till such time, it would have to keep on paying charges for STOA applications.

5.10 Thus, the Petitioner did not avail the option for surrendering its MTOA and opting to supply MSEDCL on account of the following reasons:

- i. Period of lockdown was unpredictable and extended/lifted in stages by Governments;
- ii. Absence of any hassle free or online procedure for surrender/restoration of OA permission by MSEDCL;
- iii. Option of selling wind power to MSEDCL free of cost and waiting for payment for indefinite time period was not chosen with the apprehension of heavy financial loss. The Petitioner is yet to receive its outstanding amount of Rs. 20 Lakh for its over injected wind units sold to MSEDCL in FY 2015-16;
- iv. Windmill cannot be stopped being MUST RUN projects.

5.11 MSEDCL uses the energy generated by the wind generator and earns revenue by selling it to common consumers. The Petitioner is penalized for paying Rs. 1.39 per unit against wheeling and transmission charges for over injected units.

5.12 Under Regulation 39 of DOA Regulations, 2016, the Commission can relax any provision of the DOA Regulations, 2016 on its own motion or on an application made before it by an interested person.

## **6 At the e-hearing through video conferencing held on 14 August 2020:**

6.1 The representative of Petitioner re-iterated its submission as made out in the Petition and further stated that the Commission has already passed its Order in Case No. 92 of 2020 on similar issue. The Petitioner further stated that while it does not have any intention to contest that Order, considering the submissions as made out in the Petition and the rejoinder, the Commission may grant the following reliefs:

- i. Direct MSEDCL to allow rollover of banked wind energy only for lockdown period.
- ii. MSEDCL may be allowed to give adjustment of banked wind units in OA consumer's bill in suitable instalments.
- iii. If there is any technical difficulty with MSEDCL in adjusting wind units in the group company's monthly bill, they may be allowed to purchase the units and refund said amount.

6.2 Advocate appearing on behalf of MSEDCL also opined that the issues in present Petition have already been dealt with by the Commission in Case No. 92 of 2020 and further

stated that Case No. 92 of 2020 was filed by IWPA seeking relaxation of Regulations related to banking whereas present Petition has been filed requesting the Commission to invoke its Power to Removal of Difficulties. Power to remove difficulties does not contemplate removal of hardships that may arise as a result of giving effect to the Regulation. If the Petitioner is willing to make additional new prayers, it needs to amend its Petition.

### **Commission's Analysis and Ruling:**

6 After analysing the submissions of the Parties, the Commission notes that through present Petition, the Petitioner has requested the Commission to invoke its power for removal of difficulties in implementation of Regulation 20.3 of the DOA First Amendment Regulations, 2019 related to banking issue due to Force Majeure situation prevailing in Maharashtra State due to COVID-19 outbreak and lockdown declared by the State Government. The Petitioner has sought rollover of banking of wind energy injected into the grid in FY 2019-20 and FY 2020-21 to FY 2021-22 and adjustment of such banked energy in OA consumer's monthly energy bills.

7 After going through the submissions made by the Petitioner, the Commission notes that similar prayer had been made by IWPA in its Case No. 92 of 2020. Also, the identical grounds/contentions /arguments had been made by IWPA as are made in the present Petition by the Petitioner. Only difference being that in Case No. 92 of 2020, the IWPA, the Petitioner therein, had requested the Commission to relax the Regulations related to banking whereas present Petition has been filed requesting the Commission to invoke its Removal of Difficulties power on the banking issue. MSEDCL's defense in that Case was also same as is there in present Petition. Hence, the Commission is of the view that Ruling in Order dated 4 July, 2020 in Case No. 92 of 2020 squarely applies to the present Case. The Commission, in Case No. 92 of 2020, has held as follows:

*“ 45 The Commission in the above Paras 21 to 41 has analysed the applicability of force majeure clause and the consideration/ intentions of banking as envisaged under the Wind Tariff Order 2003 and the DOA First Amendment Regulations 2019. **In view of the foregoing the Commission is not inclined to accept the contentions of IWPA as regards the extension of the banking period provided under Regulation 20.3 of DOA Regulations, 2016 and permitting adjustment of the banked units of FY 2019-20 and FY 2020-21 till the end of FY 2021-22.**”*

8 Thus, although the present Petition had been filed on 20 May, 2020, the issues raised in the Petition has already been addressed by the Commission in the aforesaid Order dated 4 July 2020 passed subsequently on the Petition filed by IWPA.

9 At the e-hearing dated 14 August, 2020, the Petitioner also admitted the above fact and requested the Commission to direct MSEDCL to allow rollover of banked wind energy only for lockdown period. The Petitioner also requested that MSEDCL may give credit adjustment in installments or MSEDCL may itself purchase these Units. Advocate for MSEDCL objected to these revised prayers and stated that the Petitioner cannot revise its prayers without amending its Petition. Without going into legality of the same, the

Commission is of the view that through such requests, the Petitioner is still seeking rollover of banking without having any consumption at other end. The Commission does not find any reason to allow the same in light of the discussions and analysis as made in the Order in Case No. 92 of 2020.


- 10 The Petitioner, in the present Petition has also drawn attention of the Commission to the circular dated 26 March, 2020 issued by MNRE claiming that MNRE has emphasized on the essential operation of RE generation. Upon perusal of the circular, it is observed that through this circular, MNRE has asked various administrative departments to treat RE Generation plants as essential services while implementing the rules imposed by the Government during the lockdown. The Commission is of the view that this is a just administrative circular for ensuring the necessary permissions to staff, vehicles and material availability for operation and maintenance of RE generation plant and as such would not support prayer of the Petitioner for seeking rollover of banking in light of the detailed analysis undertaken in Case No. 92 of 2020.
- 11 During extra-ordinary situations like the present pandemic, balancing act is required to be undertaken by Commission to safeguard interest of all parties. The present situation has adverse impact on MSEDCL and other Distribution Licensees as well with their revenue going down significantly due to reduction in consumption, continued liability of Fixed cost of contracted power and also due to reduction in collection of billed energy. Hence, while considering any dispensation to the Petitioner as sought, it is necessary to ensure that such dispensation provided to any party on a principle of "Restitution", does not cause any long term loss to other party. As held in Order dated 4 July 2020, in Case No. 92 of 2020, there may be financial implications on the Distribution Licensees and their consumers if relief as sought is allowed.
- 12 The Petitioner, in its rejoinder has raised the issue of MSEDCL's response on its request for contract demand reduction. The Commission is of the opinion that the Petitioner being a MTOA consumer, its request would be governed by the Supply Code and SoP Regulations and therefore, the Petitioner would be entitled to dispensation for contract demand revision as per the Practice Directions dated 21 May, 2020. The extent of contract demand revision including reduction in contract demand below OA quantum would be governed by the relevant provisions of DOA Regulations.
- 13 Hence the following Order:

### **ORDER**

**Case No. 115 of 2020 is dismissed.**

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

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

  
(Abhijit Deshpande)  
Secretary

