

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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Case No. 73 of 2020

**Case of Kamal Encon Industries Ltd. for review of the Order dated 14 November 2019
in Case No. 260 of 2019, in terms of the liberty granted by the Hon'ble Appellate
Tribunal for Electricity in its Judgment dated 25 February 2020 in Appeal No. 65 of
2020**

Coram

I. M. Bohari, Member
Mukesh Khullar, Member

Kamal Encon Industries LimitedPetitioner

V/s

1.Maharashtra State Electricity Transmission Co. Ltd. (MSETCL)

2.Maharashtra State Electricity Distribution Co. Ltd. (MSEDCL)Respondents

Appearance:

For the Petitioner : Ms. Swapna Seshadri (Adv.)

For MSETCL : Shri Shashank Jewalikar (Rep.)

For MSEDCL : Shri Ashish Singh (Adv.)

ORDER

Dated: 2 August 2020

1. Kamal Encon Industries Limited (**KEIL**) has filed a Case under Sections 94 (1) (f) and 86 of the Electricity Act, 2003 (**EA**) read with Regulation 85 of the Maharashtra Electricity Regulatory Commission (Conduct of Business) Regulations, 2004 (**CBR Regulations**) for review of the Order dated 14 November 2019 in Case No. 260 of 2019 (**Impugned Order**) in terms of the liberty granted by the Hon'ble Appellate

Tribunal for Electricity (**ATE**) in its Judgment dated 25 February 2020 in Appeal No. 65 of 2020.

2. KEIL's main prayers are as follows:

- i. Review the Order dated 14.11.2019 on the applicability of condition to be connected through a separate feeder;*
- ii. Relax the rigors of Regulation 8 of the MERC (F & S) Regulations on the Petitioner;*
- iii. Direct MSEDCL and MSETCL to grant No Objection to the Petitioner expeditiously in order to further the captive open access applied for by the Petitioner;*
- iv. Direct MSETCL to process the open access subject to the Petitioner installing SEM meters with AMR facility on its outgoing feeders;*
- v. Direct the meters to be installed in a time bound manner;*
- vi. Pass such further order(s) as deemed fit and proper;*

Interim Prayers :

- i. The Hon'ble Commission may for the interim period, direct MSEDCL to maintain status quo with regard to the short-term procurement of power from the Petitioners' plant;*
- ii. Alternatively, the Hon'ble Commission may direct MSEDCL to bank the electricity generated from the Petitioners' plant till the matter is disposed of;*
- iii. Pass an ex-parte ad-interim order in terms of prayer (a) or (b) above and confirm the same after notice to the Respondents;*

3. KEIL has stated as follows:

3.1 Kamal Encon Industries Limited (**KEIL**) is a Wind Generator with a capacity of 1.650 MW, commissioned in 2006 at Bhramanvel in Dhule District. KEIL intended to supply to its captive units in the State of Haryana under Inter-State Long Term Open Access (**LTOA**) after expiry of its Long-Term Energy Purchase Agreement (**EPA-I**) with MSEDCL for 13 years.

3.2 Present Petition has been filed on a limited issue decided by the Commission in the Order dated 14 November 2019 in Case No. 260 of 2019. In this Order, the Commission, had upheld the issuance of conditional NOC by MSETCL for enabling the CTU to process LTOA Application of KEIL. The contention of KIEL is that the finding had been rendered without giving KEIL a fair opportunity to respond to the conditions imposed by MSETCL pertaining to a separate feeder. Hence, as per liberty granted by the Hon'ble Appellate Tribunal for Electricity (**ATE**), present review Petition has been filed.

3.3 KEIL on 20 November 2018 requested MSETCL for grant of No Objection Certificate (**NOC**) for supplying power under Inter-State Open Access.

- 3.4 On 22 January, 2019, MSETCL issued a conditional NOC with the condition of opening of Letter of Credit (LC) and signing the Bulk Power Transmission Agreement (BPTA) with STU/MSETCL prior to the commencement date.
- 3.5 MSETCL had not issued proper NOC for enabling the CTU to process LTOA Application of KEIL for Inter-State open access. Hence, after the expiry of Long Term EPA-I on 7 February 2019, KEIL was constrained to sell power to MSEDCL under Short Term EPA (EPA-II). However, the EPA II also expired on 29 February 2019.
- 3.6 After expiry of EPA II on 29 February 2019, there was no sale of Power from this plant. On 29 September 2019, KEIL approached the Commission by filing the Petition in Case No. 260 of 2019 and raised two issues i.e. Delayed payments along with interest/penal interests and discriminatory treatment by MSETCL in the processing and issuance of amended NOCs for Inter-State Open Access.
- 3.7 In the instant Review Petition, relief is sought only on the second issue relating to revised NOC.
- 3.8 The Case No. 260 of 2019 was listed for hearing on 18 October 2019. On 17 October 2019, MSEDCL paid the dues for its supply under EPA-I and informed so during the course of hearing. On the issue of grant of NOC, representative of KEIL stated that it was willing to comply with the conditions of the NOC dated 22 January, 2019 issued by MSETCL regarding establishment of LC and BPTA. However, MSETCL's reply to the Petition was handed over to KEIL only during hearing i.e. on 18 October 2019. MSETCL's reply contained a revised NOC dated 9 October, 2019 which imposed further additional condition, which MSETCL had never sought for earlier.
- 3.9 The additional conditions imposed by MSETCL were:
- “a) KEIL shall construct separate feeder for injecting power from concerned generator to grid as per Regulation 8.2 of MERC F & S Regulations.*
- b) KEIL shall install separate SEM at generating unit and interface point, as per TOA (First amendment) Regulations, 2019 and also make arrangement for visibility of generator to SLDC.”*
- 3.10 Since the reply of MSETCL was handed over to KEIL during the hearing, the Commission with the consent of all the parties, passed over the matter and asked the representative of KEIL to take further instructions. Despite the short notice, KEIL took instructions and agreed on the issue of separate SEM Metering but objected to the issue of being connected through a separate feeder. However, KEIL was not given an opportunity to file a Rejoinder /any further submissions in Case No. 260 of 2019 and the matter was closed for orders. KEIL was not even given an opportunity to file a written response on the above revised NOC which was handed over only on the date of hearing.
- 3.11 Thereafter, the Commission issued the Order in Case No. 260 of 2019 on 14 November 2019 upholding the conditional NOC regarding construction of a separate feeder from the plant of KEIL to the Pooling sub-station (PSS).
- 3.12 KEIL challenged the above Order by filing Appeal No. 65 of 2020 before the Hon'ble

Tribunal for Electricity (**ATE**). Vide Judgment dated 25 February 2020, the Hon'ble ATE has given a liberty that KEIL should pursue its case for relaxation of Regulations, by filing a Review Petition before the Commission.

3.13 In view of the above, KEIL is filing the instant review Petition on the following grounds:

i. Nature and Applicability of Regulation 8 of the MERC (F & S) Regulations:

- a. Regulation 17.5 of MERC (Transmission Open Access) (First Amendment) Regulations, 2019 (**TOA First Amendment Regulations, 2019**) provides that Generating Stations having multiple generating units wherein one or more units are contracted under captive route or third party route, such Generating Company, shall install at their cost, SEMs, separately for each generating unit, within six months from the notification of these Regulations, in accordance with requirements stipulated by the Nodal Agency and/or MSLDC.
- b. Thus, there is no condition in the TOA Regulations of having to be connected through a separate feeder. This condition has however come subsequently in the MERC F&S Regulations 2018 that Inter-State transactions at a PSS shall be permitted only if the concerned Generator is connected through a separate feeder.
- c. However, the above condition is not for grant of open access but a subsequent requirement for forecasting and scheduling. Further, the Commission in the approach paper has defined the intent of these Regulations as below:

“If intra-State wheeling transactions move to a ‘schedule’ based compensation regime in future, no such distinction in the treatment for intra-State and inter-State transactions would be necessary.”

- d. Therefore, while the F&S Regulations only intend to operate in the sphere of scheduling and forecasting, and not intended to come in the way of grant of open access, the Commission has taken note of the fact that the Regulation in question i.e. Regulation 8 is only a transient regulation and not a permanent one.
 - e. As Regulation 8 of MERC F &S Regulations is only a transient and temporary provision till the time the intra-state transactions move to a ‘schedule’ based settlement. Thereafter, there would be no need for an independent feeder.
- ii. Cost Implication to KEIL for the above transient provision:

KEIL is a small 1.65 MW based wind generator whose entire capital cost itself is less than the cost of construction of a separate feeder from the plant to the Pooling Sub-station (**PSS**) (Sakri in this case). Hence, the requirement for construction of a separate feeder for its Wind Turbine Generator (**WTG**) connecting to PSS of MSETCL would be uneconomical as the same would involve laying of 35 KM of 33 kV lines. The indicative cost of laying down this separate Feeder is Rs. 17 Cr. (excluding land and ROW) which is more than the cost of assets itself. Incurring

the above cost to comply with a transient provision of Regulation 8 would be extremely harsh on a 1.65 MW wind generator.

iii. Addressing the issues faced by MSETCL:

The only difficulty or apprehension which MSETCL has, is regarding scheduling without there being a separate feeder to identify the power generated by KEIL. In this regard, setting up of SEM with AMR facility at the outgoing feeders of KEIL's generating plant would be sufficient for the purpose of scheduling and settlement of accounts. The main purpose of the Regulation 8 under the MERC F&S Regulations is to facilitate energy settlement in the case of generators undertaking inter-state transactions. This purpose can be satisfied by installing an SEM on the outgoing feeders of KEIL's 1.65MW Wind Power Plant. The QCA who has been appointed by KEIL has also confirmed that real time data would be visible to the MSETCL/SLDC (Sakri substation) from SEM meters with AMR facility installed by KEIL. The Petitioner is willing to install the same in a time bound manner as may be directed by the Commission.

iv. KEIL relied on following Judgments to support its claim of Review:

- a. Judgment passed by the Hon'ble Supreme Court in *Premium Granites v. State of T.N., (1994) 2 SCC 691*
- b. ATE Judgment in the matter NTPC Ltd. vs. Madhya Pradesh State Electricity Board 2007 ELR APTEL 7
- c. ATE Judgment in the matter of Ratnagiri Gas and Power Private Ltd. v. *CERC & Anr., 2011 ELR (APTEL) 532*

4. **MSETCL in its submission dated 24 April 2020 has stated as under:**

- 4.1 In accordance with Regulation 17.5 of MERC TOA First Amendment Regulations, 2016, KEIL will have to install SEM at each generating unit for metering purpose at its own cost. For amendment of NOC, this amended Regulation has also been taken into consideration.
- 4.2 Also, Regulation 8.2 of MERC F &S Regulations provides that Inter-State transactions at the PSS shall be permitted only if the concerned Generator is connected through a separate feeder.
- 4.3 Considering the above provisions, STU, issued NOC to KEIL subject to the construction of separate feeder for injecting power from concerned generator to grid, installation of separate SEM at generating unit and interface point and arrangement of visibility of generator to SLDC apart from the condition relating to opening of LC and BPTA.
- 4.4 After receipt of Judgment dated 25 February 2020 of ATE in Appeal No. 65 of 2020, the issue of proposed arrangement of setting up of SEM meters with AMR facility at outgoing feeders of KEIL Generation plant was discussed with SLDC to get SLDC's comments on whether such arrangement would be sufficient for the purpose of scheduling and settlement of the account for Inter State transactions or not.

- 4.5 MSLDC informed as under:
- a. The main architecture and logic of the Forecasting Scheduling and RE DSM billing software has been developed by MSLDC in accordance with the provisions of the MERC F&S Regulations.
 - b. Regulations 8.2 of MERC F & S Regulations provides that Inter-State transactions at a PSS shall be permitted only if the concerned Generator is connected through a separate feeder. Therefore, as per the MERC F&S Regulation, it is mandated to carry out the Forecasting Scheduling and Deviation Settlement at PSS level.
 - c. Thus, only settings up of SEM meters with AMR facility at the outgoing feeders of KEIL generating plant is not in line with F & S Regulation and hence not suitable for the purpose of Forecasting, Scheduling and Deviation Settlement for Inter State transactions.
- 4.6 Hence, STU had issued revised NOC to KEIL in line with the Regulations.
5. **MSEDCL, in its submission dated 1 May 2020, stated as under:**
- 5.1 KEIL is claiming relaxation in the Regulations which have been notified after following due public consultation and now under the guise of review, KEIL is seeking relaxation of these Regulations. KEIL's prayer cannot be allowed as it is not in line with the Regulations and will create procedural difficulties in terms of energy settlement.
 - 5.2 KEIL has claimed that Regulation 8 of MERC F & S Regulations is a transient and temporary Regulation. KEIL's such claim is baseless and not tenable. Such claim needs to be rejected as it does not fulfill the criteria of the Review Petition. Further, there is no error apparent pointed out by KEIL. If such relaxation is allowed, there will be multiplicity of similar types of applications, unnecessarily creating complications in the successful implementation of the Regulations.
 - 5.3 There is a principal difference in the energy settlement that takes place at inter-state and the intra-state transactions. Hence, cost involved for laying of feeder cannot be a reason for non-compliance of the Regulations and KEIL must bear the same even if its cost of separate feeder is exorbitant in comparison with the cost of project.
 - 5.4 KEIL should bear the cost of laying the individual feeder as it is KEIL that wishes to use wind generation for captive use through interstate open access, hence relevant Regulations need to be followed by KEIL. In view of this, no relaxation should be granted to KEIL as it will become in future a practice to claim exceptions in the Regulations.
 - 5.5 As regards Interim reliefs sought for maintaining status quo on short-term power purchase agreement, MSEDCL submits that in accordance with settled position of law, MSEDCL cannot be mandated to purchase power from the generators without valid EPA.
 - 5.6 Inefficiency or failure on the part of KEIL to lay a separate feeder as specified under the Regulations cannot be compensated by MSEDCL unless and until a valid EPA is entered into between KEIL and MSEDCL. It was the choice of KEIL to go for inter-

state open access, which was duly allowed by MSEDCL. Hence, MSEDCL has adhered to the provisions of the Open Access Regulations and now it is the duty of KEIL that it also adheres to the provisions of the MERC F & S Regulations. KEIL oscillates at one end by applying for inter-state open access while simultaneously seeking relaxation in the Regulations and thereafter if relaxations are not allowed, wants MSEDCL to purchase its generated energy. Hence, the Commission should reject the interim prayers of KEIL in view of the oscillating stands being taken by KEIL.

- 5.7 Liberty was given by the Hon'ble ATE to KEIL for filing Review on the ground that time was not given to KEIL for tendering its say on the conditions specified by MSETCL in the revised NOC. However, the Hon'ble ATE has, nowhere given liberty to KEIL to inject energy in the grid without any valid EPA or open access permission.
- 5.8 Recently, MSEDCL had floated tender for purchase of wind power from Wind Generators whose EPAs had expired. KEIL had an option to participate in that tender. Further, MSEDCL has also opened its portal for short term wind purchase w.e.f. 27 March 2020 and KEIL applied for short term sale on 27 March 2020 for the period from 1 April to 30 June 2020.
- 5.9 It is well settled position that without valid PPA or Open Access permission, Generator/s cannot be allowed to inject the energy into grid. Hence MSEDCL will not allow such injection of generation from KEIL or rather will not pay for any generation injected by KEIL without any valid PPA/EPA.
- 5.10 As regards the request for banking of energy from KEIL's wind Generator, MSEDCL submits that there is no such provision for banking of wind power except those mentioned within the ambit of existing Rules and Regulation. Further, the interim prayers as sought does not come under the purview of the Review proceeding.

6. KEIL in its Rejoinder dated 3 May 2020 has stated as under:

- 6.1 As admitted by MSEDCL, the difficulty arising out of absence of separate feeder is just a procedural difficulty. This can be overcome by alternate means as suggested by KEIL i.e. installation of Remote Terminal Units (RTU) and/or SEM Meters along with AMR Facility.
- 6.2 Such a rigid view cannot be taken when the purpose of the Regulation is, in any case, being catered to, by installation of RTU Units and/or SEM Meters along with AMR Facility. It is an admitted position that MERC F&S Regulations are not intended to create hindrances in grant of open access.
- 6.3 MSEDCL has stated that the Regulations being a transient one, is not a ground for review, and that allowing such relaxation would open flood gates for multiple applications such as the present one. However, MSEDCL does not deny the fact that the provision under Regulation 8 with respect to the requirement for a separate feeder is one that is a temporary provision. As regards the contention that the same does not fulfill the criteria for Review i.e. error apparent, KEIL submits that as per ATE Judgment, KEIL is entitled to seek review on account of the fact that KEIL was not given a proper opportunity to place its case before the Commission. The Regulation being a temporary one, is a ground for relaxation and not for review.

- 6.4 The cost of constructing an independent/separate feeder would work out to be more than the total capital asset value of WTG itself. It is wrong and denied that the reason of financial implication cannot be a ground for relaxation. The Commission will have to take all facts into consideration including the financial implication on a small 1.65 MW wind power plant of KEIL. In any case, the purpose of the Regulation is being fulfilled by the alternate arrangement as suggested by KEIL.
- 6.5 It is wrong and denied that there is any inefficiency or failure on the part of KEIL to lay separate feeder in terms of the Regulations, and that KEIL is seeking MSEDCL to compensate for the same. KEIL is only seeking that the arrangement of short-term power purchase be continued, by entering into another short-term power purchase agreement or EPA. KEIL has only as an interim measure sought relief so that power does not get stranded. It is only as an alternate prayer that in case inter-state open access is not granted in time, KEIL may be allowed to supply to MSEDCL in the short term. MSEDCL has in fact agreed to purchase the power w.e.f. 1 April 2020 till 30 June 2020.
- 6.6 The only submission of MSEDCL with regard to proposal for an alternative metering arrangement proposed by KEIL is that it would cause procedural difficulty.
- 6.7 In fact, currently RTU with ABT meter and AMR Facility are already installed on the outgoing feeder (KP-2), which receives real time metering data of all the WTGs separately. Similarly, RTU with ABT meters and AMR Facility is installed at the PSS of 132kV at Sakri. Over and above this, KEIL is now undertaking (if found necessary) to install the RTU units, with ABT metering and AMR facility at the WTG end as well, even though the separate and independent real time metering data is already available at the pre-existing RTU units at KP-2 feeder
- 6.8 Therefore, 100% operational data in real time from KEIL's WTG is available through the SCADA Centre (which is also available at the site) and RTUs. The document would show that even at the PSS (Sakri) level, real time metering data for each 15-minute time block is available for KEIL's WTG.
- 6.9 The QCA appointed by KEIL has also confirmed that real time data would be visible to the MSETCL/SLDC at the Sakri substation as SEM meters with AMR facility are installed by the Petitioner. This has not been disputed by MSETCL
7. **At the e-hearing through video conferencing held on 19 June 2020:**
- 7.1 Advocate of KEIL re-iterated its submissions as made out in the Petition and stated that she is not pressing the prayers of interim relief as Short-Term EPA has been executed with MSETCL upto December 2020. KEIL is seeking relief for relaxation of Regulation 8 of the MERC F & S Regulations as separate feeder arrangement is only a transient arrangement and the Commission is empowered to relax the Regulation.
- 7.2 Advocate of MSEDCL re-iterated its submissions as made out in the reply and stated that Interim prayer has become infructuous as MSEDCL has allowed the Short-Term EPA upto December 2020. He further stated that the grounds submitted by KEIL do not fulfill the criteria of the Review Petition since no error apparent is pointed out by KEIL.

7.3 Representative of MSETCL re-iterated its submissions as made out in the reply.

Commission's Analysis and Ruling:

8. KEIL has filed this review Petition seeking review of the Commission's Order dated 14 November 2019 in Case No. 260 of 2019 wherein the Commission had directed KEIL to fulfill the conditions under the revised NOC issued by MSETCL regarding establishment of a separate feeder.
9. This Order was challenged by KEIL before the Hon'ble ATE. The Hon'ble ATE, vide its Order dated 25 February, 2020, granted liberty to KEIL to file Review Petition before the Commission. The relevant extract is reproduced below:

"14. After some hearing, the learned counsel for the Appellant submitted that the State Commission has glossed over the alternative prayer of the Appellant for relaxation to be considered vis-a-vis such onerous condition in respect of the case of the Appellant, there being virtually no opportunity available for such alternative prayer to be pressed at the final hearing when the impugned order was passed by the State Commission. She submitted that the appeal is pressed with a limited prayer for liberty to be granted to the Appellant to approach the State Commission by a review petition so as to seek consideration of its alternative prayer of relaxation under the Regulations so as to relieve it of the rigor of such condition as to separate feeder, it being a small capacity wind generator, the expenditure required to be incurred being in excess of the cost of the project itself...."

16. The learned counsel for the Respondents, on being asked, submitted that they leave the matter to this Tribunal in so far as the limited prayer for liberty to be granted for review application to be moved is concerned.

17. Given the background facts, as noted above, we grant the liberty as is sought to the Appellant though making it clear, for removal of doubts if any, that by granting such liberty, we are not to be construed having expressed any opinion on the issues either way. The review petition for which liberty has been granted may be filed within two weeks hereof."

10. Accordingly, KEIL has filed the instant Review Petition and has sought following main reliefs:
 - a. Review the Order dated 14 November 2019 in Case No 260 of 2019 on the applicability of condition to be connected through a separate feeder for availing inter-state LTOA.
 - b. Relaxation of Regulation 8.2 of the MERC F & S Regulations 2018 for KEIL and direction to MSEDCL and MSETCL to grant NOC through an alternative arrangement of installation of RTU and SEM with AMR on the WTG of KEIL.
11. The Commission notes that MSEDCL has opposed the present review Petition. While opposing the Review Petition, MSEDCL has stated that KEIL's prayer cannot be allowed as it is not in line with the Regulations and it will create procedural difficulties in terms of energy settlement. MSEDCL further stated that if such relaxation is

allowed, then there will be multiplicity of such applications, unnecessarily creating complications in the successful implementation of the Regulations. MSETCL has stated that the condition stipulated by it in its revised NOC for separate feeder, was in line with the relevant Regulations.

12. In the present Petition, KEIL had also sought an interim relief seeking directions to MSEDCL to maintain status quo for short-term procurement of power by MSEDCL. As regards this prayer, the Commission notes that during the hearing held on 19 June 2020, Advocate of KEIL stated that it was not pressing this interim relief as Short-Term EPA had already been executed with MSEDCL which was valid upto December 2020. Thus, nothing survives in the interim relief as sought in the present Petition.

13. Based on submissions made by the Parties, the Commission notes that following issues that are required to be considered:

Issue I:- Whether sufficient opportunity was not given to KEIL for placing its case before the Commission seeking exemption from Regulations when impugned Order was passed?

Issue II:- Whether the alternate arrangement suggested by KEIL would be fully compliant with the Regulations and be sufficient for the purpose of scheduling and settlement of the account for Inter-State transactions and therefore, can the requirement of separate feeder be done away with?

Issue III:- Whether the Regulation 8.2 of F & S Regulations requiring a separate feeder for Inter-State transactions is a purely a transient and temporary Regulation?

Issue IV:- Considering the requirement of separate feeder only till the time, the Intra-State transactions move to a 'schedule' based settlement from 'actual' based settlement, can KEIL be exempted from the requirement of laying separate feeder?

Issue V:- Whether cost implication on KEIL can be considered as a ground for relaxation of Regulation 8.2 of F & S Regulations?

14. The Commission has undertaken an analysis of the above issues one by one in the following paragraphs. Some of the issues being interlinked, the Commission deems it fit to deal with such issues in a combined manner as follows:

15. **Issue I:- Whether sufficient opportunity was not given to KEIL for placing its case before Commission seeking exemption from Regulations when impugned Order was passed?**

16. The Commission notes that KEIL, during the proceeding before the Hon'ble ATE had contended that the Commission had glossed over the alternative prayer of KEIL for relaxation to be considered for the condition of separate feeder to be laid by KEIL and virtually no opportunity was available to KEIL for pressing the alternative prayer at the final hearing when the impugned Order was passed by the Commission. Based on the request of KEIL, the Hon'ble ATE granted liberty to KEIL to approach the Commission to file a review Petition.

17. In this context, the Commission notes that (as recorded in the impugned Order) at the hearing held on 18 October, 2019 in the original matter in Case No. 260 of 2019,

Representative of KEIL had stated that it had not received MSETCL's submission which was handed over to KEIL's representative during the course of hearing. After perusing the MSETCL's submissions, KEIL's representatives had stated that KEIL was ready to comply with the conditions of NOC relating to LC, BPTA and separate SEM. However, MSETCL's compliance relating to establishment of a separate feeder for its WTG as per Regulation 8.2 of MERC F & S Regulations would be uneconomical as it involved laying 35 KM of 33 kV lines. Thus, it is clear that KEIL had duly recorded its objections to MSETCL's revised NOC which included the requirement for a separate feeder. At the hearing, KEIL had enough opportunity to present its case seeking exemption from the Regulations and KEIL was not prevented from doing so. Further, KEIL could have sought permission of the Commission to file rejoinder on the reply filed by MSETCL. For the reasons best known to KEIL, it chose not to file any such rejoinder. Hence, it would be incorrect to state that sufficient opportunity was not given to KEIL for placing its case before Commission seeking relief for exemption from Regulations when impugned Order was passed.

18. Further, the Commission in the impugned Order had ruled on the requirement of separate feeder for the Inter-State OA. The relevant paragraph of the Order is as under:

“Issue III: MSEDCL/MSETCL to immediately issue their respective NOCs enabling CTU to process the LTOA application of KIEL

11.1 KEIL has contended that it had Long Term WEPA with MSEDCL upto February 2019. After the expiry of EPA, KEIL desires to transmit its wind power through Inter -State Long term OA under captive use mode for its industrial Plants located at Haryana. Accordingly, KEIL requested MSETCL for the issuance of the NOC to meet the requirements of the CTU for availing the LTOA. During the hearing, KEIL further contended that it is ready to comply with the conditions of NOC recently issued by MSETCL, relating to LC, BPTA and separate SEM for its 1.650 MW Wind Generator. However, MSETCL's desired compliance relating to construction of separate feeder for its Wind Generator as per Regulation 8.2 of MERC F & S Regulations would be uneconomical as it involves laying of 35 Km of 33 kV lines for its 1.65 MW evacuation with separate feeder......

11.5 The Commission in its discussion paper on F & S Regulations published on its websites and through a Public Notice in daily newspapers Marathi (Maharashtra Times and Loksatta) and English (Indian Express and Times of India) on 28 February, 2018 along with Draft Regulations has also explained the methodology for Inter-State transactions to be undertaken by RE generators connected to InSTS. The Commission in para 4.8 of the discussion paper has mentioned as below:

“4.8 Treatment of Inter-State Transactions of State Entities

As discussed earlier, the mechanisms for the energy settlement of intra-State wheeling transactions (on ‘actual generation’ basis) and inter-State wheeling transaction (on ‘schedule generation’ basis) of Solar and Wind Generators is different. Thus, their deviation accounting and settlement within the State Imbalance Pool will also be different.”

Some Generators connected to a pooling sub-station may undertake intra-State wheeling transactions while others may undertake inter-State wheeling transactions. As schedules are prepared at the pooling sub-station level, carrying out deviation settlement in such a case poses challenges considering the differential treatment of intra-State and inter-State transactions. [Emphasis added]

Consequently, the Proposed Regulations provide a framework for treatment of inter State wheeling transactions of Solar and Wind Generators, keeping in view that it should be easy to operationalise and be scalable considering future developments. All inter-State wheeling transactions at a pooling sub-station would be allowed if connected through a separate feeder.

If intra-State wheeling transactions move to a ‘schedule’ based compensation regime in future, no such distinction in the treatment for intra-State and inter-State transactions would be necessary. [Emphasis added]

11.6 The Explanatory Memorandum published by Forum of Regulators (FOR) for Model F&S Regulations also specifies the requirement of separate accounting for Inter-State and Intra-State transactions as below:

“ 3.5.1. Case of generator selling power outside the State
The generators connected to the State grid, even if selling power outside the State, will remain under SLDC’s jurisdiction. IEGC sub-clause 6.4(1) clearly demarcates responsibilities and control areas:

“The Load Despatch Centre of a control area therefore is responsible for coordinating the scheduling of a generating station, within the control area, real-time monitoring of the station’s operation, checking that there is no gaming (gaming is an intentional mis-declaration of a parameter related to commercial mechanism in vogue, in order to make an undue commercial gain) in its availability declaration, or in any other way revision of availability declaration and injection schedule, switching instructions, [meter data processing] , collections/disbursement of UI payments, outage planning, etc. The following clause gives the criteria for demarcation of control area jurisdiction.”

Additionally, sub-clause 6.4(2)c(ii) states:

“If a generating station is connected only to the State transmission network, the SLDC shall coordinate scheduling, except for the case as at (a) above.”

Thus, IEGC clearly specifies control area jurisdiction for different types of entities. Generators connected to the State network are monitored, metered and controlled by SLDC, even though nature of transaction might change over time (intra-state, inter-state, open-access etc). **For generators connected to the State grid and selling power outside the State, payment shall be made by the buyer as per schedule, in alignment with existing energy accounting practices at the regional level. This will ensure that wind and solar generators can seamlessly participate in the national market, which would benefit them in the long run.** A brief summary of the deviation settlement rules is provided in the Appendix. The

*Commission underscores that the accounting shall be undertaken by State Load Dispatch Centre, and settlement shall be done with the State Pool. It should be noted that even though payment is made as per schedule, the settlement with the State Pool would effectively provide payment as per actual to the generators. Additional deviation charges shall be applicable if the error is outside the tolerance band. [**Emphasis added**]*

11.7 The Commission has further explained rationale for considering above provisions in its Statement of Reasons (SOR) of MERC F & S Regulations. The relevant para. of the MERC F & S Regulations are as under:

“ 31.3

The energy settlement in case of generators undertaking Inter-State transactions shall be on scheduled basis whereas in case of Intra-State transactions it will be on actual generation basis. Accordingly, there must be provision to maintain separate account for both types of transaction which will be only possible if the metering arrangement through separate feeders will be carried out in both cases. This has also been discussed in detail in the Approach Paper. Further, the Regulations does not prohibit any generator to undertake Inter-State transactions, upon fulfilling the conditions specified in the Regulations. With regards to metering arrangement, SLDC may specify details during submission of detailed procedure considering provision of this Regulation.”

*[**Emphasis added**]*

*11.8 The Commission in the above para has explained the rationale for considering the need of separate feeder for Inter-State Transactions. The Commission further notes that the mechanisms for the energy settlement of intra-State wheeling transactions (on ‘actual generation’ basis) and inter-State wheeling transaction (on ‘schedule generation’ basis) of Solar and Wind Generators are different. Further, the deviation accounting and settlement within the State Imbalance Pool will also be different. Considering above, the Commission has specified the provisions for Inter-State Open Access in F & S Regulations that Inter-State transactions at a Pooling Sub-Station shall be permitted only if the concerned Generator is connected through a separate feeder. **In view of the above, the Commission finds merits in the submission of MSETCL for issuance of conditional NOC to KEIL and the Commission thinks it fit to direct KEIL to fulfill the conditions stipulated by MSETCL in its NOC dated 9th October 2019 for fulfilling the requirement of inter-state long term open access requirement.**”*

19. In view of the above, it is evident that the Commission had duly considered KEIL’s objection on requirement of laying of separate feeder and provided its reasoned ruling highlighting the necessity of separate feeder in KEIL’s case. The Commission opines that KEIL should have presented all the facts of the case to the Hon’ble ATE.

20. Notwithstanding the above, as per the liberty granted by the Hon'ble ATE to KEIL, the Commission in the present Order, is dealing with the Case of KEIL on merit, although the present Petition has been filed under Section 94(1)(f) of EA as a Review Petition.
21. **Issue II:- Whether the alternate arrangement suggested by KEIL would be fully compliant with the Regulations and be sufficient for the purpose of scheduling and settlement of the account for Inter State transactions and therefore can the requirement of separate feeder be done away with?**
22. As per KEIL, setting up of RTU and SEM meters with AMR facility at the outgoing feeders of KEIL's wind generating plant would be sufficient for the purpose of scheduling and settlement of accounts for its Inter-State transaction.
23. In this context, it is observed that (as recorded in earlier part of this Order) the Commission in its discussions paper, Statement of Reasons to the F&S Regulations and the impugned Order, has already explained rationale for considering the need for a separate feeder for Inter-State Transactions.
24. The differences between the Intra-State and Inter-State transactions for RE generators in respect of the energy/deviation accounting and settlement have been elaborated in the approach paper. The differences in these transactions are tabulated below:

Parameter	Intra-State Wheeling (Solar/Wind) (in RE F & S Regulations)	Inter-State Wheeling (Solar/Wind) (as per CERC)
Payment to RE Generators	Actual generation basis	Scheduled generation basis
Rates for Deviation Settlement	Fixed rate in Bands, (i.e., Rs/per unit of 0.50, 1.00, 1.50)	Linked to the percentage of PPA rate or APPC, in Bands (i.e., 110%, 120%, 130% for under-injection and 90%, 80%, 70% for over-injection)
Deviation Charge Settlement with the State Imbalance Pool	For over-injection: Pay into DSM Pool For under-injection: Pay into DSM Pool	For over-injection: Receive from DSM Pool For under-injection : Pay into DSM Pool

25. Thus, distinct methodologies have been adopted for Inter-State and Intra-State transactions in terms of different payment mechanism, different deviation rates and different deviation charge settlement are undertaken. These distinct methodologies require separate accounting for energy /deviation for Inter-State and Intra-State transactions. Provision of separate feeder for Inter-State transactions is aimed at establishing such separate accounting for the two types of transactions.
26. The Commission observes that the need for such treatment, under Regulation 8 of MERC F&S Regulations has arisen in view of the fact that for a PSS (which is basic building block for operationalizing F&S regime) where multiple RE generators are connected, several combinations of inter-state or intra-state transactions by multiple RE Generators could exist. Besides, RE Generators could keep switching from inter-state

to intra-state or vice-versa and the Regulations are required to provide arrangements/mechanism to ensure that the generator is able to exercise such option for switching. Choice exercised by particular RE generator connected to particular PSS has bearing on energy accounting/settlement, deviation accounting/settlement/de-pooling for all other RE Generators as well and the mechanism needs to address this complexity while allowing freedom to RE generator to exercise its choice. Depending upon nature of transaction (whether intra-state or inter-state), rule for energy accounting, energy settlement, deviation accounting, deviation settlement intra-state transactions would move to a 'schedule' based settlement. Hence, a Wind Generator which is opting for an Inter-State Open Access needs to establish a separate feeder as required under the RE F&S Regulations.

27. Further, the Commission notes that with the alternate arrangement proposed by KEIL, same feeder would be used for both Inter-State and Intra-State transactions and common meter at PSS would record the total flow of energy for both transactions. Thus, this arrangement would not be in line with the Regulations as both Intra-State and Inter-State transaction would be happening through a common feeder making it difficult to separate out one from the another.
28. Further, The SEM proposed by KEIL would be at WTG end whereas the common meter would be at PSS level. Due to location difference between these meters, losses would come into play and some normative losses would need to be considered for arriving at the actual generation of KEIL's Unit Inter-State OA at PSS level. Further, this grossed-down generation would need to be bifurcated /deducted from the PSS common meter reading to get Intra-State generation/transaction. Thus, the actual generation and therefore the deviation for both Intra-State and Inter-State Generator would have to be calculated, but same would be based on arrived data with some approximations and not based on actual meter data. Since deviation calculations and settlement have financial implications on the generating units connected electrically in the PSS, it is necessary that same should be based on actual meter data and not based on derived data with some approximations. Further in case a large number of generators opt for Inter-State Open Access without separate feeder, the complications would further increase due to above approximations and bifurcation involved.
29. Under MERC F & S Regulations, Pooling Sub-Station has been considered as the basic Unit for the purpose of forecasting, scheduling and deviation accounting of Solar and Wind Generators by SLDC and QCA appointed by individual Generators connected at each PSS is required so as to provide such services of forecasting, metering and de-pooling of deviation charges to individual Wind and Solar Generators. The arrangement proposed by KEIL would mean that SLDC would be required to deal with multiple smaller capacity RE Generating Units (presently around 4000 in State of Maharashtra) beyond the Pooling Sub-Station for the purpose of scheduling, energy accounting/settlement, deviation accounting /settlement. This goes against the very concept envisaged in the Regulations apart from posing enormous complexity in the implementation of F & S Regulations.

30. **Issue III:- Whether the Regulation 8.2 of F & S Regulations requiring a separate feeder for Inter-State transactions is a purely transient and temporary Regulation?**
31. **Issue IV:- Considering that requirement of separate feeder would be only till the time the Intra-State transactions move to a ‘schedule’ based settlement from ‘actual’ based settlement, can KEIL be exempted from the requirement of laying separate feeder?**
32. KEIL has stated that Regulation 8 of MERC F&S Regulations is only a transient and temporary provision till the time the Intra-State transactions move to a ‘schedule’ based settlement from ‘actual’ based settlement and hence there is no need for a separate feeder for Inter -State Open Access transactions. Thus, the Regulation which is essentially of transient and temporary nature may be relaxed for it.
33. In this context, the Commission is of the view that the Regulations, once notified, attain finality and come into force. It cannot be treated as temporary/interim in nature, unless amended after following due regulatory process including stakeholders’ consultation.
34. Further, it is true that once both types of transactions (Inter-State and Intra-State) are subjected to “schedule based” settlement regime, uniform treatment for energy accounting/ deviation accounting and settlement/de-pooling thereof could be applied and there may not be any need for separate feeder. However, in that scenario, the amendment will not be limited only to Regulation 8.2 related to separate feeder requirement, rather the entire Regulations would need an amendment. In light of the above, the provisions are not transient or temporary in nature as have been understood by the Petitioner. Hence there is no merit in KEIL’s contention that since the Regulation is temporary in nature, the same may be relaxed for the Petitioner.
35. **Issue V:- Whether cost implication on KEIL can be considered as a ground for relaxation of Regulation 8.2 of F & S Regulations?**
36. KEIL has stated that the requirement for establishment of a separate feeder for its WTG connecting to PSS of MSETCL would be uneconomical as same would involve laying of 33 kV line of 35 KM length requiring an expenditure of around Rs. 17 Cr. Incurring of such high cost to comply with a transient provision would be difficult for KEIL.
37. KEIL has also cited certain Judgments passed by the Hon’ble Supreme Court/ Hon’ble ATE and stated that it would face severe hardship, if it is made to incur expenditure of Rs. 17 Cr. for implementation of the Regulation 8.2 of F & S Regulations. In terms of the principles laid down in these Judgments of the Hon’ble Supreme Court/ Hon’ble ATE, the Commission should exempt the applicability of Regulations 8.2 to KEIL.
38. In this context, the Commission is of the view that cost cannot be a criterion for seeking exemption from a Regulation. Further, upon perusal of these Judgments, it is seen that these Judgments state that while exercising the discretionary power to relax any Regulations, there should be sufficient reason to justify the relaxation and non-exercise of discretion would cause hardship and injustice to a party. In this context, it is relevant to note that, as mentioned in earlier part of the Order, the relaxation as sought by KEIL would result into mixing of Inter-State transaction with Intra-State transaction

as against the separation of these accounts. This scheme is also in line with provision as laid down by FOR in their Model F&S Regulations. Further, expenditure cannot be termed as hardship or injustice to a Party especially when there is a fully justified requirement for an arrangement. The necessity of the same has been reasoned out in the Regulations and the Statement of Reasons which have been notified after due Public process. KEIL while taking its commercial decision for supply, needs to assess expected costs and revenues. Hence, the Commission is of the view that principles laid down in the Judgments cited by KEIL are not fulfilled.

39. The Commission further notes that the Hon'ble ATE, vide its Order dated 25 February, 2020, granted liberty to KEIL to approach the Commission seeking its prayer for exemption of Regulations. However, the Hon'ble ATE, while doing so, has neither gone into the merit of the issue of relaxation of F & S Regulations nor it has made any comment/observation on the KEIL's claim of Regulation 8.2 of F & S Regulation, being a rigorous Regulation.
40. KEIL has stated that the condition of separate feeder for inter-State transaction is a part of MERC F & S Regulations and there is no such condition in the TOA Regulations. Hence, NOC for LTOA should not include such conditions. The Commission is of the view that as per Regulation 16 of TOA Regulations 2016, the Inter-State Open Access transaction shall be in accordance with provisions of IEGC and hence such transaction is subjected to scheduling regime. Therefore, unless the requirement of separate feeder is complied, scheduling cannot happen as per MERC F & S Regulations. If that is the case, then the LTOA, even if granted, cannot be operationalized. Hence, there is no merit in the submission of the petitioner.
41. KEIL has further prayed that MSEDCL and MSETCL be directed to grant NOC to KEIL and to process the open access subject to installing SEM meters with AMR facility on its outgoing feeders. In this context, the Commission in the **above Paras. 13 to 40**, has already analyzed the need for a separate feeder for KEIL's present case and hence, nothing survives in KEIL's prayer for directions regarding grant of NOC to KEIL.
42. Hence the following Order:

ORDER

Case No. 73 of 2020 is dismissed.

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

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

