

**sBefore the**  
**MAHARASHTRA ELECTRICITY REGULATORY COMMISSION**  
**World Trade Centre, Centre No.1, 13th Floor, Cuffe Parade, Mumbai 400005**  
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**Case No. 337 of 2019**

**Case of NuPower Renewables Private Limited for wrongful denial of permission to Commission wind power project under the provisions of Electricity Act, 2003 and various policies of Maharashtra government.**

|   |                        |
|---|------------------------|
| NuPower Renewables Private Limited                  | ..... Petitioner       |
| Maharashtra State Electricity Distribution Co. Ltd. | ..... Respondent No. 1 |
| Maharashtra Electricity Transmission Co. Ltd.       | ..... Respondent No. 2 |
| Maharashtra Energy Development Agency               | ..... Respondent No. 3 |

**Coram**

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

**Appearance**

|                    |                               |
|--------------------|-------------------------------|
| For the Petitioner | : Smt. Deepa Chavan (Rep.)    |
| For                |                               |
| Respondent No. 1   | : Sh. Ashish Singh (Adv.)     |
| Respondent No. 2   | : Sh. Prasad Narnaware (Rep.) |
| Respondent No. 3   | : Dr. J. V. Torne (Rep.)      |

**ORDER**

**Date: 15 March, 2021**

1. NuPower Renewables Private Limited (**NPRPL**) has filed the present Petition on 13 December 2019 under Section 86(1)(e) and 86(1)(f) of the Electricity Act, 2003 (**EA**)

seeking directions against Maharashtra State Electricity Distribution Company Limited (MSEDCL) for denying permission to commission wind power project.

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

- (a) *Direct MSEDCL to grant Permission To Commission (PTC) to Petitioner's Wind Turbine Generator located at location No. VAS-558 at Gut No. 556 at Vaspeth, village- Jath, Sangli, Maharashtra;*
- (b) *Direct MEDA to immediately grant extension of project registration to the Wind Turbine Generator located at location No. VAS-558 at Gut No. 556 at Vaspeth, village- Jath, Sangli, Maharashtra for a period of six (6) months or till grant of PTC by MSEDCL, whichever is later;*
- (c) *Direct MSEDCL to enter into an Energy Purchase Agreement for buying the power generated by the Petitioner's Wind Turbine Generator at its derated capacity at location No. VAS-556 at Gut No. 556 at Vaspeth, village- Jath, Sangli, Maharashtra at a preferential rate prescribed by this Hon'ble Commission under the Wind Policy 2015 and Methodology Circular 2015 on same terms as if the WTG was commissioned in 2015;*
- (d) *Direct MSEDCL to compensate for delay in granting Permission To Commission the Petitioner's Wind Turbine Generator located at location No. VAS-558 at Gut No. 556 at Vaspeth, village- Jath, Sangli, Maharashtra and pay Rs.9,84,98,777 (Rupees Nine Crores Eighty Four Lakhs Ninety Eight Thousand Seven Hundred and Seventy Seven Only) as per detailed calculation sheet annexed hereto as Annex QQ;*
- (e) *Pending the hearing and final disposal of this Petition the said Project registration extension granted by MEDA be directed to subsist and extend for 1.6MW WTG of the Petitioner at location No. VAS-558 at Gut No. 556 at Vaspeth, village- Jath, Sangli, Maharashtra, till consideration and disposal of the present Petition by this Hon'ble Commission;*
- (f) *Pending the hearing and final disposal of this Petition the Petitioner be permitted to complete with the cooperation of all authorities all the steps relating to sanctions and approvals preceding the commissioning of the subject WTG i.e. the Project at location No. VAS-556 at Gut No. 556 at Vaspeth, village- Jath, Sangli, Maharashtra;*
- (g) *In alternative to prayer (f) above, pending the hearing and final disposal of this Petition the extension granted by MEDA be directed to subsist and extend, till consideration and disposal of the request / application of the Petitioner by MSEDCL and a period of three (3) weeks thereafter;*

*(h) Pending the hearing and final disposal of this Petition the Petitioner be permitted to complete all the steps relating to sanctions and approvals preceding the commissioning of the subject WTG i.e. the Project at location No. VAS-556 at Gut No. 556 at Vaspeth village, Taluka-- Jath, Sangli, Maharashtra with the cooperation of all authorities;*

**3. NPRPL in its Case has stated as follows:**

- 3.1. NPRPL has been operating wind energy turbines of 26.65 MW installed at Vaspeth Village, and 2.05 MW at Shedyal Village, in Jath Taluka of Sangli District.
- 3.2. On 14 October 2008, the Government of Maharashtra (GoM) issued a new policy for power generation from non-conventional sources of energy (Wind Policy 2008). Pursuant to the said Wind Policy 2008, the State Government intended to commission 2000 MW of Wind Power Projects and hence extended various benefits.
- 3.3. Maharashtra Energy Development Agency (MEDA) on 18 May 2011, issued recommendation letter to wind project developer viz; Sri Maruti Wind Park Developers (Developer) for a 250 MW proposed wind power project to be constructed at Vaspeth, Sangli (Site).
- 3.4. The Developer on 20 November 2012 applied for grid connectivity permission for an additional 50 MW at site to Maharashtra State Electricity Transmission Co. Ltd. (MSETCL). MSETCL vide a letter dated 7 March 2013 granted an in-principle approval and further extended the grid connectivity permission period for the wind power project at Site for total 300 MW till 30 July 2014.
- 3.5. On 25 July 2014 and 5 January 2015, MSETCL granted enhanced grid connectivity permissions to the Developer for the proposed wind project at the Site and interim arrangement on LILO basis for 350 MW subject to certain conditions.
- 3.6. On 26 May 2015, NPRPL had requested MEDA to give the issue an infrastructure clearance approval to its Project. On 2 June 2015 MSETCL extended grid permission for wind projects at Vaspeth till 30 July 2015.
- 3.7. On 19 June 2015 MSETCL had granted permission to commission the 1<sup>st</sup> Ckt. of the 220 KV substation at Shedyal and on 4 July 2015, MSETCL had granted Developer the permission for commissioning the first transformer of the 220 KV substation at Shedyal.
- 3.8. On 7 July 2015, MSETCL granted permission for synchronisation of the 100 MW out of the 350 MW with grid on temporary LILO basis till December 31, 2015 and on 14 July

2015 for additional 100 MW out of 350 MW to the Developer for the wind power project at the Site.

- 3.9. On 20 July 2015 GoM issued a Government Resolution (GR) No. NCE-2015/C.R. 49/Energy-7 (Wind Policy 2015). Pursuant to the Wind Policy 2015, a target was set for establishing 1500 MW of wind power projects in the State of Maharashtra for the purpose of Renewable Purchase Obligation (RPO).
- 3.10. On 9 September 2015, GoM issued GR No. Apau-2015/pra.kra.49/part-8/Eng (Methodology Circular 2015) and notified the source wise methodology for implementing the Wind Policy 2015. The Methodology Circular, 2015 provided that the wind power projects set up under the Wind Policy 2008 would be considered first, while calculating the ceiling/capacity of 1500 MW as provided in the Wind Policy 2015
- 3.11. On 30 September 2015, MSETCL had granted to the Developer permission for commissioning of the LILO line on 220 KV Mendhigiri line for the 220KV substation at Shedyal and second transformer at 220 KV substation situated at Shedyal.
- 3.12. NPRPL vide letter 26 October 2015 again requested MEDA to grant an infrastructure clearance to its Project.
- 3.13. On 21 November 2015, MSLDC granted further permission for synchronisation of additional 100 MW of the wind power project at the Site on temporary LILO basis till 31 December 2015.
- 3.14. On or about 2014 NPRPL commenced installation and erection of 15 Wind Turbine Generators (WTGs) at Vaspeth and Shedyal. The installation and erection were completed in September 2015 and 14 out of 15 WTGs were commissioned in October 2015.
- 3.15. On 1 January 2016, MSETCL granted extended grid connectivity permission for the Site till 30 June 2016. NPRPL paid Rs. 20.60 lakh fees on 11 February 2016 to MEDA towards the infrastructure fees payment, security deposit and infrastructure processing fees and requested MEDA to grant the necessary infrastructure clearance. Further, on 13 December 2016, NPRPL informed MEDA that all the necessary documents required for infrastructure clearance were sent to MEDA.
- 3.16. NPRPL entered into 2 WEPAs on 24 March 2017 and 1 WEPA on 8 August 2017 with MSEDCL for the sale of power generated from 14 WTGs at a preferential rate of Rs. 5.70 per unit.

- 3.17. On 8 June 2017, Developer requested MSETCL to continue to grant grid connectivity permission for the entire 350 MW of the wind power project at the Site and permission for continuation of generation from the WTG already commissioned.
- 3.18. On 6 September 2017, NPRPL gave an undertaking to MEDA agreeing to abide by the conditions prescribed by MEDA to operate its Project at a de-rated capacity of 1.6 MW in line with the conditions under which NPRPL is operating its existing 14 WTGs. On 7 September 2017 MEDA requested MSEDCL to give views/ comments on operating 2.05 MW capacity windmill with de-rated capacity of 1.60 MW so as to enable MEDA to process the proposal of NPRPL's project registration with MEDA.
- 3.19. On 17 October 2017, MSEDCL informed MEDA that there is no provision available in GoM RE Policy for operation of windmill on derated capacity. On 21 November 2017, 15<sup>th</sup> WTG of 2.05 MW capacity was inspected in the presence of MEDA, MSETCL and MSEDCL and the completion of erection and other criteria was recorded. The joint inspection also recorded that the WTG is installed as per the micro siting guidelines of MEDA dated 16 February 2008 read with the Order of Hon'ble High Court dated 9 July 2014. Further, the erection of WTG of the relevant Project is complete in all respect, evacuation system from WTG to pooling station is complete and pooling station is functional and the EHV line from pooling station to MSETCL/MSEDCL EHV substation is complete.
- 3.20. On 17 March, 2018, MEDA registered the Project at a de-rated capacity of 1.60 MW under the Wind Policy 2015. NPRPL was required to commission the project within 9 months from the date of the letter. On 19 March 2018, NPRPL requested MSEDCL for the issuance of PTC for commissioning the 15<sup>th</sup> WTG of 2.05 MW.
- 3.21. MSEDCL on 10 April 2018, informed that the registration certificate issued by MEDA for derated capacity of 1.60 MW of 2.05 MW WTG is not in accordance with GoM RE Policy. The said letter further stated that MSEDCL has taken decision to procure wind power only through the competitive bidding on e-reverse auction basis. MSEDCL also requested to submit certain documents such as grid connectivity, MEDA recommendation letter and work completion report by CE, SLDC, Kalwa for visibility on real time basis to SLDC.
- 3.22. On 11 July 2018, MSETCL requested the District Forest Officer, Sangli, to provide land for the proposed construction of 2 nos. of 220KV feeder bays adjacent to existing 220KV Jath sub-station, for evacuation of power from said Project. On 22 June 2018, the Developer requested MSETCL for the construction of 220KV AIS Bay instead of the

earlier agreed GIS Bay for 350 MW connectivity at MSETCL's 220 KV Jath sub-station to connect the wind power project of 350MW at the Site.

- 3.23. On 17 September 2018, the Developer had requested MEDA to grant a suitable recommendation to MSETCL for the extension of the existing grid connectivity in place for the 350 MW wind power project situated at the Site. On 11 October 2018, MEDA granted extension period of 3 months upto 16 December 2018 to NPRPL to submit a valid grid connectivity permission issued by MSETCL.
- 3.24. On 24 October 2018, NPRPL replied to the letter of MSEDCL and sent the project registration issued by MEDA and work completion report by CE, SLDC, Kalwa for visibility on real time basis to SLDC.
- 3.25. On 26 March 2019, NPRPL placed 2 work orders to Spark Electro Consultants Private Limited for carrying out construction and allied activities for 220 KV AIS line bays as per MSETCL's specifications and handover of the same to MSETCL.
- 3.26. On 1 June 2019, MEDA granted the extension for the retrospective period of 6 months valid from 16 December 2018 to 16 June, 2019. On 18 July 2019, MEDA granted the extension for the period of 6 months valid from 16 June 2019 to 16 December 2019.
- 3.27. On 8 August 2019, the Developer requested MSEDCL to connect NPRPL Project to the existing 220KV Shedyal substation by disconnecting the already existing grid connection of a different WTG which was idle.
- 3.28. On 19 November 2019, the CIEG had granted the final charging permission to the NPRPL's Project. On 21 November 2019, NPRPL provided all the required documents to MSEDCL and once again requested them to grant PTC.
- 3.29. On 3 December 2019 and on 11 December 2019, NPRPL had requested MEDA to grant extension to the registration granted to NPRPL's Project by 6 months in view of the various delays not attributable NPRPL.

**Issues and grounds:**

- 3.30. WEPA's were signed for 14 WTGs, the WEPA was not signed for one WTG as initially it seemed that the Wind Policy 2015 could not accommodate the 15<sup>th</sup> WTG. Thereafter, once MEDA realized on or about September 2017 that there was room to accommodate 1.6 MW in the Wind Policy 2015, MEDA sought views of MSEDCL. Further, MEDA called upon NPRPL to confirm if NPRPL was agreeable to de-rating of the 15<sup>th</sup> WTG

from 2.05 MW to 1.6 MW. NPRPL agreed to such de-rating. Once such Project Registration was granted and necessary documents were submitted by MSEDCL, MSEDCL should have issued permission to commission without further formalities. However, instead of granting such PTC, MSEDCL firstly reiterated its erroneous understanding that the GoM RE Policy does not have any provision for de-rating, it further disagreed to abide by the Wind Policy 2015 and refused to purchase power from NPRPL's 15<sup>th</sup> WTG. The power for registration of the project and implementing the Wind Policy 2015 is conferred exclusively on MEDA. MSEDCL cannot takeover powers which are not devolved on it under the EA,2003 or under the Wind Policy 2015.

3.31. Project of NPRPL fell within the targeted 1500 MW of the Wind Policy of 2015 and therefore, MSEDCL cannot take stance that MSEDCL shall not procure power under the Wind Policy 2015. NPRPL being the investor of the relevant Project had legitimate expectation at the time of establishing the relevant Project that the distribution licensee will procure power from NPRPL as per the prevailing GoM policies.

3.32. The 1.6 MW WTG is connected with its transmission line with the said 200 MW Shedyal substation operational since September 2015. The turbine is lying idle for the past 4 years and NPRPL has not been able to produce or inject any electricity from the said WTG, and consequently, NPRPL has already lost huge power generation and corresponding revenue of more than Rs. 9 Cr. for the period from September 2015 till date.

3.33. The 'Doctrine of Promissory Estoppel' applies where a person commits an act in view of the promise made by the State or its functionaries. Thus, where an entrepreneur makes substantial investments relying upon the promise or assurance of the State, it indisputably creates a right in him, which is preserved by the doctrine of Promissory Estoppel and resultantly gives rise to cause of action in his favour. The installed capacity of wind power has increased manifold during the last 10-15 years on account of the investor friendly policies made by GoM to promote renewable energy. Thus, having permitted such an increase in the wind power generation capacity, having achieved the objective of increasing wind power generation, the benefits granted to the power projects cannot be withdrawn against the legitimate interest of the wind power generators particularly when the Wind Policy unambiguously provides that MSEDCL will purchase the power from the wind power projects which are established thereunder.

3.34. In *A.P. Steel Re-Rolling Mill Ltd. vs. State of Kerala*, (2007) 2 SCC 725, which squarely applies to present case being a decision on the point of promissory estoppel, the Hon'ble Supreme Court held as follows:



*“15. Applicability of doctrine of promissory estoppel in a case where entrepreneur alters his position pursuant to or in furtherance of a promise made by the State to grant exemption from payment of charges on the basis of current tariff is not in dispute. The State made its policy decision. The said policy decision could be made by the State in exercise of its power under Section 78-A of the Electricity (Supply) Act, 1948. The Electricity Board framed tariff for supply of electrical energy in terms of Sections 46 and 49 of the 1948 Act. While framing its tariff, the Board could take into consideration the policy decision of the State.*

*16. It was, therefore, permissible both for the State to issue a policy decision and for the Board to adopt the same in exercise of their respective statutory powers under the 1948 Act.*

*17. When a beneficent scheme is made by the State, the doctrine of promissory estoppel would undoubtedly apply”.*

3.35. In the matter of Gujarat Urja Vikas Nigam Limited v. Gujarat Electricity Regulatory Commission & Ors. bearing Appeal No. 279 of 2013, the Hon’ble Appellate Tribunal for Electricity (APTEL) held as follows:

*“...it is settled position of law that the doctrine of Promissory Estoppel and Legitimate Expectations are applicable when: (a) A party makes an unequivocal promise or representation to the other party, which in effect create legal relations or affect the legal relationship to arise in the future.*

*(b) The other party believing it is induced to act on the faith of it to act to its detriment/to invest. In other words, the party invoking the doctrine has altered its position relying on the promise.*

*(c) Private parties in dealing with the Government have legitimate expectation to be dealt with regularity, predictability and certainty.*

*(d) Legitimate Expectation is capable of including expectations which go beyond enforceable legal rights, provided they have some reasonable basis.*

*(e) Denial of legitimate expectation amounts to denial of rights guaranteed to a party by the Government.”*

**4. NPRPL has submitted its Interim Application on 13 December 2019 and prayed as under:**

*a) Pending the hearing and final disposal of this Petition the extension granted by MEDA be directed to subsist and extend, till consideration and disposal of the present Petition by this Hon’ble Commission;*



- b) *In alternative to prayer (a) above, pending the hearing and final disposal of this Petition the extension granted by MEDA be directed to subsist and extend, till consideration and disposal of the request / application of the Petitioner by MSEDCL and a period of three (3) weeks thereafter;*
- c) *Pending the hearing and final disposal of this Petition the Petitioner be permitted to complete all the steps relating to sanctions and approvals preceding the commissioning of the subject WTG i.e. the Project at location No. VAS-556 at Gut No. 556 at Vaspeth village, Taluka-- Jath, Sangli, Maharashtra with the cooperation of all authorities;*
5. The Commission initially heard the matter on 17 December 2019 and issued Daily Order directing that the status-quo as on date of filing of the Petition was to be maintained till final disposal of the main Petition.
6. MSEDCL in its reply dated 10 February 2020 has stated as under:
- 6.1. MEDA issued registration letter dated 17 March 2018 to NPRPL wherein it was mentioned that “this registration letter is issued on the condition that valid grid connectivity letter from MSEDCL/MSETCL will be submitted to MEDA within 6 months from issuance of this Registration letter”.
- 6.2. On 19 March 2018, NPRPL requested MSEDCL for the issuance of PTC of 2.05 MW. MSEDCL informed on 10 April 2018 its decision to procure wind power only through the competitive bidding on e-reverse auction basis.
- 6.3. Out of the document required to be submitted along with the application for issuance of PTC the documents viz. i) MEDA recommendation letter. ii) Valid Permission of Grid Connectivity and iii) Work completion report by CE, SLDC, Kalwa, for visibility on Real Time basis to SLDC were not submitted by NPRPL. The application for PTC will be processed after receipt of these documents. NPRPL has submitted only work completion report by CE, SLDC, Kalwa for visibility on real time basis to SLDC.
- 6.4. NPRPL vide letter dated 21 November 2019 requested only for the commissioning permission of its project.
- 6.5. MSEDCL will issue Permission to Commission (PTC) for NPRPL's wind power project after submission of the required balance documents i.e. MEDA recommendation letter and Valid Permission of Grid Connectivity. However, MSEDCL has already informed that MSEDCL will procure wind power through competitive bidding only and hence MSEDCL is under no obligation to procure the power at preferential tariff.

7. NPRPL in its Rejoinder dated 24 July 2020 made the following additional submissions:
- 7.1. The 15<sup>th</sup> WTG connected to Shedyal substation can be commissioned as the substation is of 200 MW capacity and at present only 197.2 MW WTG are connected therefore present infrastructure is sufficient to accommodate NPRPL's derated 1.6 MW WTG.
- 7.2. Regarding the grid connectivity, on 8 August 2019, the Developer requested MSEDCL to connect said WTG to the existing 220 kV Shedyal substation by disconnecting the already existing grid connection of a different WTG which was idle.
8. MEDA in its reply dated 28 July 2020 has made following submission:
- 8.1. MEDA in its reply submitted sequence of events from the date of application for registration till expiry of second stage extension.
- 8.2. MEDA had issued registration to WTG of NPRPL and also given first stage & second stage extension for registration certificate as per methodology dated 9 September 2015. NPRPL has not submitted valid grid connectivity permission within stipulated period of 21 (9 months from the date of registration + two extensions of 6 months each) months after issuance of registration letter.
9. MSETCL in its reply dated 19 October 2020 submitted the timelines of activities which have been tabulated below:

| <b>Date</b>                           | <b>Activity</b>  |
|---------------------------------------|--|
| 12-Aug-11                             | Permission to M/s. Shri Maruti Wind Park Developer (SMWPD) for the propose wind power project on the Site subject to completion of scope of work and completion of 220 kV Jath S/a along with proposed associated 220 kV lines by MSETCL |
| 20-Nov-12                             | SMWPD applied for grid connectivity permission for an additional 50MW at the same Site to MSETCL   |
| 07-Mar-13                             | Granted an in principle approval for grid connectivity for the additional 50 MW on fulfilment of certain conditions  |
| 17-Jul-13                             | MSETCL extended the grid connectivity permission period for the wind power project at Site for total 300MW till 30 July 2014.  |
| 25 July 2014<br>and<br>5 January 2015 | MSETCL granted enhanced grid connectivity permissions to the M/s Shri Maruti Wind Park Developers for the proposed wind project at the Site and interim arrangement on LILO basis for 350 MW subject to certain conditions.              |

| Date      | Activity   |
|-----------|--|
| 02-Jun-15 | MSETCL extended 3 <sup>rd</sup> and final time period for grid permission for the wind power project at the Site till 30 July 2015.  |
| 19-Jun-15 | MSETCL had granted permission to commission the 1 <sup>st</sup> Ckt. of the 220 KV substation situated at Shedyal  |
| 04-Jul-15 | MSETCL had granted to the M/s Shri Maruti Wind Park Developers permission for commissioning the first transformer of the 220 KV substation situated at Shedyal.  |
| 07-Jul-15 | MSETCL granted permission for Grid connectivity to 100 MW (Out of 350 MW) wind power project proposed by SMWPD at site Vaspeth Tal-Jath Dist-Sangli through interim arrangement purely on temporary basis till 31 December 2015.   |
| 14-Jul-15 | MSETCL granted synchronisation permission for additional 100 MW out of 350 MW  |
| 30-Sep-15 | Granted permission for commissioning of the LILO line on 220 KV Mendhigiri line for the 220KV substation at Shedyal and the permission for commissioning the second transformer at 220 KV substation situated at Shedyal   |
| 01-Jan-16 | Granted extension for interim arrangement for connecting 200 MW generation (out of 350 MW) wind power project proposed by SMWPD at site Vaspeth Tal-Jath Dist-Sangli through interim arrangement purely on temporary basis till 30 June 2016   |
| 19-Oct-20 | SMWPD has been asked to submit the progress of construction of 2x 220 kV bays at 220 kv Jath S/s for evacuation of power from aforesaid project as the validity of interim period grid connectivity was up to 30 June, 2016. The interim final connectivity issued to SMWPD will be reviewed based on information submitted by SMWPD |

**10. NPRPL in its Rejoinder dated 13 November 2020 has stated as under:**

10.1. MEDA vide letter dated 17 March 2018 registered the Project at a de-rated capacity of 1.60 MW under the Wind Policy 2015 read with Methodology Circular 2015. The registration number granted was Wind 051/2016-17. NPRPL was required to commission within a period of nine (9) months of the date of the letter and submit the valid grid connectivity letter from MSEDCL/ MSETCL to MEDA within six (6) months from issuance of the letter.

10.2. On July 18, 2019, MEDA granted the extension for the period of six (6) months for the aforesaid Project valid from 16 June 2019 to December 16, 2019

10.3. On 19 November 2019, the Chief Electrical Inspector to Government (CEIG) had granted the final charging permission to the NPRPL's Project

- 10.4. On 21 November 2019, NPRPL provided all the required documents to MSEDCL and once again requested them to grant PTC to the relevant Project
- 10.5. On 3 December 2019, NPRPL once again requested MEDA to grant an extension of the project registration approval for a further period of six (6) months
- 10.6. Further, on 11 December 2019, NPRPL had requested MEDA to grant extension to the registration granted by six (6) months in view of the various delays not attributable to NPRPL. However, the extension of registration was not granted by MEDA. The same led to filing of these proceedings.
- 10.7. Only due to the actions and inaction of MSEDCL, NPRPL had been following up with various State Authorities with an intent to commission the Project since its erection in 2015. Regardless of all the efforts by NPRPL, the Project is lying idle and has not been commissioned for more than four (4) years.
- 10.8. Regarding MSETCL's submission, 200 MW Shedyal Substation to which the NPRPL's Project is connected is complete in all respects. NPRPL and the Developer have already taken all the steps in their control for the installation of AIS line Bay extension at the Jath sub-station owned by MSETCL. However, Jath substation does not have requisite land for installing additional equipment i.e. 220 kV AIS line Bay extension. Only forest land is available adjacent to Jath substation and no private land is available for installing the 220 kV AIS line Bay extension. MSETCL being owner of Jath substation has therefore applied to the Forest department to allot to MSETCL a small portion of forest land towards construction and installation of AIS line Bay extension equipment.
- 10.9. The Developer and the wind farm owners connected to 200 MW Shedyal substation have also agreed to pay the cost of supply and erection of 220 KV AIS line Bay Extension equipment and accordingly placed orders to a Vendor to supply and install 220 kV AIS line Bay Extension equipment at Jath substation owned by MSETCL. NPRPL has also placed an order to the Vendor for the construction of required 220 kV AIS line Bay Extension to be installed at the Jath Substation i.e. on forest land adjacent to Jath Substation, which is to be diverted by Forest Department to MSETCL towards construction of AIS line Bay extension.
- 10.10. Non-installation of 220 kV AIS line Bay extension equipment does not create any technical issue for the existing 200 MW Windfarm substation as the 220 kV AIS line Bay extension equipment is required only when Shedyal Substation capacity increases beyond 200 MW upto 350 MW as per the initial approval dated 12 August 2011 issued by MSETCL to Developer. The approval letter mentions that "In the load flow studies it

is observed that, with this 250 MW wind power generation, 220KV Mhaisal to Miraj S/C line is critically overloaded. Hence, now only 200 MW of wind power generation is hereby permitted to limit the flow on 220 KV Mhaisal to Miraj single circuit line. Therefore, MSETCL's permission to Developer for 350 MW capacity for Shedyal Substation is temporary till the time 220 kV AIS line Bay Extension equipment is installed at Jath substation owned by MSETCL. Capacity of Shedyal Substation to the extent of 200 MW does not get affected by such pending installation of 220 kV AIS line Bay extension. Jath sub-station is owned by MSETCL and MSETCL is in process to acquire the said land from Forest Department for construction of AIS line Bay extension. The construction of AIS line Bay extension is pre-requisite for issuance of permanent grid connectivity approval for 350 MW Shedyal Substation. However, it should be noted that the 200 MW Shedyal Substation to which the NPRPL's Project is connected is complete in all respects and all the requirements for 200 MW Shedyal Substation have been completed by the Developer. Therefore, while the permission for land allotment to MSETCL by Forest department is pending for 220 kV AIS Bay work construction, all other requisite steps have been undertaken by NPRPL and the Developer.

- 10.11. Developer has time and again submitted various request letters towards extension of validity of the Grid Connectivity for 350 MW Shedyal Substation along with the update on the construction of the AIS Bay vide various letters.
11. At the e-hearing through video conferencing held on 11 January 2021, the representatives of the Parties reiterated their submission as made in the Petition and Replies. The Commission, from the Petitioner, inquired about the technical aspect of de-rating of a WTG. Further, the Commission sought status of the AIS line Bay extension. The Petitioner sought some time to file its reply to the queries of the Commission.
12. NPRPL in its additional Submission dated 12 January 2021 submitted as below:
  - 12.1. At the hearing held on 11 January 2021, the Commission enquired regarding the technical aspects of de-rating of a wind turbine generation of certain capacity. Though the wind turbine has a rated power capacity of 2.05 MW, when the turbine is derated for the desired maximum power, it can operate only up to 1.6 MW. The power derating can be achieved in the wind turbine by making desired changes in the controller set point parameter.
  - 12.2. NPRPL's wind turbine has 'double fed induction generator' with variable speed mechanism and wherein it is possible to set the maximum rated power in the controller of the turbine where in case of excessive wind speed, the wind turbine will automatically derate to the set maximum power generation capacity of 1.6 MW.

- 12.3. Further, the power generated by the wind turbine can be monitored by the State Load Despatch Centre (SLDC) and DISCOM through the real time data feed from turbine to SLDC for every 15 minutes interval. NPRPL has been providing this kind of data for more than two (2) years now to SLDC.
- 12.4. Further, the Commission inquired as to whether any steps were undertaken to complete the construction of the 220kV AIS line Bay extension. NPRPL reiterated and repeated its submissions made in the Petition and Rejoinders and stated that MSETCL Jath substation does not have the requisite additional land required for installation of additional equipment i.e. 220 kV AIS line Bay extension. Only forest land is available adjacent to Jath substation and no private land is available for construction and installation of the 220 kV AIS line Bay extension. MSETCL being owner of the Jath substation has therefore applied to the Forest department to allot to MSETCL a small portion of the forest land towards construction and installation of AIS line Bay extension equipment.
- 12.5. NPRPL has taken all steps within its control for the construction of 220 kV AIS line Bay and is committed to complete the same. It has also placed Work orders on the Vendor for the construction of required 220 kV AIS line Bay Extension.
- 12.6. The Developer has time and again submitted various letters updating on the progress of the construction of the AIS Bay vide various letters dated 17 September 2018, 7 October 2019, 13 February 2020, 28 May 2020, 11 June 2020 and 2 November 2020 and therefore, MSETCL is well aware of the progress of the AIS Bay along with all steps undertaken by NPRPL to construct the AIS Bay.

**Commission's Analysis and Ruling:**

13. NPRPL has filed this case requesting the Commission to direct MSEDCL to grant PTC to its wind turbine having de-rated capacity of 1.6 MW (original rated capacity of 2.05 MW) and also to enter into EPA at the preferential rate of Rs. 5.70/unit. Further, it has requested for direction to MEDA to grant extension of project registration of the said wind turbine till MSEDCL grants the PTC.
14. NPRPL has submitted that it had installed and erected 15 WTGs around September 2015, out of which 14 WTGs were commissioned in October 2015. Subsequently, it entered into EPAs with MSEDCL for the 14 WTGs at preferential tariff as notified by the Commission. EPA for 1 turbine was not signed as the capacity specified in the State RE Policy 2015 (NPRPL in submission has termed it as Wind Policy 2015) could not accommodate 15<sup>th</sup> WTG.

15. Further, NPRPL has submitted that in September 2017, MEDA realized that there was a room to accommodate 1.6 MW capacity in the RE Policy 2015 and sought views from MSEDCL on operating WTG at de-rated capacity for the purpose of registration. The Commission notes that MSEDCL in its reply dated 17 October 2017 submitted that there was no provision in the RE Policy 2015 for operation of WTG at de-rated capacity.
16. The Commission notes that MEDA, vide its letter dated 17 March 2018, registered the WTG with the de-rated capacity. Thereafter, NPRPL was required to commission the project within 9 months of the date of the letter and submit the valid grid connectivity letter from MSEDCL/ MSETCL to MEDA within 6 months from issuance of the letter.
17. MEDA has submitted that as per the RE Policy 2015, despite allowing the extension of 21 months (9 months from the date of registration + two extensions of 6 months each) from date of issuing registration, NPRPL has failed to submit valid grid connectivity. The last leg of extension was valid till 16 December 2019. NPRPL has contended that there were various delays which were not attributed to it as it could not obtain the Grid Connectivity. Accordingly, it filed the present Petition along with IA on 13 December 2019 requesting for direction to MEDA to extend the registration till the final disposition of the Petition.
18. The matter was initially heard on 17 December 2019. The Commission issued daily Order directing the parties to maintain status-quo till final disposal of the Petition:

*“Heard the Advocates of the Petitioner and Respondents*

*The Commission directs that the status-quo as on date of filing of the Petition to be maintained till final disposal of the main Petition.”*

19. MSEDCL has contended that in order to achieve PTC, following documents are required to be submitted along with the application:
  - a. MEDA recommendation letter.
  - b. Valid Permission of Grid Connectivity and
  - c. Work completion report by CE, SLDC

NPRPL has only submitted the work completion report by CE, SLDC and the remaining two documents are yet to be submitted. MSEDCL has submitted that the application for PTC will be processed after receipt of all the documents. Further, the Commission notes that MSEDCL has submitted that vide its letter dated 10 April 2018, it has informed NPRPL that



MSEDCL has taken the decision of procuring wind power only through competitive bidding followed by e-reverse auction.

20. Further, MSETCL, in its submission dated 19 October 2020 has highlighted that it has sought the progress of construction of 2x 220 kV bays at 220 kV Jath Sub-station for evacuation as the validity of interim period grid connectivity was up to 30 June 2016. NPRPL has submitted that it has taken all steps within its control for the construction of 220 kV AIS line Bay and is committed to complete the same. It has also placed Work orders on the Vendor for the construction of required 220 kV AIS line Bay Extension.
21. 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 PTC needs to be granted for wind project under consideration?
  - b) Whether MSEDCL can be compelled to sign EPA at Preferential Tariff with NPRPL?
  - c) Whether NPRPL is eligible for compensation as claimed by it?
  - d) Balance of Convenience/equity/Way forward

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

22. **Issue: a) Whether PTC needs to be granted for wind project under consideration?**

22.1 NPRPL has contended that its Wind Turbine is constructed in the year 2015 and is lying idle as MSEDCL has not issued PTC. MSEDCL has opposed such contention on the ground that for issuing PTC, project developer has not submitted requisite document viz., MEDA's recommendation to commission the project and valid Grid connectivity. From the submissions of MEDA, it is observed that recommendation for commissioning of project cannot be issued as project developer has failed to submit valid grid connectivity.

22.2 Therefore, main issue in granting PTC to wind project under present Petition is submission of a valid grid connectivity. It is an admitted fact that MSETCL has granted Grid Connectivity of 350 MW to Wind Project Developer from its 220 kV Jath Substation. Project of NPRPL is connected to Shedyal Substation and the said Shedyal substation is to be connected to MSETCL's Jath substation for evacuation of wind power. As stated by NPRPL, all works related to Shedyal substation is complete, and only work that remains to be completed is construction of line bays at MSETCL's Jath substation which will be used for connecting Shedyal substation to Jath Substation. However, there is no space/land available in Jath substation for such line bays and only land available nearby is forest land. MSETCL has already applied to Forest Department for using such

land. In absence of permission from forest department, such work of line bays cannot be executed. NPRPL has further submitted that work orders for purchase of materials and execution of works related to these line bays have already been placed and hence such delay in constructing line bays at MSETCL's Jath substation is beyond its control. The Commission also notes that due to such difficulties, MSETCL has allowed evacuation of 200 MW of wind power through LILO arrangement.

22.3 The Commission notes that NPRPL is an investor, and it must have signed agreement with its Project Developer i.e. SMWPD, who is responsible for executing works related to grid connectivity. Said agreement / understanding between NPRPL and SWMPD has not been made part of this proceedings. The Commission further notes that the SMWPD had initially received grid connectivity approval of 250 MW which is subsequently increased upto 350 MW. SMWPD had initially planned to construct GIS Bay at Jath Substation which was also approved by MSETCL and though not covered explicitly in the pleadings, the available land could have been sufficient for the same. However subsequently, only on the request of SMWPD, AIS Bay (instead of GIS bay) has been approved by MSETCL. Due to such a change of AIS Bay, additional adjoining land was required to be acquired from the adjoining Forest area. This process is still pending for approval of Forest Department. It is not clear in the submission of Parties as to why the proposal of construction of GIS Bay was dropped. If the initial proposal of GIS Bay construction was implemented, the adjacent forest land probably would not have been required and work of grid connectivity would have been completed. Further, it is also important to note that WTG under consideration was erected in April 2014 and is still pending for PTC due to non-availability of valid grid connectivity, however some of NPRPL's WTG which are erected post April 2014 (i.e. post erecting of WTG under consideration) has already been commissioned. Further, NPRPL's project of 15 WTG (each WTG of 2.05 MW) was part of 350 MW Grid Connectivity approval to SMWPD, therefore under temporary evacuation arrangement approved by MSETCL (which is restricted to 200 MW) which WTG is to be covered would be depending upon agreement between SMWPD and NPRPPL which is not part of present proceedings. It is also important to note that NPRPPL's 15 WTGs were erected in the year 2015, but work order for purchase of equipment and construction of AIS bays at Jath substation was placed only in March 2019, this shows non-seriousness of project developer towards completing work of grid connectivity. The Commission opines that irrespective of the reasons analysed in the order, even otherwise without valid grid connectivity, WTG cannot be allowed to be commissioned.

22.4 Further, NPRPL has also requested to disconnect other idle turbines and allow commissioning of its WTG. In this regard, the Commission notes that details of so called idle WTGs are not part of this proceedings and also the developer of those idle turbines

have not been made party to present proceeding. Seeking any relief against any party without making such person party to the proceedings is against the principles of natural justice and hence cannot be allowed.

22.5 In view of above, the Commission is of the opinion that PTC to WTG under consideration cannot be granted in absence of valid grid connectivity. NPRPL may take up this issue with its developer i.e. SMWPD for expediting the work of grid connectivity. They may also approach the Infrastructure development committee which is primarily responsible for periodic review of progress of already granted Grid Connectivity to RE projects.

22.6 The Commission also notes that NPRPL has agreed to derate its Wind Turbine of 2.05 MW to 1.60 MW so as to register itself under 1500 MW limit prescribed under GoM's RE Policy. Although, MSEDCL has opposed such derating on the ground that it is not provided in RE Policy. NPRPL through its additional reply has submitted that such derating of Wind Generator is technically possible and can be monitored on 15-minute basis. As generator has agreed for derating and MEDA which is implementing agency for GoM's RE Policy has registered such project at derated capacity, the Commission is not intervening in such arrangement.

22.7 Having dis-allowed prayer for PTC due to non-availability of valid grid connectivity, all subsequent reliefs become redundant. However, once NPRPL gets a valid grid connectivity and commissions its 15<sup>th</sup> WTG, all the consequential steps need to be taken up by all the concerned. In order to avoid unnecessary duplication of efforts at subsequent occasion, the Commission is addressing other issues also in subsequent paragraphs.

23. **Issue: b) Whether MSEDCL can be compelled to sign EPA at Preferential Tariff with NPRPL?**

23.1 NPRPL has submitted that WTG No. VAS 556 of 2.05 MW was installed and erected in April 2015. In September 2017, MEDA realized that there was room to accommodate 1.6 MW of capacity within the 1500 MW target to sell wind power to State Distribution utilities for their RPO fulfilment. MEDA registered the 15<sup>th</sup> WTG with de-rated capacity of 1.6 MW on 17 March 2018. NPRPL has submitted for invocation of the 'Doctrine of Promissory Estoppel' and has impressed upon the fact that it made substantial investment relying upon the promise or assurance of the State and hence has requested for direction to MSEDCL to sign EPA with its Wind project at Generic Tariff applicable in the year 2015.

23.2 In this regard, the Commission notes that Generation of electricity being delicensed activity under the Electricity Act 2003, any person can setup generating facility by complying with technical standards and the statutory provisions. Such generator is free to use electricity so generated for its self-use or for sale to Distribution Licensee or any other person through Open Access. In case of Renewable energy Generators, since 2010 additional option of Renewable Energy Certificate (REC) mechanism was made available wherein RE generator can sell brown component of energy at Average Power Purchase Cost (APPC) to Distribution Licensee and earn revenue on the cost of green attribute by selling RECs on the power exchanges. The Commission highlights that though, in the RE Policy 2015, there was ceiling limit of 1500 MW for development of wind projects for the purpose of meeting the RPO targets for the State Distribution utilities, however, other avenues like third party sale/open access, REC mechanism etc. were available for NPRPL, which could have been explored.

23.3 The Commission also notes that NPRPL in its Petition has stated that it started installation of its project of 15 WTG in the year 2014 and completed such installation work only in September 2015. However, from the Rejoinder dated 24 July 2020 filed by the NPRPL, exact date of completion of erection work of WTG is made available. WTG erection work at location no. VAS 556 (WTG under present petition) was completed on 20 April 2014, which is well before the notification of RE Policy 2015. Therefore, it is evident that NPRPL must have taken business decision of developing the wind project prior to the notification of GoM's RE Policy 2015. Such a decision of developing the wind project must have been taken keeping in view the Policies applicable prior to RE Policy 2015. The policies applicable before RE Policy 2015 were MSEDCL's Wind Policy 2014 and RE Policy 2008 which are summarised below:

- a. New Policy for Generation of Power from Non-Convectional Sources of Energy 2008 (RE Policy 2008) notified by the GoM on 14 October 2008
  - i. Objective was to setup 2000 MW of Wind Projects
  - ii. If the Investor / Developers wishes to obtain benefits allowable under this policy then, it is obligatory on them to sell 50% electricity from the project to MSEDCL and remaining 50% to any other entity within the State.
  - iii. Letter of Infrastructure clearance will be issued to the project by MEDA mentioning all applicable benefits.

- b. Target of 2000 MW specified in RE Policy 2008 was achieved in FY 2013-14. Subsequent to the above mentioned 2008 Policy, the GoM notified its next policy in 2015.
- c. MSEDCL's New Policy for Wind Power Projects issued on 3 June 2014
  - i. MSEDCL shall execute the EPA with wind generators to the tune of capacity in MW to be declared by the GoM and as may be decided by MSEDCL Board considering the fulfilment of Renewable Purchase Obligation target.
  - ii. The EPA shall be executed in chronological order on the basis of date of commissioning of WTGs i.e. EPA of first commissioned project will be signed first.
- d. MSEDCL's clarification to its New Policy for Wind Power projects issued on 26 September 2014:
  - i. No MEDA infrastructure clearance is required for issuing PTC
  - ii. Statutory clearances shall be obtained by generators, only undertaking shall be submitted to MSEDCL
  - iii. MSEDCL will verify the commissioning of the WTG, fulfilment of the formalities for eligibility and issue commissioning certificate.
  - iv. For execution of EPA, generator shall submit commissioning certificate and other documents as per MSEDCL's policy, however, MSEDCL at its discretion will take decision whether or not to enter into EPA with the generator.
- e. Shortly after issuing above clarification, MSEDCL on 12 February 2015, kept its Wind Policy 2014 and subsequent clarification dated 26 September 2014 in abeyance in view of RE Policy being notified at GoM level.
- f. Comprehensive Policy for Grid-connected Power Projects based on New and Renewable (Non-conventional) Energy Sources-2015 (RE Policy, 2015) notified by the GoM on 20 July 2015:
  - i. Target to setup 5000 MW wind projects out of which 1500 MW capacity would be developed for meeting procurement requirement of distribution licensees under RPO regime.

- ii. Capacity of about 1350 MW commissioned after the expiry of previous policy [RE Policy 2008] would be included in procurement target of 1500 MW. MERC tariff prevailing at the time of commissioning of respective projects will be applicable for signing the PPAs. However, registration with MEDA will be mandatory for these projects.
- iii. As per provisions of the Electricity Act 2003, matters relating to promotion of RE sources, measures for evacuation arrangement, sale of electricity, percentage of RPO and other related matters are in the domain of the MERC and all Orders in respect of these matters will be applicable to the projects set up under this policy.
- g. Methodology for the Installation of projects will be as covered under the comprehensive policy for grid-connected power projects based on New and Renewable (Non-conventional) Energy Sources, 2015, notified by the GoM on 9 September 2015:
  - i. The wind power projects will be eligible to execute EPA or to seek Open Access or to sell energy through Renewable Energy Certificates (REC) only upon obtaining project registration from MEDA.
  - ii. If all necessary documents are received and the proposal is complete in all respects, the project registration will be done by MEDA after approval from the Chairman MEDA.

23.4 In view of the above summary of the policy framework applicable at the relevant point of time, the Commission notes that WTG of 2.05 MW was commissioned in April 2014, which was not only prior to issuance of GoM's RE Policy 2015 but confirms that the decision to set up the wind project was business decision taken by NPRPL since the planning is done much before the installation date. Thus reference to the RE Policy of 2015 by NRRPL is an after thought and the reliance on the said policy is not justified.

23.5 GoM's Policy applicable at that point i.e. RE Policy 2008 mandates only 50% capacity to be procured by Distribution Licensee. As against that out of 15 WTGs, MSEDCL has already signed EPA for 14 WTGs which is much more than 50% mandate specified under RE Policy 2008. Other applicable document at that point of time is MSEDCL's Policy 2014, however such policy of MSEDCL which is nothing but expressing intent of procuring power by commercial organization, cannot be treated as Policy by the Government. Hence, NPRPL's claim under RE Policy 2015 by referring Doctrine of Promissory Estoppel is not correct.

23.6 In view of the above detailed analysis of relevant applicable policies, the Commission notes that it cannot be concluded that NPRPL has set up its project on the assurance of RE Policy, 2015. Further, provision of RE Policy 2015 by including capacity commissioned post completion of 2000 MW targets is just an enabling provision with mandatory condition of registration of project with MEDA. For a very long period, NPRPL is not able to register /commission the project, 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 1.60 MW WTG by relying on RE Policy 2015 which may among other issues explained above discriminate unfavorably against the Wind generators who are entering into EPA with MSEDCL through competitive bidding route.

23.7 NPRPL always has the option of selling the energy in Open Access or through REC mechanism for its full capacity of its WTG of 2.05 MW. Instead, it kept its WTG idle and insisting to sell its power to MSEDCL at then applicable preferential tariff. In the opinion of the Commission, it cannot allow this prayer of NPRPL since the GoM which had notified RE Policy, 2015 itself has subsequently allowed MSEDCL to procure Wind power through competitive bidding process. The option of procurement of power at the best available price cannot be taken away from MSEDCL. Accordingly, the Commission is of the opinion that MSEDCL cannot be directed to sign EPA for 1.6 MW of de-rated capacity at preferential tariff.

24. **Issue: c) Whether NPRPL is eligible for compensation as claimed by it?**

24.1 NPRPL has claimed that it has lost revenue of about Rs. 9.84 crores since its WTG has been in idle condition since its installation.

24.2 The Commission finds no merit in such claim of NPRPL as there cannot be any injection into the grid unless there is valid arrangement of EPA or self consumption or Open Access which admittedly was not there in this case. Further, there has been no injection of power into the grid. Further, NPRPL always has option to sell such energy to third party or opt for REC mechanism. Thus, the Commission cannot direct MSEDCL to compensate purported revenue loss of NPRPL without any contractual obligation entered between parties.

24.3 Therefore, the Commission is of the opinion that NPRPL is not eligible for any compensation for a project/WTG it had not entered into legal agreement.



25. **Issue: d) Balance of Convenience/equity/Way forward**

- 25.1 After getting valid grid connectivity and commissioning of WTG, NPRPL will have various options such as sale to Open Access consumer, sale to Other Distribution Licensee in the State through competitive bidding process or opt for REC mechanism, it can also exercise option provided under MERC RE Tariff Regulations, 2019. Regulation 7.3 of RE Tariff Regulations, 2019 which has an enabling provision of signing of EPA with distribution licensee at recently discovered tariff if such project capacity is below the threshold limit specified for competitive bidding process. If both parties agree, they may utilize this provision of these Regulations for signing of long-term agreement at a rate recently discovered and adopted by the Commission on the same terms and conditions which are applicable to such competitively bid EPA. This will end uncertainty about EPA for the generator, at the same time MSEDCL will not be put to any disadvantage as the energy if procured will be as per the extant policy of procurement and also at competitively discovered rate.
26. With above ruling, the Commission hereby vacates status quo granted in the matter vide Daily Order dated 17 December 2019.
27. Hence, the following Order:

**ORDER**

1. **The Case No. 337 of 2019 is rejected.**

Sd/-  
(Mukesh Khullar)  
Member

Sd/-  
(I. M. Bohari)  
Member

