

**Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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Case No. 28 of 2021

Case filed by Minex Metallurgical Co. Ltd. seeking action against MSEDCL for violation of Section 9 of the Electricity Act 2003, SoP Regulations, Distribution Open Access Amendment Regulations 2019 and the Order dated 13 February 2021 passed by the Commission in Case No. 199 of 2020

Coram

**Sanjay Kumar, Chairperson
I. M. Bohari, Member
Mukesh Khullar, Member**

Minex Metallurgical Co. Ltd.

.....Petitioner

V/s

Maharashtra State Electricity Distribution Co. Ltd. (MSEDCL)

.....Respondent

Appearance:

For the Petitioner

: Shri Rajendra Goenka (Rep.)

For MSEDCL

: Shri Ashish Singh (Adv.)

ORDER

Dated: 5 August 2021

1. Minex Metallurgical Co. Ltd. (**Minex/Petitioner**) has filed a Case on 10 March 2021 under Section 142 of Electricity Act 2003 (**EA**) claiming that Maharashtra State Electricity Distribution Company Ltd. (**MSEDCL**) has violated Section 9 of the EA, the MERC (Distribution Open Access)(First Amendment) Regulations, 2019 (**DOA Amendment Regulations**), MERC (Standards of Performance of Distribution Licensees, Period for Giving Supply and Determination of Compensation) Regulations, 2014 (**SoP Regulations**) and the Order dated 13 February 2021 passed by the

Commission in Case No. 199 of 2020. Minex has also sought direction to MSEDCL for removal of the seal of the Solar Captive generation of the Petitioner which has been disconnected by MSEDCL after installation of Special Energy Meter (SEM) for availing Open Access (OA). The Petitioner has sought compensation, claiming that the illegal disconnection of Solar Rooftop by MSEDCL has resulted into loss of its solar generation units. The Petitioner has also sought compensation claiming that there has been considerable delay in installation of SEM Meters on account of delay on part of MSEDCL which led to delay in availing OA. It is also the contention of the Petitioner that MSEDCL has illegally denied the grant of OA to the Petitioner for the month of March 2021 and the Petitioner needs to be compensated for the corresponding loss.

2. Petitioner's main prayers are as follows:

- i. *Penalize Respondent MSEDCL under section 142 of EA 2003 for violation of section 9 of EA 2003, violation of Commissions Regulation DOA 1st amendment Regulation 2019.*
- ii. *Direct Respondent to compensate petitioner for the delay of 91 weeks as detailed in at para 4 as per SOP Regulations.*
- iii. *Direct Respondent to Compensate the petitioner for the losses incurred by the petitioner due to sealing of solar generation detailed in para 14.*
- iv. *Direct Respondent to Compensate the petitioner by making payment of the wind energy injected @ Rs. 2.52 per unit provided in the agreement of sale of wind power to MSEDCL detailed in para 15 energy into the grid for the time of delays in providing open access.*
- v. *Direct petitioner to remove the seal on solar generation and follow the Commission's DOA 1st amendment Regulation 2019 which specifies.*

“Net metering or behind the meter arrangement of roof-top PV system of a consumer opting for Open Access shall be converted into net billing arrangement for period of Open Access on temporary basis for the tenure of Open Access”.

3. Petitioner has stated as follows:

- 3.1. Minex is an industrial Consumer of MSEDCL having Contract Demand (CD) of 1.4 MVA and located at Mouza Nimji, Tah- Kalmeshwar, Dist.-Nagpur.
- 3.2. Minex is also a Generator, and it has installed 1.25 MW Wind Generating Plant at Ranjangaon, Tah-Sakri, Dist- Dhule. It was selling its generated wind energy to MSEDCL under Energy Purchase Agreement (EPA) and after expiry of the EPA term, it had planned to use wind generation for self-consumption through OA.
- 3.3. Minex, being a Consumer, has also installed Solar Rooftop Generating plant of 110 kW within its premises and it has entered Net metering arrangement with MSEDCL from April 2017.
- 3.4. Minex has raised mainly three issues in its Petition seeking relief which are elaborated in the subsequent paras:

Issue I: Delay in installation of SEM and compensation of loss due to this delay for the period between October 2020 to January 2021

- 3.5. Minex as a Wind Generator was selling power to MSEDCL from its Wind Generation Unit at Sakri, Dist-Dhule under EPA.
- 3.6. Subsequently, Minex has chosen/planned to self-consume electricity generated from its Wind Generating Unit (Generator end/injection point at Dhule) to the industrial unit located at Kalmeshwar, Dist. Nagpur (Consumer end /drawal point at Nagpur) under OA.
- 3.7. Accordingly, on 25 May 2019, Minex had requested MSEDCL to provide specifications of SEMs to be installed at its wind generator end at Dhule and consumer end at Nagpur for availing/enabling its self-consumption OA.
- 3.8. As the installation of SEMs was delayed by MSEDCL, Minex (Wind Generator) has entered into short term sale agreement for its 1.25 MW wind power with MSEDCL from 1 April 2020 to 30 September 2020 @Rs.2.52 per unit.
- 3.9. MSEDCL completed installation of SEM at consumer end at Nagpur on 9 December 2020 and at generator end at Dhule on 27 November 2020.
- 3.10. The overall delay in the SEM approval process is explained in the following table:

Stages and delays for approval power through Open access from Wind Turbine Generator at Dhule to Nagpur Unit

	Mumbai	Nagpur	Dhule	Delay
*	Application to CE Commercial for Specification of SEM for Availing Open Access Dated 25/05/2019	Mail from CE Comm to submit Format I to SE TQA Nagpur dated 11/06/2019	Mail from CE Commercial TQA Kalyan to submit Format I dated 3/06/2019	Application Submitted on Dated 25/05/2019
		Inspection Done on Dated 05/07/2019	Inspection Done on Dated 18/06/2019	As per SOP Inspection of the premises should be done in 7 days after receipt of Application
				Dhule : delay 4 weeks Nagpur : delay 2 weeks
*		Approval of SEM for Nagpur End CE/Com/OA/SEM/Minex/2 1174 Dt: 30/07/2019	Approval of SEM for Dhule End CE/Com/OA/SEM/Individual/ 26174 Dt 17/09/2019	
*			Estimate Sanction and Demand for supervision Dated 05/10/2019	As per SOP time period for intimation of Charges 30 Days from date of application
				Delay 13weeks
*			Payment Done by Consumer dated 5/10/2019	
*		Plan Apprval and charging permission by EI 10/12/2019	Plan Apprval and charging permission by EI 16/01/2020	
*		Work Completion from Consumer Submitted on 30/12/2019	Work Completion from Consumer Submitted on 25/02/2020	
		Meter installed and format II Sumitted by SE NRC Nagpur to CE Comm 16/01/2020	Meter installed and format II submitted by SE Dhule to CE Comm 17/08/2020	as per SOP after completion of work meter should be installed in one month
				Delay at Nagpur : 10 Months = 40 weeks
*		NOC for charging SEM	NOC for charging SEM	
		CE/Com/OA/SEM/Minex/3 684 dt. 3/02/2020	CE/Com/OA/SEM/Individual/ 16356. Dt. 06/10/2020	Dealy at Dhule : 8 Months = 32 Weeks
*		SEM Charged on 09/12/2020	SEM Charged on 27/11/2020	Total Delay =91 Weeks

3.11. There was a loss of wind generation owing to MSEDCL's delay in approving and installing SEM for the period from October 2020 to January 2021 as well as due to failure to provide OA after installation of SEM i.e after December 2020.

- 3.12. Minex decided not to extend the short term sale agreement beyond 30 September 2020, i.e. from October 2020 to January 2021. Therefore, there is loss of wind generation units as below:
- i. For the month of October 2020: 41856 units injected
 - ii. For the month of November 2020 : Nil (no unit injected)
 - iii. For the month of December 2020 : 14034 units injected
 - iv. For the month of January 2021 : 28668 units injected

Issue No. 2: Denial of OA and Solar Rooftop arrangement simultaneously and disconnection of Solar Rooftop Generation by MSEDCL

- 3.13. Minex had installed Solar Rooftop Generating plant within its premises and it has entered net metering arrangement with MSEDCL from April 2017.
- 3.14. The Solar Rooftop meter was removed as soon as SEM was installed in December 2020 at consumer end by MSEDCL. MSEDCL officials directed the Petitioner to stop Solar Rooftop generation and sealed the output switchgears of solar generation. Even before the commencement of the OA, the Solar Rooftop generation was sealed.
- 3.15. As per the SEM Installation Report dated 9 December 2020, the existing solar net metering has been disconnected. The SEM Installation Report also mentioned that consumer cannot avail OA and net metering simultaneously, as held by the Commission in its Case No. 163 of 2017.
- 3.16. In light of MSEDCL's above mentioned actions, Minex wrote a letter to the CMD, MSEDCL on 31 December 2020, stating that since the net meter was removed, MSEDCL has not paid any amount for the exported energy, and the Petitioner has been unable to bank the exported energy, resulting in a loss to Minex.
- 3.17. MSEDCL has violated the Commission's Order dated 13 February 2021 in Case No. 199 of 2020 (*RB Diversified v/s MSEDCL*) wherein the Commission has clarified that Net metering or behind the meter arrangement of Rooftop PV system of a consumer opting for OA shall be converted into Net Billing arrangement for period of OA on temporary basis for the tenure of OA.
- 3.18. Minex should have been allowed to use Net Metering until commencement of its OA, and its solar generation should have been treated as Gross Metering throughout the OA period.
- 3.19. The Minex's loss as a result of MSEDCL's unlawful conduct must be reimbursed by MSEDCL. The loss is calculated as below.

Loss of Solar Generation – for the period from 9 December 2020 to 28 February 2021.

- i. In the corresponding period in previous year:-
 - a. The generation in December 2019 was 9274 units for 31 days,

- b. The generation in January 2020 was 11218 units
 - c. The generation in February 2020 was 11574 units
- ii. In December 2020, till 9 December 2020, the solar generation recorded was 3481 units. Hence, the loss of solar generation based on previous year's record is estimated to be $9274+11218+11574-3481 = 28585$ units.
- a. These units could have been utilized by Minex and import from MSEDCL could have been reduced. The cost of units imported during the month of December 2020, January and February 2021 from MSEDCL is averaging to Rs. 6.60 per unit. Hence, the loss to the Petitioner due to blocking of solar generation is Rs. $28,585 * 6.60 = \text{Rs. } 1,88,661/-$.

Issue III: Denial of OA permissions for the month of March, 2021

- 3.20. On 25 January 2021, Minex applied for OA permission for the month of March 2021. MSEDCL did not provide a No Objection certificate (NOC), and the OA application was denied. After contacting with the MSEDCL officials, it was learnt that the shortfall in documents had been communicated through email by MSEDCL.
- 3.21. The copies of emails sent by MSEDCL to Minex were received on WhatsApp after query but it was found that the email ID was wrongly entered by the MSEDCL officers i.e. instead of patle@minexindia.com, the email ID entered by MSEDCL officers was patle@minexinida.com.
- 3.22. MSEDCL had sent two emails on 18 and 25 February 2021. However, these emails may have been bounced back. Nevertheless, none contacted applicant's co-coordinator mentioned in applicant form, either telephonically or otherwise, after the email was bounced and the OA was ultimately not sanctioned.
- 3.23. MSEDCL's actions are in contravention of Regulation 12.4 of MERC (Distribution Open Access) Regulations, 2016 (**DOA Regulations, 2016**) which stipulate that in case, the application is incomplete or otherwise, deficiencies are to be communicated by the Distribution Licensees, by email or fax within five working days of receipt of the application.

4. MSEDCL, vide its Reply dated 27 April 2021 stated as below:

Issue I: Delay in installation of SEM and compensation of loss due to this delay

- 4.1. Due to COVID-19 Pandemic, there was a nationwide lockdown and hence work of installation and commissioning of SEM was hampered. MSEDCL further cannot be held responsible for delays which are beyond the reasonable control of MSEDCL and have arisen on account of Force Majeure.
- 4.2. Considering the nationwide Pandemic, MSEDCL took an initiative and developed the Short Term Power Purchase Web Portal on 27 March 2020 for RE Generators to enable them to sell power to MSEDCL. Minex has also availed the said option and sold power generated to MSEDCL from 1 April 2020 to 30 September 2020.

Issue II: Denial of OA and Solar Rooftop arrangement simultaneously and disconnection of Solar Rooftop Generation by MSEDCL

- 4.3. The Commission vide its Order dated 12 June 2018 in Case No. 163 of 2017 (*Cleanmax Vs MSEDCL*) has directed that Net Metering and OA being two separate Regulations and the intermingling of same, will cause many billing issues and disputes and so the consumer can either opt for Solar Rooftop Net Metering or OA.
- 4.4. Post notification of the MERC (Grid Interactive Rooftop Renewable Energy Generating Systems) Regulations, 2019 on 30 December 2019, the above-mentioned scenario has changed. The consumer can now apply for Rooftop solar generation with OA under Net Billing (or Gross Metering) arrangement. The above scenario has also been confirmed by the Commission vide its Order dated 13 February 2021 in Case No. 199 of 2020.
- 4.5. It is pertinent to note that Minex has never applied for Net Billing (or Gross Metering) arrangement wherein the total power generated will be purchased by MSEDCL as per RE Generic Tariff rate and credit of said amount shall be given in consumer's bills. The RE Generic Tariff is nothing but the rate discovered by MSEDCL through online bidding for purchase of RE power, Solar power in present Case.
- 4.6. Minex has not entered into any agreement with MSEDCL for sale of power under Net Billing (or Gross Metering) arrangement. Instead, Minex continues to raise its objections to the use of Net Metering with OA, which is not allowable under any Regulation. Minex may be directed to apply for Gross Metering and enter into agreement with MSEDCL for sale of power @ RE Generic Tariff.

Issue III: Denial of OA permissions for the month of March 2021

- 4.7. The non-grant of OA for March 2021 was on account of the discrepancies observed in STOA application. The same was communicated to the applicant vide email dated 18 February 2021 on the same email-id which was provided by the Petitioner. The Petitioner is disputing that MSEDCL has sent the emails to incorrect email-id but it was sent on exactly same email-id as provided by the Applicant.
- 4.8. It is the responsibility of the Petitioner to provide correct email-id for correspondence. In any case, the Petitioner being the OA applicant has to ensure that its OA application is correct in all respects. Hence, MSEDCL cannot be held responsible for non-grant of OA which is solely attributable to the Applicant.

5. Minex, in its Rejoinder dated 8 May 2021, stated as below:

- 5.1. MSEDCL is taking shelter of Covid-19 situation but is forgetting that SoP Regulations have not been revised during Covid-19 pandemic. Delay in site inspection can be understood during lockdown period, but office work should not have been delayed since officers were working online and from home also.
- 5.2. The Petitioner has submitted the application on 25 May 2019, much prior to the lockdown period which started from 22 March 2020 i.e. about 9 months.

- 5.3. MSEDCL has made an inordinate delay in the sanction process and instead of making an enquiry of the concerned officers about the reasons of delay, MSEDCL is trying to protect its officers by submitting such reply and trying to take shelter of lockdown period.
- 5.4. MSEDCL has referred the Order passed by the Commission in Case No. 163 of 2017, however this Order is not at all applicable in present scenario.
- 5.5. As per the DOA Amendment Regulations, the consumers intending to have Rooftop Solar Photo Voltaic Systems can simultaneously avail OA and in such cases, the credit for solar generation is allowed to be adjusted on Gross Metering basis for such period for which OA is availed by the consumer.
- 5.6. The Petitioner's Net Metering arrangement started from April 2017 and since then, energy bills issued by MSEDCL were as per Net Metering arrangement. This is clear from the energy bills of the Petitioner for November and December 2020 but on 9 December 2020, MSEDCL sealed the solar generation illegally. Hence, from January 2021, solar generation and export of solar generation is zero. The solar generation was sealed in spite of the fact that OA had not been sanctioned and OA could not be availed by the Petitioner on account of rejection of OA application of Petitioner by MSEDCL.
- 5.7. The OA started from the month of April 2021. Till then, Net Metering should have been continued. From 1 April 2021, Net Metering should have been converted automatically to Net Billing arrangement temporarily for a period of OA.
- 5.8. MSEDCL never informed the Petitioner that there was a need for entering into an agreement for Net Billing arrangement. Also, no Regulation issued by the Commission provides this need since it is a temporary arrangement.
- 5.9. Even if there was no agreement for Net Billing or Net Metering during the period of OA as contended by MSEDCL, the solar generation should have been treated in the 3rd category i.e. Behind the Meter without net-metering or net-billing. Under this arrangement, 100% energy generated by grid connected Rooftop solar project is used for self-consumption.
- 5.10. The Petitioner never raised the dispute about availing Net Metering along with OA but raised the dispute that the Net Metering has been stopped much prior to starting the OA from 1 April 2021 and the solar generation of the Petitioner was stopped by MSEDCL on 9 December 2020.
- 5.11. The Net Metering should have been converted to Gross Metering automatically during the period of OA and if the agreement is required for Gross Metering, then this should have been communicated to the Petitioner. Even if there was no agreement for Gross Metering, the Petitioner has all rights to use 100% solar generated power for his captive use during the period of OA.
- 5.12. As regards to the issue of denial of OA for March 2021, the email sent by MSEDCL might have bounced back but nobody contacted applicant's co-coordinator mentioned in the application form. Further, the Regulation 8.2 of DOA Regulations, 2016 provides that Nodal Agency shall provide the name, designation and contact details of Nodal

Person for OA related issues on its website. The Distribution Licensee did not provide on its website the name, designation and contact details of the Nodal Officer who will be a single point contact for all OA and connectivity related matters.

6. At the E-hearing through video conferencing held on 14 May 2021:

6.1. Representatives of Minex stated that:

- i. There was delay in SEM installation by MSEDCL which led to delay in availing OA by the Petitioner and hence the Petitioner has sought compensation for the month of October 2020 to January 2021.
- ii. In December 2020, MSEDCL has sealed Solar Rooftop generation of the Petitioner and hence MSEDCL should compensate for the solar generation loss for the month of December 2020 to February 2021.
- iii. MSEDCL communicated the discrepancies in the Application on the wrong email-ID and denied the OA permission for March 2021. Further, no details of contact person have been provided on MSEDCL's website for resolving the discrepancies in the OA Application.

6.2. Advocate of MSEDCL stated that:

- i. There was delay in SEM installation due to the Petitioner's action and the delay was due to the lockdown imposed due to pandemic of COVID-19. Further, there was also delay from the Petitioner's end in submission of the Electrical Inspector's Certificate and non-shifting of 33 kV lines passing through the Petitioner's premises. The compensation of loss for the month of October 2020 to January 2021 cannot be considered as the power cannot be injected into the grid without valid EPA or OA.
- ii. For simultaneous use of OA and Solar Rooftop under DOA Amendment Regulations, the Petitioner should have applied and made an agreement with MSEDCL.
- iii. MSEDCL has communicated the discrepancies in the OA applications for March 2021 on the email ID mentioned in the OA applications. The contact details of Nodal Officers of MSEDCL are available on MSEDCL's website.

6.3. The Commission directed MSEDCL to immediately connect/restore the Solar Roof top generation of the Petitioner as per DOA Regulations Amendment 2019. The Commission also directed MSEDCL to file its additional submission on this issue.

6.4. On the query of the Commission as to whether the Petitioner's Wind generation was complying the provision of MERC (Forecasting, Scheduling and Deviation Settlement for Solar and Wind Generation) Regulations, 2018 (**F&S Regulations**), the Petitioner stated that it will file its submission on the same.

7. Petitioner, in its additional submission dated 14 May and 18 May 2021 stated as under:

- 7.1. As regards the delay in providing approval by the Electrical Inspector, it is submitted that the delay was due to the issue raised by the Electrical Inspector during first inspection. The Electrical Inspector had directed to shift the 11 KV line because of less clearance from the meter room. The Petitioner completed the work during lockdown period and thereafter the Electrical Inspector provided the permission, and, in the process, more than 3 months have passed. Hence, there is no point in raising the issue that there was a delay on account of delay in getting the permission from the Electrical Inspector.
- 7.2. Regulation 5 of DOA Amendment Regulations provides that in case the Generating Station does not have an Agreement for sale of power with any Licensee, there shall be no charge for such infirm power injected into the grid. Upon execution of such an agreement, the infirm power injected into the grid shall be settled by the Licensee at a rate equivalent to the lowest variable cost of thermal generating station as per Merit Order Despatch stack of the concerned distribution licensee for relevant monthly period, and the injected infirm power shall be credited to the Distribution Licensee to whom the Generating Station is connected. The adjustment of wind power should be done as per the above Regulations.
- 7.3. As regards to query of the Commission, regarding the registration, forecasting and scheduling of the Petitioner's Wind Generator under the F & S Regulation, it is submitted that its Wind Generator is registered under F&S Regulations for scheduling and forecasting. It has entered into agreement with QCA, M/s. Manikaran Analytics Ltd., and is connected at 220 kV Walve Pooling Substation.
- 7.4. Further, Minex has injected the wind power into the grid during the period when there was no agreement for the period from October 2020 to January 2021 with MSEDCL and its Wind Generator was a part of scheduling and forecasting for the said period.

8. MSEDCL, in its additional submission dated 25 May 2021 stated as below:

- 8.1. The list of dates cited by Minex in its Petition clearly points out the following:
- i. SEMs were to be installed by MSEDCL at generator end at Dhule and at consumer end at Nagpur. The Application was made for the same by Minex on 25 May 2019.
 - ii. The same was processed and work for the same was initiated by MSEDCL.
 - iii. However, the Electrical Inspector Certificate was only belatedly submitted by Minex on 10 December 2019 and 16 January 2020 for consumer end at Nagpur and Generator end at Dhule respectively.
 - iv. **For consumer end at Nagpur:-**
 - a. Electrical Inspector Certificate was submitted on 10 December 2019.
 - b. The work completion report was submitted by Minex on 30 December 2019.
 - c. SEM was installed on 16 January 2020. However, it was noticed that another 33 kV line was passing through the Minex's premises which was required to be removed by Minex.

- d. The NOC for charging the SEM issued by MSEDCL on 3 February 2020. Also, Minex was directed to remove the said line.
 - e. Finally, the Petitioner responded on 14 October 2020 with its clarification regarding shifting of 33 kV Line.
 - f. Subsequently, the SEM was installed on 9 December 2020.
- v. **For generator end at Dhule:-**
- a. Electrical Inspector Certificate was submitted on 16 January 2020.
 - b. The work completion report was submitted by the Petitioner on 25 February 2020.
 - c. SEM was installed on 17 August 2020
 - d. Thereafter, NOC for SEM charging was issued on 16 October 2020.
 - e. The SEM was charged on 27 November 2020.
- 8.2. On the issue of the SEM installation at the consumer end which was coupled with the issue of another 33 kV line passing through Minex's premises, it is submitted that the work after 3 February 2020 could also not be processed by MSEDCL on account of "Pandemic" which led to a nationwide lockdown immediately in March 2020.
- 8.3. For generator end at Dhule, after 25 February 2020, the work could also not be processed on account of Pandemic of COVID- 19 outbreak.
- 8.4. The compensation for delay as per SoP Regulations as claimed by Minex is not maintainable primarily for two reasons:
- i. Major delay is attributable to the Petitioner itself as explained above, coupled with the additional issue at Nagpur site which could only be resolved mutually after the belated response from the Petitioner.
 - ii. Regulation 11 of the SoP Regulations stipulates about 'Exemptions" which are applicable to MSEDCL. The "Pandemic" has to be categorized as a situation beyond the reasonable control of MSEDCL and hence any alleged delay, if any needs to be condoned.
- 8.5. Assuming without admitting that the delay in commissioning of the SEM was due to MSEDCL's fault, Minex has suffered no loss as a result of the alleged delay in commissioning of the SEM. From 17 March 2019 until 30 September 2020, Minex has sold its electricity to MSEDCL via different EPA/sale agreements.
- 8.6. Hence, the compensation sought by the Petitioner is fiction of its imagination since Minex as a Generator has duly recovered the cost of its power by willingly entering into an EPA with MSEDCL and by selling its power at a predetermined rate during the tenure when the process of SEM commissioning was underway.
- 8.7. It is an admitted position that Minex has injected power into the grid for the period October 2020 to January 2021 without having an EPA with MSEDCL and without the knowledge and consent of MSEDCL.

- 8.8. It is a settled position of law laid down through various Judgments of the Hon'ble Appellate Tribunal for Electricity (ATE) (such as in the matters of *Indorama, Kamachi Sponge, Lalpur* etc.) which has been followed by the Commission in a catena of Orders (such as *G.I. Energy, Gopani Power, Bothe, Lalpur, Khandke, Wind India* etc.) that a generator cannot inject power into the grid of MSEDCL without having a PPA with MSEDCL and without the knowledge and consent of MSEDCL. Hence, the claim of compensation on this count by the Petitioner ought to be rejected by the Commission.
- 8.9. During the hearing held on 14 May 2021, Representatives of Minex referred to Regulation 5.10.5 of DOA Amendment Regulations and claimed that Minex needs to be compensated in line with this Regulation for the period between October 2020 to January 2021 even though Minex had no PPA with MSEDCL. The reliance on the said provision by Minex is absolutely misplaced as the said provision is applicable only for projects prior to date of COD. The said provision is applicable only during the period of testing of a new project. Hence, it specifies the treatment of power injected during the period of testing. The said provision cannot be made applicable for any other situation as is being sought to be done by the Petitioner.
- 8.10. In addition, Minex claimed in its Rejoinder that no details of Nodal Officer were found on MSEDCL's website and that as a result, Minex was unable to contact the concerned officials. The contention of the Petitioner is not correct as the contact details of the Nodal Officer are available on the website of MSEDCL. The Commission in its Order dated 3 November 2018 in Case No. 331 of 2018 (*Chalet Hotels Vs MSEDCL*) has recognized the digital efforts of MSEDCL in matters of OA and has also appreciated the same.

Commission's Analysis and Rulings:

9. Following three issues have been raised by the Petitioner in present Petition:

Issue I: Delay in installation of SEM and compensation of loss due to this delay for the period between October 2020 to January 2021

Issue II: Denial of OA and Solar Rooftop arrangement simultaneously and disconnection of Solar Rooftop Generation by MSEDCL

Issue III: Denial of OA permissions for the month of March 2021

The Commission has dealt with the above issues in the following paragraph:

10. **Issue I: Delay in installation of SEM and compensation of loss due to this delay for the period between October 2020 to January 2021**

- 10.1. The Petitioner has contended that with the objective of opting for OA under captive mode, Minex, vide its letter dated 25 May 2019, requested MSEDCL to provide the specification of SEM. There has been an inordinate delay on part of MSEDCL and the SEM was charged after a delay of 91 weeks in December 2020 at consumer end and in November 2020 at generator end. Minex had sold its power under Short Term EPA during 1 April 2020 to 30 September 2020 and had not entered into Short Term Agreement after September 2020. There was a loss of wind generation owing to

MSEDCL's delay in approving and installing SEM for the period from October 2020 to January 2021 as well as the failure to provide OA after installation of SEM i.e after December 2020. According to the Petitioner, it is entitled for the compensation of loss as per the SoP Regulations for the period from the October 2020 to January 2021.

10.2. MSEDCL has contended that the installation of the SEM was delayed owing to lockdown and the COVID -19 scenario. It has, however, made available the option of purchasing wind generating units on short term basis, which Minex as generator has taken advantage of. MSEDCL has also contended that the installation of SEM at the consumer end was delayed owing to delay from the Petitioner's side, such as a delay in submitting an Electrical Inspector certificate and responding to a request to shift 33 kV line. Regulation 11 of SoP Regulations provides for exemptions from the obligations under the SoP Regulations under the situation which are beyond the reasonable control of the Distribution Licensees and Covid 19 Pandemic falls under such situation. Hence any delay on the part of MSEDCL needs to be condoned by the Commission. Further, the compensation requested by the Petitioner is a work of fiction, because Minex, as a Generator, has duly recovered the cost of its power by willingly entering into an EPA with MSEDCL and selling its power during the period when the SEM commissioning process was in progress.

10.3. To adjudicate the issue related to SEM installation, it is imperative to examine the relevant Regulations and Orders passed by the Commission on this issue.

10.4. The relevant Regulations of the DOA Regulations 2016 read as under:

“ 17. Metering and Communication

17.1. All Open Access Consumers and Generating Stations shall install Special Energy Meters ('SEM's):

Provided that any existing or prospective Consumer who has not sought Open Access but desiring it shall have the option to install such SEM at his premises.

17.2. Such Consumers or Generating Stations may procure the required SEM from any supplier in accordance with the standards and specifications stipulated in the Regulations of the Central Electricity Authority governing the installation and operation of meters.

17.3. The Consumer or Generating Station may also procure the required SEM from the Distribution Licensee;

Provided that, upon receipt of such request, the Distribution Licensee shall communicate the lead time for its procurement of such SEM in case it is not available with it so as to enable the Consumer or Generating Station to finalise its option for purchase:

Provided further that, if the Consumer or Generating Station chooses to purchase the SEM from it, the Distribution Licensee may require the payment of an advance not exceeding its price.

17.4. The Distribution Licensee shall test and install such SEM within sixty days from the receipt of a request from the Consumer or Generating Station, as the case may be.”

10.5. The aforesaid Regulations provide that the OA consumers may either procure the required SEM from any supplier in accordance with the applicable standards and specifications or the SEM may also be procured from the concerned Distribution Licensee. It is seen from the documents on record that the Petitioner had opted first option i.e. to procure the SEM from other suppliers and getting the same tested and installed in co-ordination with MSEDCL.

10.6. Arvind Cotsyn (India) Ltd. had filed a Petition challenging the MSEDCL’s circular mandating separate SEM for individual OA generators. During that proceeding, the Petitioner did not object for installing SEM at the individual locations provided that the SEM is installed by MSEDCL subject to cost being borne by the Petitioner. Also, MSEDCL stated that it will not deny the OA relying on its individual SEM metering policy adopted MSEDCL. While passing the Order dated 5 April 2019, the Commission has directed as follows:

“ ...

12.

the Commission accepts the same and directs MSEDCL that as per its statement made during the hearing on 25th March 2019 and the extant metering regulatory provisions, in case consumer or generator desires that MSEDCL should install the required meter on due payment by such consumer/generator, MSEDCL should procure and install the meter at the specified location of consumer/generator. MSEDCL and Consumer/generator would continue to follow the provisions of the DOA Regulations with regards to installation of SEM.

2. In Case, consumer/generator opts for installation of Special Energy Meter by the Maharashtra State Electricity Distribution Company Ltd. at former’s cost, latter shall install the same as per provisions of the DOA Regulations, 2016 within a period of six months.

3. In the intervening period till installation of Special Energy Meter, Maharashtra State Electricity Distribution Company Ltd. shall not deny Open Access to such consumer/generator”

10.7. Thus as per this Order, if a consumer/generator requires MSEDCL to install SEM at the consumer’s/generator’s cost, SEM needs to be installed by MSEDCL within a period of six months.

10.8. The same cushion of 6 months’ period is reflected in the DOA Amendment Regulations which read as under:

“ 17.8(a). 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, Special Energy Meters, 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.

....

Provided that if generator opts for installation of Special Energy Meter by the Distribution Licensee at the former's cost, latter shall install the same. In the intervening period till installation of Special Energy Meter, Distribution Licensee shall not deny Open Access to such consumer/ generator."

10.9. In the present case, the Petitioner had not opted for installation of SEM by MSEDCL on payment, rather it opted to procure the SEM on its own as per the required standards and specification. The process involved many activities from MSEDCL end and also certain activities were required to be done by the Petitioner. The chronology of the events/activities regarding installation of SEM at individual Wind Generator end at Dhule and consumer end at Nagpur is summarized in the following Tables:

Chronology of Events for Generator end at Dhule:

Date	Chronology of Events
25 May 2019	Petitioner's Generator submitted an application to MSEDCL for providing specification of SEM.
3 June 2019	CE (Comm.), MSEDCL requested to SE Dhule to carry out joint inspection and submit the joint inspection Report in the format I.
5 July 2019	Joint Inspection was done. [As per documents enclosed with the Petition, it is observed that inspection at Generator End at Dhule was done on 5 July 2019 and at consumer end at Nagpur on 18 June 2019. However, the Petitioner in its submission (para 4 of the Petition) has interchanged the dates of joint inspections at Generator and consumer end and entered wrongly.]
19 July 2019	SE Dhule submitted Joint Inspection Report to SE (T&Q) Kalyan regarding installation of individual SEM Metering for Wind generator connected on group feeder emanating from 220/33kV Jamde site at location K-267 Ranjangaon Dhule.
17 September 2019	CE (Comm.), MSEDCL intimated to SE Dhule regarding the approval of specification of SEM and requested to carry out joint inspection and submit the report in Format II.
5 October 2019	SE Dhule informed Petitioner's generator for payment of Supervision charges towards installation of SEM metering arrangement and SEM/CT/PT Testing Charges.
25 February 2020	<ul style="list-style-type: none"> • Work completion informed by the Petitioner. • The Petitioner requested to SE Dhule for providing Work completion report and Joint Inspection Report in Format II. (Pre-Release Joint inspection Report -HT connections in respect of OA consumers)
17 August 2020	Meter installed and joint inspection Report in format II was submitted by SE Dhule to CE (Comm.) MSEDCL.

6 October 2020	<ul style="list-style-type: none"> • CE (Comm.) MSEDCL intimated to SE (O & M) Dhule regarding approval for NOC for charging SEM Metering. • Further, in the said letter, it was mentioned that the SEM Joint inspection shall be carried out by concern SE (O&M) and SE (TQA) and SEM installation Report shall be submitted to CE (Commercial) after charging of main meter and check meter.
27 November 2020	SEM charged and MSEDCL provided the SEM installation Report to Petitioner.

10.10. As seen from the above, MSEDCL has taken significant time for processing the Petitioner's request regarding SEM installation which involved correspondence with field offices, joint Inspections, obtaining approvals of competent authority for SEM Specification (Period from 19 July 2019 to 17 September 2019), granting NOC for charging etc. It must be noted that this period of taking significant time by MSEDCL is a pre-Covid 19 period .However, it is observed that there has been delay on part of Minex as well since after intimation of supervision and testing charges on 5 October 2019, Minex approached MSEDCL only on 25 February 2020 informing Work Completion at its end and requesting MSEDCL to provide Joint Inspection Report in Format II. Hence , the Petitioner has also taken 5 months time for completion of its work which is also a pre-Covid-19 period.

10.11. Further, it is also observed that few days after email dated 25 February 2020 from Minex, nation-wide lockdown was declared by the Government of India which brought various restrictions on the field work, availability of manpower etc. Restrictions had been placed on movement of public and opening of offices and establishments etc. by the State Governments and vide Order dated 24 March 2020 of Ministry of Home Affairs, Government of India to contain the spread of the COVID-19 pandemic in the country. Due to this, the Government had imposed strict restrictions on the movement of general public. Electricity being essential service, was exempted from such restrictions, however the concerned Offices of the State Government were mandated to work with minimum number of employees. **Therefore, it is reasonable to consider and accept the submission of MSEDCL that delay from MSEDCL was also due to the Covid 19 related difficulties for the period from 24 March 2020 to 27 November 2020.**

Chronology of events for consumer end at Nagpur:

Date	Chronology of Events
25 May 2019	Petitioner submitted an application to MSEDCL for providing specification of SEM.
11 June 2019	CE (Comm.) requested SE Rural Nagpur to carry out joint inspection and submit the joint inspection Report in the format I.

18 June 2019	<p>Joint Inspection was done.</p> <p>[As per documents enclosed with the Petition, it is observed that inspection at Generator End at Dhule was done on 5 July 2019 and at consumer end at Nagpur on 18 June 2019. However, the Petitioner in its submission (para 4 of the Petition) has interchanged the dates of joint inspections at Generator and consumer end and entered wrongly.]</p>
21 June 2019	<ul style="list-style-type: none"> • Joint inspection report submitted by SE Rural Nagpur to CE (Comm.) MSEDCL. • In the Joint Inspection report, it was mentioned that consumer connection released on 11 kV industrial feeder (non-express) and existing connection is with Solar Net Meter of 110 kW. • Further, it was mentioned that 33 kV line was passing through the consumer premises.
30 July 2019	<ul style="list-style-type: none"> • CE (Comm.) intimated to SE Rural Nagpur regarding approval of SEM specification and requested to carry out joint inspection and submit the report in Format II. • CE (Comm.), in said letter stated that the Solar Power under Net Metering shall be disconnected because as per the Commission's directive, OA and Net Metering shall not allowed simultaneously. <p>[Copy of this letter was marked to the Petitioner]</p>
30 December 2019	<ul style="list-style-type: none"> • Work completion informed by Petitioner. • Minex informed SE Nagpur about receipt of the Metering Cubical, CT, PT, Meters, and also receipt of charging permission from the Electrical Inspector. • Minex requested for outage on 1 January 2020 for installation and charging the SEM metering cubical and provide the installation report.
7 January 2020	<ul style="list-style-type: none"> • SE Rural Nagpur informed to Ex. Engr. O&M Nagpur to take necessary action in respect of SEM installation as per the letter recd. from Minex. • In the said letter, Minex was asked to shift the 33 kV line passing through its premise and to disconnect the Solar Roof Top under Net Metering Arrangement.
16 January 2020	<ul style="list-style-type: none"> • SEM Meter was installed, and Report in format II was submitted by SE Nagpur to CE (Commercial). • The Inspection report mentioned that Minex was asked to shift 33 kV Lines, but same was not done.
3 February 2020	<ul style="list-style-type: none"> • CE (Comm.), MSEDCL intimated to SE (Nagpur) regarding approval of NOC for charging SEM. • Further, in the said letter, CE (Comm.) mentioned that the SEM Joint inspection report shall be carried out by concern SE (O&M) and SE (TQA) and SEM installation Report shall be submitted to CE (Commercial) after charging of main meter and check meter.

	<ul style="list-style-type: none"> In the said letter, it was also directed that 33 kV line inside the premises shall be shifted and net metering shall be disconnected. <p>[Copy of this letter was marked to Petitioner.]</p>
14 October 2020	<ul style="list-style-type: none"> Petitioner wrote a letter to CE (Comm.) on the issue of shifting of 33 kV line passing through premises. In the said letter, the Petitioner mentioned that this 33 kV line was very old line and was existing before the supply was released to the Petitioner. It was mentioned that this issue cannot be raised at the time when only meter replacement was required to be done to avail OA. It was also mentioned in the letter that this condition of shifting of 33 kV line is totally impracticable as it is interconnected to the MSETCL Line.
27 November 2020	CE (Comm.) instructed SE O&M Nagpur regarding shifting of HT/LT Line, MSEDCL installations other than metering in consumer's premises is applicable for new HT connections and in present case, the consumer was live from 1 August 2001.
9 December 2020	SEM was charged and SEM Installation Report was given to the Petitioner.

10.12. Again it is seen from the above chronology that although , there has been some delay by MSEDCL (21 June 2019 to 30 July 2019) for providing the approval of SEM specifications. There has also been considerable delay on part of the Petitioner as well, since after letter dated 30 July 2019 from CE (Comm.) intimating the approval of SEM specification, the Petitioner approached MSEDCL only on 30 December 2019 (i.e. after passage of five months) about receipt of the Metering Cubical, CT, PT, Meters, charging permission from the Electrical Inspector and requesting MSEDCL to take further necessary steps for SEM testing and installation. It may be noted that both these delay periods are during pre-Covid-19 period.

10.13. Further, SEM charging at consumer end was delayed due to issue related shifting of the 33 kV Line passing through the Petitioner's premise. MSEDCL, as per its initial inspection, asked the Petitioner to remove the 33 kV line from its premise. The Petitioner was aware of this condition since vide letter dated 7 January 2020 itself, the Petitioner had been asked to shift the 33 kV line passing through its premise. However, the Petitioner clarified its position regarding shifting of the 33 kV line belatedly only on 14 October 2020 which was accepted by MSEDCL, and the SEM Metering arrangement was charged subsequently on 3 December 2020.

10.14. In view of foregoing circumstances and submissions from both parties, it is seen that while the Petitioner has been alleging that MSEDCL is responsible for the delay in SEM installation, it is observed that the Petitioner has also taken significant amount of period during pre-Covid-19 period, which has resulted the delay in overall process. This delay was additionally coupled with the Covid 19 related restrictions.

10.15. It is seen that the Petitioner has made the following prayer on the issue of delay in SEM installation seeking compensation:

“Direct Respondent to compensate petitioner for the delay of 91 weeks as detailed in at para 4 as per SOP Regulations.”

10.16. It is observed that the Applications for SEM specification had been made by the Petitioner on 25 May 2019 and the SEM at generator’s end was charged on 27 November 2020 and SEM at consumer’s end was charged on 9 December 2020. There are 81 weeks in this period between 25 May 2019 and 9 December 2020. It is difficult to understand how the Petitioner can claim that there has been a delay of 91 weeks when the SEM has been charged within a period of around 81 weeks from the date of receipt of the request letter for SEM Specification. Thus, the Petitioner has incorrectly claimed the delay period.

10.17. The Petitioner has claimed compensation from October 2020 to January 2021. It is observed that this period of compensation is not linked to the delay of SEM (i.e. it is not the case that had there been no delay from MSEDCL in SEM installation, the Petitioner would have availed OA from October 2020). The Petitioner appears to claim compensation from October 2020 onwards solely because till September 2020, it had a Short-Term EPA with MSEDCL. This means that had the Petitioner continued its short-term EPA for further period (this option was available with the Petitioner), the claim period would have further reduced.

10.18. Further, it is difficult to understand as to why the Petitioner did not continue the Short-Term EPA with MSEDCL after September 2020. It was well aware of the fact that SEMs were yet to be installed and it would not be possible for it to avail the OA in absence of SEMs. Still the Petitioner did not extend the EPA and chose to inject energy into grid without a valid contract. The claim for compensation for such injected energy is not justified in terms of various related Judgments issued by the Hon’ble Appellate Tribunal for Electricity (**ATE**).

10.19. The Petitioner’s reliance on the Regulation 5.10.5 of DOA Amendment Regulations for wind power adjustment is not correct as this Regulation is applicable to the projects prior to date of COD for treatment of power injected during the period of testing of a new project which is not the case here.

10.20. In light of the above discussion, the Commission is not inclined to accept the claim of compensation to the Petitioner on account the delay in SEM installation.

10.21. Nevertheless, it is observed that there have been few lapses on part of MSEDCL while performing its obligations. It is observed that MSEDCL, based on initial inspection report, had directed that the 33 kV Line passing through the Petitioner’s premise needs to be removed. However, upon clarification from the Petitioner that the line was old line and interconnecting MSETCL Line, MSEDCL vide letter dated 27 November 2020, revised its instruction regarding shifting of 33 kV lines for installation of SEM as under:

“.....The instructions issued vide Commercial Circular No. 291 dated 29.06.2017 regarding shifting of HT/LT Line, MSEDCL installations other than metering in consumer’s premises is applicable for new HT connections. As in present case, the consumer is live from dated 01.08.2001, the 33 KV line passing through the consumer’s premises is old and is interconnecting line of MSETCL 220 KV Kalmeshwar Substation to MSEDCL Bazargaon Substation; it is requested to take necessary action at your end for charging of SEM metering.

10.22. Such instruction was not warranted, since MSEDCL realized that 33 kV line shifting would have been required had it been a New HT connection case and such shifting was not necessary for old connection. It is also a fact that the Petitioner’s early clarification on this issue would have avoided the delay in the process of SEM installation. However, MSEDCL as a responsible entity needs to be diligent enough while issuing instructions to its field officers. In future, MSEDCL should provide precise instructions/directions based on the circumstances and as per the requirements and exercise greater prudence when issuing any orders, failing which the Commission will be forced to issue directions for initiating appropriate action against the concerned officers of MSEDCL.

10.23. Further, the Commission in past, had directed MSEDCL to streamline the issues of SEM installation, to review their processes at the Head Office and field levels and to ensure coordination between them in this regard considering their impact on the consumers with whom it interacts. Considering the time taken by MSEDCL for various activities, it appears that MSEDCL is yet to streamline the process, relating to installation of SEM, both at MSEDCL head office and its field office level in an efficient manner and there is further scope for improvement. MSEDCL needs to improve its internal processes to ensure compliance as per the regulatory provisions. MSEDCL shall make necessary changes in its procedures so as to ensure compliance within the stipulated timelines. The changes/modifications so carried (for the purpose of streamlining of interaction between the HO and Field Office of MSEDCL and the OA Consumer) shall be effected and uploaded on the MSEDCL website within a period of 3 months from the date of this Order under intimation to the Commission. The Commission further expects that both OA applicants and MSEDCL are required to ensure their timely compliances and expeditious responses to avoid such litigations in future.

11. Issue II : Denial of OA and Solar Rooftop arrangement simultaneously and disconnection of Solar Rooftop Generation by MSEDCL

11.1. The Petitioner has stated that after installation of SEM Metering arrangement at consumer’s end in December 2020, MSEDCL has removed Solar Rooftop Net Metering arrangement and directed the Petitioner to stop Solar Rooftop generation and sealed the output switchgears of solar generation on the premise that the consumer cannot source power from OA and net metering simultaneously as per the Commission’s Order in Case No. 163 of 2017. However, the Order dated 13 February 2021 passed by the Commission in Case No. 199 of 2020 clarified that Net Metering arrangement of Solar Rooftop of the consumer opting for OA shall be converted into

Net Billing arrangement for OA period on temporary basis for the tenure of OA. As per the DOA Amendment Regulations, consumers intending to have Rooftop Solar Photo Voltaic Systems can simultaneously avail OA and, in such cases, the credit for solar generation shall be adjusted on Gross Metering basis for such period for which OA is availed by the consumer.

- 11.2. The Petitioner further stated that it has availed OA from April 2021 and hence till then Net Metering should have been continued and after commencement of OA from 1 April 2021, the Net Metering should have been converted automatically into the Net Billing arrangement temporarily for OA period. Therefore, the Petitioner needs to be compensated for the loss of solar generation during the period from December 2020 to February 2021.
- 11.3. On the other hand, MSEDCL contended that the Commission vide its Order dated 12 June 2018 in Case No. 163 of 2017 (*Cleanmax Vs MSEDCL*) has directed that Net Metering and OA being two separate Regulations and the intermingling of same will cause many billing issues and disputes and so the consumer can either opt for Solar Rooftop Net Metering or OA. Post notification of the MERC (Grid Interactive Rooftop Renewable Energy Generating Systems) Regulations, 2019 (**GIRREGS Regulations**) on 30 December 2019, the above-mentioned scenario has changed. The consumer can now apply for rooftop solar generation with OA under Net Billing (or Gross Metering) arrangement. The above scenario has also been confirmed by the Commission vide its Order dated 13 February 2021 in Case No. 199 of 2020 (*R.B. Diversified Vs MSEDCL*). Minex has never applied for Net Billing (or Gross Metering) arrangement wherein the total power generated will be purchased by MSEDCL as per RE Generic Tariff rate and credit of said amount shall be given in consumer's bills. Minex has not entered into any agreement with MSEDCL for sale of power under Net Billing (or Gross Metering) arrangement. Minex may be directed to apply for Gross metering and enter into agreement with MSEDCL for sale of power @ RE Generic Tariff.
- 11.4. The Commission notes that on this issue, the Petitioner has sought action against MSEDCL for violation of the Order dated 13 February 2021 passed by the Commission in Case No. 199 of 2020. However, it is extremely relevant to note that when MSEDCL has disconnected Net Metering arrangement in December 2020, this Order was not there, and it was passed subsequently in February 2021. Hence, the Petitioner cannot seek relief citing this Order.
- 11.5. The Petitioner has also relied on the DOA Amendment Regulations stating that under these Regulations, the consumer intending to have Rooftop Solar Photo Voltaic Systems can simultaneously avail OA and, in such cases, the credit for solar generation shall be adjusted on Gross Metering basis for such period for which OA is availed by the consumer.
- 11.6. It is therefore imperative to examine the relevant Regulation of the DOA Amendment Regulations 2019 which reads as under:

(20) (a) **“Gross metering”** means a metering arrangement wherein, **the entire energy generated by rooftop solar PV system is fed into the electrical grid subject to permissible technical limits as per interconnection standard and the system owner is benefited** by way of sale of solar power to the Distribution Licensee at rate approved or adopted by Commission;”

.....
3. Eligibility to seek Open Access
.....

*provided further that **Consumers intending to have Roof-Top Solar Photo Voltaic Systems can simultaneously avail open access under these Regulations;** subject to a condition that in such cases, the credit for **solar generation shall be adjusted on Gross metering basis for such period for which open access is availed by the Consumer.** The applicable rate for sale under such Gross metering arrangement shall be equivalent to the rate stipulated under the yearly Generic tariff Order for Renewable Energy Technologies based on the principles stipulated therein.”*

11.7. It is observed that the DOA Amendment Regulations only provide that the consumer can avail the OA and Solar Rooftop and solar energy would be settled on gross metering basis. However, these Regulations nowhere says that the existing Net Metering arrangement would be automatically converted into the Gross Metering (or Net Billing arrangement) upon the consumer opting to OA. The Regulations nowhere allow continuation of the existing Net Metering System after availing the OA. These Regulations are also silent on the necessity of entering into an agreement for Gross Metering (or Net Billing) whereas as per the GIRREGS Regulations, for consumer opting for Net Billing arrangement, the consumer need to enter into the agreement with the concerned Distribution Licensee. MSEDCL disconnected the Solar Roof Top photo voltaic system which was having Net Metering arrangement. Hence, the violation of the DOA Amendment Regulations by MSEDCL as claimed by Petitioner is not clearly established.

11.8. Further, the Order in Case No. 199 of 2020, which has been referred by the Petitioner, has held as under:

“19.2. Thus, grid-connected roof-top solar project installation can be under any of above said three arrangements subject to its fulfilling the specified criteria for the same as stipulated under the Regulations. Such consumer having grid-connected roof-top solar PV project can also seek Open Access for meeting its remaining power requirement in full or part from source other than its Distribution Licensee. In addition to other requirements which need to be fulfilled by any consumers to become eligible for grant of Open Access, consumer with grid connected roof-top PV installation has to comply with following additional condition of Regulation 3 of DOA (First Amendment) Regulations 2019:

.....

19.3. Thus, as per above stated provision of DOA Regulations, consumer having roof-top Solar system can opt for Open Access and during that period energy generated from roof-top solar system shall be adjusted on gross metering basis.

....

19.5. Gross metering system referred in the above DOA Regulations is nothing but net billing arrangement stipulated under GIRREGS Regulations 2019. Two other modes of roof-top Solar PV arrangement i.e. net-metering and behind the meter without net-metering or netbilling arrangements allowed in GIRREGS Regulation are required to be treated as netbilling arrangement for the period in which consumer avails Open Access.

19.6. Accordingly, the Commission clarifies that net-metering or behind the meter arrangement of roof-top PV system of a consumer opting for Open Access shall be converted into net-billing arrangement for period of Open Access on temporary basis for tenure of Open Access. Post Open Access, commercial accounting of roof-top Solar system shall automatically be resorted to the original position prior to grant of Open Access.

20. Having clarified above aspects of roof-top solar projects and simultaneous use of Open Access facility, the Commission notes that in present matter, Petitioner has stated that it has off-grid solar system but will install reverse power flow relay for ensuring that no energy is fed into the Grid. Reverse power flow relay is required only when solar system is to be connected to the grid. Hence, it can be concluded that Petitioner's solar system is grid-connected behind the meter roof-top solar system without net-metering or net-billing arrangement. **Under this circumstance, if Petitioner wishes to avail Open Access facility then as per DOA (First Amendment) Regulations 2019, behind the meter arrangement of roof-top PV system shall be converted into net-billing arrangement for the period of Open Access.**

.....

3. Net-metering or behind the meter arrangement of roof-top PV system of a consumer opting for Open Access shall be converted into net-billing arrangement for the period of Open Access on temporary basis for the tenure of Open Access.

11.9. Thus, vide the aforesaid Order, it has held that the Gross Metering referred in DOA Amendment Regulations is nothing but Net Billing as per the GIRREGS Regulations. The GIRREGS Regulations have provided different modalities for Net Metering and Net Billing. These Regulations have also stipulated two separate formats for Net Metering agreement and Net Billing Agreement to be entered into the consumer and MSEDCL. It cannot be the case that a normal consumer intending to avail Net Billing arrangement, has to enter to Net Billing agreement with the concerned Distribution Licensee in terms of the provision of GIRREGS Regulations and such agreement is not necessary and the provision of GIRREGS Regulations are waived if the OA consumer

intends to use Solar Rooftop with Net Billing arrangement. Further, OA need not be for a temporary period. There could be the case where OA consumer after availing the OA for long term basis may opt for the Solar Rooftop arrangement. In such case, the OA consumer has to enter into the Net Billing arrangement with the concerned Distribution Licensee.

- 11.10. Further, from the aforesaid extract of the Order in Case No. 199 of 2020, it is seen that after expiry of OA, the resorting/conversion of Net Billing to Net Metering shall be automatic. **However, the aforesaid Order nowhere mentions that during the period of OA, there would be an automatic conversion of the existing Net Metering arrangement into Net Billing arrangement.**
- 11.11. Hence, the Commission finds merit in the submission of MSEDCL that the Petitioner ought to have approached MSEDCL with Net Billing arrangement. Nevertheless, as mentioned earlier, since the aforesaid Order has been issued subsequently, the Petitioner cannot take support of this Order to seek action against MSEDCL under Section 142 of the EA or to claim compensation for the loss the solar generation.
- 11.12. The Petitioner has also stated that MSEDCL disconnected the Net Metering arrangement even before the commencement of OA. While it would be seem as an incorrect act by MSEDCL, however, it is the matter of fact that while making an Application for SEM specification, the Petitioner had stated that it intended to avail the OA. Indeed, need of the SEM installation had arose purely on account of the consumer opting to OA. Post installation of SEM, the consumer being 1 MW consumer becomes eligible to get OA for the next month subject to fulfillment of the other stipulations of the DOA Regulations. Hence, removal of net metering arrangement immediately upon installation of the SEM meter, is done with the understanding that OA and net metering are not allowed simultaneously as per the prevailing directions of the Commission and also on the assumption that the Petitioner would opt for OA immediately which is not an unreasonable assumption.
- 11.13. It is not clear as to why the Petitioner did not opt for the OA immediately after the installation of SEM and applied for the same for the month of March 2021. The Petitioner could have availed OA for immediate month of January 2021. Further, the Petitioner did not raise the issue of Net Metering disconnection on immediate basis. The Petitioner was aware of the condition of removal of Net Metering arrangement in the month of July 2019 itself, as the letter dated 30 July 2019 had mentioned the requirement of removal of the Net Metering. The copy of this letter was marked to the Petitioner. Had it raised the issue that time only, there would have been no need for the Petitioner to seek compensation as prayed in the Petition which in any case is not justified.
- 11.14. Also, the Petitioner could have immediately approached the Commission seeking an interim relief citing urgency of the matter arising on account of the disconnection of the solar plant. Neither such immediate legal remedy was availed by the Petitioner nor it availed the OA for the immediate month. Both these actions would have avoided the loss the Minex which it is seeking compensation by way or present Petition. Thus, even

if it is assumed that MSEDCL's disconnection was based on incorrect premise or on incorrect assumptions, the Petitioner has not been proactive and diligent enough to take appropriate action in its own interest.

- 11.15. Further, though not relevant for dealing with it, the Commission opines that the Petitioner's claim for compensation for loss of solar generation is based on assumptions and same is not based on actual numbers as it has computed the compensation based on previous year's generation. There is no way to establish that same generation would have been there, had its solar generation been operated during the months of December 2020, January and February 2021.
- 11.16. At the hearing held on 14 May 2021, the Commission had directed MSEDCL to remove the seal of the Petitioner's Solar Rooftop generation system immediately. MSEDCL is directed to ensure compliance of the same, if not done already. Also both the Parties are directed to enter into the Net Billing agreement as per the requirements laid down under the GIRREGS Regulations with the rate of solar energy supply to MSEDCL to be the rate stipulated under the yearly Generic Tariff Order approved by the Commission in terms of the DOA Amendment Regulations.

12. Issue III: Denial of OA permissions for the month of March 2021

- 12.1. The Petitioner contended that it had applied for OA for the month of March 2021 which was not granted by MSEDCL. This non-grant of OA was on account of the fact that MSEDCL did not communicate the discrepancies in the OA applications on correct email. It is also the claim of the Petitioner that MSEDCL did not provide single point contact details for OA on its website as required under Regulation 8.2 of DOA Regulations, 2016. On the other hand, MSEDCL has contended that it had communicated the deficiencies to the Petitioner on the email ID provided by the Petitioner itself in its OA application. Further, necessary contact details of Nodal Officer for OA related issue are available on its website.
- 12.2. It is observed that the Regulation 12.4 of DOA Regulations 2016 provides that in case OA Application is incomplete or otherwise deficient, or any deficiency is to be communicated by the Distribution Licensee, it shall communicate the deficiency to the Applicant by email or fax within five working days of receipt of the Application. On perusal of the copy of email sent by MSEDCL dated 18 February 2021, the Commission notes that MSEDCL has communicated the discrepancies via the email ID mentioned in the OA Application only. In the OA Applications, the Petitioner has provided two email addresses. One of the email addresses was (which was incorrectly provided by the Petitioner itself) patle@minexinida.com, to which the MSEDCL had communicated the deficiencies which might have bounced back, and inconsistencies might not have been communicated to the Petitioner. However, MSEDCL has adhered to the Regulation by communicating the discrepancies through the email ID which was provided in the OA application, which was incorrectly stated in the OA Application by the Petitioner itself. It is also noted that an email was also sent on another email ID, viz. murli@minexindia.com, provided in the OA Application, which is the proper address, and that the inconsistencies were conveyed to the Petitioner. Thus, there is no cause of

action for the Petitioner to agitate the issue of non-grant of OA for March 2021 against MSEDCL. As regards to the issue raised by the Petitioner about the non-availability of contact details of the Nodal Officers on MSEDCL's Website, the Commission finds merits in the submission of MSEDCL that the contact details are available on the website and the path for the Contact details on website is consumer_portal/downloads/Act/Regulations/ Distribution Open Access/Nodal officers. Therefore, the Petitioner's claim that the contact details of nodal officers were not provided on MSEDCL's website does not have merit.

12.3. In light of the above, the Commission finds that the Petitioner's contention regarding denial of OA for the month of March 2021 is devoid of merit.

13. Hence the following Order

ORDER

1. Case No. 28 of 2021 is partly allowed.
2. Maharashtra State Electricity Distribution Co. Ltd. is directed to remove the seal of the Petitioner's Solar Rooftop generation system immediately, if not done already.
3. Both the Parties are directed to enter into the Net Billing agreement as per the requirements laid down under the MERC (Grid Interactive Rooftop Renewable Energy Generating Systems) Regulations, 2019 with the rate of solar energy supply to MSEDCL to be the rate stipulated under the yearly Generic tariff Order approved by the Commission in terms of the MERC (Distribution Open Access) (First Amendment) Regulations, 2019.
4. As mentioned in Para 10.23 above, Maharashtra State Electricity Distribution Co. Ltd. shall make necessary changes in its procedures so as to ensure compliance within the stipulated timelines. The changes/modifications so carried (for the purpose of streamlining of interaction between the Head Office and Field Office of Maharashtra State Electricity Distribution Co. Ltd. and the OA Consumer) shall be effected and uploaded on the MSEDCL's website within a period of 3 months from the date of this Order under intimation to the Commission.

Sd/-
(Mukesh Khullar)
Member

Sd/-
(I. M. Bohari)
Member

Sd/-
(Sanjay Kumar)
Chairperson


(Abhijit Deshpande)
Secretary

