

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

Case No. 27 of 2022

**Case of Kamal Encon Industries Ltd. seeking special relaxation by way of a direction to
MSEDCL for issuance of credit notes for the wind power injected into the grid for
month of March 2020**

Coram

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

Kamal Encon Industries Ltd. (**KEIL**)Petitioner

V/s

Maharashtra State Electricity Distribution Co. Ltd. (**MSEDCL**) Respondent

Appearance:

For the Petitioner : Mr. Shivkumar Gupta (Adv.)

For MSEDCL : Shri Rahul Sinha (Adv.)

ORDER

Date: 4 May 2022

1. Kamal Encon Industries Ltd. (**KEIL**) has filed a Case on 31 December 2021 under Regulation 85 of the MERC (Conduct of Business) Regulations, 2004 seeking special relaxation by way of a direction to Maharashtra State Electricity Distribution co. Ltd.

(MSEDCL) for issuance of credit notes for the wind power injected into the grid for month of March 2020.

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

i. *That special relaxation for the acceptance of already injected wind generation for the month of March, 2020 which is lying between two SPPAs, but which is unpaid due to technical snag in online Short Term PPA system during the month Feb-March-2020 and also ongoing sub-judice pending issue of Inter-state open Access (Still pending in APTEL vide DFR no 356 of 2020) is being sought from the Hon'ble Commission and to issue the directions to MSEDCL to issue the credit note and also pay it along with DPC for consumed power of 177093 units at the prevailing/applicable rate of SPPA i.e. Rs.2.52/unit by the MSEDCL;*

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

- 3.1. KEIL has set up a 1.65 MW Wind Power Plant in 2006 at Bhramanvel in Dhule District.
- 3.2. KEIL had entered into a Long Term Energy Purchase Agreement (EPA) with MSEDCL for 13 years which was valid upto 7 February 2019.
- 3.3. After expiry of its EPA with MSEDCL, KEIL has taken up the option of inter-state captive Open Access and took all necessary actions resulting in substantial investment. However, due to some procedural issues in implementation of MERC (Forecasting, Scheduling and Deviation Settlement for Solar and Wind Generation) Regulations, 2018 (**F & S Regulations**), the matter is still pending before the Hon'ble Appellate Tribunal For Electricity (**APTEL**) vide DFR No 356 of 2020 .
- 3.4. Till date, KEIL is having valid connectivity since 24 March 2006 and MSEDCL is regularly purchasing power against valid LTPPA/STPPAs. The Last LOI for the purchase of power with MSEDCL is for the period from 1 January 2022 to 31 December 2022.
- 3.5. KEIL is now seeking relaxation for only one month i.e. March 2020 and praying the Commission to direct MSEDCL for issuance of credit note for March 2020 and also for payment of Delay Payment Charges (DPC) against already injected and used power for (177093 units) at the prevailing/applicable rate of STPPA i.e. Rs.2.52/unit

4. **MSEDCL, vide its reply dated 1 April 2022, stated as below:**

- 4.1. MSEDCL has developed a portal for purchase of wind/solar power on short term basis wherein RE generator can apply for sale of power to MSEDCL well in advance. The said portal is operative since 1 January 2018.
- 4.2. MSEDCL decided to discontinue the purchase of wind/solar power under short term w.e.f. 13 December 2019. Thus, the portal was operative till 13 December 2019.
- 4.3. In view of Covid-19 pandemic and subsequent lockdown since 23 March 2020, with the objective of supporting wind/solar generators, MSEDCL started purchase of short

term power through portal w.e.f. 27 March 2020 and condition of submission of mandatory documents was also relaxed.

- 4.4. There was no technical snag in the portal during the period in which it was operative. KEIL didn't apply on the portal well in advance and thus the contract for purchase of power couldn't be executed between MSEDCL and KEIL.
- 4.5. KEIL has injected energy into the grid during the month of March 2020 without any valid EPA. Vide its Order dated 11 April 2018 in Case No. 86 of 2016, the Commission has held that a generator cannot inject electricity into the grid without consent/ contractual agreement with the distribution licensee and without the approval/scheduling of the power by the State Load Dispatch Centre (**SLDC**). Injection of such energy by a generator is not entitled to any payment. The above principle has been reiterated by the Commission in its Order dated 25 July 2018 in Case No. 120 of 2018. Hence, the Petitioner is not eligible for any compensation.
- 4.6. In its various Judgments, the Hon'ble ATE has also ruled that entity injecting any energy into the grid without a valid contract need not be compensated. The Hon'ble ATE, in its Judgment dated 16 May 2011, in the matter of *M/s Indo Rama Synthetics Vs MERC*, has explained the importance of PPA for injecting power into the grid and held that no compensation shall be payable for energy injected without agreement. In another Judgment dated 8 May 2017 in Appeal No. 120 of 2016, the Hon'ble ATE has reiterated its aforesaid ruling.
- 4.7. It is well settled position that, MSEDCL is under no obligation to execute an EPA with any party. It was the KEIL's responsibility to ensure that an EPA was executed with MSEDCL before injecting power into the State grid.
- 4.8. KEIL could have taken prudent decision, well in time, regarding its sale of power under short term to MSEDCL or sale to third party under Open Access or opt for Renewable Energy Certificate (**REC**) mechanism.
- 4.9. KEIL, despite being aware of available options, failed to take the steps necessary for mitigation of its losses and continued to supply power in contravention of the prevailing Regulations. Hence, KEIL is not entitled for any compensation for the power injected by it into the State grid. The consumers of MSEDCL cannot be made to pay for the inappropriate action of KEIL.
- 4.10. RE generation without valid EPA, will result into MSEDCL in over injection status. Further, the same will be treated as unscheduled power in view of implementation of F&S Regulations and the CERC (Deviation Settlement Mechanism) Regulations, 2014 and its amendments. Hence, MSEDCL will have to pay the penalties as specified in these Regulations.
- 4.11. The Renewable Purchase Obligation (**RPO**) compliance of MSEDCL was filed with the Commission which has been approved by the Commission, vide its Order dated 7 September 2021 in Case No. 49 of 2021. Thus, the purchase of KEIL power during March 2020 will not be accounted in the RPO compliance of MSEDCL.

Compensation for unauthorised injection will be a financial burden on MSEDCL and also on common consumers.

- 4.12. MSLDC, as a system operator for the State of Maharashtra, has to ensure adherence to Regulations and Orders issued by the Commission. Commercial implementation of F&S Regulations has commenced from 6 January 2020. These Regulations are applicable to the Petitioner and the Petitioner is required to adhere to the Scheduling and Despatch Code and RE DSM Procedure approved by the Commission.
- 4.13. As per Regulation 5.14 of F&S Regulations, no Wind and Solar energy shall be considered by the MSLDC if it is not scheduled by the Qualified Coordinating Agencies (QCA) on behalf of the generators. Accordingly, as per the Clause No 6.3 of the amended F&S Procedure dated 19 December 2019, MSLDC is collecting details of power contracted by Distribution Licensees for each Pooling Sub-Station (PSS) and their embedded consumers on monthly basis. Based on the information, PSS-wise power is scheduled to respective Distribution Licensee based on the quantum received. On analysing the information for the month of May 2020, it is observed that out of total capacity of 6305 MW considered under the F&S Regulations, contract details for 1181 MW capacity are not available.
- 4.14. If non-contracted capacity is connected to the grid, then there may be injection in addition to the scheduled power. This creates a heavy mismatch at the State periphery and also creates difficulties in real time operation during peak injection scenario. This unscheduled and non-contracted RE injection hamper grid stability and reliability.
- 4.15. The Commission vide Order dated 1 July 2020 in Case No. 28 of 2020, held that in order to maintain grid discipline and grid security, the injection of energy without any valid EPA or a contract needs to be discouraged.

5. At the E-hearing through video conferencing held on 5 April 2022:

- 5.1. Advocate of KEIL stated that MSEDCL, in its replies, has admitted that the STPPA Portal was not working for some period. He further claimed that MSEDCL has modified the starting date of STPPA from 1 March 2020 to 1 April 2020 in the STPPA which was entered into between the Petitioner and MSEDCL for short term purchase for the period between 1 March 2020 to 30 June 2020.
- 5.2. Advocate of MSEDCL re-iterated its submissions as filed in the reply and stated that since there was no STPPA for the month of March 2020, the power injected for this month cannot be compensated considering the ruling of the Commission and the Hon'ble ATE in various related Judgments/Orders.

Commission's Analysis and Rulings:

6. KEIL has filed the present Petition seeking a special relaxation for the month of March 2020 and it is seeking a direction to MSEDCL for issuance of credit notes for March 2020 despite the fact, there was no valid STPPA between MSEDCL and KEIL during March 2020.
7. KEIL has made the following prayers:

“That special relaxation for the acceptance of already injected wind generation for the month of March, 2020 which is lying between two SPPAs , but which is unpaid due to technical snag in online Short Term PPA system during the month Feb-March-2020 and also ongoing sub-judice pending issue of Inter-state open Access (Still pending in APTEL vide DFR no 356 of 2020) is being sought from the Hon’ble Commission and to issue the directions to MSEDCL to issue the credit note and also pay it along with DPC for consumed power of 177093 units at the prevailing/applicable rate of SPPA i.e. Rs.2.52/unit by the MSEDCL;”

8. Thus, it is the submission of KEIL that for the period before and after the month of March 2020, it had valid energy purchase agreements with MSEDCL and the STPPA for March 2020 could not be entered into by it since there was a technical snag in the online STPPA portal of MSEDCL. Another ground raised by KEIL for seeking the relaxation is regarding the pending issue of Inter-state Open Access sub-judice before the Hon’ble ATE.
9. In response, MSEDCL has stated that there was no technical issue in the online STPPA Portal during the period when it was operative. Further, MSEDCL has highlighted various Judgments/Orders passed by the Commission and the Hon’ble ATE which held that the generator cannot inject electricity into the grid without consent/ contractual agreement with the distribution licensee and injection of such energy by a generator is not entitled for any payment.
10. Considering prayer of the Petitioner and documents placed on record, the Commission needs to adjudicate following issues in this matter:

Issue I: Technical snag in the Online STPPA Portal of MSEDCL

Issue II:- Pendency of the issue of Inter-State Open Access before the Hon’ble ATE

11. The Commission is now dealing with the aforesaid issues as follows:
Issue I: Technical snag in the Online STPPA Portal of MSEDCL:
12. From the documents placed on record, the Commission notes that KEIL was having agreements with MSEDCL for different periods under Long Term /Short Term basis. The details of the agreements are as follows:

Sr. No.	Particulars of EPA	Period of EPA
1	Long term EPA	From 24 March 2006 to 7 February 2019
2	Short Term EPA	From 8 November 2019 to 29 February 2020
3	Short Term EPA	From 1 April 2020 to 30 June 2020
4	Short Term EPA	From 1 January 2022 to 31 December 2022

13. As it is evident from the above Table, there was no EPA/STPPA for the month of March 2020 and its earlier STPPA expired on 29 February 2020 and next STPPA commenced on 1 April 2020. It is the claim of KEIL that there was a technical snag in the STPPA Portal due to which the STPPA for March 2020 could not be entered into.
14. In this context, the Commission notes the submission of MSEDCL wherein it is stated that the online STPPA Portal was launched on 1 January 2018 and MSEDCL decided to discontinue the purchase of wind/solar power under short term w.e.f. 13 December 2019. Thus, the portal was operative till 13 December 2019. Further, MSEDCL started purchase of short term power through portal w.e.f. 27 March 2020. It is also the submission of MSEDCL that there was no technical snag in the portal during the period when it was operative. Further, although KEIL has claimed that there was a technical snag in the STPPA Portal, it has not elaborated in its Petition, the details of technical difficulty (screen shots, error message etc) observed by it while submission of online Application. Thus, from submission of the Parties, it is concluded that there was no technical snag in the STPPA Portal, rather the portal itself was kept closed after 13 December 2019 as MSEDCL decided to discontinue the purchase of wind/solar power under short term w.e.f. 13 December 2019. From documents placed on record, it is observed that on 27 December 2019, MSEDCL had floated a tender for procurement of 200 MW wind power from generators whose EPA had expired or were to expire on or before 31 March 2020. With this proposed procurement through a separate tender, the STPPA Portal might have been closed w.e.f. 13 December 2019.
15. Thus, the ground raised by KEIL for seeking a special relaxation regarding technical snag in the STPPA Portal is misconceived and not factually correct.

Issue II: Pendency of the issue of Inter-State Open Access before the Hon'ble ATE:

16. Another ground raised by KEIL for special relaxation is about pendency of the issue of Inter-State Open Access which was sub-judice before the Hon'ble ATE vide DFR No. 356 of 2020. In this context, the Commission notes that the issue before the Hon'ble APTEL is pertaining to adjudication of the appropriateness of the ruling of the Commission in its impugned Order dated 2 August 2020 in Case No. 73 of 2020, to insist compliance of the F&S Regulation for establishment of a separate feeder for Inter-State Open Access transaction, whereas in present matter, KEIL is seeking a direction to MSEDCL for Intra-State transaction of injected energy without any contract. Further, the Commission notes that KEIL's action of injecting power into grid without valid contract or OA permission is not justified merely because it could not avail Inter-State Open Access as sought by it and the legality of the pending issue (Inter-state OA transaction) was under consideration before the Hon'ble ATE. Thus, this ground raised by KEIL about pendency of the sub-judice matter before the Hon'ble ATE lacks adequate justification for consideration by the Commission.

17. The Commission further notes that during the E-hearing dated 5 April 2022, KEIL raised another issue wherein it claimed that MSEDCL has modified the starting date of STPPA from 1 March 2020 to 1 April 2020 in the STPPA which was entered into between the Petitioner and MSEDCL for short term purchase for the period 1 March 2020 to 30 June 2020. Thus, it is the contention of KEIL that MSEDCL has indulged into a document forgery.
18. In this context, it is observed that this issue is not part of its Petition, neither specifically highlighted in the prayer nor in the submission made as a part of detailed Petition and KEIL has raised this issue only during E-hearing dated 5 April 2022. Further, after perusal of the correspondence made with MSEDCL which has been submitted along with the Petition, it is seen that KEIL has never taken up this issue with MSEDCL. KEIL had been following up with MSEDCL for issuance of the credit notes for energy injected during March 2020 claiming that there was a technical snag in the online portal during March 2020. Further, KEIL had been requesting MSEDCL for extension of its earlier STPPA till final outcome of the Appeal pending before the Hon'ble ATE. Thus, the issue of modification of date on STPPA appears to be an afterthought. On the contrary, in one of its letters it wrote to MSEDCL, KEIL has stated as follows:

“ After restored operational status of STPPA as per attached copy of on line application no 101548 dated 27.03.20 generation of from 01.04.2020 to 30.06.2020 was covered in STPPA. Before it as per attached another previous application no. 101339 dated 07.10;2019 was already approved for the period of 08.11.2019 to 29.02.2020.

Therefore already injected generation of March, 2020 is still pending is to be manually permitted and then processed by your good self. ”

19. Thus, it is evident that the STPPA was for the period of 1 April 2020 to 30 June 2020 and not for the period 1 March 2020 to 30 June 2020 as claimed by KEIL during E-hearing dated 5 April 2022.
20. In the light of the above, the Commission does not find any merit in the submission of KEIL wherein it has claimed that MSEDCL has modified the starting date of STPPA from 1 March 2020 to 1 April 2020 in the STPPA which was entered into between the Petitioner and MSEDCL for short term purchase for the period 1 March 2020 to 30 June 2020.
21. It is observed that KEIL had applied through STPPA portal for sale of wind energy vide request ID No. 101548 dated 27 March 2020 and based on its application and after following due procedure, STPPA was executed between KEIL and MSEDCL for the period 1 April 2020 to 30 June 2020. Thus, it is clear that there was no EPA/STPPA for the month of March 2020 and the STPPA started from April 2020 onwards.
22. The Commission and the Hon'ble ATE, in its various Judgments/Orders, have already held that a generator cannot inject electricity into the grid without consent/contractual

agreement with the distribution licensee and without approval/scheduling of the power by the State Load Dispatch Centre. Injection of such energy by a generator is not entitled to any payment.

23. In view of the above, the Commission does not find any merit in the submission of KEIL and accordingly the prayer of KEIL seeking a special relaxation by way of a direction to MSEDCL for issuance of credit notes for the wind power injected into the grid for month of March 2020 is rejected.
24. **Hence the following Order:**

ORDER

1. **Case No. 27 of 2022 is dismissed.**

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

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

**Sd/-
(Sanjay Kumar)
Chairperson**

