

**Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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Case No. 162 of 2023 and IA No. 63 of 2023

And

Case No. 163 of 2023 and IA No. 62 of 2023

And

Case No. 166 of 2023 and IA No. 69 of 2023

Case No. 162 of 2023 And IA No. 63 of 2023

Case of CIE Automotive India Ltd. and Sunbarn Renewables Pvt. Ltd. challenging the levy of wheeling charges by Maharashtra State Electricity Distribution Company Ltd. on its Captive Open Access transactions

And

Interlocutory Application seeking urgent listing of the Petition and interim directions for not to levy wheeling charges on their captive open access in future bills till pendency of main Petition.

Case No. 163 of 2023 and IA No. 62 of 2023

Case of CIE Automotive India Ltd. and Strongsun Solar Pvt. Ltd. challenging the levy of wheeling charges by Maharashtra State Electricity Distribution Company Ltd. on its Captive Open Access transaction

And

Interlocutory Application seeking urgent listing of the Petition and interim directions for not to levy wheeling charges on their captive open access in future bills till pendency of main Petition.

Case No. 166 of 2023 and IA No. 69 of 2023

Case of Bekaert Industries Pvt. Ltd. and Greenzest Sun Park Pvt. Ltd. challenging the levy of wheeling charges by Maharashtra State Electricity Distribution Company Ltd. on its Captive Open Access transaction

And

Interlocutory Application seeking urgent listing of the Petition and interim directions for not to levy wheeling charges on their captive open access in future bills till pendency of main Petition.

CIE Automotive India Ltd.
Sunbarn Renewables Pvt. Ltd.

Petitioners in Case No. 162 of 2023

V/s

Maharashtra State Electricity Distribution Co. Ltd. (MSEDCL)

Respondent

CIE Automotive India Ltd.
Strongsun Solar Pvt. Ltd.

Petitioners in Case No. 163 of 2023

V/s

Maharashtra State Electricity Distribution Co. Ltd. (MSEDCL)

Respondent

Bekaert Industries Pvt. Ltd.
Greenzest Sun Park Pvt. Ltd.

Petitioners in Case No. 166 of 2023

V/s

Maharashtra State Electricity Distribution Co. Ltd. (MSEDCL)

Respondent

Coram

**Sanjay Kumar, Chairperson
Anand M. Limaye, Member
Surendra J. Biyani, Member**

Appearance

Petitioners in
Case No. 162 of 2023,
Case No. 163 of 2023 And
Case No. 166 of 2023 & IAs

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: Shri Anand Ganesan (Adv.)

Maharashtra State Electricity Distribution Co. Ltd.

:Shri Harinder Toor (Adv.)

:Shri Rahul Sinha (Adv.)

COMMON ORDER

Date: 1 February 2024

1. Petitioners, i.e., Open Access Consumers and Solar Generators have filed three cases under Section 42 and 861 (f) of Electricity Act 2003(**EA/ Act**) challenging the levy of wheeling charges by Maharashtra State Electricity Distribution Company Ltd. (**MSEDCL**) on its Captive Open Access transactions.
2. The three Petitioners have also filed Interlocutory Applications (**IAs**) for seeking urgent listing of the Petition and interim directions for not to levy wheeling charges on their captive open access transactions in future bills till pendency of their main Petitions.
3. The details of Petitioners and their filing of Petitions and IAs are tabulated in the following table:

Table No.1: Details of Petitioners and filing of Petitions.

Sr. No.	Case Nos and IAs	Name of Petitioners	Date of filing Petition
1	Case No. 162 of 2023 & IA No. 63 of 2023	CIE Automotive India Ltd. and Sunburn Renewables Pvt. Ltd.	13 June 2023
2	Case No. 163 of 2023 & IA No. 62 of 2023	CIE Automotive India Ltd. and Strongsun Solar Pvt. Ltd.	13 June 2023
3	Case No. 166 of 2023 & IA No. 69 of 2023	Bekaert Industries Pvt. Ltd. Greenzest Sun Park Pvt. Ltd	16 June 2023

4. **Details of the Prayers of three Petitions and their IAs:**
 - 4.1. **The Prayers of the Petition in Case No. 162 of 2023 (CIE Automotive and Sunburn Renewables) are as follows:**
 - (a) *Declare that levying of wheeling charges and wheeling losses by MSEDCL on the supply of power by the Petitioner No. 2 to the Petitioner No. 1 is illegal;*
 - (b) *Hold and direct MSEDCL to refund the wheeling charges levied on the Petitioner No. 2 till date which are Rs. 2013915 till date of filing the present petition;*
 - (c) *Hold and direct the Respondent to pay interest at 12% on the amounts directed to be refunded under prayer (b) above, computed from the date of payment till the date of refund by the MSEDCL;*

The Prayers of IA No. 63 of 2023 filed in Case No. 162 of 2023 are as follows:

- (a) Allow the present Application seeking urgent listing of Case No. 162/AD/2023; and*
- (b) Stay the levy of wheeling charges by MSEDCL on the open access supply by the Petitioner No. 1 to the Petitioner No. 2;*

4.2. The Prayers of the Petition in Case No. 163 of 2023 (CIE Automotive and Strongsun Renewables) are as follows:

- (a) Declare that levying of wheeling charges and wheeling losses by MSEDCL on the supply of power by the Petitioner No. 2 to the Petitioner No. 1 is illegal;*
- (b) Hold and direct MSEDCL to refund the wheeling charges levied on the Petitioner No. 2 till date which are Rs. 3,150,042 till date of filing the present petition;*
- (c) Hold and direct the Respondent to pay interest at 12% on the amounts directed to be refunded under prayer (b) above, computed from the date of payment till the date of refund by the MSEDCL*

The Prayers of IA No. 62 of 2023 filed in Case No. 163 of 2023 are as follows:

- (a) Allow the present Application seeking urgent listing of Case No. 163/AD/2023; and*
- (b) Stay the levy of wheeling charges by MSEDCL on the open access supply by the Petitioner No. 1 to the Petitioner No. 2;*

4.3. The Prayers of the Petition in Case No. 166 of 2023 (Bekaert Industries Pvt. Ltd. and Greenzest Sun Park Pvt. Ltd) are as follows:

- (a) Declare that levying of wheeling charges and wheeling losses by MSEDCL on the supply of power by the Petitioner No. 2 to the Petitioner No. 1 is illegal;*
- (b) Hold and direct MSEDCL to refund the wheeling charges levied on the Petitioner No. 2 till date which are Rs. 2,489,472.65 till date of filing the present petition;*
- (c) Hold and direct the Respondent to pay interest at 12% on the amounts directed to be refunded under prayer (b) above, computed from the date of payment till the date of refund by the MSEDCL;*

The Prayers of IA No. 69 of 2023 filed in Case No. 166 of 2023 are as follows:

- (a) Allow the present Application seeking urgent listing of Case No. 166/AD/2023;*
- (b) Stay the levy of wheeling charges by MSEDCL on the open access supply by the Petitioner No. 1 to the Petitioner No. 2;*

Submissions of the Parties:

5. The Commission notes that the Parties in the present three Petitions i.e., Petitioners and MSEDCL have made multiple submissions (including multiple IAs). The Commission has taken on record the following submissions relevant of the parties:

Table No.2: Details of submission by Parties

Sr. No.	Party	Details of submission
1	Petitioner (CIE Automotive and Sunburn Renewables) (Case No. 162 of 2023)	a. Affidavit dated 13 June 2023 b. IA No. 63 of 2023 filed on 5 October 2023 c. Written submission dated 29 December 2023
2	Petitioners (CIE Automotive and Strongsun Renewables (Case No. 163of 2023)	a. Affidavit dated 13 June 2023 b. IA No. 62 of 2023 filed on 5 October 2023 c. Written submission dated 29 December 2023
3	Petitioners (Bekaert Industries and Greenzest Sun Park) (Case No. 166 of 2023)	a. Affidavit dated 16 June 2023 b. Rejoinder submission filed on 14 October 2023 c. IA No. 69 of 2023 filed on 28 October 2023 d. Written submission dated 29 December 2023
4	MSEDCL	a. Case No. 166 of 2023- Reply dated 13 October 2023 b. Case No. 162 of 2023 and Case No. 163 of 2023 - Reply dated 18 December 2023

6. The arguments of Parties made through submissions, as noted above, recorded in the subsequent paragraphs of this Order for the sake of brevity.
7. The Commission notes that there are total three Cases alongwith IAs filed by the different Petitioners (Open Access consumers and Captive Solar Generators). The submissions and prayers in all the three Cases are similar in nature except the location of Open Access consumer and Solar Generator, period of OA and amount of the wheeling charges levied by MSEDCL. Petitioners are challenging the entitlement of MSEDCL for levy of wheeling charges on its Captive Open Access transactions. Since the grounds raised and issues involved are similar in nature, these three Cases are being dealt with by the Commission in a combined manner and these Cases are being disposed through a common Order.
8. **E-hearing / Proceedings of IAs for urgent listing and Interim directions:**
- 8.1. E-hearing held on 20 October 2023 for IA No. 63 of 2023 in Case No. 162 of 2023 and for IA No. 62 of 2023 in Case No. 163 of 2023:

- (i) The Commission directed the Secretariat of the Commission to list both matter (i.e.,

Case No. 162 of 2023 and 163 of 2023) urgently for the hearing.

8.2. E-hearing held on 8 December 2023 for IA No. 69 of 2023 in Case No. 166 of 2023 (CIE Automotive and Sunburn Renewables):

The Commission directed the Secretariat of the Commission to schedule the cases for hearing as soon as possible along with other similar cases and issue the notice for hearing within 7 days.

9. **Petitioners in its Petition in Case No. 162 of 2023 stated as under:**

9.1. Petitioner No. 1 (**CIE Automotive**) is a consumer of MSEDCL located at Chakan, Tal-Khed, Dist: Pune (**Premises**) and has a drawal voltage of 132 kV.

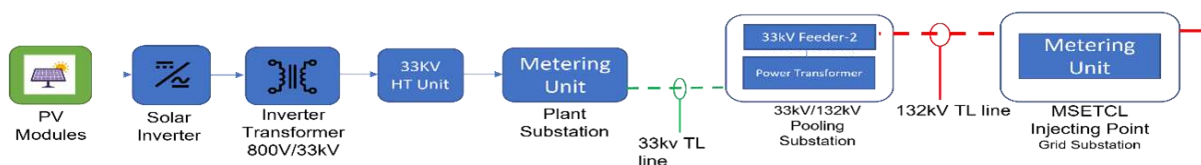
9.2. Petitioner No. 2 (**Sunburn Renewable**) is a generating company established a 4.29 MW and 12.8 MW solar generating station at Rawankola, Tal. Jalkot, Dist.: Latur. (**Generating Plants**).

9.3. The Petitioner No. 1 holds 26.12% of equity shareholding with voting rights in the Petitioner No. 2 Company and also consumes the entire electricity generated from the Generating Plants, thereby fulfilling the requirements of Rule 3 of the Electricity Rules, 2005 for captive consumption of electricity.

Connectivity of the Petitioner with Solar Generator:

9.4. Petitioner No. 1's premises is therefore directly connected to the transmission network of MSETCL at 132 kV and does not use the distribution network of MSEDCL (that is 33 kV or lower) for the drawal of electricity at its premises.

9.5. The Generating Plants are injecting power directly to the network of the transmission licensee, MSETCL at Rawankola, Tal: Jalkot Dis: Latur, at the Jalkot 220/132kV Substation of MSETCL and is not using the distribution network of MSEDCL. For this purpose, the Petitioner No. 2 group has established a dedicated transmission line from the Generating Station up to the substation of MSETCL.



9.6. For the purpose of supply of electricity by the Petitioner No. 2 through open access, the open access is granted from the Jalkot substation of MSETCL which is at 220/132 kV to the point of drawal of the consumer i.e., Petitioner No. 1 in the instant case. The entire network prior to the Jalkot sub-station has been established by the Petitioner No. 2 group

as a dedicated network. The said network does not belong to MSEDCL and therefore does not form part of the distribution network of MSEDCL.

- 9.7. Petitioner No. 1 had applied for and was granted Short-Term Open Access (**STOA**) for supply of electricity from the 4 MW project. The 4 MW project was commissioned on 14.02.2023. Petitioner has taken STOA permissions granted from March 2023 to May, 2023.
- 9.8. The Petitioner No. 1 had applied for Long-Term Open Access (**LTOA**) for supply of electricity from the 12.8 MW project on 29.08.2021 and the same was approved for the period from 01.03.2022 to 31.07.2046 on 12.03.2022. The 12.8 MW project was commissioned on 13.08.2021. The injecting voltage level of the 12.8 MW project is at EHV (132 kV).
- 9.9. The open access permissions clearly identify the injecting substation as the 220/132 kV Jalkot sub-station and the voltage level of injection being at 132 kV EHV level.
- 9.10. As is evident from the abovementioned details, since the substation is at a voltage level of 220/132 kV it forms part of the transmission network of MSETCL. Moreover, in such case, given the voltage level of the Jalkot sub-station, power cannot be injected at the voltage level of 33 kV or lower. Consequently, no wheeling charges or losses are applicable on this supply of electricity through open access.
- 9.11. MSEDCL for processing STOA application for the month of March 2023 directed the Petitioner No. 2 to provide an undertaking to the effect that the Petitioner No. 2 has a project specific SEM at 33 kV. Further it was orally informed that without such an undertaking open access application would not be processed. MSEDCL did not process the application for grant of STOA of the Petitioner No. 1, with the 4 MW project until submission of the abovementioned undertaking. Further, the Petitioner No. 1 has already paid the billing charges of amount Rs. 2,36,95,160/- including the wheeling charges on 22 May 2023.
- 9.12. The generation of electricity by the Petitioner No. 2 is at 800 volts, and thereafter it is stepped up to 33 kV in the internal network of Petitioner No. 2 group and then stepped up to 132 kV for transmission to the 220/132 KV Jalkot substation of MSETCL. Till the 220/132 KV Jalkot sub-station, the entire network is that of the Petitioner No. 2 group and not of the licensee, either MSEDCL or MSETCL.
- 9.13. Each energy project has installed meters as required and approved by MSEDCL, and apart from the metering of electricity, there is no other role of MSEDCL in the entire process. MSEDCL has approved on the metering to be done at a particular place at 33 KV level within the internal network of the Petitioner No. 2.
- 9.14. The network between the generating station and the 132/220 KV Jalkot sub-station is the internal network of the Petitioner No. 2 group, there are meters installed at both ends and

the electricity is capable of being measured, including the line losses on the internal lines up to the 220/132 KV Jalkot sub-station. This works out to only about 1.5%. Further, the entire investment is by the Petitioner No. 2 group and there is no question of any network charges being paid for this network.

- 9.15. Petitioner No. 2 vide letter dated 2 March 2023 provided the details of the SEM specifications sanctioned at that 33 kV level and provided the details of the connectivity to the 220/132 kV Jalkot substation.
- 9.16. However, , MSEDCL has now sought to levy wheeling charges and wheeling losses for the open access supply by the Petitioner No. 1 to the Petitioner No. 2. MSEDCL levied Wheeling charge for the month of April 2023 of Rs. 2013915 /-
- 9.17. The above action has been taken by MSEDCL, presumably only on the basis of the communication dated 2 March 2023 of the Petitioner No. 2, which itself was based on the undertaking as demanded for by MSEDCL and submitted under coercion.

Provisions of EA and Regulations:

- 9.18. The question of levy of wheeling charges and losses does not arise when no part of the distribution system of the distribution licensee, MSEDCL in the present case is being used. The very definition of ‘wheeling’ under section 2(76) of the electricity act requires the distribution system of to be used.
 - 9.19. In the present case, both the injection of electricity, and the drawl of electricity, to the grid is through MSETCL’s network and at 132 KV voltage level. The distribution system of MSEDCL is only at 33 KV and below.
 - 9.20. Regulation 14.6 of DOA Regulations, 2016 further provides that Wheeling Charges shall not be applicable in case a Consumer or Generating Station is connected to the Transmission System directly or using dedicated lines owned by the Consumer or Generating Station.
 - 9.21. The wheeling charges cannot be levied without the use of the distribution system of the distribution licensee has also been settled by *Steel Furnace Association of India v. Punjab State Electricity Regulatory Commission* Appeal No. 245, 176, 237 and 191 of 2012 which has in turn relied on the decision of *Kalyani Steels Limited vs. Karnataka Power Transmission Corporation Limited 2007 ELR (APTEL) 985*.
 - 9.22. The action of MSEDCL therefore to levy wheeling charges and wheeling losses on the electricity supplied by the Petitioner No. 2 to the Petitioner No. 1 is contrary to the Electricity Act, 2003.
10. **Petitioner in Case No. 163 of 2023, re-iterated the similar submission and ground for seeking relief as in Case No. 162 of 2023 (as mentioned at para. 9 above).**

11. **Petitioner in Case No. 166 of 2023, re-iterated the similar submission and ground for seeking relief as in Case No. 162 of 2023 (as mentioned at para. 9 above).**

12. **MSEDCL in its reply dated 13 October 2023 in Case No. 166 of 2023 stated as under:**

12.1. It would be relevant for the proper adjudication of the dispute:-

- a. Point of Supply has been defined under Regulation 2.2.2 (mm) of the MERC (Electricity Supply Code and Standards of Performance of Distribution Licensees including Power Quality) Regulations, 2021, the relevant portion of which are as under :-

mm. "Point of Supply" means the point at the outgoing terminals of the Distribution Licensee's cutouts/switchgear fixed in the premises of the Consumer:

Provided that, in case of HT and EHT Consumers, the Point of Supply means the point at the outgoing terminals of the Distribution Licensee's metering cubicle placed before such HT and EHT Consumer's apparatus:

Provided further that, in the absence of any metering cubicle or, where the metering is on the LT side of the HT or EHT installation, the Point of Supply shall be the incoming terminals of such HT and EHT Consumer's main switchgear;

12.2. Further, Distribution System has been defined under Section 2(19) of the Act *means the system of wires and associated facilities between the delivery points on the transmission lines or the generating station connection and the point of connection to the installation of the consumers;*"

12.3. Regulation 14.6(b) of DOA First Amendment Regulations, 2019 states that Wheeling Charges shall not be applicable in case a Consumer or Generating Station is connected to the Transmission System directly or using dedicated lines owned by the Consumer or Generating Station only if such dedicated lines are used for point-to-point transmission or wheeling of power from Generating station to load centre without any interconnection with distribution system.

12.4. In furtherance, to the Regulation 14.6(b) of DOA First Amendment, Regulation, 2019 (*supra*) it is pertinent to mention that the above Regulation provides the following criteria, under which the wheeling charges are not applicable:-

- (i) If a generation station is directly connected to the transmission system; or
- (ii) If a consumer or generating station is using dedicated lines owned by the Consumer or generating station, and only if, such dedicated lines are used for point-to-point transmission; or
- (iii) where wheeling of power from generating station to load center is done without any interconnection with distribution system.

12.5. With regard to the grounds/raised by the Petitioner, the details related to charging of SEM commissioning certificate etc., are as under:

(i) On 04.05.2022, MSEDCL vide its letter granted approval/sanction of Auxiliary/Start up power connection to M/s Greenzest Sunpark Pvt. Ltd. (**Petitioner No. 2**). It is pertinent to mention here that the said start-up power connection was sanctioned at 33 KV level (i.e. network in question).

(ii) On 29.07.2022, MSEDCL granted permission for charging of SEM metering to Petitioner no. 2 installed at 33 KV level i.e between generating station and pooling substation.

(iii) On 23.08.2022, MSEDCL vide its letter issued commissioning certificate in reference to the project in question. It is noteworthy that the said certificate also categorically stated that Petitioner no. 2 is connected on 33KV level (i.e. network in question).

(iv) Pertinently, MSEDCL have granted various STOA permissions to Petitioners for the period between 30.08.2022 to 31.03.2023.

12.6. The perusal of the above letters makes it clear that MSEDCL was associated to the said 33KV line and the said line was infact an associated distribution facility of the MSEDCL.

12.7. It is further noteworthy that the said 33KV line was used by the MSEDCL to provide start-up power and OA permission to the generator, the reading of which was recorded by the SEM meter (*supra*) connected on the said line. Thus, it is clear and apparent that the said 33KV line was very much part of the distribution infrastructure of MSEDCL.

12.8. The generator does not qualify with the requirements of the Regulation 14.6(b) of DOA, DOA First Amendment Regulation, 2019. The Generator is neither directly connected with the OA consumer through the DDF line (rather it is developer which maintains the pooling station and then passes such pooled electricity from various generators to the transmission line for OA consumption) nor there is a point-to-point transmission line.

12.9. Further, the generator has an interconnection point with MSEDCL on 33KV line as answering respondent uses the said line for providing start-up power and grant of OA to the Petitioner.

12.10. Thus, in view of the above, it is apparent that the 33kV line is part of the MSEDCL infrastructure and thus, the wheeling charges are applicable to the Petitioner.

12.11. The case laws relied upon by the Petitioner are not applicable in the facts and circumstances of the case.

13. **Petitioner in Case No. 166 of 2023 in its rejoinder dated 14 December 2023 reiterated the similar submissions as mentioned in Para.9 above. The additional**

points in its Rejoinder are as under:

- 13.1. The commissioning certificate dated 23.08.2022 stipulates that the metering arrangement is commissioned at 220/132 kV Jalkot substation. The certificate makes reference to 33kV level for the purposes of metering. As stated hereinabove, it was MSEDCL which approved for the metering to be done at a particular place within the internal network of the Petitioner No. 2 at 33 kV level.
- 13.2. The open access permissions granted by MSEDCL (annexed in the Petition) clearly identify the injecting substation as the 220/132 kV Jalkot sub-station and the voltage level of injection being at 132 kV EHV level. Given the voltage level of the Jalkot sub-station, power cannot be injected at the voltage level of 33 kV or lower. Since the substation is at a voltage level of 220 / 132 kV it forms part of the transmission network of MSETCL. The 33 kV line is thus not a part of the transmission infrastructure of Petitioner No. 2.
- 13.3. The contention of MSEDCL that the 33 kV line has been used to provide start up power and open access to the Petitioner No. 2 is wholly arbitrary. MSEDCL has sought to levy wheeling charges and wheeling losses for the open access supply by the Petitioner No. 2 only from March 2023, when in fact the plant of the Petitioner No. 2 was commissioned much prior and was using the same system, namely, from August, 2022 onwards. The understanding of MSEDCL all along, including for the Petitioner was that wheeling charges are not applicable as the line does not belong to MSEDCL.
- 13.4. For the purpose of supply of electricity by the Petitioner No. 2 through open access, the open access is granted from the Jalkot substation of MSETCL which is at 132 kV to the point of drawal of the consumer i.e., Petitioner No. 1 in the instant case. The entire network prior to the Jalkot substation has been established by the Petitioner No. 2 group as a dedicated network. The said network does not belong to MSEDCL and therefore Petitioner No. 2 has no interconnection with the distribution network of MSEDCL. Petitioner No. 2 thus fulfils the criteria stipulated under Regulation 14.6 (b) of DOA Regulations 2016 and its First Amendment Regulations 2019.
- 13.5. Both the injection of electricity, and the drawal of electricity, to the grid is through MSETCL Network and at 132 kV voltage level. The distribution system of MSEDCL does not form part of part of infrastructure of Petitioner No. 2. Hence wheeling charges and wheeling losses are not applicable to the purchase and sale of the electricity by the Petitioner through Open Access.
14. **MSEDCL in its reply dated 18 December 2023 in Case No. 162 of 2023 re- iterated the similar submissions as filed in Case No. 166 of 2023 which has discussed at Para.12 above. The additional points in the reply are as under:**

14.1. Section 2 (19) of EA, 2003 envisages distribution system:

- (i) comprising of system of wires as well as associated facilities thereof.

- (ii) The associated facilities are relatable or allied to the system of wires.
- (iii) The function or service of both system of wires and associated facilities is enabling the distribution or supply of electricity.
- (iv) The system of wires and associated facilities are between the delivery point on the transmission lines and the point of connection to the installation of the consumers.
- (v) The system of wires and associated facilities are between the generation system connection and the point of connection to the installation of the consumers.

14.2. Both Section 2(47) and Section 2(76) of the EA, 2003 expansively construe distribution system with associated facilities also.

14.3. Distribution system is not limited to the system of wires or network, but also includes additional functions or services without such system of wires. However, the underlying objective of both such a system of wires and associated facilities thereof, is to enable distribution or supply of electricity.

14.4. The Statement of Reasons (SoR) for DOA / TOA (First Amendment) Regulations, 2019 and MERC TOA (First Amendment) Regulations, 2019 clarified that the exemption in wheeling charge is only in case of use of point-to-point Dedicated transmission lines or in case where generator and consumer in the OA transaction are both directly connected to the transmission system.

14.5. The Open Access Consumer is using the Distribution System of MSEDCL in law for conveyance of electricity/renewable energy, and as such is due and liable to pay the Wheeling Charges to MSEDCL under Regulation 14.6 (a) DOA Regulations 2016.

14.6. Wheeling Charges are not excluded under Regulation 14.6 (b) of DOA (First Amendment) Regulations, 2019 because,

- (i) there is no direct connection of the Consumer or Generating Station to the Transmission System,
- (ii) the Consumer or Generating Station do not own the lines connecting to the Transmission System,
- (iii) the lines connecting to the Transmission System are not dedicated transmission lines (particularly, as they are not used for point-to-point transmission)
- (iv) There is interconnection with the Distribution System of MSEDCL in law, between the wheeling of power from Generating Station to Load Centre.

14.7. The Generating Station or the Consumer in the OA transaction are both not directly (i.e.,

indirectly) connected to the transmission system.

14.8. In view of the above, Open Access Consumer is due and liable to pay the Wheeling Charges to MSEDCL under Regulation 14.6 (a) of the DOA Regulations, 2016.

15. **MSEDCL in its reply dated 18 December 2023 in Case No. 163 of 2023 re- iterated the similar submissions as mentioned in Para.12 and 14 above.**

16. **At the e-hearing through video conferencing held on 19 December 2023 in all three Petitions:**

16.1. The Petitioners re-iterated its submissions as made out in their Petitions. It further stated in in the present 3 cases, they are directly connected to the transmission network of MSETCL at 132 kV and does not use the distribution network of MSEDCL (that is 33 kV or lower) for the drawal of electricity under open access at its premises. Hence, no part of MSEDCL's Distribution System is involved in the entire open access transaction of power supply from the CPP Project to the Petitioner's Premises. Therefore, levy of wheeling charges by MSEDCL is arbitrary and MSEDCL shall refund the amount of wheeling charges. Further DOA First Amendment Regulations 2019 has provided that Wheeling Charges shall not be applicable in case a Consumer or Generating Station is connected to the Transmission System directly or using dedicated lines owned by the Consumer or Generating Station only if such dedicated lines are used for point-to-point transmission or wheeling of power from Generating station to load centre without any interconnection with distribution system.

16.2. MSEDCL re-iterated its submissions as made out in the reply and further stated that the letters / permissions given by MSEDCL makes it clear that MSEDCL was associated to the said 33KV line, and the said line was infact an associated distribution facility of the MSEDCL. The said 33KV line was used by the MSEDCL to provide start-up power and OA permission to the generator, the reading of which was recorded by the SEM meter (*supra*) connected on the said line. The generator is not qualifying with the requirements of the Regulation 14.6(b) of DOA, DOA First Amendment Regulations, 2019. The Generator is neither directly connected with the OA consumer through the DDF line (rather it is developer of Solar Power which maintains the pooling station and then passes such pooled electricity from various generators to the transmission line for OA consumption) nor there is a point-to-point transmission line. Further, the generator is having an interconnection point with MSEDCL on 33KV line as answering respondent uses the said line for providing start-up power and grant of OA to the Petitioner. Therefore, 33KV line is part of the MSEDCL infrastructure and thus, the wheeling charges are applicable to the Petitioners.

16.3. The Commission directed both the Parties to submit additional submissions if any within 10 days with copies to other parties.

17. **Petitioners in its written submission in Case No. 162 of 2023 dated 29 December**

2023 re- iterated the similar submissions as mentioned at Para.9 above. The additional Points in its written submission are as under:

- 17.1. The Commission in the common Order dated 27 December 2023 in Case No. 151 of 2023, 177 of 2023, 186 of 2023, 187 of 2023 and 196 of 2023 (*Case of Jubilant Ingrevia Ltd. V. AMP Energy Green Fifteen Pvt. Ltd. & Anr VS MSEDCL*), has rejected the claim of MSEDCL for levy of wheeling charges and losses for use of the evacuation system up to the pooling sub-station of MSETCL. The said decision applies to the present cases.
- 17.2. In the present case, both the injection and drawl of electricity to the grid is through MSETCL's network at 132 KV voltage level. When the network of MSEDCL is by no means used in the distribution / supply of electricity by the Petitioner No.2 to Petitioner No.1, wheeling charges and losses as sought to be levied by MSEDCL is liable to be quashed.
- 17.3. It is an admitted position that the entire electrical network and lines up to the 132/220 KV Jalkot sub-station of MSETCL is owned and operated by the generating company and its group. No such network is Owned by MSEDCL.
- 17.4. The Hon'ble Supreme Court in the case of *Sai Wardha Power Generation Limited V. The Tata power Company Limited Distribution & Ors. (Civil Appeal No. 2228 of 2020)* has upheld the position that unless the system in issue is included within the distribution licensee of the licensee, the levy of wheeling charges and losses on the system does not arise.
- 17.5. The above position, namely that wheeling charges cannot be levied without the use of the distribution system of the distribution licensee has also been settled by the Hon'ble APTEL in Appeal Nos. 245, 176, 237 & 191 of 2012 (*Steel Furnace Association of India v. Punjab ERC*)
- 17.6. Auxiliary power consumption is the drawl of electricity, for which applicable charges are payable. Similarly, banking of electricity is also a commercial activity for which commercial charges are payable.
- 17.7. This interpretation is also incorrect as the services such as banking, auxiliary power etc. as alleged by MSEDCL, have independent charges payable in respect of each one and same is being duly levied by MSEDCL, seeking to levy open access charges on the pretext of providing additional functions is thus wholly outside the purview of the DOA First Amendment Regulation, 2019.
- 17.8. The contention of MSEDCL that there is *de jure* extension of the distribution system, and the metering of electricity is at the 33 KV network is also completely misplaced.
- 17.9. The metering of electricity is at the point where MSEDCL chooses to place the meters. This has nothing to do with who owns the electrical system. Even when consumers are

connected directly to the transmission licensee, the meters are within the control of the distribution licensee, who supplies electricity.

18. **Petitioners in its written submission in Case No. 163 of 2023 dated 29 December 2023 re- iterated the similar submissions as mentioned in Para.17 above.**
19. **Petitioners in its written submission in Case No. 166 of 2023 dated 29 December 2023 re- iterated the similar submissions as mentioned in Para.17 above.**

Commission’s Analysis and Rulings:

20. The above mentioned three Petitioners have filed the present cases for not to levy of wheeling charges by MSEDCL as the MSEDCL’s Distribution System is not being used for sourcing power from their CPP through open Access. These Petitioners have also filed IAs for the urgent listing and interim directions for not to levy of wheeling charges till the pendency of their main Petition. In the present three cases, Petitioners are the Open Access Consumers and the Solar Generators. The Open Access permissions in these cases are sought by the Open Access consumers.
21. Upon perusal of the above three Petitions and submissions from the Parties, the details of all the above Petitions i.e., details of OA consumers, generators, period of OA and period/amount of levy of wheeling charges are as under:

Table No.3: Details of three Cases (Open Access Consumers / Solar Generators/ Solar Park Developers)

Sr. No.	Case No.	Details of OA consumer	Details of OA Generator	OA permission sought by	Period/Amount of Wheeling charges levied by MSEDCL
1	162 of 2023	OA consumer: CIE Automotive, Chakan , Dist-Pune ; connected at 132 kV	Sun Burn Renewables.- (12.6 MW - Captive generator) Jalkot Dist-Latur	OA consumer – CIE Automotive	March 2022 to July 2046 (LTOA): Rs. 20,13,915/- (Till filing Petition as stated in prayers for Refund)
2	163 of 2023	OA consumer: CIE Automotive, Maval Dist- Pune ; connected at 132 kV	Strong sun Renewables.- (6 MW - Captive generator) Jalkot Dist-Latur	OA consumer – CIE Automotive	March to May 2023 (STOA for each month) Rs. 31,50,042/- (Till filing Petition as stated in prayers for Refund)
3	166 of 2023	OA consumer: Bekaert Industries, Maval Dist- Pune ; connected at 132 kV	Greenzest Sun Park; (13.1 MW - Captive generator) Jalkot Dist-Latur	OA Consumer - Bekaert	October 2022 to April 2023 (STOA for each month) Rs. 24,89,472/- (Till filing Petition as stated in prayers for Refund)

22. The Commission notes the submission of the Petitioners and MSEDCL in the matter.
23. During the pendency of these matters, the Commission has disposed of the Petitions on

the similar issues vide its common Order dated 27 December 2023 in Case No. 151 of 2023, 177 of 2023, 186 of 2023 , 187 of 2023 and 196 of 2023 of 2023. The relevant para. of the common Order dated 27 December 2023 are reads as under:

“

49. *In view of the above, the Commission does not find merit in the contentions of the MSEDCL that the said 33 kV line is part of MSEDCL distribution system. Accordingly, the Petitioners are entitled for banking dispensation as specified in DOA and TOA Regulations 2016 and its 2019 First Amendment.*

.....

60. *The Commission in the above Order noted the observation of Hon'ble ATE Order dated 6 October 2022 in Appeal No. 20 of 2019 that the wheeling charge cannot be levied beyond what is calculated as the actual energy drawal at the consumption end for which computation will necessarily have to take into account wheeling losses.*

61. *In view of the above, the Commission notes that Wheeling Charges are payable to the Distribution Licensee only when its Distribution System is used. In the present cases, however, it is clear from the factual matrix set out above that there is no 33kV MSEDCL's Distribution System is used.*

.....

64. *Considering the foregoing, the Commission concludes that MSEDCL is not entitled for levy of wheeling Charges and wheeling losses on the power sourced through Open Access in the present cases. Accordingly, the Commission think it fit to direct MSEDCL to refund the wheeling charges recovered from Petitioners/OA Consumers as prayed in these Cases, along with applicable interest, within one month of this Order. Accordingly, the prayer of the Petitioners for setting aside the Impugned Invoices issued by MSEDCL to the extent of imposition of wheeling charges and wheeling losses are hereby set aside.*

.....

66. *Therefore, the above Regulations have clearly provided that STU is the Nodal Agency for grant of Connectivity, Long-term Open Access and Medium-term Open Access to the Intra-State Transmission System (InSTS). But by failing to approach/apply the appropriate Nodal Agency, the Petitioners are the ones who brought these circumstances upon themselves. Further, the Open Access Regulations of the Commission also demarcate and distinguish between the transmission and distribution boundaries by separately notifying Transmission*

Open and Distribution Open Access Regulations. Hence the DOA and TOA Regulations recognizes transmission and wheeling as two distinct activities pertaining to utilization of transmission and distribution assets, respectively.

67. Under such circumstance, the Commission notes that in the present cases when the Open Access consumers /solar generators connected to transmission system/InSTS then it is the responsibility of the Petitioners/ the Open Access Consumers /Solar Generators to approach the proper Nodal Agencies as specified in the DOA and TOA Regulations 2016 and its Amendment. However, the Petitioners are failed to do so and created this problem and issues.

.....
71. Hence, the following Order:

COMMON ORDER

1. *Petition in Case Nos. 151 of 2023, 177 of 2023, 186 of 2023, 187 of 2023 and 196 of 2023 are partly allowed in terms of the Petitioners prayers as ruled at Para. 64 of this Order.*
2. *IA Nos. 45 of 2023, 55 of 2023, 57 of 2023 and 58 of 2023 are disposed of accordingly.*
3. *As ruled at para. 64 of this Order, Maharashtra State Electricity Distribution Co. Ltd. is directed not to levy Wheeling Charges and Wheeling losses on the power sourced through Open Access in the present cases.*
4. *As ruled at para. 64 of this Order, Maharashtra State Electricity Distribution Co. Ltd is directed to refund the Wheeling Charges recovered from Petitioners /Open Access Consumers, along with applicable interest, within one month from the date of this Order.*
5. *As ruled at para. 70 of this Order, State Transmission Utility to submit the Report on the entire compliances of the TOA Regulations 2016 and TOA First Amendment Regulations 2019 within one month of this Order. Upon receipt of the Report, the Commission would take appropriate steps/ actions in accordance with the provisions of the Electricity Act 2003.”*

[Emphasis Added]

25. The above dispensations in the Order dated 27 December 2023 in Case No. 151 of 2023, 177 of 2023, 186 of 2023, 187 2023,3 and 196 of 2023 of 2023, are squarely applicable

in the present cases also.

26. In view of the above , the Commission concludes that MSEDCL is not entitled for levy of Wheeling Charges and Wheeling losses on the power sourced through Open Access in the present cases. Accordingly, the Commission think it fit to direct MSEDCL to refund the wheeling charges recovered from Petitioners/OA Consumers as prayed in these Cases, along with applicable interest, within one month from the date of this Order.
27. **Hence, the following Order:**

COMMON ORDER

1. **The Petitions in Case Nos. 162 of 2023, 163 of 2023, and 166 of 2023 alongwith IA Nos. 62 of 2023 , 63 of 2023 and 69 of 2023 are disposed of.**
2. **As ruled at Para. 26 of this Order, Maharashtra State Electricity Distribution Co. Ltd. is directed not to levy Wheeling Charges and Wheeling losses on the power sourced through Open Access in the present cases.**
3. **As ruled at Para. 26 of this Order, Maharashtra State Electricity Distribution Co. Ltd is directed to refund the Wheeling Charges recovered from Petitioners /Open Access Consumers, along with applicable interest, within one month from the date of this Order.**

Sd/-
(Surendra J. Biyani)
Member

Sd/-
(Anand M. Limaye)
Member

Sd/-
(Sanjay Kumar)
Chairperson


(Dr. Rajendra G. Ambekar)
Secretary

