

IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)

APPEAL No.66 OF 2019

Dated: 24.02.2025

Present: Hon'ble Mr. Sandesh Kumar Sharma, Technical Member
Hon'ble Mr. Virender Bhat, Judicial Member

In the matter of:

PUDUMJEE PAPER PRODUCTS LTD.

Thergaon, Chinchwad,
Pune - 411033

... Appellant

Versus

**1. MAHARASHTRA STATE ELECTRICITY
DISTRIBUTION COMPANY LTD.**

Through its Managing Director
5th Floor, Prakashgad
Bandra (East)
Mumbai - 400051

**2. MAHARASHTRA ELECTRICITY
REGULATORY COMMISSION**

Through its Secretary
World Trade Centre,
Centre No. 1, 13th Floor, Cuffe Parade,
Colaba, Mumbai - 400005

... Respondent(s)

Counsel for the Appellant(s) : Aishwarya Subramani
Anand K. Ganesan
Neha Garg
Swapna Seshadri for App.

Counsel for the Respondent(s) : Tushar Mathur
Samir Malik
Rahul Sinha
Nikita Choukse for Res. 1

J U D G M E N T

PER HON'BLE MR. VIRENDER BHAT, JUDICIAL MEMBER

1. M/s Pudumjee Paper Products Limited (in short "PPPL"), a business entity in the State of Maharashtra, has preferred this appeal against the order dated 24.10.2018 passed by the 2nd respondent Maharashtra Electricity Regulatory Commission (in short "the Commission" or "MERC") whereby the Commission, while determining the wheeling charges payable by the appellant has upheld the methodology adopted by the 1st respondent Maharashtra State Electricity Distribution Company Limited (in short "MSEDCL").

2. The appellant is a consumer getting electricity supply from the 1st respondent MSEDCL. It also avails power through Short Term Open Access (STOA) under captive model from M/s Sai Wardha Power Generation Limited (in short "SWPGL") which is a thermal power generator. In order to meet its additional power requirement, the appellant had applied for STOA of 1MW for the month of December, 2016 from power exchange by following day-ahead

bidding procedure and the same was approved by MSEDCL vide letter dated 30.11.2016.

3. The appellant also applied for STOA of 1MW for the month of January, 2017 from power exchange which too was granted by MSEDCL with an additional condition that open access permission is issued subject to scheduling of power on Round the Clock (RTC) basis.

4. Since, the appellant uses the distribution network of 1st respondent MSEDCL, it is liable to pay wheeling charges for such use.

5. The MSEDCL appears to have imposed wheeling and transmission charges on the entire quantum of power availed through STOA by the appellant at injection point with effect from January, 2015 and accordingly issued bills to the appellant from time to time with effect from the month of December, 2016 wherein the transmission and wheeling charges were levied on the total open access capacity sanctioned to the appellant as against power actually allocated and consumed by it.

6. Accordingly, the appellant had approached the Commission by way of petition No.156/2018 with the following prayers: -

- “a. Direct Respondent to refund the amount of Rs.2,21,05,566/- (Rupees Two Crore Twenty One Lakhs Five Thousand Five Hundred Sixty Six only) being the total amount of transmission and wheeling charges unlawfully recovered from the Petitioner, together with interest on the said amount @ 18% p.a. from January 2015 onwards and no later than seven (7) days from date of order or credit such wrongful recovery of transmission and wheeling charges in the ensuing bills of the Petitioner;*
- b. Direct Respondent to levy wheeling and transmission charges only on the actual consumption for STOA;*
- c. Direct Respondent to not levy arbitrary conditions on open access permission of scheduling on RTC basis;*
- d. Direct Respondent to forthwith correct the bills raised upon the Petitioner from June, 2016 due to incorrect adjustment of power;*

e. Direct Respondent to refund/credit the amount of Rs.39,96,755/- (Rupees Thirty Nine Lakh Ninety Six Thousand Seven Hundred Fifty Five only) together with interest on the said amount @ 18% p.a. from June 2016 onwards; in respect of loss incurred by the Petitioner on account of alleged over-injection of 5,41,786 units which occurred due to incorrect billing method followed by Respondent within fifteen (15) days from the date of order by way of refund or credit in ensuing bills;

f. Direct Respondent to adopt correct practice of set-off of open access power i.e. first conventional OA power and then RE power in accordance with DOA 2016 and the Order of this Hon'ble Commission dated August 11, 2017 in Case No.139 of 2016;

g. Direct Respondent to comply with DOA 2016, Practice Directions and Orders of this Hon'ble Commission in letter and spirit for processing and grant of open access;

h. Direct Respondent to comply with DOA 2016, Practice Directions and Orders of this Hon'ble Commission in letter and spirit for billing open access consumers;

i. Award costs of this proceeding against the Respondent and in favour of the Petitioner;"

7. The Commission, vide impugned order dated 24.10.2018, ruled against the appellant as it did not find any infirmity in the methodology followed by MSEDCL for levying wheeling and transmission charges.

8. The case of the appellant before the Commission was that imposition of wheeling / transmission charges by MSEDCL on the entire quantum of power at injection point from January, 2015 instead of drawal / consumption point is contrary to the Regulation 16.1 of DOA Regulations, 2014 as well as Regulation 14.6 of DOA Regulations, 2016, which are quoted hereinbelow: -

DOA Regulations, 2014: -

"16.1 Open Access customer using Distribution system shall pay the wheeling or Dedicated Distribution facility charge, as the case may be, as under:

a) Wheeling charges payable to the Distribution Licensee by an Open Access customer for usage of their system shall be determined under the Maharashtra Electricity Regulatory Commission (Multi Year Tariff) Regulations, 2011, as amended from time to time:

Provided that the Wheeling charges shall be payable on the basis of actual energy flow at the consumption end:”

DOA Regulations, 2016: -

“14.6. Wheeling Charge

a. An Open Access Consumer, Generating Station or Licensee, as the case may be, using a Distribution System shall pay to the Distribution Licensee such Wheeling Charges, on the basis of actual energy drawal at the consumption end, as may be determined under the Regulations of the Commission governing Multi-Year Tariff;”

9. The contentions of MSEDCL before the Commission were: -

“(i) It has levied Transmission and Wheeling Charges in respect of energy supplied via Open Access for the period from April 2016 to March 2017 in accordance with “Open Access Wheeling Illustration 2010-2011”.

(ii) Due to nature of RE generation a cushion is given to the consumers in the form of banking wherein the over injected units are banked and adjusted later. But the unutilized banked units are also injected in MSEDCL grid for which consumer is liable to pay Wheeling as well as Transmission charges to MSEDCL.

(iii) Taking into account the Open Access Wheeling Charges 2010-2011, which provide that Wheeling charges should be deducted after Transmission charge and Transmission loss compensation have been computed.”

10. The Commission has based its findings totally on its previous decision dated 20.07.2018 in case No.206/2017 in which it had explained the rationale

for levying of wheeling and transmission charges and did not find any infirmity in the methodology followed by MSEDCL for levying of wheeling charges as MSEDCL was not levying wheeling charges on the injected units but after deducting transmission losses i.e. units available for consumption by the consumers. The reasoning given by the Commission in order dated 20.07.2018 in case No.206/2017, which has been reiterated and followed in the impugned order is extracted hereinbelow: -

“15. The Commission notes that MSEDCL is levying the Wheeling Charges on the remaining units after due deduction of transmission loss from the injected Units. The units get directly adjusted against consumption units of the Consumer after deduction of wheeling losses. MSEDCL is not levying wheeling charges on injected unit but is levying after deducting transmission loss i.e. units available for consumption by consumer.”

11. No further additional reasoning has been given by the Commission in the impugned order in approving the methodology followed by MSEDCL for levy of wheeling and transmission charges.

12. We may note that the legality and validity of the order dated 20.07.2018 passed by the Commission in case No.206/2017 was tested by this Tribunal in appeal No.20/2019. The appeal was decided vide judgment dated 06.10.2022 holding that wheeling charges cannot be levied beyond what is calculated as the actual energy drawn at the consumption end which computation will necessarily have to take into account wheeling losses as well. The relevant portion of the said judgment of this Tribunal is extracted hereinbelow: -

“7. The State Commission had issued practice directions on the subject on 08.03.2017, the relevant part whereof would read as under:-

“Practice Directions

1. A STOA Consumer, Generating Station or License using a Distribution System shall pay Wheeling Charges or Transmission Charges, as the case may be, on the basis of the actual energy drawal at the consumption end on Rs/kWh basis. The Distribution

Licensee shall refund any amounts recovered in excess of these stipulations within a month, with applicable interest, without requiring such refund to be applied for.”

8. The MSEDCL, while contesting the claim before the State Commission had relied primarily on the following part of a clarificatory order styled as “Open Access Wheeling Illustration 2010-2011” which had been issued by the State Commission earlier:

“Open Access Wheeling Illustration 2010-2011”, reproduced below:

“...7. Depending on nature of open access transaction, the injection point(s) for open access and drawl point(s) for open access wheeling transaction could lead to use of distribution assets of multiple distribution licensees and/or use of intra-state transmission system. Even in case of particular distribution licensees, the wheeling charges applicable for a particular open access transaction shall depend on voltage level at injection

point(s) and drawal point(s), as wheeling charges are determined in accordance with voltage level. Accordingly, transmission charges, transmission losses, wheeling charges and wheeling losses applicable for a particular transaction have to be ascertained on the basis of use of assets of concerned licensee and extent of use at a particular voltage level.”

9. The State Commission has referred to its observations in tariff order dated 20.10.2006 in Case no.54 of 2005 and order dated 20.11.2007 in Case No.33 of 2007 whereby the philosophy and rationale for levy of wheeling charges was explained. The prime observations of the State Commission for declining the claim of the appellant are summarised in para as under:

“The Commission notes that MSEDCL is levying the Wheeling Charges on the remaining units after due deduction of transmission loss from the injected Units. The units get directly adjusted against consumption

units of the Consumer after deduction of wheeling losses. MSEDCL is not levying wheeling charges on injected unit but is levying after deducting transmission loss i.e. units available for consumption by consumer.”

10. The learned counsel for the appellant has explained his contentions by an illustration which reads as under:-

(i) “The generator injects 100 units of electricity for supply through open access.

(ii) The transmission losses are levied at same 4 units, and 96 units is delivered in the distribution network.

(iii) The distribution licensee levies distribution losses at same 6 units and 90 units are delivered to the consumer, which is the actual energy drawl at the consumption end.

(iv) In terms of the regulations, the wheeling charges are payable on 90 units of electricity.

(v) However, MSEDCL has levied wheeling charges on 96 units. This is sought to be justified on the ground that

96 units is available for consumption. How is it available for consumption to justify the levy of wheeling charges is not understandable.”

11. In our considered view, the Open Access Wheeling illustration given for 2010-2011 by the State Commission may not be correct view of the matter particularly in the context of Regulations of 2016, as quoted above. The wheeling charge cannot be levied beyond what is calculated as the actual energy drawal at the consumption end which computation will necessarily have to take into account wheeling losses as well.

12. In above view, we cannot uphold the approach taken by the State Commission by the impugned order which is accordingly set aside. We remit the claim of the appellant to the State Commission for passing of the consequential orders in light of these observations.

13. The appeal is disposed of in above terms.

(Emphasis supplied)”

13. Therefore, the very basis upon which the impugned order was passed by the Commission has got shaken by the above noted judgment of this Tribunal in appeal No.20/2019 and thus, impugned order cannot stand and deserves to be set aside outrightly. It was also brought to our notice by the appellant's counsel that in pursuance to the said judgment dated 06.10.2022 of this Tribunal in appeal No.20/2019, the Commission has passed consequential orders also directing MSEDCL to refund the excess wheeling charges wrongly recovered from M/s Sridevi Trading Company Private Limited (appellant in that case) along with interest. A copy of said order dated 20.01.2023 passed by the Commission has been produced by the appellant's counsel and has been perused by us.

14. An artificial distinction was sought to be made on behalf of the respondent MSEDCL between the facts of the case before this Tribunal in appeal No.20/2019 and the facts of the instant case. It was sought to be argued that the appellant herein is a captive consumer whereas the appellant M/s Sridevi Trading Company Private Limited in appeal No.20/2019 is a power generator and therefore, the judgment of this Tribunal in appeal No.20/2019 is not applicable to the instant case. We are unable to countenance these submissions made on behalf of MSEDCL. It is for the

reason that neither Regulation 16.1 and DOA Regulations, 2014 nor Regulation 14.6 of DOA Regulations, 2016 makes any distinction between the open access consumers, generating stations and licensees. These regulations are equally applicable to open access consumers or generating stations or the licensees, as the case may be, which use the distribution system of a distribution licensee. Further, if we accept the submissions made on behalf of the 1st respondent MSEDCL to the effect that the decision of this Tribunal in appeal No.20/2019 is completely inapplicable to the facts of the instant case, then also the impugned order of the Commission would have no legs to stand for the reason that it is founded upon the previous decision of the Commission in case No.206/2017 from which the appeal No.20/2019 had emanated. We are unable to discern the wisdom of respondent MSEDCL in advancing such arguments as it would shatter away the very foundation upon which the impugned order was passed by the Commission thereby making it liable to be set aside on this very score only.

15. Thus, in view of the above discussion, we are unable to sustain impugned order of the Commission. Same is hereby set aside. We hold that the methodology followed by MSEDCL for levying of wheeling and transmission charges is not correct and is contrary to DOA Regulations of

2014 as well as of 2016, as quoted hereinabove. We concur with the views of this Tribunal in judgment dated 06.10.2022 in appeal No.20/2019 and affirm that wheeling charges cannot be levied on the quantum of power at injection point and are leviable / payable only on the actual power drawn by the consumer at the consumption end.

16. Accordingly, the appeal stands allowed to the extent indicated hereinabove.

17. The case is now remanded back to the Commission for passing appropriate consequential orders in the light of what we have observed hereinabove.

Pronounced in open court on this the 24th day of February, 2025

(Virender Bhat)
Judicial Member

(Sandesh Kumar Sharma)
Technical Member (Electricity)

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