

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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Case No. 165 of 2023

Petition of Pimpri Chinchwad Municipal Corporation and Antony Lara Renewable Energy Pvt. Ltd. seeking adoption of the Electricity (Promoting Renewable Energy Through Green Energy Open Access) Rules, 2022 as promulgated by the Government of India in June 2022

Coram

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

Pimpri Chinchwad Municipal Corporation

Antony Lara Renewable Energy Pvt. Ltd.

... **Petitioners**

V/s

Maharashtra State Electricity Distribution Co. Ltd. (MSEDCL)

Brihanmumbai Electric Supply & Transport Undertaking (BEST)

Adani Electricity Mumbai Limited- Distribution (AEML-D)

The Tata Power Company Limited- Distribution (TPC-D)

Maharashtra Energy Development Agency (MEDA)

... **Respondents**

Appearance:

For Petitioners

: Mr. Abhishek Khare (Adv.)

For Respondents

: Mr. Kiran Gandhi (Adv.), MSEDCL

: Dr. Rajendra Patsute (Rep.), BEST

: Mr. Abhaji Naralkar (Rep.), AEML-D

: Mr. Girish Pednekar (Rep.), TPC-D

: Mr. Anand Raidurg (Rep.), MEDA

ORDER

Dated: 28 July 2023

1. Pimpri Chinchwad Municipal Corporation (**PCMC**) and Antony Lara Renewable Energy Pvt. Ltd. (**ALREPL**) (**Petitioners**) filed the present Petition on 12 July 2023 under Regulation 39 of Maharashtra Electricity Regulatory Commission (Transaction of Business and Fees and Charges) Regulations, 2022 seeking adoption of the Electricity (Promoting Renewable Energy Through Green Energy Open Access) Rules, 2022 (**GEOA Rules**) as promulgated by the Government of India in June 2022. Petitioners has also filed Interlocutory Applications (**IAs**) for Interim and Ad- Interim Reliefs (IA No. 42 of 2023) and Urgent listing (IA No. 43 of 2023) of the matter.
2. **The Petitioner's main prayers are as follows:**

- (a) pending the final hearing and disposal of this Petition, the Hon'ble Commission be pleased to pass an Order to allow the Green Energy Open Access Rules notified on the 6th of June 2022 by the Government of India be applied on the present plant instead of State Regulations qua Open Access until appropriate Rules / Regulations of this Hon'ble Commission are notified;*
- (b) pending the final hearing and disposal of the petition this Hon'ble Commission be pleased to direct the Hon'ble Maharashtra State Electricity Distribution Company Limited (MSEDCL) and other Distribution licensees to follow the guidelines issued by the Government of India via notification on the 6th of June 2022, till such time that the Hon'ble Commission notifies appropriate Green Energy Open Access Guidelines for the State of Maharashtra;*
- (c) pass appropriate directions to have necessary rules/regulations promulgated to adopt and follow the Green Energy Open Access Rules as promulgated by the Government of India;*
- (d) Interim and ad-interim reliefs in terms of prayer clause (a) and (b) above;”*

3. **Petitioner's Prayers in IA No. 42 of 2023 are as under:**

- (a) pending the final hearing and disposal of this Petition, the Hon'ble Commission be pleased to pass an Order to allow the Green Energy Open Access Rules notified on the 6th of June 2022 by the Government of India be applied on the present plant instead of State Regulations qua Open Access until appropriate Rules / Regulations of this Hon'ble Commission are notified;*
- (b) pending the final hearing and disposal of the petition this Hon'ble Commission be pleased to direct the Hon'ble Maharashtra State Electricity Distribution Company Limited (MSEDCL) and other Distribution licensees to follow the guidelines issued by the Government of India via notification on the 6th of June 2022, till such time*

that the Hon'ble Commission notifies appropriate Green Energy Open Access Guidelines for the State of Maharashtra

(c) Interim and Ad-Interim relief in terms of the prayer clause (a) and (b) above

4. Petitioner's Prayers in IA No. 43 of 2023 are as under:

"Kindly fix a date for hearing of the matter at the earliest as per the convenience of the Hon'ble Commission"

5. Considering application for urgent hearing, this matter was listed for hearing on 21 July 2023. Further, considering the fact that relief sought in application for interim relief is same as sought in main Petition, post hearing this matter on 21 July 2023, instead of ruling in interim relief, the Commission is deciding the main Petition itself through this Order.

6. The Petition states as follows:

6.1. The Petitioner No. 1, Pimpri Chinchwad Municipal Corporation (**PCMC**) is the Urban Local Authority for the city of Pimpri Chinchwad, created under the provisions of the Maharashtra Municipal Corporation Act, 1965. PCMC has to manage vast amount of solid waste (Approx 1000TPD) in its area.

6.2. The present project of Municipal Solid Waste finds its foundational roots in the aegis of the Solid Waste Management Rules of 2016 issued by the Government of India in 2016.

6.3. As is known this kind of solid waste keeps piling up at a site or different dumping sites. The aggregation of the solid waste leads to its own problems relating to its handling and its disposal. Large amount of such waste also adversely affects the surrounding environment and the ground/surface water. In order to effectively deal with this issue, the Petitioners initiated, in its jurisdiction, the concept of generation of Electricity from the Municipal Solid Waste. A Waste to Energy Plant operates using solid municipal waste as fuel which would serve the twin purposes of effectively reducing garbage dumps and landfills at the site as well as supplying energy which could be used for fulfilling the energy needs of PCMC.

6.4. Pursuant to this idea, a tender was issued inviting bids from companies/entities wanting to be contractors to convert solid waste.

6.5. Pursuant to being successful in the bid, PCMC entered into concession agreement with Petitioner No. 2, Antony Lara Renewable Energy Pvt. Ltd.(**ALREPL**) on the 6th September 2018.

6.6. Pursuant to the terms of the Agreement, the PCMC have given access and license to use of approximately 29 acres of land in Moshi, Pune to ALREPL for designing, building, financing as well as operating a Material Recovery Plant and Waste to Energy Plant up to gross capacity of 14 MW.

- 6.7. The present plant is based on Rankine technology for its functioning which would use municipal solid waste to ultimately provide energy for local municipal consumption.
- 6.8. The said Agreement has a tenure of 21 years. This power as generated from the project would be used by PCMC throughout the concession period for its captive use and remuneration shall be Rs. 5.00 per unit generated and tipping fees pursuant to the Concession Agreement.
- 6.9. PCMC would use this power to operate pumping stations, sewage treatment plants and many such and similar operations.
- 6.10. The Project is nearing completion and is likely to be commissioned within the next 30 - 45 days. So far in the project the following progress has been made:
- i) Most of the plant construction has been completed;
 - ii) The Project SPV is in process of applying for Open Access / Connectivity for evaluation of power generated from the project;
 - iii) PCMC is in process of applying for Distribution Open Access for consuming the power;
 - iv) Turbine trial runs have commenced.
- 6.11. On 06 June 2022, the Government of India notified the Electricity (Promoting Renewable Energy Through Green Energy Open Access) Rules, 2022 (**GEOA Rules**) with the objective of ensuring access to affordable, reliable, sustainable and green energy for all.
- 6.12. The salient features of the said Green Energy Open Access Rules are:
- (i) The said Rules shall be applicable for generation, purchase, and consumption of green energy including the energy from Waste-to-Energy plant.
 - (ii) Only consumers who have contracted demand or sanctioned load of hundred kW and above shall be eligible to take power through Green Energy Open Access and there shall be no limit of supply of power for the captive consumers taking power under GEOA
 - (iii) cross subsidy surcharge and additional surcharge shall not be applicable in case power produced from a Waste-to-Energy plant is supplied to the Open Access Consumer.
- 6.13. Forum of Regulators (**FOR**) have framed model Green Energy Open Access Regulations and various States (Haryana, Karnataka; Madhya Pradesh; Manipur; Mizoram; Punjab; Sikkim; Telangana; Tripura; West Bengal; and Gujarat) have also already adopted or are in the process of adopting the said Green Energy Open Access Rules by promulgating their own regulations which are in sync with the said Green

Energy Open Access Rules.

- 6.14. FOR in its report on “Developing Model Regulations on Methodology for Calculation of Open Access Charges And Banking Charges For Green Energy Open Access Consumers” of September 2022 provided that cross subsidy surcharge and additional surcharge shall not be applicable in case power produced from a non-fossil fuel-based Waste-to-Energy plant is supplied to the Open Access Consumer. Cross-Subsidy Surcharge for Green Energy Open Access shall be computed in Rs/kWh and shall be charged on the actual energy consumed by the consumer under Green Energy Open Access.
- 6.15. The Commission being already in the process of aligning and formulating Rules for GEOA in the State of Maharashtra pursuant to the notification issued by the Government of India, in the interregnum, the Petitioners craves the protection from the Commission as per the provisions notified in the GEOA Rules of GoI. The interim relief may extend to all the provisions of the Rules including non-requirement of payment of Cross Subsidy Surcharge as well as Additional Surcharge by the Petitioners or the Generator.
- 6.16. The interim directions of the Commission as sought hereto would be for a limited period till such time the Commission notifies its Regulations for GEOA or modifies the existing Regulations on Open access, as the case may be.
- 6.17. There have been various judicial decisions of the Hon’ble Supreme Court of India where the Court has clearly demarcated that in case of a conflict of legislation between the Central Government and a State Government, the rules as promulgated by the Central Government would prevail.

7. **At the e-hearing through video conferencing held on 21 July 2023:**

- 7.1. Advocate of the Petitioners re-iterated its submissions as made out in the Petition and further stated that MSEDCL and other Distribution licensees to follow the guidelines issued by the Government of India via notification on the 6 June 2022, till such time that the Commission notifies appropriate Green Energy Open Access Guidelines for the State of Maharashtra. It has further stated that such interim relief sought is at its risk and cost, and it will abide by the MERC amendment Regulations once notified.
- 7.2. Advocate of MSEDCL opposed the prayers of the Petitioners and further stated that before implementing the GEOA Rules, DOA Regulations to be amended after following the due pre -publication procedure.
- 7.3. Representatives of the BEST, TPC-D and AEML-D stated that they don’t have any specific submissions on this issue.
- 7.4. Representatives of MEDA stated that they will t abide by the directions of the Commission.

Commission's Analysis and Rulings:

8. The Commission notes that the present Petition has been filed to give effect to the MoP's notification of Electricity (Promoting Renewable Energy Through Green Energy Open Access) Rules 2022 dated 6 June 2022 in the State of Maharashtra. The Commission has framed Regulations governing Distribution Open Access in 2016 and amended it in 2019. MoP has notified above referred Green Open Access Rules in 2022. The Commission is in process of amending its Distribution Open Access Regulations to make it consistent with MoP's Rules. In the interregnum, Petitioner has requested for the following:

- (a) To allow the Green Energy Open Access Rules notified on the 6 June 2022 by the Government of India on the present plant instead of State Regulations qua Open Access until appropriate Rules / Regulations of the Commission are notified;
- (b) To direct the MSEDCL and other Distribution licensees to follow the guidelines issued by the Government of India via notification on t 6 June 2022, till such time that the Commission notifies appropriate Green Energy Open Access Guidelines for the State of Maharashtra

During the hearing, Petitioners have clarified that above request is at their risk and cost, and they will abide by the Commission's Regulation in this regard once notified.

9. MSEDCL has opposed such request of the Petitioners on the ground that till Regulations are not framed/amended, the relief sought cannot be granted.
10. In this context, the Commission notes that MOP has notified the Electricity (Promoting Renewable Energy Through Green Energy Open Access) Rules, 2022 on 6 June 2022 for implementation of Green Open Access.
11. Further, the Section 181 of the Electricity Act, 2003 stipulates that the State Commission(s) may by notification, make regulations consistent with the Act and the rules to carry out the provisions of the Act. The relevant provisions of Section 181 is extracted below:

"181. Powers of State Commissions to make regulations.-

(1) The State Commissions may, by notification, make regulations consistent with this Act and rules generally to carry out the provisions of this Act.

Thus, Regulations framed by the Commission need to be consistent with the provisions of Act and Rules notified under the Act.

12. Further, the Ministry of the Power vide letter dated 2 June 2023 in reference to difficulty highlighted by the Government of Uttar Pradesh regarding implementation of Electricity (Promoting Renewable Energy Through Green Energy Open Access) Rules, 2022 has clarified aspect related to implementation of GEOA Rules. The relevant para. of the MOP's letter dated 2 June 2023 reads as under:

“I am directed to refer to your letter dated 09.05.2023 regarding difficulty in implementation of Electricity (Promoting Renewable Energy through Green Energy Open Access) Rules, 2022, said to have been pointed out by the UP State Electricity Regulatory Commission. The UP SERC have misread the law. The purport of the law is that open access shall progressively become the norms and to ensure that entities do not drag their feet, it has provided that the State Commissions shall, not later than five years from the date of commencement of the Electricity (Amendment) Act, 2003, by regulations, provide such open access to all consumers who require a supply of electricity where the maximum power to be made available at any time exceeds one megawatt.

2. The Electricity (Amendment) Act, 2003 by which the above said fifth proviso to Section 42(2) inserted, was made effective from 27.01.2004. One Megawatt threshold was mandated to be achieved for open access in five years. This was the minimum which had to be achieved in not more than five years. The provision does not limit open access to one Megawatt. One of the objectives of the Act is to promote competition in Electricity Industry and promotion of environmentally benign policies. Hence, the Green Open Access Rules are not in contravention to the law. The Rule is in accordance with the intent and spirit of the Act to promote Open Access. In our country the people have rights, and non- discriminatory open access is a right.

3. The above said Green Energy Open Access Rules, 2022 framed under the Electricity Act, 2003, are subordinate legislation and have been notified after consultation with all Stakeholders and following the due process. As per procedure these Rules have been laid before both the Houses of the Parliament. As such, all concerned are duty bound to comply with the provisions of the Act and the Rules. Therefore the Rules may be implemented.”

[Emphasis Added]

Thus, the above MOP's letter made it clear that the said Green Energy Open Access Rules, 2022 framed under the Electricity Act, 2003, are subordinate legislation and have to be implemented by all concerned.

13. The Commission has also initiated process of aligning its Regulations with GEOA Rules. DOA Regulations 2016 will be amended after following due process of previous publication. But till that time, implementation of GEOA Rules cannot be stopped. The Commission does not agree with MSEDCL's submission in this regard. Once Act or Rules has been notified, all concerned needs to comply with provisions of the said Act or Rules. It is important to note that MSEDCL has not raised any operational difficulty while opposing the relief sought. Also, none of other Distribution Licensees have raised any operational issue. Nevertheless, such issues, if any, can be raised during previous publication process on draft amendment to DOA Regulations which the Commission will initiate shortly. Therefore, the Commission is inclined to allow the relief sought in the present Petition.

14. In view of the above, the Commission rules that provisions of Green Energy Open Access Rules notified on the 6 June 2022 and as amended from time to time by the Government of India be followed by all concerned authorities. If there is an inconsistency in MERC's Regulations and Rules, then provisions of GEOA Rules will prevail.
15. Hence the following Order:

ORDER

1. The Case No.165 of 2023 along with IA Nos.42 of 2023 and IA No. 43 of 2023 are allowed.
2. All concerned authorities to comply with provisions for Green Energy Open Access Rules notified on 6 June 2022 as amended from time to time. If there is inconsistency in MERC's Regulations and Rules, then provisions of GEOA Rules will prevail.

Sd/-
(Surendra J. Biyani)
Member

Sd/-
(Anand M. Limaye)
Member

Sd/-
(Sanjay Kumar)
Chairperson


(Dr. Rajendra G. Ambekar)
Secretary

