

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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Case No. 97 of 2024

Case of MSEDCL seeking review of Order dated 31 March 2024 in Case No. 146 of 2023, regarding consideration of the non-entitlement of “interest” on the principal amount payment concerning the claim of over-injected units for the period from FY 2019-20 to FY 2022-23

Coram

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

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

V/s

Persistent System Ltd. (PSL/Persistent) ... **Respondent**

Appearance:

For Petitioner : Mr. Udit Gupta (Adv.)

For Respondent : Mrs. Shital Pednekar (Rep.)

ORDER

Dated: 18 February 2025

1. Maharashtra State Electricity Distribution Co. Ltd. (**MSEDCL/Petitioner**) filed the present Petition on 13 June 2024 for review of Order dated 31 March 2024, in Case No. 146 of 2023 (*Imagicaa VS MSEDCL*) (**impugned Order/ Order under Review**). This review pertains to consideration of the non-entitlement of “interest” on the principal amount payment concerning the claim of over-injected units for the period from FY 2019-20 to FY 2022-23. The said Review Petition has been filed under Regulations 28 and 39 of MERC (Transaction of business and fees and charges) Regulations, 2022.

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

“(i) To admit the present Review Petition as per the provisions Regulation 28 (Review of Decisions, Directions & Orders) of MERC (Transaction of Business and Fees and Charges) Regulations, 2022;

(ii) To review the order dated 31.04.2024 passed by this Hon'ble Commission in Case No. 146 of 2023 to the limited extent as submitted in the present Petition on the aspect of considering the non-entitlement of “interest” over the principal amount payment w.r.t., the claim of over injected units for the period FY 2019-20 to FY 2022-23. ”

3. **The Petition states as follows:**

3.1. Persistent System Ltd. (PSL/Respondent/Original Petitioner) had filed a Petition, in Case No. 146 of 2023, seeking refund of improper wheeling and transmission charges allegedly recovered on over-injected units by MSEDCL/Review Petitioner and payment of eligible unutilized banked units for the period FY 2015-16 and FY 2019-20 to FY 2022-23.

3.2. The Commission vide Order dated 31 March 2024 in Case No. 146 of 2023 (impugned **Order / Order under review**) had ruled as under:

“ *ORDER*

1. *The Petition in Case No.146 of 2023 is partly allowed.*
2. *The claims of the Petitioner for FY 2015-16 are time Barred, and the Petitioner is not liable for refund of improper wheeling and transmission charges recovered on over-injected units and payment of eligible unutilised banked units for the period FY 2015-16.*
3. *Maharashtra State Electricity Distribution Co. Ltd. (MSEDCL) and Petitioner are directed to sit together and reconcile on the issue of refund the improper wheeling and transmission charges on over-injected units recovered from the Petitioner and purchase of unutilised banked energy for the eligible claimed period of FY 2019-20 to FY 2022-23 within one month from the date of this Order.*
4. *MSEDCL to refund the improper wheeling and transmission charges on over-injected units recovered from the Petitioner for the period of FY 2019-20 to FY 2022- 23, with applicable interest, within two months from the date of this Order. MSEDCL shall verify the claim made by the Petitioner before making the payment.*

5. *MSEDCL to purchase and make the payment of the eligible unutilised banked units, with applicable interest, after verification, as per the applicable provisions of MERC (Distribution Open Access) Regulations, 2016 and its first amendment for the period FY 2019-20 to FY 2022-23 within the two months from the date of this Order.*”

- 3.3. Thus, the present Review Petition is being filed mainly seeking review the above direction no. 4 and 5 from the impugned Order with respect to applicability of interest on wheeling and transmission charges on over-injected units and on unutilised banked units invoices.
- 3.4. The undisputed fact on record has been that no invoice on these claims has ever been raised by PSL and hence consequently the relief of interest thereof, is an evident error apparent in law and requires rectification.
- 3.5. Inter-alia certain clarification is also required, for proper understanding of computational methodology to compute the wheeling and transmission charges on over-injected units and also further to compute the unutilised banked units.

Grounds seeking Review of impugned Order:

- 3.6. Error apparent towards grant of “Interest” on Unutilized Banked Units, in absence of any invoice for the same:
- 3.6.1. On the issue that whether the PSL is entitled for the payment and purchase of eligible unutilized banked units by MSEDCL for the period FY 2019-20 to FY 2022-23, the Commission had directed MSEDCL to purchase and make the payment of the eligible unutilized banked units, with applicable interest, after verification, as per the applicable provisions of MERC Distribution Open Access Regulations 2016 (**DOA Regulations, 2016**) and Distribution Open Access First Amendment Regulations 2019 (**DOA First Amendment Regulations 2019**) for the period FY 2019-20 to FY 2022-23.
- 3.6.2. PSL’s excel Working Calculation of amount to be paid on eligible unutilized Banked units, does not clarify whether the applicable Rate/Unit for the period from FY 2019-20 to FY 2022-23 is at Pooled Cost of Power Purchase under Regulation 20.6 of DOA Regulations, 2016 or at the yearly Generic RE Tarriff Order under Regulation 20 of DOA First Amendment Regulations, 2019.
- 3.6.3. The applicable Rate/Unit for the period from FY 2019-20 to FY 2022-23 has been partly without any justification has been claimed at Pooled Cost of Power Purchase under Regulation 20.6 of DOA Regulations, 2016 and partly at the yearly Generic RE Tarriff Order under Regulation 20.5 of the DOA Regulations, 2016 and DOA First Amendment Regulations, 2019. Therefore, the clarification as sought is essential, for appropriate computation of the principal due amount.

3.6.4. As both units of M/s PSL, Hinjewadi and PSL, Erandawane had separate existing MTOA Agreements on the date of Notification of the DOA First Amendment Regulations, 2019. This clarification is necessary for MSEDCL, and the said Agreements expired at different times after such Notification (pursuant to the second Proviso to the Regulation 38.3 of the DOA Regulations, 2016 and DOA First Amendment Regulations, 2019.

3.6.5. As long as MSEDCL has the right to appeal, the charges that need to be paid on unutilised banked energy by MSEDCL to PSL will not apply because PSL has not raised an invoice to MSEDCL with the relevant taxes or duties to pay these charges. As a result, MSEDCL has not paid the invoice by the due date, so PSL will not be responsible for paying interest.

3.6.6. Therefore, in the absence of any invoice raised by PSL for their claim of payment and purchase of eligible unutilized banked units by MSEDCL for the period FY 2019-20 to FY 2022-23, the direction for payment of interest along with it by the Commission at this stage has no basis. Thus, it is an error apparent on the face of record, wherein interference is required by the Commission for appropriate rectification of the impugned order's direction.

3.7. Error apparent on the Face of the record:

3.7.1. The Commission had placed reliance on the below mentioned orders, even with respect to grant of "interest":

(i) Order dated 4 February 2022 in Case Nos. 100, 101, 121 and 122 of 2021 (*B.S. Channabasappa & Son and Others Vs MSEDCL*)

(ii) Order dated 11 March 2022 in Case No. 131 of 2021 (*Ghodawat Energy Vs MSEDCL*)

(iii) Order dated 30 July 2022 in Case No. 14 of 2022 (*Wind World VS MSEDCL*)

3.7.2. The factual matrix of the cases relied upon by the Commission while giving orders in the present case dated 31 March 2024 are not same as the factual matrix of the instant case.

3.7.3. The facts of the cases upon which the Commission placed its reliance clearly provides that in all the said cases, invoices were duly raised by the concerned Petitioner's to MSEDCL.

3.7.4. In the present case, PSL had never raised invoices for its claim.

3.7.5. The Commission had directed MSEDCL for payment of "interest" under an incorrect premise that despite the invoices being raised upon MSEDCL, it had failed to pay and as such PSL was entitled for the "interest", on the unpaid

amounts.

- 3.7.6. This appears to be an error apparent on the face of the record, as it was only vide impugned Order the claim of PSL towards principal amount was crystalized and based thereof the invoices are to be raised. Thereafter MSEDCL's is entitled to clear payment within the due date of the said Invoices without interest and only if the payments are not released by the due date, then only PSL would be entitled for "interest", evidently not before that.
- 3.7.7. The Commission vide order dated 04 February 2022 in Case No. 100, 101, 121 & 131 of 2021 (*B.S. Channabasappa & Son Vs MSEDCL*) had directed MSEDCL to streamline the process through a transparent mechanism and develop an online portal for purchase of Over-injected units. Accordingly, MSEDCL has developed the online portal for purchase of surplus energy/over injected units. The relevant circular was published on 16 June 2022.
- 3.7.8. The Non-Conventional Energy Portal of MSEDCL is fully operational and over injected energy invoices from April-2022 are accepted through online portal. The renewable energy generators, availing Open Access, who are eligible to claim for over injected units, have to mandatory submit their invoices through online portal.
- 3.7.9. PSL has failed to submit their over injected units invoices for FY 2022-23 through online portal.
- 3.8. MSEDCL has submitted all the above points in its reply in Case No. 146 of 2023.
- 3.9. In view of above, since the PSL has not submitted the Invoices for over-injected units for past period, therefore the "interest" will only be applicable after submission of invoices and expiry of due date thereof.
- 3.10. MSEDCL has also filed an application for condonation of delay of 28 days for filing the Petition. This delay was due to vetting and finalization of review Petition.
- 4. PSL in its reply dated 12 July 2024 stated:**
- 4.1. MSEDCL has not provided any cogent or valid reason or sufficient cause for the delay in filing the review petition. Therefore, its delay condonation application is liable to be dismissed.
- 4.2. There is no ground for filing the review petition by MSEDCL; therefore, the petition is liable to be rejected.
- 4.3. MSEDCL had enough opportunities to put across its submissions and arguments in the main petition. Further, the issue as regards calculations and invoices was raised by MSEDCL even earlier and it has already been considered by the Commission in detail in the said impugned Order.

- 4.4. MSEDCL's main allegation is that there is an error apparent towards the grant of "interest" in the said Order, in the absence of any invoice for the same. However, MSEDCL has failed to prove any self-evident error in the said Order and therefore there is no need for any interference by the Commission in the said Order.
- 4.5. It is to be noted that non-submission of invoices is not a new fact as the same was pleaded and considered by the Commission. After hearing rival submissions on this point along with other issues, the Commission has directed the payment of the principal amount plus interest by the Petitioner to the PSL based on legal provisions and settled positions of law.
- 4.6. PSL denies MSEDCL's contention that in the absence of any invoice raised by PSL for their claim of payment and purchase of eligible unutilized banked units by MSEDCL for the period FY 2019-20 to FY 2022-23, the direction for payment of interest along with it by the Commission at this stage has no basis and thus is allegedly an error apparent on the face of record, wherein interference is required by the Commission for appropriate rectification of the impugned order's direction.
- 4.7. As per the third proviso to Regulation 4.2.6 of DOA Regulations, 2014 and the 2nd proviso to Regulation 4.5 of the DOA Regulations, 2016, the Distribution Licensee shall pay interest at a rate equivalent to the Bank Rate of the Reserve Bank of India while returning the sum to the consumer, and therefore MSEDCL is bound by law to refund the amounts along with interest to the Respondent.
- 4.8. Further, the Commission has accepted the PSL's submission in the main petition, as noted in para. 8.13 of the impugned Order, that PSL was unable to raise detailed invoices and provide the exact calculations for Annexure C due to the non-availability of information about the actual cost of APPC or generic tariff.
- 4.9. It was MSEDCL's legal obligation to refund the improperly levied wheeling and transmission charges on over-injected units with interest as well as to purchase and make the payment of the eligible unutilised banked units with interest.
- 4.10. The distribution licensees like Adani Electricity Mumbai Ltd – Distribution Business (AEML-D) provide its consumers monthly credit for over-injected units.
- 4.11. In the impugned Order, the Commission has observed that there is no dispute on the principle of refund of the charges on over-injected units and also the purchase of the unutilised banked units, but the only dispute is as regards reconciliation for which PSL (i.e., Original petitioner) had shown readiness to sit together for reconciliation of its claims.
- 4.12. Since MSEDCL did not refund the improperly levied charges on over-injected units and did not purchase the eligible unutilised banked units in a timely manner, it is now bound to pay interest along with the principal amount.

- 4.13. When hearing a review petition filed against its own order or judgment, the Court does not rehear the case at hand, as it would in an appeal. The purpose of a review petition is limited to remedying an apparent error.
- 4.14. Under the garb of filing a review petition, a party cannot be permitted to repeat old and overruled arguments for reopening the conclusions arrived at in a judgment.
- 4.15. Several judgments of the Hon'ble High Court and Supreme Court have noted this point. In support of this submission, Petitioner referred In the case of *Union Of India vs Sandur Manganese & Iron Ores Ltd. & Ors* on 23 April, 2013.
- 4.16. In spite of this, MSEDCL has sought certain clarifications regarding the applicable Rate/Unit from PSL through the review petition.
- 4.17. It is improper and incorrect on MSEDCL's part to seek such clarifications in a review petition when the said issue has been already debated and considered by the Commission in the said Order.

5. At the e-hearing through video conferencing held on 25 October 2024:

- 5.1. MSEDCL re-iterated its submissions as made out in the Petition and further stated that
- (i) PSL has not submitted the Invoices for over-injected units for the past period, therefore the "interest" will only be applicable after the submission of invoices and the expiry of the due date thereof.
 - (ii) The Commission in the other similar Orders directed MSEDCL to pay the applicable interest on the unutilised banked units. In those cases, the Petitioners therein have raised the invoices and when MSEDCL has delayed the payments, the Petitioners in those cases were liable for the payment of interest amount.
- 5.2. PSL stated that MSEDCL has not filed the Review Petition within the timelines stipulated in the MERC (Transaction of Business and Fees and Charges) Regulations 2022. Further, PSL will abide by the Orders passed by the Commission.

Commission's Analysis and Rulings:

6. The Commission notes that in the impugned Order, the Commission has directed MSEDCL for payment and purchase of over-injected units along with applicable interest for FY 2019-20 to FY 2022-23. Through the present Petition, MSEDCL sought the review of the impugned Order on the ground that the PSL/Original Petitioner has not submitted the Invoices for over-injected units for the period from FY 2019-20 to FY 2022-23 and therefore the "interest" will only be applicable after the submission of invoices and expiry of due date thereof. MSEDCL has further contended that PSL has not submitted the invoices for the period FY 2019-20 to FY 2022-23 even though MSEDCL has allowed the facility for online submission of invoices. MSEDCL has also

raised the issues of clarifications on the rate for the purchase and payment of utilised banked energy and the applicability of DOA Regulations 2016 and its Amendments after the expiry of the MTOA agreements.

7. The Commission notes that the present Review Petition has been filed by MSEDCL under Regulation 28 of MERC (Transaction of Business and Fees and Charges) Regulations, 2022. The relevant extract of MERC (Transaction of Business and Fees and Charges) Regulations 2022 are as under:

“28. Review of decisions, directions, and orders:

- (a) Any person aggrieved by a direction, decision or order of the Commission, from which
 - (i) no appeal has been preferred or*
 - (ii) from which no appeal is allowed, may, upon the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the direction, decision or order was passed or on account of some mistake or error apparent from the face of the record, or for any other sufficient reasons, may apply for a review of such order, within Forty-Five (45) days of the date of the direction, decision or order, as the case may be, to the Commission.**
- (b) An application for such review shall be filed in the same manner as a Petition under these Regulations.*
- (c) Review application shall be decided, as far as practicable, by the same constitution of the Commission which passed the original order.*
- (d) The Commission shall for the purposes of any proceedings for review of its decisions, directions and orders be vested with the same powers as are vested in a civil court under the Code of Civil Procedure, 1908.*
- (e) When it appears to the Commission that there is no sufficient ground for review, the Commission may after giving such person an opportunity of being heard in the matter, reject such review application.*
- (f) When the Commission is of the opinion that the review application should be granted, it shall grant the same provided that no such application will be granted without previous notice to the opposite side or party to enable him to appear and to be heard in support of the decision or order, the review of which is applied for.”*

Thus, the ambit of review is limited, and the Petitions filed have to be evaluated accordingly.

8. As per the above-mentioned Regulations, the Review Petition is required to be filed within forty-five (45) days from the date of Order of the Commission. In the present case, the Impugned Order was issued on 31 March 2024, and the review Petition is required to be filed on or before 15 May 2024. MSEDCL filed the review Petition on 13 June 2024. Therefore, MSEDCL has requested the condonation of a delay of 28-days delay in filing the Petition and this delay was due to the vetting and finalisation of the review Petition. However, PSL has opposed the condonation of such delay.
9. In this context, the Commission notes that vide Order dated 17 November 2022 in Case No.132 of 2022 (*MSEDCL Vs Bhulani Steel*) has condoned the delay of 62 days for filing the Review Petition by MSEDCL. The relevant extract of the Order dated 17 November 2022 is as under:

“8. The Commission notes the submission of MSEDCL that a delay of 62 days for filing the review Petition, which was due to delay by MSEDCL for deciding whether the appeal or review should be preferred on the Original Order dated 21 April, 2022. There was a further delay on account of drafting and filing the review Petition before the Commission, by their advocates. MSEDCL has prayed for the condonation of delay for filing the review Petition. The Commission notes the delay for filing the review Petition is inadvertent and thus, condones the same.”

10. The Commission notes that the justification cited by MSEDCL for condonation of delay in the instant case is very general, routine and vague and normally the same should have been the reason to reject the Review Petition, as contended by PSL. However, in the interest of justice, and more-so considering the fact that the ground for review sought by MSEDCL was a law point concerning payment of interest amount on over-injected units when such invoices were not raised by PSL, the Commission condones the delay and is going into the merits of review petition of MSEDCL.
11. The Commission is now addressing the issues on the Review Aspects and clarifications aspects in the following part of the Order:

Review Issue No.1

12. MSEDCL has filed the review Petition on the aspect of considering the non-entitlement of “interest” over the principal amount payment w.r.t., the claim of over-injected/unutilised banked units for the period FY 2019-20 to FY 2022-23, in the absence of invoices raised by the PSL.
13. In support of its contentions, MSEDCL has contended that
 - 13.1. No invoice has ever been raised by PSL for their claim of payment and purchase of over-injected units /eligible unutilized banked units by MSEDCL for the period FY 2019-20

to FY 2022-23 and hence consequently the relief of interest thereof, is an evident error apparent in law and requires rectification.

- 13.2. The facts of the cases upon which the Commission placed its reliance clearly provides that in all the said cases, invoices were duly raised by the concerned Petitioner's to MSEDCL.
- 13.3. MSEDCL has developed the online portal for the purchase of surplus energy/over-injected units and the RE generators availing Open Access, who are eligible to claim for over-injected units, have to mandatorily submit their invoices through the online portal. PSL has failed to submit their over-injection unit invoices for FY 2022-23 through the online portal.
14. While opposing the Review, PSL has contended that:
 - 14.1. The issue as regards calculations and invoices was raised by MSEDCL even earlier and it has already been considered by the Commission in detail in the said impugned Order.
 - 14.2. MSEDCL's main allegation is that there is an error apparent towards the grant of "interest" in the said impugned Order, in the absence of any invoice for the same. However, MSEDCL has failed to prove any self-evident error in the impugned Order and therefore there is no need for any interference by the Commission in the impugned Order.
 - 14.3. Further, non-submission of invoices is not a new fact as the same was pleaded and considered by the Commission.
 - 14.4. Further, the Commission has accepted the PSL's submission in the main petition, as noted in para. 8.13 of the impugned Order, that PSL was unable to raise detailed invoices and provide the exact calculations for Annexure C due to the non-availability of information about the actual cost of APPC or generic tariff.
15. In this regard, it is imperative to note the following statutory provisions regarding the purchase of unutilised banked energy:
 - 15.1. Regulation 20.6 of DOA Regulations 2016 (notified in April 2016) provides that unutilised banked energy at the end of the financial year, limited to 10% of the actual total generation by the RE Generator in such financial year, shall be considered as deemed purchase by the Distribution Licensee at its Pooled Cost of Power Purchase for the respective year.
 - 15.2. Regulation 14 (F) of DOA First Amendment Regulations 2019 (notified on 7th June 2019) provides that unutilised banked energy at the end of the month, limited to 10% of the actual total generation by such RE Generator in such month, shall be considered as deemed purchase by the Distribution Licensee at a rate equivalent to that stipulated under yearly Generic RE Tariff Order for wind energy.

15.3. On perusal of the website of MSEDCL, it is observed that MSEDCL has issued Circulars, citizen charters and procedures from time to time for the purchase of surplus over-injected units. The details of the circulars /citizen charters and procedures are as under:

- (a) MSEDCL's circulars issued from time to time provides that surplus non-firm power from RE Generator, after setting off with OA Consumer's, consumption would be purchased by MSEDCL at APPC subject to fulfilment of the conditions. The RE Generator shall submit an undertaking to the MSEDCL field office to sell the surplus energy to MSEDCL at APPC. Also, the record of surplus energy units needs to be maintained monthly. Accordingly, the RE Generator has to raise the invoices. As per MSEDCL's Circular/Procedure, it is the responsibility of the Nodal officer of MSEDCL to make the payment to the RE Generator.
 - (b) Further, as per MSEDCL's Citizen Charter, MSEDCL has to act in time bound manner on the issue of RE Generators. The Superintending Engineer of the concerned Circle Office of MSEDCL has to deal with the issue of the payment to generators after receiving of invoices in timely manner.
 - (c) MSEDCL's procedure for Distribution OA provides for the purchase of non-firm RE, surplus energy at APPC. As per the said procedure, a tri-partite agreement between the RE generator, OA consumer and MSEDCL shall be executed within a period of one month from the date of issue of OA permission.
16. From the above provisions, it is clear that the unutilised banked energy shall be considered as deemed purchase by MSEDCL at the rates specified in the respective Regulations.
17. However, MSEDCL has raised the issue of review that as PSL has not submitted the Invoices for over-injected units/ eligible unutilised banked energy for FY 2019-20 to FY 2022-23, therefore the "interest" will only be applicable after submission of invoices and expiry of due date thereof.
18. On the issue of Review, the Commission in the impugned Order ruled as under:

"8.20. The Commission further notes the submission of MSEDCL that the Excel working calculation submitted by the Petitioner for eligible unutilised Banked units, does not provide the details of the applicable Rate/Unit and further it is mandatory to Petitioner to raise appropriate detailed invoicing document on MSEDCL for payment of such charges. In its Reply in the Rejoinder, the Petitioner stated that there may be some differences as regards the calculations at the Petitioner and MSEDCL's ends regarding the unutilized banked units and if MSEDCL has any issue with the calculations, the Petitioner is willing to sit together for reconciliation of the calculations.

8.21. The Commission notes that there is no dispute on the principle of purchase eligible unutilised banked units and only the dispute is with respect to reconciliation/ raising invoices/ non-availability of applicable rates of Purchase of unutilised banked Energy by MSEDCL for the period of FY 2019-20 to FY 2022-23, for which Petitioner is willing to sit together for reconciliation of its claims.

8.22. Considering the submission of the Parties as above, the Commission directs MSEDCL and Petitioner to sit together and reconcile the issue of purchase of eligible unutilised banked energy for the eligible claimed period of FY 2019-20 to FY 2022-23, as per applicable provisions of DOA Regulations.

8.23. In view of the above, the Commission needs to direct MSEDCL to purchase and make the payment of the eligible unutilised banked units, with applicable interest after verification, as per the applicable provisions of DOA Regulations for the period FY 2019-20 to FY 2022-23 within the two months from the date of this Order.”

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ORDER

1. The Petition in Case No.146 of 2023 is partly allowed.
2. The claims of the Petitioner for FY 2015-16 are time Barred, and the Petitioner is not liable for refund of improper wheeling and transmission charges recovered on over-injected units and payment of eligible unutilised banked units for the period FY 2015-16.
3. Maharashtra State Electricity Distribution Co. Ltd. (MSEDCL) and Petitioner are directed to sit together and reconcile on the issue of refund the improper wheeling and transmission charges on over-injected units recovered from the Petitioner and purchase of unutilised banked energy for the eligible claimed period of FY 2019-20 to FY 2022-23 within one month from the date of this Order.
4. MSEDCL to refund the improper wheeling and transmission charges on over-injected units recovered from the Petitioner for the period of FY 2019-20 to FY 2022-23, with applicable interest, within two months from the date of this Order. MSEDCL shall verify the claim made by the Petitioner before making the payment.
5. MSEDCL to purchase and make the payment of the eligible unutilised banked units, with applicable interest, after verification, as per the applicable provisions of MERC (Distribution Open Access) Regulations, 2016 and its first amendment for the period FY 2019-20 to FY 2022-23 within the two months from the date of this Order.

[Emphasis added]

19. The Commission in the impugned Order at Para 8.21 noted that the dispute was concerning reconciliation/ raising invoices/ non-availability of applicable rates of Purchase of unutilised banked Energy by MSEDCL for the period of FY 2019-20 to FY 2022-23, for which MSEDCL and Petitioner PSL directed to sit together and reconcile the issue of purchase of eligible unutilised banked energy for the eligible past period claim. The Commission in the impugned Order at Para 8.21 has clearly noted that the dispute was regarding the raising of invoices and hence directed Parties to sit-together and reconcile the issues.
20. Thereafter, in the operative part of the ruling paras. 3 and 5 of the impugned Order, the Commission had directed MSEDCL for the payment and purchase of over-injected units for the period FY 2019-20 to FY 2022-23 with applicable interest, based on the reconciliation of purchase of unutilised banked energy for the eligible claimed period of FY 2019-20 to FY 2022-23 within one month from the date of impugned Order.
21. It is imperative to note the Commission has not ruled in the impugned Order for payment of applicable interest without raising the invoice and its reconciliation for the payment. The Commission further notes that MSEDCL has issued Circulars, citizen charters and procedures from time to time for the purchase of surplus over-injected units/ unutilised banked units. Further, MSEDCL has developed an online portal for the purchase of surplus energy/over-injected units and the portal has been operational since April 2022. After following these circulars, RE Generators have to raise the invoices for surplus over-injected units/ unutilised banked units to MSEDCL, and after reconciliation, MSEDCL shall purchase the unutilised banked energy. The Commission further notes that the interest amount for the delay in the payment made for unutilised banked units is required to be paid for the delayed period, i.e. from the due date of payment till the actual date of payment. Therefore, it is evident that interest payments are only required upon the submission of invoices and the expiry of the due date thereof.
22. As regards to the submission of PSL:
- (i) The Commission has accepted the PSL's submission in the main petition, and the same is noted in para. 8.13 of the impugned Order, that PSL was unable to raise detailed invoices and provide the exact calculations for Annexure C due to the non-availability of information about the actual cost of APPC or generic tariff.
 - (ii) AEML-D provides its consumers monthly credit for over-injected units.
23. Considering these issues raised by PSL, the Commission, in the impugned Order, has directed MSEDCL and PSL to sit together and reconcile on the issue of the purchase of unutilised banked energy for the eligible claimed period of FY 2019-20 to FY 2022-23. The Commission also notes that the information/ details about surplus unutilised banked units are required for the payment and purchase of unutilised banked units and in order to have more clarity on this issue, MSEDCL has issued the circulars and citizens charter and also provided the online facility from April 2022.

24. Considering the foregoing, the Commission is of the view that this issue cannot be considered as an error apparent on the face of the record. Hence, a review of this issue is not sustainable concerning payment of applicable interest for the purchase of over-injected units for the period FY 2019-20 to FY 2022-23, in the absence of invoices raised by PSL.
25. The Commission notes the submission from MSEDCL, in which MSEDCL has itself conceded that, based on the invoice issued by PSL, MSEDCL is obliged to remit payment by the due date of the aforementioned invoices without incurring interest. It is only in the event that payments are not processed by the due date that PSL would be entitled to claim "interest," clearly not before this condition arises. In this context, it is crucial to emphasize that the interest accrued due to the delay in the payment for unutilized banked units is mandated to be paid solely for the period of delay, specifically from the due date of payment until the actual date of payment remitted by MSEDCL.
26. In view of the above, the Commission finds that as per the impugned Order, MSEDCL is required to pay the applicable interest if the payment of unutilised banked units for the period FY 2019-20 to FY 2022-23 is not released by the due date of payment stated in the invoices raised upon MSEDCL.

Review Issue No.2 :

27. MSEDCL has further sought for review the direction No.4 from the impugned Order with respect to applicability of interest on refund of wheeling and transmission charges on over-injected units. The Commission in the impugned Order has ruled as under:

“ ORDER

.....

4.MSEDCL to refund the improper wheeling and transmission charges on overinjected units recovered from the Petitioner for the period of FY 2019-20 to FY 2022- 23, with applicable interest, within two months from the date of this Order. MSEDCL shall verify the claim made by the Petitioner before making the payment.

5. MSEDCL to purchase and make the payment of the eligible unutilised banked units, with applicable interest, after verification, as per the applicable provisions of MERC (Distribution Open Access) Regulations, 2016 and its first amendment for the period FY 2019-20 to FY 2022-23 within the two months from the date of this Order.”

28. As regards the review of direction No. 4 of the impugned Order i.e., applicability of interest on refund of wheeling and transmission charges, the Commission notes that MSEDCL has not made any prayers regarding the review of this issue and also not elaborated on the issue. Further, the interest on refund of wheeling and transmission charges on open access transactions has to be paid by MSEDCL to PSL as MSEDCL has wrongly levied the wheeling and transmission charges which required to be refunded in

the provisions of the Regulations, and similar directions have been given by the Commission in the impugned Order.

29. It is also imperative to note that the Commission, through various Orders directed MSEDCL to refund the excess wheeling and transmission charges on open access transactions recovered by it along with applicable interest. The List of such Orders/cases wherein the Commission has passed the Orders is as under:

Table No. 1: Details of similar Orders issued by the Commission for a refund of wheeling and transmission charges on open-access transactions with interest.

S. N.	Details of Cases	Date of Order
1	Case No. 206 of 2017 (ATE Remand Back Matter)	20 January 2023
2	Case No. 109 of 2022 (AMJ Land Holdings Ltd. VS MSEDCL)	23 January 2023
3	Case No. 72 of 2023 (Tatysaheb Kore VS MSEDCL)	31 October 2023
4	Case No. 123 of 2023 (Imagicaa Vs MSEDCL)	1 February 2024
5	Case No. 146 of 2023 (Persistent Vs. MSEDCL)	31 March 2024
6	Case Nos. 206 of 2023 & Others (ICC Reality India Pvt. Ltd & Others Vs MSEDCL)	Common Order dated 18 June 2024
7	(Case Nos. 232 of 2023 & others) (Pragati Agencies & others Vs MSEDCL)	Common Order dated 11 November 2024

30. Hence, the Commission does not find any error on this aspect which would warrant a review of the impugned Order.

Clarifications Issue No.1 :

31. As regards the clarifications sought by MSEDCL that for the period from FY 2019-20 to FY 2022-23, PSL's Excel Working Calculation of the amount to be paid on eligible unutilised banked units does not clarify whether the applicable Rate/Unit is at the yearly Generic RE Tariff Order under Regulation 20 of DOA First Amendment Regulations, 2019 or at the Pooled Cost of Power Purchase under Regulation 20.6 of DOA Regulations, 2016.
32. In this regard, the Commission notes that the Commission has notified DOA Regulations 2016 on 30 March 2016 and DOA First Amendment Regulations 2019 was notified on 8 June 2019 and accordingly, the period of applicability of these Regulations are from their

dates of notifications. Further, these Regulations have provided different treatment for purchase and payment of the over-injected units. which is reproduced below:

DOA Regulations 2016 (Notified on 30 March 2016):

“ 20.6 .The unutilised banked energy at the end of the financial year, limited to 10% of the actual total generation by such Renewable Energy generator in such financial year, shall be considered as deemed purchase by the Distribution Licensee at its Pooled Cost of Power Purchase for that year:

DOA First Amendment Regulations 2019 (Notified on 8 June 2019):

“14.

.....

F...

“20.5. The unutilised banked energy at the end of the month, limited to 10% of the actual total generation by such Renewable Energy generator in such month, shall be considered as deemed purchase by the Distribution Licensee at a rate equivalent to that stipulated under yearly Generic RE Tariff Order applicable for respective technology.

33. Thus, the above Regulations provide for the purchase of unutilised banked energy-based on the date of notifications of the DOA Regulations and its Amendments and also provide rates for the purchase of unutilised banked energy. The details of the period and rates for the purchase of unutilised banked energy with respect to the different DOA Regulations 2016 and its Amendments are tabulated in the following table below:

Sr.No.	Period for purchase of unutilised banked energy	Applicability of Regulations	Rates for the purchase of unutilised banked energy
1	For the period from 30 March 2016 to 7 June 2019	DOA Regulations 2016 (Notified on 30 March 2016)	The unutilised banked energy purchased at APPC rate
2	From 8 June 2019 to 9 November 2023	DOA First Amendment Regulations 2019 (Notified on 8 June 2019)	The unutilised banked energy purchased at generic Tariff

34. The above clarification is self-explanatory, and no more clarification is required on this issue.

Clarifications Issue No.2:

35. The Petitioner contended that as both units of M/s PSL, Hinjewadi and PSL, Erandawane had separate existing MTOA Agreements on the date of Notification of the DOA (First

Amendment) Regulations, 2019, and the said Agreements expired at different times after such Notification (pursuant to the second Proviso to the Regulation 38.3 of the DOA Regulations, 2016 [as amended by DOA First Amendment Regulations, 2019].

36. In this context, it is imperative to note that MSEDCL has neither made any prayers regarding this clarification on this issue nor elaborated the issue in detail. MSEDCL has not provided the dates of separate MTOA agreements for M/s PSL, Hinjewadi and PSL, Erandawane and the dates of the expiry of these MTOA agreements.
37. In this regards, DOA Regulations 2016 and DOA First Amendment Regulations 2019 provides the provisions of transition period. The relevant extract of the DOA Regulations 2016 and DOA First Amendment Regulations 2019 are as below:

Provisions of DOA Regulations 2016 (notified on 30 March 2016)

“1.3. These Regulations shall come into force from the date of their publication in the Official Gazette.

.....

38. Repeal and Savings

Save as otherwise provided in these Regulations, the Maharashtra Electricity Regulatory Commission (Distribution Open Access) Regulations, 2014, shall stand repealed from the date of notification of these Regulations.

38.2. Notwithstanding such repeal, anything done or purported to have been done under the repealed Regulations shall be deemed to have been done or purported to have been done under these Regulations.

38.3 Consumers, Generating Stations or Licensees, as the case may be, availing Open Access to the Distribution System in Maharashtra on the date of coming into force of these Regulations under an existing agreement or contract shall be entitled to continue to avail such access on the same terms and conditions as stipulated under such existing agreement or contract

Provided that the provisions of these regulation relating to Banking under Regulation 20, the definition of Billing Demand, change in injection or drawal point under Regulation 26 and revision in Contract Demand under Regulation 4.2 shall be applicable to existing Open Access Agreements or contracts”

Provisions of DOA First Amendment Regulations 2019 (notified on 8 June 2019)

“1.2. These Regulations shall come into force from the date of their publication in the Official Gazette.

.....

16. Amendment in Regulation 38 of the Principal Regulations :

The provisos of existing Regulation 38.3 shall be amended as under :

“Provided that the provisions of these regulation, as amended from time to time relating to Banking under Regulation 20, the definition of Billing Demand, change in injection or drawal point under Regulation 26 and revision in Contract Demand under Regulation 4.2 with amendments thereof shall be applicable to existing Open Access Agreements or contracts.

Provided further that provision relating to Banking of the Principal Regulations shall continue to apply for existing Open Access Agreements or contracts as on date of notification of the first amendment of the Principal Regulations, till the expiry of the approved period for such OA transactions, beyond which provision relating to Banking under Regulation 20 of the first amendment of the Principal Regulations shall apply.”

38. The DOA Regulation 2016 and DOA First Amendment Regulations 2019 shall come into force from the date of their publication in the Official Gazette and the provisions of these Regulations relating to Banking, the definition of Billing Demand, change in injection or drawal point and revision in Contract Demand thereof shall apply to existing Open Access Agreements or contracts.
39. It is also imperative to note that on the similar issue of transition periods of DOA Regulations 2016 and DOA First Amendment Regulations 2019, MSEDCL has sought clarifications relating to the applicability of banking provisions in Case No. 196 of 2019. On this issue, Commission vide its Order dated 13 November 2019 in Case No. 196 of 2019 (*MSEDCL Vs IWPA*) has clarified that the provision relating to banking of the Principal DOA Regulations, 2016 shall continue to apply for the existing OA Agreements or contracts till the expiry of the approved period for such OA transactions/contracts/agreements and after expiry of the approved OA period, the provision relating to banking under Regulation 20 of the first amendment of the Principal DOA Regulations, 2016 shall apply. The relevant ruling of the Order is as under:

“ 10. In view of the foregoing discussion, the Commission deems it fit to reject MSEDCL’s contentions as raised in this clarificatory Petition. In accordance with 2nd Proviso to Regulation 16 of DOA (First Amendment) Regulations, 2019 the Commission clarifies once again that the provision relating to banking of the Principal DOA Regulations, 2016 shall continue to apply for the existing OA Agreements or contracts till the expiry of the approved period for such OA transactions/contracts/agreements. After expiry of the approved OA period, the provision relating to banking under Regulation 20 of the first amendment of the Principal DOA Regulations, 2016 shall apply.

11. Hence following Order:

ORDER

1. *The Case No. 196 of 2019 of Maharashtra State Electricity Distribution Co. Ltd. Alongwith MA no. 34 of 2019 filed by Indian Wind Power Association Maharashtra State Council, thereunder is disposed of in terms of Para 10 above.*
2. *The provision relating to banking of the Principal DOA Regulations, 2016 shall continue to apply for the existing OA Agreements or contracts till the expiry of the approved period for such OA transactions/contracts/agreements. After expiry of the approved OA period, the provision relating to banking under Regulation 20 of the first amendment of the Principal DOA Regulations, 2016 shall apply.*
40. The Commission in the above Order has already clarified that after the expiry of the approved OA period/contract/agreement, the provision relating to banking under Regulation 20 of the first amendment of the Principal DOA Regulations, 2016 shall apply and hence no more clarification would be needed on this issue.
41. **Hence, the following Order.**


ORDER

The Review Petition in Case No. 97 of 2024 is dismissed.

**Sd/-
(Surendra J. Biyani)
Member**

**Sd/-
(Anand M. Limaye)
Member**

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


**(Dr. Rajendra G. Ambekar)
Secretary**

