

**Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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Case No. 100 of 2024

**Case of TP Solapur Saurya Ltd , TP Arya Saurya Ltd and TP Ekadash Ltd. for
Incorrect levy of Wheeling Charges and Losses for energy generated from the Solar
Power Plants of the Petitioners**

1. TP Solapur Saurya Ltd.
2. TP Arya Saurya Ltd.
3. TP Ekadash Ltd.

....Petitioners

V/s

1. Maharashtra State Electricity Distribution Co. Ltd. (MSEDCL)
2. Maharashtra State Electricity Transmission Co. Ltd. (MSETCL)
3. Tata Power Trading Company Ltd.(Tata Power Trading /TPTCL)
4. Tata Steel Company Ltd. (Tata Steel / TSCL)
5. Neosym Industry Ltd. (Neosym / NIL)
6. Fenace Auto Ltd. (Fenace Auto/ FAL)
7. Tata Power Renewable Energy Ltd. (TPREL)

.....Respondents

Coram

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

Appearance

For Petitioners

:Adv. Shri Venkatesh

For MSEDCL

:Adv. Harinder Toor

For MSETCL

: Mr. Peeyush Sharma (Rep.)

ORDER

Date: 20 March 2025

1. TP Solapur Saurya Ltd , TP Arya Saurya Ltd and TP Ekadash Ltd. (**Petitioners / Solar Generators**) have filed Petition on 14 June 2024 for the Incorrect levy of Wheeling Charges and Losses for energy generated from the Solar Power Plants of the Petitioners. The Petition has been filed under Sections 86 (1) (e) and (f) of the Electricity Act (**EA/ Act**) 2003.
2. **Petitioners's main prayers are as follows:**

“
 - (a) *To admit the Petition;*
 - (b) *Declare that MSEDCL cannot levy wheeling charges and losses if the energy is injected directly into the transmission system.*
 - (c) *Set aside the Impugned Invoices raised by MSEDCL qua the Wheeling Charges and Losses;*
 - (d) *Direct MSEDCL not to levy Wheeling Charges and Losses for the energy supplied by the Petitioners to TSL, NIL and FAL;*
 - (e) *Direct MSEDCL to reimburse the respective amounts levied upon TSL ,NIL and FAL towards wheeling charges during the months of May 2023 to March 2024, as prayed for, along with applicable LPS;*
 - (f) *Direct MSEDCL to adjust the units deducted towards wheeling losses during the months of May 2023 to March 2024, as prayed for, in the next billing cycle of TSL, FAL and NIL respectively, as applicable;”*
3. **The Petition states as follows:**
 - 3.1. The present Petition has been filed by the three Petitioners, i.e., Petitioner No. 1/TP Solapur Saurya Ltd. (**TPSSAU/ TP Solapur Saurya**), Petitioner No. 2/TP Arya Saurya Ltd. (**TPASL / TP Arya Saurya**) and Petitioner No. 3/TP Ekadash Ltd. (**TPEL/ TP Ekadashi**).
 - 3.2. The Petitioners are Special Purpose Vehicles (**SPV**) of Respondent No. 7/Tata Power Renewable Company Ltd (**TPREL**) and commissioned the Solar Power Generating Station plant. Further, various Open Access (OA) Consumers sought OA for sourcing power the Solar Generators. The details of the Solar Power Generating Station and OA consumers are as below:

Table No.1 Details of the Solar Power Generating Station and OA Consumers

Sr.No.	Name of Solar Power Generating Stations	Details of Solar Power Generating Stations	Details of Open Access consumers
1	Petitioner No. 1/TP Solapur Saurya Ltd. (TPSSAU/ TP Solapur Saurya),	<ul style="list-style-type: none"> TPSSAU commissioned Solar Power Plant on 31 March 2023 with a capacity of 8.4 MW located at Akkalkot Dist: Solapur (TPSSAU Project). 	<ul style="list-style-type: none"> Tata Steel Company Ltd (TSCL/ Tata Steel) Tarapur , Boisar Dist: Palghar connected at 132 kV
2	Petitioner No. 2/TP Arya Saurya Ltd. (TPASL / TP Arya Saurya)	<ul style="list-style-type: none"> TPASL commissioned Solar Power Plant on 10 June 2023 having a capacity of 12.5 MW located at Himayatnagar Dist: Nanded. (TPASL Project) 	<ul style="list-style-type: none"> Neosym Industry Ltd. (NIL/ Neosym) Shirur Dist: Pune connected at 132 kV
3	Petitioner No. 3/TP Ekadash Ltd. (TPEL/ TP Ekadash).	<ul style="list-style-type: none"> TPEL commissioned Solar Power plant on 20 June 2023, with a capacity of 8.8 MW located at Himayatnagar Dist: Nanded (TPEL Project) 	<ul style="list-style-type: none"> Fenace Auto Ltd. (FAL / Fenace Auto) Doud Dist: Pune Connected At 132kV

- 3.3. The Petitioners are constrained to file the present Petition as MSEDCL has incorrectly levied wheeling charges amounting to Rs. 1.54 Cr (approx.) and deducted units towards wheeling losses of 2.10 MUs (approx..) collectively on the supply of power from the Petitioners during the relevant period even though the Petitioners are directly connected to MSETCL's transmission network and have not used the distribution system of MSEDCL.
- 3.4. Such levy on the part of MSEDCL is arbitrary and is in clear contravention of the definition of 'Wheeling Charges' under Section 2(76) of EA 2003 and Regulation 14.6(b) of the Distribution Open Access Regulation (First Amendment) Regulations, 2019 (DOA First Amendment Regulations 2019) which categorically specify that wheeling charges can only be levied by the distribution licensees if its distribution system is used.
- 3.5. Further, such levy is against the settled law that wheeling charges cannot be levied if the Distribution System of a distribution licensee is not being used.

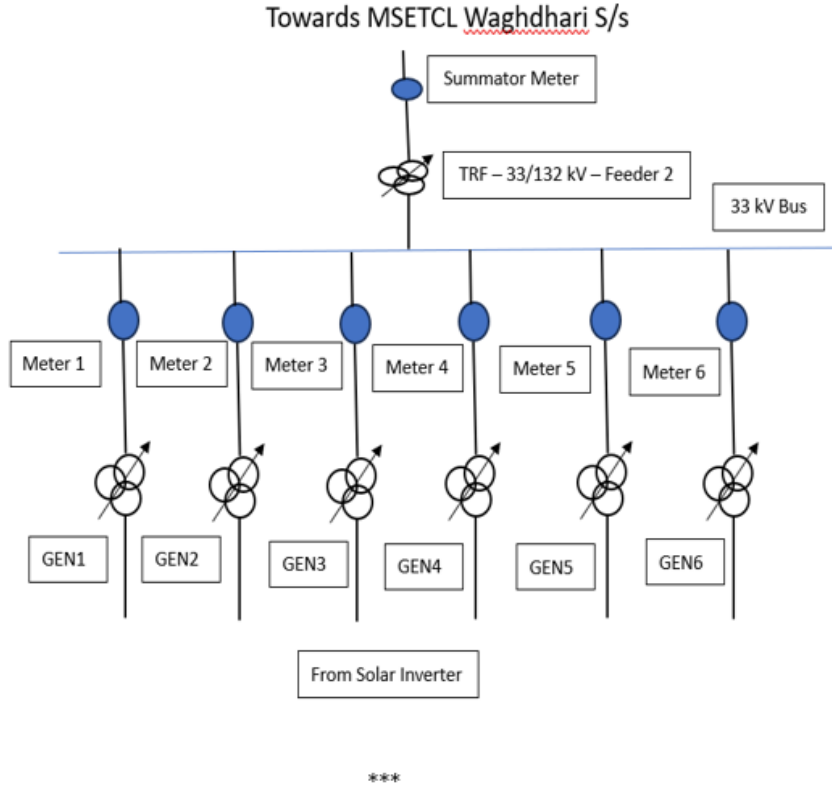
- 3.6. Moreover, the Commission in its common Order dated 27 December 2023 in Case No. 151 of 2023 & others (**Wheeling Charges Order dated 27 December 2023**) (**Jubilant & Others VS MSEDCL**) has categorically held and clarified that MSEDCL cannot levy wheeling charges if the Generating Station is not connected to its Distribution System.
- 3.7. As stated above, the Petitioners are not connected to MSEDCL's Distribution System and hence MSEDCL ought not to levy Wheeling Charges.
- 3.8. Accordingly, on 25 June 2024, the Petitioners wrote letters to MSEDCL stating that MSEDCL has incorrectly levied wheeling charges and losses upon the respective EHV Consumers of the Petitioners, i.e., Tata Steel Limited (**TSL/Respondent No. 4**), Neosym Industries Limited (**NIL/Respondent No. 5**), Fenace Auto Limited (**FAL/Respondent No. 6**). However, MSEDCL has not taken any remedial measures or even responded to the said Letters.
- 3.9. The details of facts related to TPSSAU (TP Solapur Saurya Ltd) are as below:

S.N.	Dates	Particular of events
1		<ul style="list-style-type: none"> The total capacity of the Solar Power Park owned by TPREL is 120 MW. In order to evacuate power, TPREL commissioned and installed a dedicated line of 33 / 132 KV which is connected to the transmission grid at MSETCL's 132 kV Waghdhari Substation Feeder No. 2.
2	27 May 2021	<ul style="list-style-type: none"> TPREL incorporated its Special Purpose Vehicle (SPV), i.e., TPSSAU, to develop an 8.4 MW Solar Power Generation Station at its Solar Power Park at Village Gholasgaon & Kirankali, Akkalkot Taluka, Dist: Solapur.
3	2 September 2022	<ul style="list-style-type: none"> MSETCL issued a letter to TPREL granting approval for grid connectivity to its Solar Power Park of 120 MW located at Akkalkot. The relevant extract of the said approval is reproduced below: <ul style="list-style-type: none"> <i>"In context to above subject, this office has issued Final Grid Connectivity to 120 MW Solar Power Park of M/s. Tata Power Renewable Energy Ltd. at Village: Gholasgaon & Kirankali, Tal: Akkalkot, Dist.: Solapur at <u>MSETCL's 132/33 kV Waghdari Substation at 132 kV level</u>"</i> Therefore, it is clear as per the Grid Connectivity approval granted to TPREL that it is connected to the State Transmission Grid at MSETCL's 132 kV Waghdhari

		Substation Feeder No. 2 through a dedicated line of 33 /132 KV, which is commissioned and installed by TPREL.
4	09 January 2023	<ul style="list-style-type: none"> TPSSAU and TPTCL executed a Power Purchase Agreement (PPA) in respect of TPSSAU Project for supply of 8.4 MW of power for a period of 01 February to 31 March 2023 which was subsequently extended by mutual agreement between the parties
5	31 March 2023	<ul style="list-style-type: none"> The TPSSAU Project was commissioned.
6	5 April 2023	<ul style="list-style-type: none"> MSETCL issued a Commissioning Certificate dated 05 April 2023 which states that the TPSSAU Project is “<i>Connected at 132/33 kV TPREL Pooling Substation at 33 kV voltage level</i>”.
7	In May 2023 to July 2023	<ul style="list-style-type: none"> The power from the TPSSAU Project was supplied to TPTCL which in turn supplied it to TSL who is an ‘EHV’ Open Access third party consumer located in the licence area of MSEDCL.

(i) A single line diagram of the said arrangement is as shown below:

SINGLE LINE DIAGRAM FOR TPSSAU PROJECT



- (ii) Notably, the dedicated line and the infrastructure arrangement of the said 33/ 132 KV up till the injection point is owned by TPREL. Therefore, the power generated from the TPSSAU Project is injected directly into the MSETCL's Substation and no network of MSEDCL is being used to wheel power into the Transmission Grid.
- (iii) However, MSEDCL, while issuing monthly Bills to TSL (i.e., EHV Consumer) and giving credit of the power, is levying additional wheeling charges and wheeling losses even though MSEDCL's distribution network has not been used and power is being directly injected into the grid [i.e., 132 kV level at MSETCL's Substation]. The details of Wheeling Charges and Wheeling Losses levied by MSEDCL are tabulated below:

Table 1 – Wheeling Charges levied by MSEDCL (in Rs)

Sr No	Generator	May-2023	Jun-2023	Jul-2023	Total
1	TPSSAU	10,78,485	9,10,920	5,87,713	25,77,118

Table 2 – Wheeling Losses levied by MSEDCL:

Month	OA Adjustment	Units After Distribution	Distribution losses
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	Units (kWh)	Loss (kWh)	Units (kWh)
May-2023	17,72,310	16,39,387	1,32,923
Jun-2023	16,73,167	15,47,679	1,25,488
Jul-2023	10,80,598	9,99,553	81,045
Total	45,26,075	41,86,619	3,39,456

(iv) As detailed in the above table, MSEDCL has levied wheeling charges of Rs. 25,77,118/- and deducted 3,39,456 units towards Wheeling Losses from May 2023 to July 2023 in respect of the energy injected from the TPSSAU Project and ultimately supplied to TSL.

3.10. The details of facts pertaining to TPASL (TP Arya Saurya Ltd.) are as below:

S.N.	Events	Particulars of Events
<u>1</u>	06 September 2022	<ul style="list-style-type: none"> TPREL incorporated its SPV, i.e., TPASL, to develop a 12.5 MW Solar Power Generation Station at its Solar Power Park at Himayatnagar, Himayatnagar Taluka, Dist: Nanded. The total capacity of the Solar Power Park owned by TPREL is 70 MW. In order to evacuate power, TPREL commissioned and installed a dedicated line of 33 / 132 KV which is connected to the transmission grid at MSETCL's 132/33 kV Himayatnagar Substation.
2	30 June 2022	<ul style="list-style-type: none"> MSETCL issued a letter to the TPREL and granted approval for grid connectivity to the Solar Power Park of TPREL situated at Himayatnagar. As per the said Grid Connectivity, the Solar Power Park of TPREL is connected to 132/33 kV Himayatnagar Substation at 132/33 kV Level.
3	10 June 2023	<ul style="list-style-type: none"> TPASL Project was commissioned
4	12 June 2023	<ul style="list-style-type: none"> MSETCL issued a Commissioning Certificate which states that the "<i>solar power park of 70 MW connectivity at 132/33 kV Himayatnagar substation...has successfully commissioned</i>".
5	07 August 2023	<ul style="list-style-type: none"> TPASL and TPTCL executed a PPA in respect of TPASL Project for supply of 12.5 MW of power for a period of September, 2023 to December, 2023 which shall be

S.N.	Events	Particulars of Events
		extended further as mutually agreed
6		<ul style="list-style-type: none"> During September 2023 to March-2024, the power from the TPASL Project was supplied to TPTCL which in turn supplied it to NIL (and to TSL for December-2023), who are both 'EHV' Open Access third party consumers located in the licence area of MSEDCL
7		<ul style="list-style-type: none"> MSEDCL has levied wheeling charges of Rs. 86,07,608/- and deducted 11,95,056 units towards Wheeling Losses from September 2023 to March 2024 in respect of the energy injected from the TPASL Project.

3.11. The details of facts pertaining to TPEL (. TP Ekadash Ltd.) are as below:

S.N.	Events	Particulars of Events
1	20 June 2023	<ul style="list-style-type: none"> TPEL Project was commissioned.
2	21 June 2023	<ul style="list-style-type: none"> MSETCL issued a Commissioning Certificate dated 21.06.2023. It is noteworthy that the Commissioning Certificate states that the <i>“solar park of 70 MW connectivity at 132/33 kV Himayatnagar substation ... has successfully commissioned at Generated end ... on 20.06.2023”</i> .
3	30 June 2022	<ul style="list-style-type: none"> MSETCL issued a letter to the TPREL and granted approval for grid connectivity to the Solar Power Park of TPREL situated at Himayatnagar. As per the said Grid Connectivity, the Solar Power Park of TPREL was connected to 132/33 kV Himayatnagar Substation at 132/33 kV Level.
4	7 August 2023	<ul style="list-style-type: none"> TPEL and TPTCL executed a PPA in respect of TPEL Project for supply of 8.8 MW of power for a period of 01.09.2023 to 30.09.2023 which shall be extended further as mutually agreed.
5	During September 2023 to	<ul style="list-style-type: none"> The power from the TPEL Project was supplied to TPTCL which in turn supplied it to NIL & TSL who are an 'EHV' Open Access third party consumer located in the licence

S.N.	Events	Particulars of Events
	October 2023	area of MSEDCL.
6	November 2023 onwards	<ul style="list-style-type: none"> Subsequently, , power from TPEL was supplied to FAL who is an EHV Open access Consumer of TPEL located in license area of MSEDCL and connected to Baramati Rural Circle at 132 kV level.
7		<ul style="list-style-type: none"> MSEDCL, while issuing monthly Bills to NIL ,TSL & FAL (i.e., EHV Consumers of TPEL) and giving credit of the power, is levying additional wheeling charges and wheeling losses even though MSEDCL's distribution network has not been used and power is being directly injected into the grid [i.e., 132 kV level at MSETCL's Substation]. MSEDCL has levied wheeling charges of Rs. 42,54,244/- and deducted 5,66,848 units towards Wheeling Losses from September 2023 to March 2024 in respect of the energy injected from the TPEL Project.

Wheeling charges and losses are not payable as per regulation 14.6(b) of the MERC (Distribution Open Access) Regulations (DOA Regulations 2016)

3.12. As evident from the above factual background, it is evident that the TPSSAU Project, TPASL Project and TPEL Project are directly connected to the transmission network of MSETCL without using any distribution network of MSEDCL.. As such, none of the Petitioners are using MSEDCL's Distribution Network.

3.13. Regulation 14.6 of the DOA First Amendment Regulations 2019 provides for the levy of Wheeling Charges which is reproduced as below:

“14.6 Wheeling Charge :

...

b. “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 center without any interconnection with distribution system.”

3.14. From a bare perusal of Regulation 14.6 of DOA First Amendment Regulations 2019, wheeling charges are not applicable if the following factors are satisfied: -

- (a) A consumer/generating station is connected to the Transmission System directly.
- (b) There is no interconnection with the distribution system.

3.15. The SOR of DOA First Amendment Regulations 2019 clearly provides as follows:

- (c) Exemption in wheeling charge is allowed where generator and the consumer in the Open Access Transaction are both directly connected to the transmission system.
- (d) As wheeling charges are paid for using distribution network, consumers or generators who are directly connected to transmission system which is not maintained by Distribution Licensee are not required to pay wheeling charges.

Wheeling charges and losses are not payable if the distribution system is not used

3.16. The rationale behind Regulation 14.6(b) is that a consumer/generating station should not be burdened with wheeling charges if it is not using the distribution system of the distribution licensee. In this regard, it is relevant to take note of Section 2(76) of the Act which defines “wheeling” in the following manner: -

“(76) “wheeling” means the operation whereby the distribution system and associated facilities of a transmission licensee or distribution licensee, as the case may be, are used by another person for the conveyance of electricity on payment of charges to be determined under section 62”

3.17. It is clear from a bare perusal of Section 2(76), it becomes clear that “wheeling” only takes place if the distribution system of the distribution licensee is used. Consequently, wheeling charges are payable to MSEDCL only when the distribution system of MSEDCL is being used.

3.18. The Hon’ble Appellate Tribunal for Electricity (**APTEL**) in ‘*Kalyani Steels Limited v. Karnataka Power Transmission Corporation Limited*’, 2006 SCC OnLine APTEL 19 has held that liability to pay wheeling charges arises only when a distribution system is used,

3.19. Further, the Hon’ble APTEL in ‘*Steel Furnace Association of India v PSERC & Ors.*’, 2014 SCC OnLine APTEL 146 has also held wheeling charges cannot be levied on a consumer who is connected to a transmission network and who is not using the distribution network.

3.20. The above case law decided by the Hon’ble APTEL is pertinent while deciding the present dispute as the Hon’ble APTEL considered the following while holding that Wheeling Charges are not applicable:

- (i) In terms of Section 2(76) of the Act, Wheeling is the use of distribution system and its associated facilities. Therefore, Wheeling Charges can only be levied if such system is being for supply of power.

(ii) The Hon'ble Tribunal made reference to its earlier judgment in Kalyani Steel (Supra), wherein it was seen that the consumer was an EHT consumer directly connected to the transmission system for availing power supply. Even though it was a consumer of the distribution licensee it was physically not using the distribution system of the Distribution Licensee. The Hon'ble Tribunal, accordingly, held that the consumer was not liable to pay wheeling charges when it was availing power through open access.

(iii) Further, after analysing the scheme of the Act, Tariff Policy and the dictum of the Hon'ble Tribunal in Kalyani Steel (Supra), the Hon'ble Tribunal came to the conclusion that levy of wheeling charges on consumers directly connected to the transmission system of the transmission licensee and not using the distribution system of the distribution licensee for conveyance of electricity is liable to be set aside.

3.21. In addition to the above, the Commission in its Order dated 10 February 2012 passed in Case No 78 of 2011 has dealt with the issue of applicability of wheeling charges and wheeling losses in such cases and has held that wheeling charges are not payable to MSEDCL, and wheeling losses are not applicable if MSEDCL's distribution system is not being used.

3.22. In view of the above settled position, Section 2(76) of the Act & Regulation 14.6(b) of the DOA First Amendment Regulations 2019 it is clear that Wheeling Charges and Losses are not applicable to the present Open Access transactions.

Wheeling charges cannot be levied in view of Order dated 27 December 2023

3.23. The Commission passed the Wheeling Charges Order dated 27 December 2023 and unequivocally clearly held that MSEDCL cannot levy wheeling charges and wheeling losses if the Generating Station is not connected to its Distribution System. As stated above, the Petitioners are not connected to MSEDCL's Distribution System and hence MSEDCL ought not to levy Wheeling Charges or Wheeling Losses.

3.24. The Commission in Order dated 27 December 2023 came to the following conclusion:

(a) In the said case, the Power Sub-Station ("PSS") and the Power Evacuation Lines were developed by Solar Power Developers ("SPD"). Specifically, under the OA transaction, the 33 kV Bus connecting to 132/33 kV PSS and further connecting to 220 kV/132 kV MSETCL's Substation were owned by SPD. Thus, the entire power evacuation infrastructure from the Generating Station up to MSETCL's GSS was owned by SPDs. (*Relevant Para 33*)

(b) Further, the 33 kV/132 kV Power Evacuation lines connecting the Generating Stations to MSETCL's Transmission System qualified as DTL. (*Relevant Para 42*)

- (c) It was clear from the DOA Regulations that DTL are not part of transmission network. As wheeling charges are paid for using distribution network, consumers/generators who are directly connected to transmission system which is not maintained by Distribution Licensee are not required to pay wheeling charges. *(Relevant para 39)*
- (d) Apart from aforementioned, the Commission has also considered the fact that under the OA Transaction in question, a point of connection at consumer premise was interfaced with metering facilities of distribution licensee.
- (e) In this regard, the Commission held that it could not be stated that just because a point of connection at consumer premises is interfaced with metering facilities of distribution licensee, the said 33 kV line would form part of Distribution System. *(Relevant Para 47)*
- (f) In view of the factual circumstances, it was clear that MSEDCL's Distribution System was not being used. Therefore, MSEDCL could not have levied Wheeling Charges and Wheeling Losses. *(Relevant Para 64)*. Therefore, the Commission directed MSEDCL to refund wheeling charges along with applicable interest. *(Relevant Para 64)*

3.25. In view of the afore-mentioned decision of the Commission, it is clear that the MSEDCL has wrongly levied the Wheeling Charges and Wheeling Losses as the Petitioners are not using MSEDCL's distribution system.

3.26. The present Petition has been filed in respect of Invoices raised by MSEDCL during the period May 2023 to March 2024. However, in case the MSEDCL raises any further Invoices during the pendency of the present Petition, the Petitioners seeks liberty to amend/modify the present Petition suitably at the appropriate time as and when such Invoices are raised.

4. MSEDCL, in its reply dated 7 October 2024 stated as under:

- 4.1. TPSSL is having 8.4MW Solar Generator situated in 120 MW Solar Park developed by TPREL at Gholasgaon & Kirnali, Tal. Akkalkot, Dist. Solapur. 120 MW solar park is connected using 132 KV feeder No -1 & 2 at 132/33 KV Substation Waghdari S/S. 62.5 MW Poolwadi Generator is connected through 132 KV Feeder No. 01. Remaining generators, including TPSSL's 8.4MW Solar Plant is connected through 33/132 KV Pooling S/s at 132 KV Feeder No 2 at Waghdari S/S.
- 4.2. TP Ekadash - 8.8 MW and TP Arya Saurya Ltd - 12.5 MW Ltd are generators situated in 70 MW Tata Power Renewable Energy Solar Park at Karla, Himayatnagar Dist Nanded. 70 MW solar park is connected using 132 KV feeder at 132/33 KV Substation Himayatnagar S/S. All the generators are connected through 33/132 KV Pooling S/s at

132 KV Feeder at Himayatnagar S/S.

- 4.3. It is worthwhile to refer to the definitions which are important for due adjudication of the present matter:

19. “Distribution System” 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;

...

47. “Open Access” means the non-discriminatory provision for the use of transmission lines or distribution system or associated facilities with such lines or system by any licensee or consumer or a person engaged in generation in accordance with the regulations specified by the Appropriate Commission;

...

76. “Wheeling” means the operation whereby the distribution system and associated facilities of a transmission licensee or distribution licensee, as the case may be, are used by another person for the conveyance of electricity on payment of charges to be determined under section 62;

As per DOA regulations,

“14.6 Wheeling Charges”

...

*b. “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.”*

- 4.4. Section 2 (19) of EA, 2003 envisages distribution system as under:

- (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.

- 4.5. Both Section 2(47) and Section 2(76) of the EA, 2003 expansively construe distribution system with associated facilities also.
- 4.6. 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 system of wires and associated facilities thereof, is to enable distribution or supply of electricity.
- 4.7. It is providing auxiliary power supply on 33 kV level to groups of solar power projects situated in the Solar Park. MSEDCL also provides energy metering specification (through special energy meter [SEM]) for (i) evacuation, and (ii) auxiliary power supply at single point connectivity to said groups of solar power projects.
- 4.8. Its Point of Supply for such auxiliary power supply is encompassed by the First Proviso to Regulation 2.2.2 (mm) of MERC (Electricity Supply Code and Standards of Performance of Distribution Licensees including Power Quality) Regulation, 2021. The First Proviso to said Regulation 2.2.2 (mm) provides that in case of HT and EHV Consumers, the Point of Supply means the point at the outgoing terminals of the Distribution Licensee's metering cubicle placed before such HT and EHV Consumer's apparatus.
- 4.9. MSEDCL is providing of such auxiliary power supply and energy metering thereof, are associated facilities under Section 2(19) of EA, 2003, and extend de jure the distribution system of MSEDCL to the Point of Supply for such auxiliary power supply.
- 4.10. The distribution system of MSEDCL (including, in particular, the associated facilities of its distribution network) are used by the Petitioners for the conveyance of electricity.
- 4.11. Under Regulation 14.6 (a) of the DOA Regulations, 2016, an Open Access Consumer or Generating Station using a Distribution System is required to pay Wheeling Charges to the Distribution Licensee.
- 4.12. It is pertinent to note that even under the SOR to DOA First Amendment Regulations, 2019 and TOA First Amendment Regulations, 2019, the Commission at Para 15.3 and internal page 34 have analysed and explained inter alia as follows:

“Regarding ambiguity of applicability of wheeling charges, it is clarified that 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.”

- 4.13. In this context, Section 2(16) of the EA, 2003 defines dedicated transmission lines, as follows:

(16) "dedicated transmission lines" means any_ electric supply-line for point-to-point transmission which are required for the purpose of connecting electric lines or electric plants of a captive generating plant referred to in section 9 or generating station referred to in section 10 to any transmission lines or sub-stations or generating stations, or the load centre, as the case may be;

4.14. As abovementioned, 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) of the DOA Regulations, 2016.

4.15. Wheeling Charges are not excluded under Regulation 14.6 (b) 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.

4.16. The Generating Station or the Consumer in the OA transaction are both not directly (i.e., indirectly) connected to the transmission system.

4.17. In view of the afore-stated legal position, the Consumer is due and liable to pay the Wheeling Charges to MSEDCL under Regulation 14.6 (a) of the DOA Regulations, 2016.

4.18. In the circumstances and for the reasons afore stated, the recovery of the wheeling charges from the Petitioners are lawful and justified. The present Case filed by Petitioners deserve to and should be discredited and dismissed with costs.

4.19. The Hon'ble Supreme Court vide Judgment dated 29 November 2019 passed in *Transmission Corporation of Andhra Pradesh Limited versus M/S Rain Calcining Limited & Ors.*, (2021) 13 SCC 674., has held that all persons using the distribution system should bear the system losses. The relevant para of the said judgment is reproduced as below:

62. The use of the system cannot be isolated from losses in the system as they form an integral part of the system. All persons using the system should bear the system losses, whether technical or non-technical. Incidentally, the terms of a

licence issued by APTRANSCO and DISCOMS specifically refer to deliver such electricity, adjust losses of electricity to a designated point. Technical losses in the system to be taken into account as these are also an integral part of the system. It is an integrated system where the electricity is supplied on displacement basis rather than direct conveyance of the particular electricity which is generated, the technical losses upto the voltage level at which the electricity is delivered along cannot be measured. The technical losses of the total system need to be taken into account as it is impossible to determine from which source electricity is being supplied to which particular customer. The electricity from all sources gets combined in the system and loses its identity. As investment in the system has also been made, it was evident that requisite charges have to be paid.

4.20. Thus, in view of the above submissions, it is apparent that 33KV line is part of the MSEDCL's infrastructure and thus, the wheeling charges are applicable to the Petitioner.

4.21. Accordingly, the case laws relied upon by the Petitioner are not applicable in the facts and circumstances of the case in hand.

5. MSETCL in its Reply dated 10 October 2024 stated as under:

5.1. As per TPREL request, STU has issued the Final Grid Connectivity to 120MW Solar Power Park proposed by TPREL at Village: Gholasgaon & Kirankali, Tal.: Akkalkot, Dist.: Solapur.

5.2. This project is interconnected at MSETCL's 132/33kV Waghdari Substation at 132kV level with following Scope of work carried out by developer at their own cost:

- (i) Establishment of 132/33kV Pooling Substation at Solar Project Site. (To be Owned, Operated and Maintained by TPREL.
- (ii) Construction of 132kV Double circuit line from 132kV Solar Project substation to MSETCL's 132/33kV Waghdari substation with bays on both sides.

5.3. Thereafter TPREL vide letter dated 17 August 2022 has requested STU to revise the capacities in view of customer allocation and requested to modify the power flows as 57.5MW through Ckt-I which is connected to 132 kV Naldurg side bus portion and 62.5MW through Ckt-II which is connected to 132 kV Akkalkot side bus portion at Waghdari Substation.

5.4. Accordingly, STU vide letter dated 02 September 2022 has issued the Final Grid Connectivity to 120 MW Solar Power Park proposed by TPREL for revision in power flow capacity as mentioned above.

- 5.5. As per TPREL request, STU vide letter dated 30 May 2023 has issued the Final Grid Connectivity to 70 MW Solar Power Park proposed by TPREL at Village: Himayatnagar, Karla, Tal.: Himayatnagar, Dist.: Nanded.
- 5.6. This project is interconnected at MSETCL's 132/33kV Himayatnagar Substation at 132kV level with following Scope of work carried out by developer at their own cost:
- (i) Establishment of 132/33kV Pooling Substation at Solar Project Site. (To be Owned, Operated and Maintained by M/s. Tata Power Renewable Energy Ltd.)
 - (ii) Construction of 132kV Single circuit line from 132kV Solar Project substation to MSETCL's 132/33kV Himayatnagar substation with bays on both sides.
- 5.7. It is to point out that, Petitioners in its Petition at various places is mentioned that project is connected through the dedicated line of 33/132 kV or it is mentioned that TPREL commissioned and installed a dedicated line of 33/132KV which is connected to the transmission grid.
- 5.8. In this context, it is important to note that the interconnection of both the SPPs is at the 132kV level of MSETCL substation hence, the construction of a 132kV single or double circuit line from the 132kV Solar Project substation to MSETCL's 132/33kV Himayatnagar or Waghdari substation is included in the scope of developer. The scope does not cover internal 33kV feeders, which is the developer's responsibility.
- 5.9. Further, Petitioners in its Petition mentioned that commissioning certificate is issued by MSETCL. However, the said certificates are issued by MSEDCL.
6. **Petitioners in its Rejoinder dated 14 October 2024 stated as under:**
- 6.1. Petitioners in its Petition had sought the quashing of Invoices raised by MSEDCL during the period of May 2023 to March 2024.
- 6.2. Thereafter, MSEDCL has subsequently continued to levy wheeling charges amounting to Rs. 28.82 Lakhs and deducted losses of 4.05 lakh units upon the consumers of Petitioner Nos. 2 and 3 during the period of April 2024 to June 2024. Accordingly, the Petitioner prays that in addition to the invoices challenged in the Petition, the aforementioned invoices also deserve to be set aside.
- 6.3. MSEDCL has placed reliance on incorrect diagrams that show that there is a 33/132 kV Pooling Sub-Station (**PSS**). However, it is evident from drawing/diagram approved the MSEDCL and MSETCL that the Petitioners are directly connected to MSETCL and that there is no 33/132 kV PSS. Instead, there are two 33 kV buses along with a bus coupler and two outgoing feeders on which two nos. of transformer 33/132 kV of 62.5 MVA are placed. This set up is developed and owned by TPREL, up to the MSETCL's Waghdari Sub-Station.

6.4. MSEDCL has erroneously contended wheeling charges/losses are payable since the Petitioners are using MSEDCL's distribution system (including, in particular, the associated facilities of its distribution network). In response to MSEDCL's contentions, following is noteworthy:

- (i) MSEDCL has relied on Letters dated 20.01.2023, 26.05.2023 and 26.05.2023 [Annexure-C @ Pg 14, Annexure-D @ Pg 17, MSEDCL's Reply] wherein approval has been granted for sanction of Auxiliary/Start-Up power supply connection in respect of Petitioners (as applicable). Now, it is necessary to take note of Clause 9 of the Letter dated 20.01.2023 [Pg 18, MSEDCL's Reply] issued in respect of Petitioner No. 2/TPASL which is reproduced below:

"9) As per grid connectivity, the interconnection point is at MSETCL's 132/33 KV Himayatnagar S/st at 132 KV level. The energy injection or common evacuation point will be at 132/33 KV Himayatnagar S/st and the loss from 132/33 KV Himayatnagar S/st to individual generators shall be borne by the individual generators who takes start up/auxillary power."

- (ii) It is evident from Clause 9 of Letter dated 20.01.2023 that MSEDCL itself acknowledges that the Petitioner No. 2/TPASL is connected to MSETCL's network, and it has been granted grid connectivity accordingly.
- (iii) Further, similar clauses are also present in Approval granted to rest of the Petitioners. In fact, it is evident from Grid Connectivity granted to Petitioners that they are connected to MSETCL's Sub-Station.
- (iv) Further reliance is placed upon the Synchronization Permission Letters issued by MSEDCL in respect of Petitioner No. 1/TPSSAU, Petitioner No. 2/TPASL and Petitioner No. 3/TPEL respectively which itself show that Solar Power Park of TPREL (wherein Petitioners' Projects are located) is itself connected to MSETCL's Substations at Himayat Nagar & Wagdhari respectively.
- (v) Further, MSETCL has, inter-alia, also stated (Para 6, Pg 4, MSETCL's Reply) that interconnection of both the Solar Power Park is at 132 kV level of MSETCL's Sub-Station hence construction of a 132 kV single or double circuit line from 132 kV Solar Project Sub-Station to MSETCL's 132/33 kV Himayatnagar or Wagdhari Substation is included in the scope of developer.

6.5. In view of the afore mentioned, it is clear that the Petitioners are solely using MSETCL's transmission system and no part of MSEDCL's systems are being used. As such, MSEDCL's contentions are erroneous and liable to be rejected.

6.6. The Commission issued its Statement of Reasons (**SOR**) along with the DOA First

Amendment Regulations 2019 wherein the Commission has, inter-alia, observed that payment of wheeling charges is exempt in case of use of point-to-point dedicated transmission lines or in case where generator and consumer in the OA transaction are both connected to transmission system.

6.7. Clearly, therefore, MSEDCL's contentions are misplaced and liable to be rejected as wheeling charges/losses are not applicable if the distribution network is not being used.

6.8. In this regard, MSEDCL has failed to consider the following documents and facts placed on record, which show that the Petitioners are not using MSEDCL's distribution network:

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(i) Grid Connectivity dated 02.09.2022 [Annexure-P4, Pg 116] and Commissioning Certificate dated 05.04.2023 [Annexure-P6, Pg 132], Project Drawing [Annexure-P7, Pg 135], Synchronization Permission dated 16.02.2023 in respect of Petitioner No. 1/TPSSL.

(ii) Grid Connectivity dated 30.06.2022 [Annexure-P12, Pg 152], Commissioning Certificate dated 12.06.2023 [Annexure-P14, Pg 170], Project Drawing [Annexure-P15, Pg 171]. Synchronization Permission dated 31.05.2023 in respect of Petitioner No. 2/TPASL.

(iii) Grid Connectivity dated 30.06.2022 [Annexure-P12, Pg 152], Commissioning Certificate dated 21.06.2023 [Annexure-P20, Pg 279] and Project Drawing [Annexure P21, Pg 280] Synchronization Permission dated 09.06.2023 in respect of Petitioner No. 3/TPEL.

6.9. In this regard, as stated earlier, TPREL has commissioned and installed a dedicated line of 33/132 kV which is connected to transmission grid at MSETCL's Himayatnagar and Wagdhari Substation respectively.

6.10. MSEDCL cannot contend that merely because the Petitioners are drawing auxiliary power/ start up power from MSEDCL, the Petitioners are liable to pay wheeling charges. It must be borne in mind that use of auxiliary power/start-up power is not related to the open access usage/transaction. In this regard, the Commission in Order dated 27 December 2023 has clearly held that a generating station cannot be termed as a consumer merely because MSEDCL is providing auxiliary/start-up power.

6.11. Further, MSEDCL has relied on Letters dated 20 January 2023 and 26 May 2023 wherein approval has been granted for the sanction of Auxiliary/Start-Up power supply 14 connection in respect of Petitioners (as applicable). However, as explained earlier, the said Letters themselves acknowledge that Petitioners are connected to MSETCL's transmission network.

6.12. In view thereof, MSEDCL cannot contend that the Petitioners are liable to pay wheeling charges considering that Petitioners are drawing auxiliar power/start up power from MSEDCL.

6.13. MSEDCL cannot rely on the Judgment dated 29 November 2019 passed in ‘Transmission Corporation of Andhra Pradesh Limited versus M/S Rain Calcining Limited & Ors.’, (2021) 13 SCC 674 since in the present case MSEDCL’s distribution network is evidently not being used.

7. At the e-hearing through video conferencing held on 15 October 2024:

7.1. Petitioners re-iterated its submissions as made out in the Petition and further stated that:

- (i) The Commission, vide Common Order dated 27 December 2023, held that MSEDCL cannot levy wheeling charges and wheeling losses if the Generating Station is not connected to its Distribution System.
- (ii) Petitioners are not connected to MSEDCL’s Distribution System and hence MSEDCL ought not to levy Wheeling Charges or Wheeling Losses.

7.2. MSEDCL re-iterated its submissions as made out in the Reply and further stated that

- (i) MSEDCL has filed two review Petitions, i.e. Petition in Case No. 79 of 2024 for Review of the Common Order dated 27 December 2023 and Petition in Case No. 80 of 2024 for Review of the Common Order dated 01 February 2024.
- (ii) The definition of ‘distribution system’ is not limited to the system of wires (or network), but also includes associated facilities (i.e., provision of additional functions or services other than said system of wires).
- (iii) Only Solar Park developer is directly connected and solar generators ae not directly connected
- (iv) Clause 5 of PPA between TPSSL and Tata Power Trading Company for sale and supply of 8.4 MW Solar Power by TPSSL to TPTCL on open access provides that the Invoice shall equal to the number of units credited to the Consumer (considering the applicable Transmission and Distribution Losses).
- (v) Regulation 18.2 of DOA Regulations, 2016 provides that the buyer of electricity shall bear the approved wheeling losses of the Distribution System and not any part of the commercial losses.

7.3. MSETCL re-iterated its submissions as made out in the Reply.

7.4. The Commission directed Parties to file additional submissions within 15 days.

8. **MSEDCL in its additional submission dated 21 October 2024 re-iterated its similar submissions as mentioned at para. 4 above. The additional submission of MSEDCL is as under:**

8.1. TPREL had applied to MSETCL for Grid connectivity of said 120 MW Solar Power Park to the 132 kV Waghdari Sub-station of MSETCL.

8.2. Initially, MSETCL granted in principle approval for Grid connectivity of said 120 MW Solar Power Park to the 132 kV Waghdari Sub-station of MSETCL at 132 kV level on conditions *inter alia* that

- (i) TPREL is to provide metering arrangement for individual Solar PV Power Generating Stations being erected in the Solar Power Park and furnish apportioned meter readings at the inter-connection point i.e. at 132/33 kV Waghdari Sub-station of MSETCL, to the concerned authorities such as MNRE, MSLDC, MSEDCL, MSETCL, etc. as per the requirement, and
- (ii) TPREL is to obtain consent from the concerned distribution licensee for drawal of power required for start-up and auxiliary consumption from the network.

8.3. Thereafter, MSETCL by letter dated 09.02.2022 to TPREL, granted final Grid connectivity to said 120 MW Solar Power Park at 132 kV level at 132/33 kV Waghdari Sub-station of MSETCL. This letter dated 09.02.2022, is referred to and relied upon in the letter dated 02.09.2022 from MSETCL to TPREL which revised the power flow capacity from said 120 MW Solar Power Park to Waghdari Sub-station of MSETCL.

8.4. TPSSL applied to MSEDCL for grant of auxiliary / start-up power supply connection. MSEDCL by letter dated 20.01.2023 to *inter-alia* TPSSL, sanctioned 168 kVA (Contract Demand) and 168 kW (Connected Load) of auxiliary / start-up power supply connection to 8.4 MW Solar PV Power Generating Station of TPSSL on 33 kV level in said 120 MW Solar Power Park of TPREL. The said letter dated 20.01.2023 granted such sanction on conditions, including Condition No. 11 that

“It shall be ensured that as the individual meters will be connected at individual generators end, the line loss shall be levied proportionally among all the generators through their energy bills with due energy audit at evacuation point in co-ordination with IT. The generator shall indemnify MSEDCL for any loss and will not claim any compensation”.

8.5. The Condition No. 13 of said letter dated 20.01.2023 that

“The sanction is subject to the provision of grid connectivity issued by MSETCL with scope of work involved. Individual energy meters to be installed to each generator. As per grid connectivity, Energy Injection or common evacuation point will be at EHV level

at 132 kV Waghdari Sub-station and loss from sub-station to individual generator shall be borne by the individual generator who takes start-up / auxiliary power. The connection at project end shall bear the system losses up to delivery point i.e. Sub-station. The generator shall indemnify MSEDCL for any loss and will not claim any compensation.”

- 8.6. TPSSL applied to MSEDCL for SEM Metering Installation at generator end at 33 kV level for its 8.4 MW Solar PV Power Generating Station. MSEDCL by letter dated 05.04.2023 to TPSSL, recorded about installing by MSEDCL of the SEM Metering Installation at generator end at 33 kV level for 8.4 MW Solar PV Power Generating Station of TPSSL. The said letter further stated that the main and check metering was commissioned on 31.03.2023 and that the complete system was commissioned and on 31.03.2023 for said 8.4 MW Solar PV Power Generating Station of TPSSL on 33 kV level.
- 8.7. MSEDCL has prepared a block diagram of connectivity between said 120 MW Solar Power Park of TPREL and said 132/33 kV Waghdari Sub-station of MSETCL.
- 8.8. TPREL had applied to MSETCL, for Grid connectivity of said 70 MW Solar Power Park to the 132 kV Himayatnagar Sub-station of MSETCL.
- 8.9. Initially, MSETCL by letter dated 30.06.2022 to TPREL, granted in principle approval for Grid connectivity of said 70 MW Solar Power Park to the 132 kV Himayatnagar Sub-station of MSETCL at 132 kV level on conditions *inter alia* that
- (i) TPREL is to provide metering arrangement for individual Solar PV Power Generating Stations being erected in the Solar Power Park and furnish apportioned meter readings at the inter-connection point i.e. at 132/33 kV Himayatnagar Sub-station of MSETCL, to the concerned authorities such as MNRE, MSLDC, MSEDCL, MSETCL, etc. as per the requirement, and
 - (ii) TPREL is to obtain consent from the concerned distribution licensee for drawal of power required for start-up and auxiliary consumption from the network.
- 8.10. Thereafter, MSETCL by letter dated 30.05.2023 to TPREL, granted final Grid connectivity to said 70 MW Solar Power Park at 132 kV level at 132/33 kV Himayatnagar Sub-station of MSETCL.
- 8.11. TPASL and TPEL applied to MSEDCL for grant of auxiliary / start-up power supply connection. MSEDCL by letters both dated 26.05.2023 to *inter-alia* TPASL and TPEL, respectively, sanctioned (i) 250 kVA (Contract Demand) and 250 kW (Connected Load) of auxiliary / start-up power supply connection to 12.5 MW Solar PV Power Generating Station of TPASL, and (ii) 176 kVA (Contract Demand) and 176 kW (Connected Load) of auxiliary / start-up power supply connection to 8.8 MW Solar PV Power Generating

Station of TPEL, on 33 kV level in said 70 MW Solar Power Park of TPREL. The said letters dated 26.05.2023 granted such sanction on conditions, including Condition No. 8 that

“It shall be ensured that as the individual meters will be connected at individual generators end, the line loss shall be levied proportionally among all the generators through their energy bills with due energy audit at evacuation point in co-ordination with IT. The generator shall indemnify MSEDCL for any loss and will not claim any compensation.”

Condition No. 9 that

“As per grid connectivity, the interconnection point is at MSETCL’s 132 / 33 kV Himayatnagar Sub-station at 132 kV level. The Energy Injection or common evacuation point will be at 132 / 33 kV Himayatnagar Sub-station and the loss from 132 / 33 kV Himayatnagar Sub-station to individual generators shall be borne by the individual generators who take start- up / auxiliary power.”

- 8.12. TPASL and TPEL applied to MSEDCL for SEM Metering Installation at generator end at 33 kV level for their 12.5 MW and 8.8 MW Solar PV Power Generating Stations, respectively. MSEDCL thereafter installed the SEM Metering at generator end at 33 kV level for 12.5 MW and 8.8 MW Solar PV Power Generating Stations of TPASL and TPEL, respectively.
- 8.13. Furthermore, MSEDCL issued commissioning certificates dated 12.06.2023 and 21.06.2023 to TPSAL and TPEL, respectively, for having commission generator end capacity of 12.5 MW and 8.8 MW, respectively, out of total 70 MW installed capacity of said Solar Power Park, with generator end connectivity at 33 kV level and Solar Power Park connectivity at 132 kV level Himayatnagar Sub-station.
- 8.14. MSEDCL has prepared a block diagram of connectivity between said 70 MW Solar Power Park of TPREL and said 132/33 kV Himayatnagar Sub-station of MSETCL
- 8.15. There is a PPA dated 09.01.2023 between TPSSL and Respondent No.3 / Tata Power Trading Company Limited (TPTCL), for sale and supply of 8.4 MW Solar Power by TPSSL to TPTCL on open access for supply to open access Consumers in Maharashtra. Pertinently, clause 5 of said PPA dated 09.01.2023 provides, as follows:

“5. Billing Cycle & Payment: GENERATOR shall raise bills on Monthly basis, based on the solar energy credited in the Consumer MSEDCL bill. The Invoice shall equal to the number of units credited to the Consumer (considering the applicable Transmission and Distribution Losses).”

- 8.16. Further pertinently, in the monthly Bills of Supply-Power Sale Invoice for May, June &
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July 2023 issued by TPSSL to TPTCL for power supply capacity of 8.4 MW, there is provisioning for the 'Discount against Wheeling Charges'.

- 8.17. It is significant that in addition to said SEM metering facility, MSEDCL is providing (i) auxiliary and start-up power supply, and (ii) banking facility, to TPSSL, TPASL and TPEL through said common evacuation system of TPREL.
- 8.18. The basic defence of MSEDCL in above Case is founded on the plain meaning and definition *inter alia* of 'distribution system' under Section 2 (19) of Electricity Act, 2003.
- 8.19. The said definition of 'distribution system' is not limited to the system of wires (or network), but also includes associated facilities (i.e., provision of additional functions or services other than said system of wires). The underlying objective of both said system of wires and said associated facilities is to enable distribution or supply of electricity. It is submitted by MSEDCL that its providing of (i) auxiliary power supply, (ii) energy metering of such auxiliary power supply, and (iii) banking facility, are associated facilities under Section 2 (19) of EA, 2003, and as such extend *de jure* [i.e., in law (whether in fact or not)] the distribution system of MSEDCL to the Point of Supply for provision of said auxiliary power and said banking facility.
- 8.20. Thus, in law, the distribution system of MSEDCL (particularly, the associated facilities of its distribution network) are used by the Open Access Consumer(s) and/or Solar PV Power Generating Station(s) / Solar Power Project(s) for the conveyance of electricity/renewable energy.
- 8.21. In light of this legal position, the Open Access Consumer(s) is due and liable to pay the Wheeling Charges under the Regulation 14.6 (a) of DOA Regulations, 2016.
- 8.22. Banking facility is being provided by MSEDCL to the Solar Power Project or CPP Project/Solar Power Generator, under Regulations 2.1 (4) and 20 of the DOA Regulations, 2016 [as amended by DOA First Amendment) Regulations, 2019]. The said Regulation 2.1 (4) defines "Banking" as under: -

"Banking" means the surplus Renewable Energy injected in the grid and credited with the Distribution Licensee after set off with consumption in the same Time of Day slot as specified in Regulation 20;

- 8.23. Although the said 33 kV lines are owned the Solar Park Developer, but the provision through the said 33 kV lines by MSEDCL of (i) auxiliary power supply, (ii) energy metering of such auxiliary power supply, and (iii) banking facility, are associated facilities under Section 2 (19) of EA, 2003, and as such extend *de jure* [i.e., in law (whether in fact or not)] the distribution system of MSEDCL to the Point of Supply for provision of said auxiliary power and said banking facility.

- 8.24. Thus, in law, the distribution system of MSEDCL (particularly, the associated facilities of its distribution network) are used by the Open Access Consumer(s) and/or Solar Power Project(s) for the conveyance of electricity/renewable energy.
- 8.25. The clear legal position is that banking facility (i) is not at all available under the TOA Regulations, 2016, but (ii) is available under Regulations 2.1 (4) and 20 of the DOA Regulations, 2016. It is submitted that allowing of banking facility by MSEDCL in above Case, clarifies and entails the applicability of DOA Regulations, 2016. DOA Regulations, 2016 are applicable in above Case, under Regulation 1.2 thereof. TOA Regulations, 2016 are not applicable in above Case, as the same would have been applicable under Regulation 28 of DOA Regulations, 2016, only if the Distribution System of the Distribution Licensee is not used
- 8.26. TPSSL, TPASL and TPEL have incorrectly referred to said common evacuation system of TPREL as Dedicated Transmission Line (as defined under Section 2(16) of EA, 2003).
- 8.27. The Generating Station or the Consumer in the OA transaction are both not directly (i.e., indirectly) connected to the transmission system.
- 8.28. Open Access Consumer(s) are liable to bear the distribution system losses / Wheeling losses, under Regulation 18.2 of DOA Regulations, 2016 which is reproduced as under:
- “18.2 Distribution System losses:
The buyer of electricity shall bear the approved wheeling losses of the Distribution System and not any part of the commercial losses as may be determined by the Commission from time to time.”*
- 8.29. Further, Regulation 14.6 (A) of DOA Regulations, 2016 [as amended by the MERC (DOA) (First Amendment) Regulations, 2019] clearly provides for applicability of *inter-alia* Wheeling charges and Wheeling losses for various combinations of Open Access Transactions.
- 8.30. The citation of 2006 SCC OnLine APTEL 19 (*Kalyani Steels Limited v/s Karnataka Power Transmission Corporation Limited*) relied upon by the Petitioners in above Case, actually supports the above defense of MSEDCL. In that regard, MSEDCL is also relying upon Paras 39 & 40 of said citation, which have been relied upon by the Petitioners. The relevant para. of the Hon’ble APTEL Judgment are reproduced as below: -

“39. Wheeling is defined in Section 2(76) and it reads thus:

“(76) “wheeling” means the operation whereby the distribution system and associated facilities of a transmission licensee or distribution licensee, as the

case may be, are used by another person for the conveyance of electricity on payment of charges to be determined under section 62”

On careful analysis, it is clear that liability to pay wheeling charges arises only when distribution system and associated facilities of a transmission licensee or distribution licensee are used by another person for the conveyance of electricity on payment of charges to be determined under Section 62 and not when the consumer uses its dedicated lines of its own.

40. In the present case and on the admitted facts, no part of the distribution system and associated facilities of the first Respondent transmission licensee or the second Respondent distribution licensee is sought to be used by the appellant for the transmission of power from Grid Corporation, from injecting point (sub-station) to appellant's plant. Therefore, the definition as it stands, the appellant is not liable to pay wheeling charges”

[Emphasis Added]

8.31. The citation of 2014 SCC OnLine APTEL 146 (*Steel Furnace Association of India v/s PSERC & Ors.*) relied upon by the Petitioners in above Case, actually supports the above defense of MSEDCL. In that regard, MSEDCL is also relying upon certain paras of said citation, which have been relied upon by the Petitioners. The relevant paras of the Hon’ble APTEL Judgment are reproduced as below:

“20. “Wheeling” is defined u/s 2(76) as operation whereby the distribution system and associated facilities of a transmission licensee or distribution licensee, as the case may be, are used by another person for the conveyance of electricity on payment of charges to be determined under section 62.”

21. Thus, wheeling is use of distribution system and associated facilities of a transmission licensee or distribution licensee, as the case may be, for conveyance of electricity by another person on payment of applicable charges.

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34. The scheme of open access and levy of the charges for the same under the Electricity Act, 2003, National Electricity Policy and Tariff Policy is as under:

(i) The Act enables competing generating companies and licensees other than the area distribution licensee besides the area distribution licensee to sell

electricity to consumers when such open access is introduced by the State Commission.

(ii) Wheeling is use of distribution system and associated facilities of transmission licensee or distribution licensee, as the case may be, for conveyance of electricity on payment of charges.

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36. In 2007 ELR (APTEL) 985, Kalyani Steels Limited vs. Karnataka Power Transmission Corporation Limited, this Tribunal held as under:

On careful analysis, it is clear that liability to pay wheeling charges arises only when distribution system and associated facilities of a transmission licensee or distribution licensee are used by another person for the conveyance of electricity on payment of charges to be determined under Section 62 and not when the consumer uses its dedicated lines of its own.

37. In Kalyani Steel case, it was seen that the consumer was an EHT consumer directly connected to the transmission system for availing power supply. Even though it was a consumer of the distribution licensee it was physically not using the distribution system of the Distribution Licensee. The Tribunal held that the consumer was not liable to pay wheeling charges when it was availing power through open access...

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50. The above Regulations provide as under:

(i) An open access customer could be a licensee, generating company, Captive Power Plant or a consumer.

(ii) Wheeling is defined as the operation whereby the distribution system and associated facilities of a transmission licensee or distribution licensee, as the case may be, are used by another person for conveyance of electricity on payment of wheeling charges. Thus, wheeling takes place when the distribution system is used for conveyance of electricity by another person."

[Emphasis Added]

8.32. The associated facilities is clearly encompassed by the definition of 'distribution system' under Section 2 (19) of the EA, 2003.

8.33. Further, as held hereinabove in extracted portion of said Judgement of Hon'ble APTEL, there is a liability to pay Wheeling Charges when the associated facilities (which are part of distribution system) of a Distribution Licensee are used by another person for the conveyance of electricity.

8.34. Petitioners in above Case have failed to appreciate that the associated facilities are being used by Open Access Consumers and/or Solar Power Generators, as detailed hereinabove.

9. **Petitioners in its additional submission dated 30 October 2024 re-iterated its similar submissions as mentioned at para. 3 and 5 above. The additional submissions of Petitioners are as under:**

9.1. The factual background has been briefly stated as under: -

S. N.	Date	Particular of Event
Facts pertaining to TPPSAU i.e., Petitioner No. 1		
1.	27 May 2021	<ul style="list-style-type: none">TPREL incorporated its SPV, i.e., TPSSAU, to develop an 8.4 MW Solar Power Generation Station
2.	02 September 2022	<ul style="list-style-type: none">MSETCL issued a letter to the TPREL granting approval for grid connectivity to its Solar Power Park of 120 MW located at Akkalkot.
3.	09 January 2023	<ul style="list-style-type: none">TPSSAU and TPTCL executed a PPA in respect of TPSSAU Project for supply of 8.4 MW of power for a period of 01.02.2023 to 31.03.2023 which was subsequently extended by mutual agreement between the parties. The relevant terms of the PPA are below: -<ul style="list-style-type: none">(a) Clause 3: Delivery Point(b) Clause 7 of the PPA states that any charges and losses up to the delivery point, if applicable, shall be on the generator.Note: For the subsequent period i.e., from 01 April 023, TPSSAU and TPTCL executed another PPA with similar terms and conditions.
4.	20 January 2023	<ul style="list-style-type: none">MSEDCL granted approval for auxiliary/start-up power to TPSSAU. Clause 13 thereof states that energy injection or common evacuation point will be at EHV Level at 132 kV Wagdhari Substation.

5.	16 February 2023	<ul style="list-style-type: none"> MSETCL issued Synchronization Permission to 8.4 MW Solar Power Plant of TPSSAU which, <i>inter-alia</i>, stated that the Solar Power Park is connected to 132 kV Wagdhari Sub-Station of MSETCL.
6.	31 March 2023	<ul style="list-style-type: none"> TPSSAU Project was commissioned.
7.	05 April 2023	<ul style="list-style-type: none"> MSEDCL issued a Commissioning Certificate. Notably, the Commissioning Certificate states that the TPSSAU Project is “<i>Connected at 132/33 kV TPREL Pooling Substation at 33 kV voltage level</i>”.
8.	May 2023 To July 2023	<ul style="list-style-type: none"> MSEDCL while issuing monthly bills to TSL i.e., the EHV Consumer, levied additional wheeling charges and wheeling losses even when MSEDCL’s distribution network has not been used. Although the wheeling charges and losses are not applicable and were incorrectly levied, in order to prevent any detrimental impact on the end consumer, under Clause 7 of PPA the Generator agreed to bear the amount of wheeling charges and adjusted units towards wheeling losses in its own bill.
9.	14 September 2023	<ul style="list-style-type: none"> TPSSAU wrote a letter to MSEDCL regarding the incorrect levy of wheeling charges and losses on power supplied to TSL for the period of May to July 2023.
10.	25 January 2024	<ul style="list-style-type: none"> TPSSAU wrote a Letter to MSEDCL reiterating its contentions in light of the Order dated 27.12.2023, passed by MERC in Case No. 151 of 2023, whereby MERC has held that distribution company cannot levy wheeling charges and losses when the Generator was not utilising the Distribution System.
Facts pertaining to TPASL i.e., Petitioner No. 2		
11.	06 September 2022	<ul style="list-style-type: none"> TPREL incorporated its SPV, i.e., TPASL, to develop a 12.5 MW Solar Power Generation Station at its Solar Power Park at Himayatnagar, Himayatnagar Taluka, Dist:Nanded
12.	30 June 2022	<ul style="list-style-type: none"> MSETCL issued a letter to the TPREL and granted approval for grid connectivity to the Solar Power Park of TPREL situated at Himayatnagar. As per

		the said Grid Connectivity, the Solar Power Park of TPREL is connected to 132/33 kV Himayatnagar Substation at 132/33 kV Level.
13.	07 August 2023	<ul style="list-style-type: none"> TPASL and TPTCL executed a PPA in respect of TPASL Project for supply of 12.5 MW of power for a period of September 2023 to December 2023, which was extended further as mutually agreed. Pertinently, the PPA executed by TPASL is similar to PPA executed by TPSSAU.
14.	26 May 2023	<ul style="list-style-type: none"> MSEDCL granted approval for auxiliary/start-up power to TPASL. Clause 9 thereof stated that the interconnection point is at MSETCL's 132/33 kV Himayatnagar Sub-Station at 132 kV Level.
15.	31 May 2023	<ul style="list-style-type: none"> MSETCL issued synchronization permission to TPASL's Project of 12.5 MW, and, <i>inter-alia</i>, stated that it is connected to 132/33 kV Himayatnagar Sub-Station of MSETCL.
16.	10 June 2023	<ul style="list-style-type: none"> TPASL Project was commissioned.
17.	12 June 2023	<ul style="list-style-type: none"> MSEDCL issued a Commissioning Certificate in respect of TPASL Project.
18.	01 September 2023 to 01 March 2024	<ul style="list-style-type: none"> MSEDCL issued monthly bills to OA consumer NIL and TSL thereby levying wheeling charges and wheeling losses.
Facts pertaining to TPEL i.e., Petitioner No. 3		
19.	07 February 2023	<ul style="list-style-type: none"> TPEL and TPTCL executed a PPA in respect of TPEL Project for the supply of 8.8 MW of power for a period of 01.09.2023 to 30.09.2023. The terms of the PPA is stated below for ease of reference: - <ul style="list-style-type: none"> (a) Clause 3.2.1 of PPA states that the SPV will supply the electricity to the Captive Consumer at the delivery point of 11/22/33/132 kV MSETCL network. (b) Clause 4.8 of the PPA states that wheeling charges and wheeling losses upto delivery point is responsibility of TPEL.
20.	26 May 2023	<ul style="list-style-type: none"> MSEDCL granted approval for auxiliary/start-up power to TPEL. Clause 9 stated that the interconnection point is at MSETCL's 132/33 kV Himayatnagar Sub-Station at 132 kV Level.

21.	09 June 2023	<ul style="list-style-type: none"> MSETCL granted synchronization permission to TPEL's 8.8 MW Project which, <i>inter-alia</i>, states that the Project is connected to 132/33 kV Himayatnagar Substation.
22.	20 June 2023	<ul style="list-style-type: none"> TPEL Project was commissioned
23.	21 June 2023	<ul style="list-style-type: none"> MSEDCL issued a Commissioning Certificate in respect of the TPEL Project. Note: As per Commissioning Certificate, TPEL's Project is connected at 132/33 kV Himayatnagar Substation.
24.	01 September 2023 To 31 March 2024	<ul style="list-style-type: none"> MSEDCL raised invoices in respect of TPEL's Project and, <i>inter-alia</i>, levied wheeling charges and losses.
Subsequent Facts		
25.	June, 2024	<ul style="list-style-type: none"> Petitioners filed the present Petition thereby making the following prayers: - <ul style="list-style-type: none"> (a) To Set aside the Impugned invoices raised by MSEDCL qua the wheeling charges and wheeling losses. (b) Direct MSEDCL to reimburse the amounts levied upon TSL, NIL and FAL for wheeling charges along with the applicable LPS, and adjust units deducted towards wheeling losses. Note: The Petitioners sought the liberty to modify the present Petition in case of further invoices being raised by MSEDCL.
26.	April 2024-June-2024	<ul style="list-style-type: none"> During the pendency of the present Petition, MSEDCL has raised further invoices in respect of TPASL and TPEL, and levied wheeling charges to the tune of Rs. 28.82 Lakhs and deducted losses of Rs. 4.05 lakh units.

9.2. The Commission in its Order dated 27.12.2023 passed in Case No. 151 of 2023 has clearly and unequivocally held that MSEDCL cannot levy wheeling charges and wheeling losses if the Generating Station is not connected to its Distribution System. As stated above, the Petitioners are not connected to MSEDCL's Distribution System and hence MSEDCL ought not to levy Wheeling Charges or Wheeling Losses.

9.3. While dealing with a similar factual matrix as the present case, the Commission came to the following conclusion: -

- (a) Even though MSEDCL has granted permission for charging of SEM to Solar Generators installed at 33 kV level, and MSEDCL is providing start-up power and OA permission to generator, it cannot be said that MSEDCL can levy wheeling charges and wheeling losses. The petitioners therein were not consumers merely because they obtained start-up power from MSEDCL.
- (b) It was clear from the DOA Regulations that dedicated transmission lines are not part of transmission network. As wheeling charges are paid for using distribution network, consumers/generators who are directly connected to transmission system which is not maintained by Distribution Licensee are not required to pay wheeling charges.
- (c) The Commission noted MSEDCL's contention that there is no point-to-point transmission line for supply of captive power and Generating Station has an interconnection with MSEDCL at 33 kV transmission line. Thereafter, it was held that Generating Stations are directly connected to MSETCL's network through dedicated transmission line. In between, there is no interconnection with Distribution.
- (d) Apart from aforementioned, the Commission also considered the fact that under the OA Transaction in question, a point of connection at consumer premise was interfaced with metering facilities of distribution licensee.
- (e) In this regard, the Commission held that it could not be stated that just because a point of connection at consumer premises is interfaced with metering facilities of distribution licensee, the said 33 kV line would form part of Distribution System.
- (f) In view of the factual circumstances, it was clear that MSEDCL's Distribution System was not being used. Therefore, MSEDCL could not have levied Wheeling Charges and Wheeling Losses. (Relevant Para 64). Therefore, the Commission directed MSEDCL to refund wheeling charges along with applicable interest.

9.4. MSEDCL has wrongly contended that the Petitioners are using its network as: -

- (a) MSEDCL has relied on Letters dated 20.01.2023, 26.05.2023 and 26.05.2023 wherein approval has been granted for sanction of Auxiliary/Start-Up power supply connection in respect of Petitioners (as applicable).
- (b) However, it is evident from Clause 9 of Letter dated 20.01.2023, MSEDCL itself acknowledges that the Petitioner No. 2/TPASL is connected to MSETCL's network and it has been granted grid connectivity accordingly. Further, similar clauses are also present in Approval granted to rest of the Petitioners. In fact, it is evident from Grid Connectivity granted to Petitioners that they are connected to MSETCL's Sub-

Station.

- (c) Further, reliance is placed upon the Synchronization Permission Letters issued by MSETCL in respect of Petitioner No. 1/TPSSAU, Petitioner No. 2/TPASL and Petitioner No. 3/TPEL respectively which itself show that Solar Power Park of TPREL (wherein Petitioners' Projects are located) is itself connected to MSETCL's Substations at Himayat Nagar & Wagdhari respectively.
 - (d) MSETCL in its Reply inter-alia, also stated that interconnection of both the Solar Power Park is at 132 kV level of MSETCL's Sub-Station hence construction of a 132 kV single or double circuit line from 132 kV Solar Project Sub-Station to MSETCL's 132/33 kV Himayatnagar or Wagdhari Substation is included in the scope of developer.
 - (e) MSETCL in its Reply has admitted that the Petitioners are connected to MSETCL's Sub-Station and that they are using evacuation system which is within the scope of the developer. Therefore, MSEDCL's contentions are misleading and liable to be rejected.
 - (f) In such circumstances, MSEDCL cannot rely on PPA dated 09.01.2023 or the monthly bills of Supply-Power Sale Invoice to contend that MSEDCL's distribution system is being used.
- 9.5. The afore-mentioned contentions were also raised by MSEDCL before the Commission in Case No. 151 of 2023. However, the Commission vide Order dated 27 December 2023 has rejected all such contentions of MSEDCL. In this regard, the following is noteworthy regarding Order dated 27 December 2023:-
- (a) The Commission in Order dated 27 December 2023 in Case No. 151 of 2023 rejected the claim of MSEDCL [*Para 35-37, Order dated 27.12.2023*] even though it had contended that Solar Generators granted approval/sanction of auxiliary start-up power connection. The said startup power connection was granted at 33 kV Level. [*Para 14.4, Order dated 27.12.2023*] The commissioning certificates were issued by MSEDCL. [*Para 14.7, Order dated 27.12.2023*]
 - (b) MSEDCL had also contended that its Point of Supply for such auxiliary power is encompassed by the first proviso Regulation 2.2.2(mm) of MERC Electric Supply Regulation 2021. [*Para 14.1, Order dated 27.12.2023*]. However, the Commission rejected contentions of MSEDCL on the ground that Connectivity Letter granted to solar generator stated that they were connected to MSETCL's Sub-station. [*Para 40, 41, Order dated 27.12.2023*]
 - (c) Similarly, MSEDCL had also contended that distribution system is not limited to the

system of wires or network, but also includes additional functions or services without such system of wires. [Para 24.3, Order dated 27.12.2023]

- (d) In Case No. 151 of 2023, MSEDCL had contended that there is no point-to-point transmission line for supply of captive power and the Generating Station has an interconnection with MSEDCL at the 33 kV transmission line. In this context, it was held that that Generating Stations are directly connected to MSETCL's Transmission System through 33 kV/132 kV dedicated transmission line. In between there is no interconnection with Distribution System of MSEDCL. Further, the entire power evacuation infrastructure (i.e., 33 kV/132 kV transmission line and PSS) connecting the Generating Stations to MSETCL's Transmission System has been constructed by the SPDs for and on behalf of the Generating Station. Accordingly, MSEDCL's claim was rejected. [Para 42, Order dated 27.12.2023]

Commission's Analysis and Ruling:

10. The above-mentioned three Petitioners have filed the present case for not to levy wheeling charges and wheeling losses by MSEDCL as the MSEDCL's Distribution System is not being used for sourcing power from their CPP through open Access. Further, the three Petitioners sought to refund the respective amounts levied upon OA consumers towards wheeling charges from May 2023 to March 2024, along with applicable interest. The Petitioners in their additional submissions further stated that MSEDCL has subsequently continued to levy wheeling charges amounting to Rs. 28.82 Lakhs and deducted losses of 4.05 lakh units upon the consumers of Petitioner Nos. 2 and 3 from April 2024 to June 2024 and hence the Petitioners prayed that in addition to the invoices challenged in the Petition, the afore-mentioned invoices also deserve to be set aside.
11. Upon perusal of the above 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.2: Details of three Petitioners (OA consumers, generators, period of OA and period/amount of levy of wheeling charges):

S.N.	Name of Solar Power Generating Stations	Details of Solar Power Generating Stations	Details of Open Access consumers	Amount and Period of Levy of wheeling charges
1	Petitioner No. 1/TP Solapur Saurya Ltd. (TPSSAU/ TP	• TPSSAU commissioned Solar Power Plant on 31	• Tata Steel Company Ltd (TSCL/ Tata Steel) Tarapur ,	• levied wheeling charges of Rs. 25,77,118/-

S.N.	Name of Solar Power Generating Stations	Details of Solar Power Generating Stations	Details of Open Access consumers	Amount and Period of Levy of wheeling charges
	Solapur Saurya),	March 2023 with a capacity of 8.4 MW located at Akkalkot Dist: Solapur (TPSSAU Project).	Boisar Dist: Palghar • connected at 132 kV	and deducted 3,39,456 units towards Wheeling Losses from May 2023 to July 2023
2	Petitioner No. 2/TP Arya Saurya Ltd. (TPASL / TP Arya Saurya)	• TPASL commissioned Solar Power Plant on 10 June 2023 having a capacity of 12.5 MW located at Himayatnagar Dist: Nanded. (TPASL Project)	• Neosym Industry Ltd. (NIL/ Neosym) Shirur Dist: Pune • connected at 132 kV	• Levied wheeling charges of Rs. 86,07,608/- and deducted 11,95,056 units towards Wheeling Losses from September 2023 to March 2024
3	Petitioner No. 3/TP Ekdash Ltd. (TPEL/ TP Ekdash).	• TPEL commissioned Solar Power plant on 20 June 2023, with a capacity of 8.8 MW located at Himayatnagar Dist: Nanded (TPEL Project)	• Fenace Auto Ltd. (FAL / Fenace Auto) Doud Dist: Pune • Connected At 132kV	• levied wheeling charges of Rs. 42,54,244/- and deducted 5,66,848 units towards Wheeling Losses from September 2023 to March 2024

12. The Commission notes the submission of the Petitioners and MSEDCL in the matter.

13. 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:

“

36.As regards to the issue raised by MSEDCL that MSEDCL has granted permission for charging of SEM to Solar Generators installed at 33 kV level i.e., between generating station and PSS. Further, the said 33KV line was used by MSEDCL to provide start-up power and OA permission to the generator and the reading of which was recorded by SEM connected on the said line. As a result, said 33KV line was part of MSEDCL's distribution system. In this context, the Commission notes that the Hon'ble APTEL in the Judgment, dated 24 May 2011 in Appeal No. 166 of 2010 (Chhatisgarh State Power Transmission Co. Ltd Vs. Chhatisgarh ERC) held that a generating station requiring 'startup up power' from the grid cannot be termed as a consumer. The relevant para. of the APTEL Judgment are reproduced as under:

“44 Startup Power has not been defined in the Electricity Act 2003 or in the Rules and Regulations framed there under. It has also not been defined in the repealed Acts viz., Indian Electricity Act 1910, Electricity (Supply) Act 1948 and Electricity Regulatory Commission Act 1998. Thus we have to go by its general meaning. In general parlance, word 'Startup' means to start any machine or motor. In terms of electricity, Startup Power is power required to start any machine. Thus Startup Power is power required to start a generator. Next question is why it is required. Thermal generating units, (to some extent large hydro generating units also) have many auxiliaries, such as water feed pump, coal milling units, draft pumps etc.,. These auxiliaries operate on electrical power and are essentially required to run before generating unit starts producing power of its own. These auxiliaries would draw power from grid till unit start producing power and is synchronized with the grid. Once unit is synchronized, requirement of 'startup power' vanishes. Thus 'startup power' is required only when all the generating units in a generating station are under shutdown and first unit is required to startup. Once any one unit in a generating station is synchronized, power generated by the running unit is used to startup other units. Period of requirement of startup would vary from few minutes to few hours depending upon the size of unit.

45 Above discussion shows that requirement of startup power is essential for every generating station and is very limited both in quantum (MW) and duration terms....

.... 48 Further, consumer as defined in the Act is a person who is supplied with electricity for his own use. Here startup power is supplied to Respondent -1 to startup its generating unit. Once generating unit is synchronized with the grid, the power so generated is supplied to Appellant. Without startup power, generators cannot start and produce power. Thus, in way, startup power is supplied for the benefit of Appellant only. From this point of view, a generator taking startup power

from distribution licensee and supply power to same licensee on startup, cannot be termed as a consumer.

49 In light of above discussions a generator requiring 'startup up power' from the grid cannot be termed as a consumer."

37.From the above APTEL Judgment, the Commission notes that the requirement of startup power is essential for every generating station and is very limited both in quantum (MW) and duration terms. Further, in terms of Section 2(15) of the Electricity Act, a 'consumer' means any person who is supplied with electricity by the licensee for his own use and includes any person whose premises are for the time being connected for the purpose of receiving electricity with the works of a licensee. The Commission further notes that the Generating Stations cannot be considered "consumers" under the EA merely because they obtain start-up power from MSEDCL via the 33 kV distribution line. The Commission further notes that the wheeling charges should be based on the use of the system for conveyance of electricity to the consumer taking power under open access and same shall be in accordance with the Open Access Regulations specified by the Commission. Moreover, the connection with MSEDCL's Distribution System is not the determining criteria for levy of wheeling charges. The pre-requisite for levy of wheeling charges is the use of MSEDCL's Distribution System, which is not being used in the present cases.

38.The Commission further notes that SoR to TOA and DOA First Amendment Regulations 2019 also clarified on the applicability of wheeling charges for various Open Access transactions. The relevant para. of the SoR to TOA and DOA First Amendment Regulations 2019 is reproduced as below:

“15.3

.....

Regarding ambiguity of applicability of wheeling charges, it is clarified that 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.

Dedicated transmission lines or transmission system are not part of distribution network. As wheeling charges are paid for using distribution network, consumers or generators who are directly connected to transmission system which is not maintained by Distribution Licensee or point to point dedicated transmission lines are not required to pay wheeling charges.

Above relaxation of non-applicability of wheeling charges is not available for the cases where such high voltage network (of transmission stature) of Distribution Licensees is involved. In this context, reference to APTEL Judgement 84 of 2018 is made where the said EHV line is being maintained by the distribution licensee itself

and whose tariff is being determined by the Commission under the Retail Tariff Order. As per APTEL ruling, (Judgement 84 of 2018) consumer connected to such EHV line is mandated to pay Wheeling Charges determined for EHV lines. The relevant extract of the Order is as following:

“In view of the findings and analysis brought out in the above mentioned paras, we are of the considered view that the reference 110 kV HPCL Feeders are part of the distribution network of the TPC-D. Further, to arrive at a balanced decision and evolving judicious principles for safeguarding interests of all stakeholders, the wheeling charges are required to be determined at EHT (110 kV) level also along with determination of other wheeling charges at LT/HT levels in accordance with law. Accordingly, we hold that the instant Appeal deserves to be allowed to the extent mentioned as above. For the foregoing reasons, we are of the considered opinion that the issues raised in the present appeal being Appeal No.84 of 2018 have merit. Hence, the Appeal is allowed and the impugned order dated 12.03.2018 passed by the Maharashtra Electricity Regulatory Commission in the Case No. 58 of 2017 is set aside to the extent, as stated in Para 11 above. The State Commission is directed to pass consequential orders as per the above findings, as expeditiously as possible within a period of three months from the receipt of a copy of the judgment. In view of the above, IA No.419 of 2018 stands disposed of, as having become infructuous.”

39, The above SoR to TOA and DOA First Amendment Regulations 2019 clarified that Dedicated transmission lines or transmission system are not part of distribution network. As wheeling charges are paid for using distribution network, consumers or generators who are directly connected to transmission system which is not maintained by Distribution Licensee or point to point dedicated transmission lines are not required to pay wheeling charges.

.....

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]

14. The Commission further vide Order dated 1 February 2024 in Case Nos. 162, 163 & 166 of 2023 (CIE Automotive & Others Vs MSEDCL) has also provided similar observations. The relevant extract of the Order dated 1 February 2024 is as under :

“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:

.....

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
MERC Order in Case No. 100 of 2024 Page **40** of **52**

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.*

[Emphasis Added]

15. The above dispensations in the Order dated 27 December 2023 and 1 February 2024 are also squarely applicable in the present case.
16. It is also imperative to note that MSEDCL has raised the various issues regarding the levy of wheeling charges and wheeling losses as below:
 - (i) The definition of ‘distribution system’ is not limited to the system of wires (or network) but also includes associated facilities.
 - (ii) The Banking Facility is Applicable to the Distribution System as per DOA Regulations 2016.
 - (iii) Generating Station or the Consumer in the OA transaction are not directly connected to the transmission system.
 - (iv) Interpreting and relying upon the Judgement dated 24 May 2011 passed by Hon’ble APTEL in Appeal No. 166 of 2010 (*Chhatisgarh State Power Transmission Co. Ltd Vs. Chhatisgarh ERC*)
 - (v) Interpreting and relying upon the Judgement dated 12 September 2014 passed by Hon’ble APTEL in Appeal No. 245 of 2012 & Batch (*Steel Furnace*

17. In this context, the Commission notes that MSEDCL has filed two review Petitions, i.e. Petition in Case No. 79 of 2024 for Review of the Common Order dated 27 December 2023 and Petition in Case No. 80 of 2024 for Review of the Common Order dated 01 February 2024 wherein MSEDCL has raised the above similar issues. The Commission vide common Order dated 10 March 2025 in Case No. 79 and 80 of 2024 (MSEDCL Vs Jubilant & Others) has addressed the above issues raised by MSEDCL and dismissed the review Petition. The relevant extract of the Order dated 10 March 2025 is as under:

“17.17. The Commission notes that during the earlier proceedings in the original cases, MSEDCL has also argued similar submissions (which are also raised in the present Review Petitions) that the Distribution system includes associated facilities used by OA consumers and hence OA consumers are liable for payment of wheeling charges. The relevant extract of the impugned common Order dated 27 December 2023 reads as follows:

“14.1

.....

- 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.*

.....

- b. 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.*

.....

24.3. 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 system of wires and associated facilities thereof, is to enable distribution or supply of electricity.

24.4. MERC DOA Regulations, 2016, defines Banking means the surplus Renewable Energy injected in the grid and credited with the Distribution Licensee after setting off with consumption in the same Time of Day slot as specified in Regulation 20.

.....

24.6.The generation SEM meter is installed at 33 KV level (being an associated facility of MSEDCL) and accordingly, billing is carried out using said meter.”

17.18.It is imperative to note the Hon’ble Supreme Court Judgments dated 8 August 2013 in Review Petition (CRL.) NO. 453 OF 2012 in Writ Petition (CRL.) 135 OF 2008 [Kamlesh Verma v. Mayawati (2013) 8 SCC 320] which has provided the principals of review. The relevant extracts of the Hon’ble Supreme Court Judgment are as below:

“16. Error contemplated under the Rule must be such which is apparent on the face of the record and not an error which has to be fished out and searched. It must be an error of inadvertence. The power of review can be exercised for correction of a mistake but not to substitute a view. The mere possibility of two views on the subject is not a ground for review. This Court, in Lily Thomas v. Union of India [(2000) 6 SCC 224: 2000 SCC (Cri) 1056] held as under: (SCC pp. 250-53, paras 54, 56 & 58)

“54. Article 137 empowers this Court to review its judgments subject to the provisions of any law made by Parliament or any rules made under Article 145 of the Constitution. The Supreme Court Rules made in exercise of the powers under Article 145 of the Constitution prescribe that in civil cases, review lies on any of the grounds specified in Order 47 Rule 1 of the Code of Civil Procedure which provides:

‘1. Application for review of judgment.—(1) Any person considering himself aggrieved—

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,

(b) by a decree or order from which no appeal is allowed, or

(c) by a decision on a reference from a Court of Small Causes, and who, from 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 decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the court which passed the decree or made the order.’

Under Order 40 Rule 1 of the Supreme Court Rules no review lies except on the ground of error apparent on the face of the record in criminal cases. Order 40 Rule 5 of the Supreme Court Rules provides that after an application for review has been disposed of no further application shall be entertained in the same matter.

56. It follows, therefore, that the power of review can be exercised for correction of a mistake but not to substitute a view. Such powers can be exercised within the limits of the statute dealing with the exercise of power. The review cannot be treated like an appeal in disguise. The mere possibility of two views on the subject is not a ground for review. Once a review petition is dismissed no further petition of review can be entertained. The rule of law of following the practice of the binding nature of the larger Benches and not taking different views by the Benches of coordinated jurisdiction of equal strength has to be followed and practised. However, this Court in exercise of its powers under Article 136 or Article 32 of the Constitution and upon satisfaction that the earlier judgments have resulted in deprivation of fundamental rights of a citizen or rights created under any other statute, can take a different view notwithstanding the earlier judgment.

17. In a review petition, it is not open to the Court to reappreciate the evidence and reach a different conclusion, even if that is possible. Conclusion arrived at on appreciation of evidence cannot be assailed in a review petition unless it is shown that there is an error apparent on the face of the record or for some reason akin thereto. This Court in *Kerala SEB v. Hitech Electrothermics & Hydropower Ltd.* [(2005) 6 SCC 651] held as under: (SCC p. 656, para 10)

18. Review is not rehearing of an original matter. The power of review cannot be confused with appellate power which enables a superior court to correct all errors committed by a subordinate court. A repetition of old and overruled argument is not enough to reopen concluded adjudications. This Court in *Jain Studios Ltd. v. Shin Satellite Public Co. Ltd.* [(2006) 5 SCC 501], held as under: (SCC pp. 504-505, paras 11-12)

“11. So far as the grievance of the applicant on merits is concerned, the learned counsel for the opponent is right in submitting that virtually the applicant seeks the same relief which had been sought at the time of arguing the main matter and had been negatived. Once such a prayer had been refused, no review petition would lie which would convert rehearing of the original matter. It is settled law that the power of review cannot be confused with appellate power which enables a superior court to correct all errors committed by a subordinate court. It is not rehearing of an original matter. A repetition of old and overruled argument is not enough to reopen concluded adjudications. The power of review can be exercised with extreme care, caution and circumspection and only in exceptional cases.

12. When a prayer to appoint an arbitrator by the applicant herein had been made at the time when the arbitration petition was heard and was rejected, the same relief cannot be sought by an indirect method by filing a review petition. Such petition, in my opinion, is in the nature of ‘second innings’ which is

impermissible and unwarranted and cannot be granted.”

19. Review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order 47 Rule 1 CPC. In review jurisdiction, mere disagreement with the view of the judgment cannot be the ground for invoking the same. As long as the point is already dealt with and answered, the parties are not entitled to challenge the impugned judgment in the guise that an alternative view is possible under the review jurisdiction.

Summary of the principles

20.2. When the review will not be maintainable:

(i) A repetition of old and overruled argument is not enough to reopen concluded adjudications.

(ii) Minor mistakes of inconsequential import.

(iii) Review proceedings cannot be equated with the original hearing of the case.

(iv) Review is not maintainable unless the material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice.

(v) A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected but lies only for patent error.

(vi) The mere possibility of two views on the subject cannot be a ground for review.

(vii) The error apparent on the face of the record should not be an error which has to be fished out and searched.

(viii) The appreciation of evidence on record is fully within the domain of the appellate court, it cannot be permitted to be advanced in the review petition.

(ix) Review is not maintainable when the same relief sought at the time of arguing the main matter had been negated.”

[Emphasis added]

17.19. The above Hon'ble Supreme Court Judgment provides the principle when review will not be maintainable. The Hon'ble Supreme Court further provides that while the power of review can be used to rectify errors, it cannot be used to substitute one point of view for another. A review cannot be used to rehear or reconsider a decision under the guise of an appeal. There must be a sufficient reason that is analogous to the grounds listed in the rule, much like an apparent error.

17.20. In view of the above discussions, the Commission is of the view that some of the issues raised in the present review proceedings were already raised during the original proceeding and these issues are being re-agitated in the present proceeding. MSEDCL is seeking re-consideration or re-hearing on these issues, which is impermissible under

the law. None of the grounds stated in these review cases can be said to fall within the ambit and scope of Regulation 28 of MERC Transaction of Business Regulations, 2022. Review case has a limited purpose and cannot be allowed to be “an appeal in disguise”. The Commission’s review jurisdiction is limited. It is also not the case of the Petitioner that there is any new important evidence or matter which was not within its knowledge even after exercise of due diligence, when the original Orders were passed and now same is being presented in the present proceeding, for the purpose of seeking review of the impugned Orders. Further, the Commission in the preceding part of this Order observed that there is also no error apparent on the face of records which warrants review of the impugned Orders.

18. In view of the above analysis, there is no merit in the grounds of review raised by MSEDCL and hence the present review Petitions needs to be rejected.

19. Hence, the following Order:

COMMON ORDER

1. IA 22 of 2024 and 23 of 2024 disposed of in terms of ruling at Para 11.33 of this Order.
2. The Review Petitions in Case Nos. 79 of 2024 and 80 of 2024 dismissed.”

[Emphasis added]

18. The Commission notes that the issues raised by the MSEDCL in the present Petition has been addressed by the Commission in the above common Order dated 10 March 2025 in Case No. 79 and 80 of 2024 and dismissed the review Petition filed by MSEDCL.
19. As regards the submission of MSEDCL that
 - (i) Regulation 18.2 of DOA Regulations, 2016 provides that the buyer of electricity shall bear the approved wheeling losses of the Distribution System and not any part of the commercial losses.
 - (ii) Clause 5 of PPA between TPSSL and Tata Power Trading Company for sale and supply of Power by TPSSL to TPTCL on open access provides that the Invoice shall equal to the number of units credited to the Consumer (considering the applicable Transmission and Distribution Losses).
 - (iii) The Hon’ble Supreme Court Judgment dated 29 November 2019 passed in

Transmission Corporation of Andhra Pradesh Limited versus M/S Rain Calcining Limited & Ors., (2021) 13 SCC 674 wherein it has held that all persons using the distribution system should bear the system losses

20. In this context, the Commission notes that Regulation 18 of the DOA Regulations as amended vide the DOA (First Amendment) Regulations, 2019 reads as under:

“ 18.1. Transmission losses:

.....

18.1.2. Intra-State transmission losses: The buyer of electricity shall bear the approved Intra-State transmission losses as may be determined by the Commission from time to time:

Provided that the energy settlement shall be based on the approved loss in the Intra-State Transmission System.

18.2. Distribution System losses: The buyer of electricity shall bear the approved wheeling losses of the Distribution System and not any part of the commercial losses as may be determined by the Commission from time to time.”

21. The Commission notes that the Petitioners in the instant case, i.e. the solar generators, are directly connected to the transmission system, and no distribution system is sued while availing OA.
22. Regarding contentions of MSEDCL that clause 5 of PPA between TPSSL and Tata Power Trading Company for sale and supply of Power by TPSSL to TPTCL on open access provides that the Invoice shall equal to the number of units credited to the Consumer (considering the applicable Transmission and Distribution Losses). In this context, the Commission notes that the PPA is a contractual agreement between generator and trader with the terms and conditions agreed between them.
23. The Regulation 9 of DOA First Amendment Regulations 2019 provides as under:

“9.

.....

The existing Regulation 14.6 (b) shall be modified as under:

“14.6 Wheeling Charge:

...

b. “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.”

24. The above DOA Regulations provides applicability of the wheeling charges and further stipulates 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.
25. The Commission in its Statement of Reasons (**SOR**) to DOA and TOA First Amendment Regulations 2019 (Notified on 8 June 2019) has clarified the issue of recovery of wheeling charges/losses to be recovered under various combinations of open access transactions. The relevant para. of SOR of DOA/ TOA First Amendment Regulations 2019 are as below:

“15. Regulation 14.6: Applicability of Wheeling Charges

15.1 Proposed in draft DOA Regulations, 2019

“14.6 Wheeling Charge: ...

b. “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.”

“14.6 (A) Applicability of Transmission Charges and Wheeling Charges and Transmission Loss and Wheeling Losses for various combination of Open Access Transactions shall be as shown in the following table.

.....

15.2 Comments received

MSEDCL submitted that, instead of accounting wheeling charges at consumption end, it should be levied on the actual energy injected at the Distribution Licensees’s periphery for OA consumption.

.....

15.3 Analysis and Commission’s Decision

With reference to comment by MSEDCL to apply wheeling charges at injection end, it is clarified that transmission/wheeling loss is already accounted for from the injection point to the drawal point while determining the applicable wheeling charges at respective voltage level. Applying wheeling charges on the energy quantum at injection point amounts to charging for loss quantum twice, which would not be proper.”

26. The above SOR to DOA and TOA First Amendment Regulations 2019 clearly provides

that transmission/wheeling loss is already accounted for from the injection point to the drawal point while determining the applicable wheeling charges at respective voltage level and therefore applying wheeling charges on the energy quantum at injection point amounts to charging for loss quantum twice, which would not be proper.

27. The Commission notes that MSEDCL has referred the Hon'ble Supreme Court Judgment dated 29 November 2019 passed in *Transmission Corporation of Andhra Pradesh Limited versus M/S Rain Calcining Limited & Ors.*, (2021) 13 SCC 674 wherein it has held that all persons using the distribution system should bear the system losses. In this context, the Commission notes that in the instant case, the solar generators are directly connected to the transmission system, and no distribution system is used during OA transactions. In view of the above, the above referred Hon'ble Supreme Court Judgment dated 29 November 2019 is not applicable in the instant case.
28. In view of the above, the Commission does not find any merits in the submissions of MSEDCL.
29. The Commission notes that MSEDCL has raised the issue of the applicability of banking under DOA Regulations 2016 and not available under TOA Regulations 2016. In this context, it is imperative to note the definition of banking, which is provided in DOA Regulations 2016 as below:

“2.1.

.....

4. “Banking” means the surplus Renewable Energy injected in the grid and credited with the Distribution Licensee after set off with consumption in the same Time of Day slot as specified in Regulation 20;

30. Further DOA Regulations 2016 provides that :

“1.2 These Regulations shall apply for Open Access to and use of the Distribution System of Distribution Licensees in the State of Maharashtra, and where the network of the Distribution Licensee is not being used but supply to an Open Access Consumer is being provided within the distribution area of the Distribution Licensee

31. Further, TOA Regulations 2016 also provides that :

“2.2 Words and expressions used herein and not defined in these Regulations but defined in the Act or Indian Electricity Grid Code or the State Grid Code or the Electricity Supply Code or the Rules and other Regulations made under the Act, as the case may be, shall have the meaning assigned to them therein.”

32. On the conjoint reading of the above provisions of the Regulations made it clear that Banking means the surplus Renewable Energy injected in the grid and credited with the Distribution Licensee after set off with consumption in the same Time of Day slots. The Commission further notes that Banking units' adjustments are extended to the consumers. Further, the provision of banking is governed under different provisions of DOA Regulations 2016 and DOA First Amendment Regulations 2019 and the grant of open access to the Transmission System is governed as per the provisions of the TOA Regulations 2016. Further, TOA Regulations provide that words and expressions used herein and not defined in these Regulations but defined in the Act or Indian Electricity Grid Code or the State Grid Code or the Electricity Supply Code or the Rules and other Regulations made under the Act, as the case may be, shall have the meaning assigned to them therein.
33. Therefore, there is no merit in the submission of MSEDCL on this ground.
34. As regards the prayer (e) of Petitioners to direct MSEDCL to reimburse the respective amounts levied upon OA consumers towards wheeling charges from May 2023 to March 2024, as prayed for, along with applicable LPS/interest. The Commission notes that Petitioners in their additional submissions further stated that MSEDCL has subsequently continued to levy wheeling charges amounting to Rs. 28.82 Lakhs and deducted losses of 4.05 lakh units upon the consumers of Petitioner Nos. 2 and 3 during the period of April 2024 to June 2024 and hence the Petitioners prayed that in addition to the invoices challenged in the Petition, the afore-mentioned invoices also deserve to be set aside.
35. In this context, the Commission notes that:
- (i) The 2nd proviso to Regulation 4.5 of the DOA Regulations, 2016 provides that the Distribution Licensee shall pay interest at a rate equivalent to the Bank Rate of the Reserve Bank of India for the amount of deposit that is returned to the Consumer upon resolution of the dispute.
 - (ii) Further, based on the provisions of the DOA Regulations, 2016, the Commission, in the similar matter vide its Order dated 11 March 2022 in Case No. 131 of 2021 (Ghodawat energy Vs MSEDCL) has addressed the issue of interest and directed MSEDCL to pay the applicable interest to the Petitioner therein. The relevant rulings of the Commission's Order are as follows:

“63. Further, DOA Regulations 2014 (3rd proviso to Regulation 4.2.6) and DOA Regulations 2016 (2nd Provision to Regulation 4.5) have similar provisions for payment of interest amount. The Commission, in the past vide its Order dated 22 December 2017 in Case No 76 of 2016 (BFL Vs MSEDCL) has allowed the payment towards surplus over-injected units with applicable interest. The relevant para of the Commission's Order is as under:

“9.

(6)In view of the above, the Commission directs MSEDCL to pay BFL for the surplus energy injected in FY 2015-16, along with applicable interest, within 60 days if it has not already done so.

“ 64. It is settled position of the law that payment of dues that accrued without any fault of the party, need to be effected with the applicable interest. Further, the Commission’s applicable DOA Regulations and the aforesaid Order provided for the payment with the applicable interest. In view of the above background MSEDCL is liable for payment of claim of the Petitioners, as ruled in this Order, with applicable interest. Hence, the Commission directs MSEDCL for payment towards the purchase of the surplus over-injected Units for the period FY 2016-17 to FY 2017-18 along with applicable rate of interest, within three months from the date of this Order.”

36. The aforesaid directions of the Commission for payment of interest amount are also applicable in the present case.
37. Considering the foregoing, the Commission concludes that MSEDCL is not entitled to levy wheeling Charges and wheeling losses on the power sourced through Open Access in the present case. 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.
38. As regards to prayer (f) of the Petitioners to direct MSEDCL to adjust the units deducted towards wheeling losses during May 2023 to March 2024, as prayed for, in the next billing cycle of TSL, FAL and NIL, respectively, as applicable. Further, Petitioners in its additional submissions stated that MSEDCL has subsequently continued to deduct losses of 4.05 lakh units upon the consumers of Petitioner Nos. 2 and 3 during the period of April 2024 to June 2024 and hence these units also required to be adjusted by MSEDCL.
39. In this regard, the Commission has concluded at para. 37 of the Order that MSEDCL is not entitled to levy Wheeling Charges and Wheeling losses on the power sourced through Open Access when the energy is injected directly into the transmission system. Therefore, the Commission is of the view that MSEDCL is required to adjust the units deducted towards wheeling losses.
40. In view of the above, the Commission think it fit to direct MSEDCL to adjust the units deducted towards wheeling losses in the next billing cycle of Petitioners’s OA consumers.

41. Hence, the following Order:


ORDER

1. The Petition in Case No.100 of 2024 allowed.
2. 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 case.
3. 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.
4. Maharashtra State Electricity Distribution Co. Ltd. to adjust the units deducted towards wheeling losses in the next billing cycle of Petitioners's OA consumers.

Sd/-
(Surendra J. Biyani)
Member

Sd/-
(Anand M. Limaye)
Member

Sd/-
(Sanjay Kumar)
Chairperson


(Dr. Rajendra G. Ambekar)
Secretary

