

**Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
World Trade Centre, Centre No.1, 13th Floor, Cuffe Parade, Mumbai 400005
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Case No. 186 of 2014

Dated: 3 November, 2015

**CORAM: Shri Azeez M. Khan, Member
Shri Deepak Lad, Member**

In the matter of

Petition of M/s. Global Energy Limited seeking issuance of appropriate directions on the TPC-D with respect to the grant of Open Access/ NOC for adjustment of wind energy credit notes in the monthly bills of the end –consumers and seeking relief on the ground of abuse of dominant position for denial / delay in grant of Open Access / NOC by the TPC-D resulting in commercial losses to GEPL.

M/s Global Energy Pvt. Ltd. (GEPL) ... Petitioner

V/s

Tata Power Company Limited – Distribution (TPC-D) ... Respondent

Appearance

For Petitioner: Adv. Matru Gupta

For the Respondent: Adv. Deepa Chawan.

Consumer Representative: Dr. Ashok Pendse (TBIA)

Daily Order

The parties were informed of the Commission's decision to constitute a two Member Bench to hear and decide this case. Advocates to the parties give their consent to further hearing of the matter being in continuance of the earlier proceedings.

Heard the Advocates of Petitioner, Respondent and the Consumer Representative.

GEPL submitted that:-

- 1) **Delay and Denial in granting Open Access:** TPC-D has delayed issuance of NOC for allowing Open Access and denied Open Access permission/NOC from a date prior to the date of application in a financial year in respect of renewable/ wind energy in the monthly consumption bills of the consumers of GEPL.
- 2) **Banking:** Banking of wind energy generators is allowed by the Commission vide its Order dated 24 November, 2003. TPC-D did not grant banking from 1 April 2012 to 31 March 2013 as demanded by GEPL in absence of pre-identified consumers and hence TPC-D has violated the Commission's Order. TPC-D has provided banking prospectively (i.e. from the date of the application) instead of retrospectively from 1 April, 2012 as requested, which is contrary to Orders dated 20 August 2014 in Case Nos. 72 of 2014, 95 of 2014 and 106 of 2014. TPC-D has not adjusted energy credit notes and hence Petitioner had to sell unadjusted units at the Power Exchanges, which has caused huge losses.
- 3) **Cross Subsidy Surcharge (CSS):** TPC-D has levied 100% CSS instead of 25% of the applicable CSS on the transactions relating to the renewable energy source treated it as conventional energy.
- 4) **Breach of the Commission Orders and abuse of dominant position:** TPC-D has not complied with various Orders of the Commission. The conduct of TPC-D has cost huge financial loss to GEPL and hence it must be penalized under Sections 142, 146 and 149 of the Electricity Act, 2003. TPC-D has abused its dominant position on account of delay/denial of NOC/Open Access and relied on Draft MERC (Distribution Open Access) Regulations, 2011 and acted contrary to the various Orders of Commission. TPC-D should be required to pay compensation for the losses suffered as determined by the Commission under Section 57 read with 60 of the Electricity Act, 2003.

TPC-D submitted that:-

1) **Banking of Energy:**

The submission of GEPL with reference to banking is contrary to the scope and intent of framework provided by the Commission in its Order dated 24 November, 2003 in Case No. 17 (3), (4) and (5) of 2002. Hence, TPC-D has not provided banking facility retrospectively, i.e. from 1 April, 2012 (before the date of Open Access Application).

2) GEPL has no locus-standi:

- GEPL is seeking relief either for generating companies or the Open Access consumers. It is presuming loss due to its arrangements with the generating companies and/or the Open Access consumers. GEPL is not a person aggrieved who has suffered legal injury on account of the action of TPC-D. Hence no claim is sustainable.
- GEPL does not have a contractual relationship with TPC-D; hence there is no basis for seeking damages for the alleged losses suffered by it. Losses claimed to be suffered are due to its own business decisions. Therefore there is no justification and no direct dispute between GEPL and TPC-D.
- Also there is no document on record to demonstrate that there is any dispute between generating companies or consumers and TPC-D.
- GEPL's prayers are to compensate loss to the consumers or generation companies, though it does not have any legal rights to claim in representative capacity.

3) No delay in granting Open Access by Tata Power

The Open Access was granted in all the five given cases within a maximum period of 22 days from the date of application.

4) Breach of the Commission Orders

TPC-D has rightly imposed 100 % of the applicable CSS to the consumers of GEPL as the conjoin reading of the Commission's Orders in Case No. 43 of 2010 and 57 of 2012 states that no concessional CSS is to be provided to Open Access consumers availing power from renewable sources which have availed REC benefit.

The Commission directs GEPL to submit following within four weeks.

- i) The authority under which it claims on behalf of the generator and the consumer.
- ii) The actual damages/losses sustained by GEPL.

The Commission directs TPC-D to make its further submissions within two weeks after receiving the submission from GEPL.

Case is reserved for Order.

**Sd/-
(Deepak Lad)
Member**

**Sd/-
(Azeez M. Khan)
Member**