

**Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
World Trade Centre, Centre No.1, 13th Floor, Cuffe Parade, Mumbai 400005
Tel. 022 22163964/65/69 Fax 22163976
Email: mercindia@merc.gov.in
Website: www.mercindia.org.in / www.merc.gov.in**

Case No. 55 of 2015

Dated: 5 January, 2016

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

**In the matter of
Petition of M/s Shah Promoters and Developers for non-issuance of No Objection
Certificate for the Period 1 April, 2012 to 30 April, 2012.**

M/s Shah Promoters and DevelopersPetitioner

Chief Engineer (Commercial), MSEDCL.Respondent

Appearance

For the Petitioner:Smt.Dipali Sheth,Adv.

For the RespondentShri Ashish Singh, Adv

Daily Order

Heard the Representative of the Petitioner & Respondent.

The Petitioner reiterated its submissions made in the Petition. During the hearing, Petitioner also submitted a letter dated 4 July, 2012 which was not a part of the Petition.

Petitioner stated that the Open Access permission was stalled by MSEDCL for various reasons. The Petitioner, being a RE generator, had therefore requested MSEDCL vide letter 4 July, 2012 to purchase its power at APPC rate for the period from April 2012 to March 2013. However, Petitioner did not receive any response from MSEDCL. Hence Petitioner applied for grant of an Open Access for the period from 1 April, 2012 to 31 March, 2013.

Further, on 6 December, 2012 Petitioner requested MSEDCL for change in the above Open Access period as from 1 October, 2012 to 30 September, 2013. In reply, MSEDCL vide its letter dated 14 February, 2013 granted Open Access Permission to Petitioner from 1 October, 2012 to 31 March, 2013. MSEDCL vide its letter dated 1 August, 2013 informed the Petitioner that Power for the period 1 May, 2012 to 30 September, 2012 will be purchased as

per RE Tariff Orders issued by the Commission. However MSEDCL had not dealt with the power injected in the month of April 2012.

Commission asked MSEDCL to check and revert regarding whether it received the Petitioner's application dated 4 July, 2012. Commission also asked MSEDCL to submit its reasons for delay in replying to the application. The Commission noted the various correspondences of Petitioner reflecting its changing stand about energy settlement with MSEDCL on various occasions.

The Commission notes that MSEDCL has delayed in submission of its Reply to the instant Petition despite the fact that the Notices were served to it on 31 July, 2015 and 2 December, 2015.

Referring to a APTEL Judgement, MSEDCL stated that when a Generator is seeking Open Access intermittently and if any dispute arises, then CGRF is the forum where such issues need to be addressed and not the Commission. MSEDCL admitted that this submission was not a part of its Reply dated 1 January, 2016. The Commission observed that MSEDCL should have submitted this basic issue of maintainability in its Reply dated 1 January, 2016.

MSEDCL further submitted that vide its letter dated 25 September, 2013 the permission to sell power to MSEDCL for the month of April, 2012 could not be granted as Petitioner had already claimed REC benefits for that month. Further, referring to the Order in Case No 180 of 2013 for FY 2012-13, MSEDCL submitted that had it purchased power at APCC rate, for the month of April 2012 it would not have got the benefit towards its Renewable Purchase Obligation.

On the issue of limitation raised by MSEDCL, Petitioner submitted that since it was in continuous correspondence with MSEDCL till 25 August, 2014 and the instant Petition was filed on 31 March, 2015, the three year limitation does not apply in this Case. Hence Petitioner prayed that the power for the month of April, 2012 which has already been injected and consumed by MSEDCL should be taken at APPC rate. On the issue of jurisdiction raised by MSEDCL, Petitioner submitted that being, a Generator, CGRF's jurisdiction is not applicable in this Case.

The Commission directed MSEDCL to make submissions on the following issues:

- a) Whether MSEDCL is in actual receipt of the Petitioner's application dated 4 July, 2012.
- b) Reasons for delay in replying to the Petitioner's various applications.
- c) Reasons for rejecting the application of the Petitioner to purchase power for the period 1 April, 2012 to 30 April, 2012 at APPC rate.
- d) A comprehensive reply as to whether EPAs have been signed with all RE Generators whose power is being purchased for the purpose of RPO

MSEDCL requested Commission to allow two weeks for submission.

The Commission granted 10 days for submission to be made by MSEDCL and 10 days for Rejoinder by the Petitioner thereafter.

The Case is reserved for orders.

Sd/-
(Deepak Lad)
Member

Sd/-
(Azeez M. Khan)
Member