

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
World Trade Centre, Centre No.1, 13th Floor, Cuffe Parade, Mumbai 400005
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Case No.104 of 2015

Date: 11 February, 2016

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

Petition of M/s. Sun N Sand Hotels Ltd for clarifications on applicable CSS payable in accordance with Regulations 21, 22 of the MERC (Distribution Open Access)Regulations, 2005 and Regulations 7.2,18 and 20 of the MERC (RPO REC Frame work) Regulations, 2010

M/s. Sun N Sand Hotels Ltd Petitioner

R-Infra-D Respondent

Present During the hearing

For the Petitioner : Ms. Swapna Seshadri (Adv)

For the Respondent : Shri Ghanshyam Thakkar (Rep)

Consumer Representative : Shri Ashok Pendse (TBIA)

Daily Order

Heard the Representatives/ Advocate of Petitioner and Respondent.

Petitioner submitted that:-

- a) Petitioner is a consumer of R-Infra-D and was sourcing power through Open Access from three wind developers (M/s Shalimar Visuals Pvt. Ltd, M/s Deccan Industrial Explosives Pvt. Ltd, M/s. Ahbay Shah) situated in the area of MSEDCL, during April, 2014 to March, 2015.
- b) Petitioner is getting Open Access credits in the energy bills from R-Infra-D from June 2014. Petitioner is paying 25% of the Cross Subsidy Charges (CSS) for sourcing renewable energy (RE) as permitted by Commission in the Tariff Orders.

- c) R-Infra-D vide email dated 6 June 2015 informed the Petitioner that their generators have claimed Renewable Energy Certificate (REC) benefits. Therefore, Petitioner is not eligible for concessional CSS of 25% and it has levied 100% CSS along with back dated recovery for Rs. 42 lakh approximately as per the Commission's Order dated 1 December, 2011 in Case No. 57 of 2011.
- d) The Commission's Order dated 1 December, 2011, in Case No. 57 of 2011 pertains to a specific plea on a subject totally different and out of context of Open Access transactions or CSS. This argument has been rejected by the ATE in the Judgment dated 22 April, 2015. The generating company is entitled to get registered under the REC mechanism whereas the concessional CSS is applicable to the consumer.
- e) ATE Judgment dated 22 April, 2015 in Appeal No. 22 & 24 of 2014 ruled that RE generator supplying power through Open Access is entitled to concessional benefits such as wheeling charges, CSS, etc and simultaneously avail the benefit of REC, if such concessions are permitted by the State Commission.
- f) The Commission has clarified in its Order dated 23 May, 2013 that CSS at 25% of the applicable CSS is payable by Open Access Consumers purchasing power from renewable sources of energy, as laid down in Order dated 9 September, 2011 in Case No. 43 of 2010
- g) R-Infra-D is denying the benefit as provided by the Commission vide its Order dated 9 September, 2011 to the Petitioner. The Distribution Licensee cannot take away the benefit of the Tariff Order given by the Commission to a consumer.
- h) The challenge to the ATE Judgment dated 22 April, 2015 in Appeal No. 22 & 24 of 2014 was dismissed by the Supreme Court on the issue of concessional benefits of CSS. ATE reiterates its stand on the issue in its Judgment dated 2 February, 2016 in Appeal No. 83 of 2015..
- i) Petitioner had paid the CSS under protest and sought the Commission's immediate intervention to stop the recovery of 100% CSS by R-Infra-D. R-Infra-D should refund the amount paid by the Petitioner under protest, with carrying and opportunity cost.

R-Infra-D submitted that:-

- a) In case the RE generator supplying power to Open Access Consumer has committed its capacity under REC mechanism then the electricity generated cannot be treated as Renewable Energy and it shall not be eligible for concessional CSS of 25%.
- b) The entire basis of levy of 100% CSS is as per the Commission's Order dated 1 December, 2011 in Case No 57 of 2011 wherein it has held that the electricity generated by RE generator opting for capacity under REC mechanism is devoid of environmental attribute and is basically equivalent to conventional electricity.
- c) The Commission has clarified in its Order dated 7 April, 2014 in case No. 92 of 2012 that RE generator receives another source of income by way of selling of RECs on Power Exchanges. However, under such scheme, a RE generator would be selling only the electricity component to the third party consumer and not the Renewable Energy. The Renewable Energy component is being sold on Power Exchanges in form of RECs.

- d) The power purchase by an Open Access consumer from RE generator who has committed its capacity under REC mechanism is equivalent to conventional electricity. Concessional CSS of 25% is applicable only for renewable source of energy and not conventional electricity.

The Commission directed the Petitioner and Respondent to submit its submission, if any, within a week.

The Case is reserved for Order.

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

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