

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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Case No. 23 of 2017

And

Miscellaneous Application No. 7 of 2017 in Case No. 23 of 2017
Miscellaneous Application No. 8 of 2017 in Case No. 23 of 2017
Miscellaneous Application No. 13 of 2017 in Case No. 23 of 2017
Miscellaneous Application No. 14 of 2017 in Case No. 23 of 2017

Date: 6 July, 2017

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

Petition of Maharashtra State Electricity Distribution Co. Ltd. for in-principle approval of pre-condition of furnishing Bank Guarantee / Revolving Letter of Credit as payment security mechanism equivalent to Cross Subsidy Surcharge and additional surcharge applicable to an Open Access consumer to be furnished by an entity who claims itself to be a Captive/ Group Captive Generator before grant of Open Access.

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

1. Captive Power Producers Association (CPPA)
2. M/s Sai Wardha Power Generation Limited (SWPGL)
3. M/s. OPGS Power Gujarat Pvt Ltd. (OPGS)
4. M/s. JSW Energy Ltd. (JSW)

.....Interveners

Appearance

For the Petitioner : Shri Ashish Singh, (Adv) MSEDCL
Shri A. W. Mahajan, (Rep) MSEDCL

For the Interveners : Shri. Anand K Ganeshan, (Adv) (SWPGL)
Shri. Hemant Sigh (Adv) (OPGS)
Shri. Suraj D. Guru, (Rep) JSW
Shri. Prafulla Katiyar, (Rep) JSW

For other Distribution Licensees : Smt. Swati Mehendale, TPC-D

Authorised Consumer Representative

: Dr. Ashok Pendse, (TBIA)

Daily Order

Heard Advocates /Representatives of the Petitioner, Interveners, other Distribution Licensees (i.e. TPC-D, R Infra-D) , and Authorized Consumer Representative.

1. The Commission observed that it has received two more Intervention Applications from M/s. OPGS Power Gujarat Pvt Ltd. (OPGS) and M/s. JSW Energy Ltd (JSW) in this matter. The Commission allowed both the Intervention Applications and MSEDCL has also not raised any objection.
2. Advocate of MSEDCL stated that:
 - (i) Pursuant to the hearing dated 18 April, 2017, MSEDCL has reexamined the scope of the Petition for inclusion of both Captive Power Plants (CPP) and Group CPPs. Vide its letter dated 11 May, 2017, MSEDCL has informed that it has limited the scope of the Petition only to Group CPPs and Inter State CPPs. Intra State CPPs are now excluded from the scope of the Petition. MSEDCL has uploaded the Petition and its letter on its internet website.
 - (ii) To a query of the Commission about Inter State CPPs, Advocate of MSEDCL stated that there could be several units of the CPP holder in different States, and this may lead to difficulty in assessing the verify the CPP status.
 - (iii) MSEDCL will not press prayer 'C' in the Petition to debar CPPs from availing short term Open Access.
 - (iv) Regulation 25 of the MERC (Distribution Open Access) Regulations, 2016 (DOA Regulations, 2016) provides for payment security mechanism for long term Long-term or Medium-term Open Access in the form of an Irrevocable Revolving Letter of Credit in favour of the Nodal Agency to the extent of the estimated amount of the various charges payable for a period of two months. It needs to be seen whether this provision can be applied to Group CPPs.
 - (v) To a query of the Commission regarding whether MSEDCL is ready to bear the cost of Bank Guarantee/ Revolving Letter of Credit along with interest if the CPP status was essential is confirmed at the end of the year, Advocate of MSEDCL stated that it will collect the information regarding the cost of such mechanism and will submit its response accordingly.
3. Representative of TPC-D stated that:
 - (i) Regulation 14.9 of DOA Regulation, 2016 provides that the Distribution Licensee may require the Consumer, Generating Station or Licensee, to furnish an additional

security deposit for wheeling equivalent to one month's billing for Wheeling Charge, Cross Subsidy Surcharge and Additional Surcharge. In case of Short-term Open Access, the Distribution Licensee shall collect an additional security deposit for wheeling commensurate with the duration of the Open Access instead of on the basis of one month's billing.

- (ii) There should be some payment security mechanism which may be a Bank Guarantee effective at the end of year so as to avoid the associated cost in the intervening period. She was not sure, however, whether such Bank Guarantee could be provided.
4. Representative of R Infra-D stated that:
- (i) The Ministry of Power has settled the Rules for the determination of captive status.
 - (ii) The Commission can decide a time bound process after the close of financial year for determination of captive status of Group CPP fixing roles and responsibilities.
5. Advocate of SWPGL stated that:
- (i) It supports the stand taken by R Infra-D that there should be a time bound process for determination of captive status of the Group CPP.
 - (ii) To a query of the Commission, SWPGL stated that it is ready to discuss with the Distribution Licensees, staff of the Commission, and SLDC regarding such a time bound process for the determination of captive status of Group CPP at the end of the year.
 - (iii) Electricity Rules, 2005 stipulate that the final CPP status will be determined at the end of financial year considering fulfillment of the eligibility criteria of shareholding etc. There is no need to put any obligation on the Group CPP in the meantime through Bank Guarantee, etc. which are an additional cost
 - (iv) The power to remove difficulty under the Regulations cannot be invoked in the present case. There cannot be a distinction between CPP and Group CPPs for the purpose.
6. Advocate of JSW stated that:
- (i) Two weeks time may be given to file its submission.
 - (ii) To a query of the Commission, Advocate of JSW replied that it undertakes a Group Captive model and is supplying five captive consumers.
7. Advocate of OPGS stated that:
- (i) Two weeks time may be given to file its submission.

- (ii) OPGS is an Inter-State Group CPP. Section 2(15) of Electricity Act, 2003 defines the consumer who is connected to Distribution Licensee and hence the definition of the consumer does not include CPP Users.
- (iii) The CPP Users and consumers are two separate and distinct definitions. The Group CPPs are Captive Users, and hence not come under the jurisdiction of the Commission. Therefore, Distribution Licensees cannot impose any obligations on them.
- (iv) The Petition is not within the jurisdiction of the Commission.
8. Dr. Ashok Pendse, for Thane Belapur Industries Association (TBIA), an Authorized Consumer Representative) stated that there could be issues with some of the Group CPPs, but MSEDCL should not treat all the CPPs/ Group CPPs in the same manner by stretching the issue too far. He further stated that methodology needs to be formulated for the determination of status of Group CPPs. He also pointed out the indirect cost of providing Bank Guarantees in form of opportunity cost of funds and credit limits.
9. The Commission directs OPGS and JSW to file their Replies within two weeks and MSEDCL to file its Rejoinder within a week, thereafter.

The Case is reserved for Order.

Sd/-
(Deepak Lad)
Member

Sd/-
(Azeez M. Khan)
Member