

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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Case No. 286 of 2018

**Case of Maharashtra Metro Rail Corporation Ltd to review Order dated 16.1.2018 in
Case No. 133 of 2016**

Coram

**Anand B. Kulkarni, Chairperson
Mukesh Khullar, Member**

Maharashtra Metro Rail Corporation Ltd (**Maha Metro**) Petitioner

V/s

Maharashtra State Electricity Distribution Company Ltd. (**MSEDCL**)

Maharashtra State Electricity Transmission Co. Ltd (**MSETCL**)

.... Respondents

Appearance

For the Petitioner	: Smt. Kumkum Mishra (Adv.)
For MSEDCL	: Shri. Ashish Singh (Adv.)
For MSETCL	: Shri. S.B.Patekar

ORDER

Date:15 February, 2019

1. Maharashtra Metro Rail Corporation Ltd (**Maha Metro**) formerly known as Nagpur Metro Rail Corporation Ltd has filed this Petition on 9 October, 2018 to review the Order dated 16 January, 2018 in Case No 133 of 2017 (**impugned Order**).

2. **Maha Metro has prayed as under:**

2.1. Review the Order dated 16.01.2018 passed in Case No. 133 of /2016, in the interest of justice and equity;

2.2. To consider the technical feasibility of connecting 23 MWp Roof-top Solar PV system of MMRCL(MAHA METRO) under Net Metering Arrangement and relax the

provisions of Net Metering Regulations and allow special dispensation for MMRCL(MAHA METRO) to connect its entire Solar PV capacity under Net Metering.

2.3. *Pass such other and further orders as may be deemed fit and proper in the facts and circumstances of the case by this Hon'ble Commission.*

Maha Metro has filed an Application on 3 December, 2018 prayed to condone the delay as under:

a) Condone the delay of 272 days in filing the accompanying Review Application on behalf of the applicants; and;

3. Maha Metro in its review Petition has stated as follows:

- 3.1. It is seeking review of Commission's impugned Order dated 16.01.2018 in which the Commission has erroneously rejected the prayer of Maha Metro for relaxing the definition of 'Eligible Consumer' under Regulation 2.1 (g) and 5 of the MERC (Net Metering for Roof-top Solar Photo Voltaic Systems) Regulations ('Net Metering Regulations'), 2015. The Commission erred in not invoking Regulation 13 and granting relaxation specific to it regarding the specified capacity limit so as to enable Maha Metro to set up the entire Solar capacity under Net Metering Arrangement. Since there are errors apparent on the face of impugned Order, Maha Metro has filed the present review Petition.
- 3.2. The Commission failed to appreciate that the Jawahar Lal Nehru National Solar Mission (JNNSM) announced by the Government of India in the year 2010, set a bid for developing 20 GW capacity Solar Grids and 2 GW capacity off-grid Solar applications. In 2015, Government of India increased the Mission target from 22 GW to 100 GW. A slew of measures to this effect are already being taken up by the Government of India, including allotment of Solar project capacities through tariff based competitive bidding, provision of separate Solar purchase obligation in the recently issued Tariff Policy, 2016 etc., to provide the required impetus for the development of Solar energy in India. Out of the revised Mission target, 40 GW is envisaged to be developed through Roof-top Solar installations. MNRE has issued operational Guidelines for Grid Connected Roof-top and Small Solar Power Plants Program vide Circular dated 26 June, 2014. This Circular emphasizes on development of large Solar Roof-top potential available throughout the country. Para 4 of Circular specifies the implementation arrangement, and specifically refers to Metro Rail Corporations of States.

"4.0 Implementation Arrangements: 4.1 The programme would be implemented through multiple agencies for rapid up-scaling in an inclusive mode. These agencies would be State Nodal Agencies/Depts. implementing the renewable energy programmes, Solar Energy Corporation of India and other Govt. organizations i.e. PSUs/Institutions/State Departments /Local Governments /Municipal Corporations /

NHB/ IREDA/ DMRC and Metro Rail Corporations of other States etc. The Distribution Licensees /DISCOMs will also be eligible for direct implementation of the programme. Channel partners may also be considered for some cases.”

- 3.3. Further, GoM has issued its Comprehensive Policy for Grid connected Power Projects based on New and Renewable (Non-conventional) Energy Sources-2015 on 20 July 2015 and its implementation methodology on 9 September 2015. Vide this Policy, GoM has specified the targets for RE capacity addition by 2020. Out of the total target of 14400 MW, Solar PV capacity addition target is 7500 MW. Clause 6.4.3 envisages the development of Solar projects by Departments related to public transport or Metro Railway.

“6.4.3. The Solar power projects can be developed on lands available with the Water Resources Department and also on areas available near canals or above canals by the department itself or through private developers. Also, the departments related to public transport or metro railway can develop such Solar power projects.”

- 3.4. The Commission has been in the forefront in promoting RE generation in the State and has notified several favorable and timely regulatory frameworks, be it in the case of Feed-in-Tariff, Renewable Purchase Obligation (RPO) or in providing grid connectivity to RE based generators. As regards promotion of Roof-top Solar PV Energy, the Commission has notified the Roof-top Solar Net Metering Regulations on 10 September, 2015, in which it has allowed connectivity of an Eligible Consumer's Solar PV system with the Distribution Network through a Net Metering Arrangement.
- 3.5. Maha Metro, being an entity promoted by the Government, intends to support the mandate set by the Government, for promotion of Solar energy-based generation in the country. While doing so, Maha Metro would prefer options which would enable it to reduce its own energy input cost to the maximum. Maha Metro thus is trying to harness the maximum available Solar potential in its premises to exploit the available avenues for reducing the input energy cost. There are various options for developing the estimated Solar potential of 23 MWp and utilization of the power generated from this Solar project. Maha Metro can utilise this Solar energy potential, through Net Metering route only, considering the consumption pattern of Maha Metro and solar energy generation pattern in general. Due to the capacity restriction specified in the Net Metering Regulations-2015, Maha Metro may not be able to set up the entire exploitable potential of 23 MWp as, without having a Net Metering Arrangement, the entire project is not viable for Maha Metro. Thus, Maha Metro may end up developing only 2 MW (qualifying capacity for two grid connections) and the rest of the available potential would remain untapped.
- 3.6. In the impugned Order, the Commission erred by not considering the unique case of Maha Metro in providing public services or performing public functions. The Appellate Tribunal for Electricity observed in Appeal no. 34 of 2014 dated 28th November, 2014 that the establishment of DMRC for providing the Mass Rapid Transit System is itself an

important ground for treating the DMRC as a separate and distinct class of consumer. Just like DMRC, Maha Metro is also a separate and distinct entity albeit in the State of Maharashtra.

3.7. Further, the National Electricity Policy 2005 in Clause 5.12 has cast the duty upon the SERCs to provide suitable measures for connectivity with grid and sale of electricity in the area of distribution licensee by promoting co-generation and generation of electricity from non-conventional sources. The Commission erred while not granting relaxation to the maximum upper limit of 1MW and has this way restricted Maha Metro in its efforts of harnessing solar power.

3.8. There is no such limit in the definition of eligible consumer in regulations framed by other SERC's, viz.

a. Orissa State Electricity Regulatory Commission (OERC), through Regulations No. OERC-Engg. 02/2010/(Vol-IV)/1131 Dated :19.08.2016 as amended up to 17.01.2018 has amended the definition of eligible consumer and other key conditions. The definitions are provided below:

Eligible consumers for Net-metering/ Bi-directional Metering: "Eligible Consumer" means a consumer of electricity in the area of supply of the distribution licensee, who uses a solar system installed in the consumer premises, to offset part or all of the consumer's own electrical energy requirements, given that such systems can be self-owned or third party owned. Both the existing and new Solar systems which comply with this order are eligible for Net-metering/ bi-directional metering.

Capacity Limits: The capacity of an individual solar PV system would be the available capacity of the service line connection, i.e. the sanctioned load of the consumer. The installation of net metered bi-directional metered solar systems on consumer premises will utilize the same service line and installation which is currently being used by the consumer for drawal of power from utility network for injection of excess power into the Grid. If a consumer intends to install a Solar PV System of a capacity that exceeds the Contracted Load, the consumer shall submit an application for Contracted Load enhancement along with the Solar Net Metering application. The Contracted Load enhancement application will be processed by the Distribution Licensee as per standard procedure for such applications.

b. Tamil Nadu Electricity Regulatory Commission (TNERC) in its order No. 3 of 2013 dated 13.11.2013 has not capped the Solar PV capacity under Net-metering arrangement.

c. Delhi Electricity Regulatory Commission (Net Metering for Renewable Energy) Regulations, 2014, No. F. 9(116)/DERC/Tariff/DS/2013-14/C.F 4110 decided the Solar PV capacity under Net-metering as follows-

(3) The capacity of Renewable Energy System to be installed at any premises shall be subject to;

(i) the feasibility of interconnection with the grid;

(ii) the available capacity of the service line connection of the consumers of the premises; and

(iii) the sanctioned load of the Consumer of the premises;

d. Uttar Pradesh Electricity Regulatory Commission (UPERC), in petition No. 1243/2017 Date of Order: 18.12.2017 has allowed M/s Sukhbir Agro Energy Ltd. for installation Solar PV for more than 1 MWp under Net-metering arrangement as below-

“The Commission decides to invoke its “power to relax” under clause 16 of RSPV Regulations in respect of the capacity limit of 1 MW on rooftop solar system and allows the petitioner to install rooftop solar system of 3.398 MWp at its rice mill. All other provisions of the RSPV Regulations shall remain in force. MVVNL, the concerned licensee of the area, must also ensure that proper technical/safety measures have been taken to keep its own systems safe and stable.”

3.9. The Government of Maharashtra has recently notified Maharashtra Textile Policy, 2018 for promoting the Textile industry in the state wherein the Government of Maharashtra has allowed to install Solar PV for Textile Industry beyond 1 MW under Net Metering policy.

3.10. Because the Commission erred in not appreciating that the Review applicant, if allowed to utilize the entire Solar energy capacity under Net Metering Arrangement, will greatly reduce the conventional input energy and thereby save cost to the maximum. If the prayer of Maha Metro is not granted, this would also entail it to forego a naturally available avenue, a nature's bounty, which could otherwise have been harnessed for reducing its input energy cost for the ultimate benefit of the commuters/users of the Metro in Nagpur. The Metro project is expected to play an important role in the economic growth of the Nagpur, and offer direct employment to around 1700 persons and indirect employment to many more.

3.11. The law on the subject is clear and categorical. The Electricity Act speaks for promotion of Renewable resources. The Definition of eligible Consumer provided in (Net Metering for Roof-top Solar Photo Voltaic Systems) Regulations ('Net Metering Regulations'), 2015, is ultra-vires to the Electricity Act, 2003 as it restricts the consumer to harness its maximum solar potential. By harnessing solar energy, Green Energy is generated, and/or consumed without any significant negative impact to the environment.

3.12. The commission also erred in not appreciating the findings of various study papers published on the benefits of Metro transport services for the cities.

4. MSEDCL in its submission dated 21 January, 2019 has stated that:

4.1. MSEDCL opposes the admissibility and maintainability of the case, denies the allegations in the case and supports the impugned Order. It has contended that no grounds for review are adduced and that review is a limited jurisdiction to be exercised by the Commission under Regulation 85 of the MERC (Conduct of Business) Regulations, 2004 r/w Section 94 of the Electricity Act, 2003.

4.2. In fact, Maha Metro in the guise of the present proceedings is seeking a rehearing of the proceedings. Maha Metro cannot avail such mode of legal redress. Therefore, MSEDCL is raising the preliminary objection that the Review Petition, as filed, is not maintainable, as the same does not fall within the ambit and scope of Section 94 (1) (f) read with Regulation 85.

4.3. The perusal of the impugned Order would reveal that all of the allegations raised in the Review Petition have already been considered and dealt with by the Commission.

4.4. The Commission has given a reasoned Order after appreciating the facts and circumstances of the case. Through the review Petition Maha Metro is trying to get an appeal adjudicated in the guise of a review by the Commission which needs to be rejected by the Commission. All grounds in the original Petition have been answered by the Commission. It may not be out of place to mention that promotion of renewable energy does not mean only "Net Metering". It also means other forms which are available to Maha Metro which it conveniently chooses to overlook.

5. Maharashtra State Electricity Transmission Company Limited (MSETCL) in its submission dated 4 February, 2019 has stated that Maha Metro has requested for the relaxation to the provision of Net Metering Regulation, 2015. Grid connectivity has been issued to Maha Metro for 25 MVA as per its application. MSETCL will follow the Order of the Commission.

6. The proceedings of the hearing held on 5 February, 2019 are summarized as follows:

6.1. Advocate of Maha Metro reiterated its submission. On enquiry by the Commission regarding any important matter of evidence/development which was discovered by Maha Metro after issuance of the impugned Order, in reply the Advocate of Maha Metro stated that GoM has recently notified Maharashtra Textile Policy, 2018 in which GoM has allowed to install Solar PV for Textile Industry beyond 1 MW under Net Metering policy.

- 6.2. Advocate of MSEDCL stated that Maha Metro filed the Review Petition 272 days after the issuance of the impugned Order. The issues raised by Maha Metro in its review Petition have already been dealt with by the Commission in the impugned Order. Maha Metro through the review Petition is trying to get an appeal adjudicated in the guise of a review by the Commission which needs to be rejected by the Commission.

Commission's Analysis and Rulings

7. Maha Metro had approached the Commission in Case No. 133 of 2016 seeking relaxation in the capacity limits for eligibility under the Roof-top Solar PV Net Metering Regulations, 2015. The Commission has passed the impugned Order dated 16 January, 2018 and ruled that no modification or relaxation of the capacity limit in the Net Metering Regulations, 2015 is allowed. Through this Petition, Maha Metro is seeking review of this decision of the Commission on alleged grounds of error apparent on face of record.
8. Regulation 85(a) of the Commission's Conduct of Business Regulations, 2004 governing review specifies as follows:

“Review of decisions, directions, and orders:

85. (a) Any person aggrieved by a direction, decision or order of the Commission, from which (i) no appeal has been preferred or (ii) from which no appeal is allowed, may, upon 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 direction, decision or order was passed or on account of some mistake or error apparent from the face of the record, or for any other sufficient reasons, may apply for a review of such order, within forty-five (45) days of the date of the direction, decision or order, as the case may be, to the Commission...”

Thus, the ambit of review is limited, and this Petition has to be evaluated accordingly.

9. Maha Metro has requested the Commission to condone delay of 272 days in filing this review Petition. Maha Metro has submitted that delay was on account of the time consumed in decision making process involving consultations at several stages and digging up of connected records and files, approval from competent authority etc. The Commission notes that justification provided by Maha Metro for delay in filing the review Petition is not satisfactory. The impugned Order on which Maha Metro is seeking review, was in the matter of Case No. 133 of 2016 which was filed by Maha Metro itself and hence it would have been easy for it to access record and have consultation on the matter. Nevertheless, the issues raised in this review Petition cannot be addressed by this Commission as there is no ground for review of the impugned Order. Details of which are given below:
10. The Commission notes that in this Review Petition, Maha Metro has contended that the Commission has failed to taken into consideration GoI's policies relating to promoting

RE sources including rooftop solar and uniqueness of Maha Metro for making it eligible for connecting rooftop solar PV above 1 MW through net metering scheme. In this regards, the Commission notes that during the proceedings of the impugned Order, the Maha Metro raised identical issues which has been summarized by the Commission in the impugned Order. After considering these issues raised in that proceedings, the Commission has ruled in the impugned Order as follows:

13. The background of the Net Metering Regulations (and the capacity limits whose relaxation is sought by MMRCL) is as follows. In its Report of August, 2013, the Working Group of the Forum of Regulators (FoR) had set out the following reasoning for suggesting a capacity limit of 1 MW for Roof-top Solar PV Net Metering arrangements in its draft Model Regulations:

“The following provisions can be considered for developing the regulatory framework for net-metering based roof-top PV systems:

The maximum rated capacity for a roof-top project for interconnection with the grid at a specific grid voltage level shall be as per the provisions of the respective state supply/distribution code, read for the purpose of deciding the interconnection voltage by replacing the contracted demand with maximum rated capacity of the Solar roof-top system.

The maximum capacity of roof-top Solar system defined for grid connection in several states is 1 MW. The maximum permissible capacity under RPSSGP is 2 MW, where most projects have been ground-mounted small-scale projects. Considering the above, the maximum capacity limit for roof-top Solar system can be capped at 1 MW for a single metering point to qualify under net-metering.”

Accordingly, the FoR Model Regulations provided as follows:

“...6.2 The maximum roof-top Solar system capacity to be installed at any eligible consumer premises shall be governed by the eligibility of interconnection with the grid for that eligible consumer;

Provided that the maximum installed capacity shall not exceed 1 MW;..”

14. In 2013, the Commission also dealt with the Petition of Shri Sudhir Budhay in Case No. 86 of 2013 seeking guidelines for connectivity of Solar Generators below 1 MW. In its Order dated 25 November, 2013, considering the complexities involved and the far-reaching implications on Distribution Licensees and LT level consumers, the Commission constituted a Working Committee to study the issues, with Shri Budhay, Prayas (Energy Group) (an Authorized Consumer Representative), the Distribution Licensees, MSETCL, the State Transmission Utility, MSLDC and others. In its Report of July, 2014, while noting the differences in this regard in some other States, the Committee made its recommendations considering the capacity limit of 1 MW suggested by FOR in its Model Regulations

read with the provisions of the SoP Regulations, 2014 to start with. The Report states as follows:

“5.3.2 Capacity limits on individual projects

After the connecting Solar roof-top PV projects, the power flow will be reverse in the distribution system. Solar roof-top PV projects are intended to be connected at individual premises subject their connection with distribution licensee. Hence, the capacity limits has to be considered for Solar roof-top PV projects at individual consumer level and LT feeder or Distribution Transformer level.

The existing distribution system has been planned for the individual premises considering their contract demand/connected load (in case contract demand not available). While deciding the capacity of the project, this aspect needs to be considered. As discussed earlier, some of the States has limited the capacity with the annual consumption. The Committee opined that the approach of the deciding the capacity limits based on annual consumption is based on the commercial aspects. Further, the Committee noted that inherent nature of the Solar roof-top PV makes the output power infirm and entire distribution system is planned and designed based on Contract Demand (Sanctioned load of Consumers) and hence same should be considered. The Committee recommends that such capacity of the projects to be connected at individual premises may be limited up to the contract demand or sanctioned load of the consumer For example: If consumer has sanctioned load of 4 kW with the distribution licensee, the maximum capacity of the Solar roof-top PV project allowable to be connected will be 4 kW.”

- 15. Considering this background, the Commission notified its Net Metering Regulations, 2015 with a capacity limit of 1 MW. During that process, the Commission had also considered but not accepted suggestions made by some entities to enhance this limit.*
- 16. In this context, the Commission notes that the gross metering dispensation is available for Solar PV and other RE Projects with capacity of 1 MW and above. In fact, the earlier RE Tariff Regulations, 2010 had provided for sale of energy at the preferential rate to Distribution Licensees through gross metering only for RE Generators with a capacity of 3 MW and above. This limit was reduced by the Commission to 1 MW in its subsequent RE Tariff Regulations, 2015, which were notified shortly after the Net Metering Regulations. Moreover, RE Generators with a capacity of 1 MW and above to whom the Net Metering dispensation is not available can also obtain Open Access for third-party sales.*
- 17. As far as relaxation of the provisions of Regulations for MMRCL is concerned, the Commission notes that MMRCL is not unique in providing public services or performing public functions: there are many others, and discrimination between them cannot be justified. The question of the Commission invoking its power to remove difficulties also does not arise: that is a limited power which is intended to*

address problems that arise in the implementation of the Regulations as they stand. In any case, considering the earlier discussion, the Commission is of the view that no modification or relaxation of the capacity limit in the Net Metering Regulations, 2015 is called for at the present time.

11. Thus, in the impugned Order, after explaining the background of the limiting net-metering capacity to 1 MW, the Commission has rejected the request of Maha Metro to relax such limit. In para 17 of the impugned Order, as reproduced above, the Commission has also rejected Maha Metro's claim of uniqueness with justification. The Commission in its impugned Order has elaborated the rationale/reasoning behind capping 1 MW capacity limit for Solar Roof top and also suggested various options other than Net Metering arrangement available with Maha Metro to exercise. Such a reasoned decision of the commission cannot be ground for error apparent on face of record. If, Maha Metro is aggrieved by the decision, then Commission is not appropriate forum for the same.
12. The Commission notes that in the Review Petition, Maha Metro has referred to the Regulations / Order of other Regulators for justifying its case. However, in view of detailed reasons provided in the impugned Order, in the opinion of the Commission, these would not be sufficient ground for review of the impugned Order.
13. Maha Metro has also contended that Government of Maharashtra's Textile Policy 2018, which has allowed net-metering above 1 MW, is a new and important evidence to be considered for review of impugned Order. In this regard, the Commission notes that its dispensation is governed by the Regulations notified by it and it is not necessary for it to abide by the policy notified by the GoM. Net metering Regulation notified by the Commission allows capacity up to 1 MW to be connected under net-metering system based on a study by a technical committee. Hence, GoM's textile policy essentially a promotional dispensation cannot look into the technical aspects on which after applying its mind, Commission duly notified the Net Metering Regulations after full public consultation. Promotional policy has to be read in consonance the statutory provisions which in this case are the notified Regulations of the Commission. It is a settled law that in case of any conflict on any issue, Act/Rules/Regulations prevail over administrative policy.
14. The Commission does not find any merit in Maha Metro's argument on the ground of error apparent in the impugned Order. Maha Metro neither substantiated its contention with sufficient evidence nor added any new findings or important matter for entertaining this review case. Arguing on the earlier issues in the original matter or mere disagreement with the dispensation already provided by the Commission cannot be the ground for invoking review jurisdiction. None of the grounds stated in this review case can be said to fall within the ambit and scope of Regulation 85 of the MERC (Conduct of Business) Regulations, 2004. Review case has a limited purpose and cannot be allowed to be "an appeal in disguise". On careful consideration and close scrutiny of the case it is found that no error apparent on the face of record is made in the impugned Order. In view of the above, Petition filed by Maha Metro seeking review of the

impugned Order is rejected as not maintainable and devoid of any grounds permissible to review the impugned Order.

15. Hence following Order:

ORDER

The Case No. 286 of 2018 is dismissed as not maintainable.

**Sd/-
(Mukesh Khullar)
Member**

**Sd/-
(Anand B. Kulkarni)
Chairperson**

