

**Before the**  
**MAHARASHTRA ELECTRICITY REGULATORY COMMISSION**  
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**Case No. 184 of 2023**

**Petition of New Asian Infrastructure Development Pvt. Ltd. seeking review of the  
Commission's Order dated 18 May 2023 in Case No 103 of 2022**

New Asian Infrastructure Development Pvt. Ltd. -----Petitioner

V/s

- 1) Government of Maharashtra -Water Resources Department (GoM-WRD)
- 2) Maharashtra State Electricity Distribution Co. Ltd. (MSEDCL)
- 3) Maharashtra State Electricity Transmission Co. Ltd. (MSETCL)
- 4) Maharashtra Energy Development Agency (MEDA) ----- Respondents

**Coram**

**Sanjay Kumar, Chairperson**  
**Anand M. Limaye, Member**  
**Surendra J. Biyani, Member**

**Appearances:**

For the Petitioner:	-----Adv. Deepa Chawan
For the GoM-WRD	-----None
For MSEDCL:	-----Adv. Udit Gupta
For MSETCL:	-----Adv. Ushajee Peri
For MEDA:	-----Mr. Anand Raidurg.

**ORDER**

**Date: 14 November 2024**

1. New Asian Infrastructure Development Pvt. Ltd. (hereinafter referred to as the "**Petitioner**") submitted this Petition on July 1, 2023, pursuant to Regulation 28 of the MERC (Transaction of Business Regulations) 2022. The Petition seeks a review of the Commission's Order dated

May 18, 2023, in Case No. 103 of 2022 (hereinafter referred to as the "**Impugned Order**") of the refund of evacuation expenditure, including interest, from MSETCL for the establishment of 2 x 3.5MW Hydro Project located in Nilwande, District of Ahmednagar.

**2. Prayers of the Petitioner are as follows:**

- a) *“The Hon’ble Commission may be pleased reconsider, modify the Order and Judgment dated 18.05.2023 in MERC case no 103 of 2022 and direct the MSETCL to refund the amount of Rs. 7,61,40889 /- (Rupees Seven Crores Sixty-One Lakhs Forty Thousand Eight hundred and eighty nine Only), being the actual expenses towards evacuation of infrastructure, to the petitioner.*
- b) *The Hon’ble Commission may be pleased to direct MSETCL to pay the refund amount along with interest, to the petitioner.*
- c) *The Hon’ble Commission may punish the respondents for noncompliance of the Provisions of the Electricity, Act, MERC (RPO-REC) Regulations, 2010, MERC (RPO-REC) Regulations, 2016 and the order passed by the Hon’ble Commission U/sec. 142, 146 & 149 of the Electricity Act, 2003.-----”*

3. The Commission notes that the Petitioner is seeking a review of the impugned Order of the Commission. The Petitioner stated that the Commission, while passing the impugned Order, did not consider certain facts/provisions of the PPA/Regulations and that there is an error apparent on the face of the record. Additionally, the Petitioner stated that it has submitted a new fact on the record which could not be presented during the proceedings in the original case. Accordingly, the Petition is being analysed on the basis of the issues raised by the Petitioner and the arguments of the parties in the subsequent part of the Order..
4. There are multiple submissions by the Petitioner, MSETCL, in terms of the reply, rejoinder, and additional submissions. Hence, the Commission considers these submissions on the record to analyse the issues as follows:

<b>S.N.</b>	<b>Description</b>	<b>Date of submission</b>
1.	Reply of MSEDCL	19 April 2024
2.	Reply of MEDA	25 May 2024
3.	Reply of MSETCL	12 June 2024
4.	Petitioner’s Rejoinder	1 August 2024
5.	Petitioner’s additional submission	15 August 2024
6.	MSETCL Additional submission	16 August 2024

**5. At the E-hearing held on 2 August 2024:**

- 5.1 The Advocate for the Petitioner reiterated the issues raised in the Review Petition and submitted that there are some errors on the face of the record of the Impugned Order

and new facts. She also submitted a copy of the email dated 18 November 2013 from the MSETCL asking for an undertaking in a specific format from the Petitioner, as a new fact on the record which could not be submitted at the time of the proceedings in the original case. Hence, the review is maintainable as per the provisions of MERC (Transaction of Business and Fees and Charges) Regulations, 2022 (MERC Fees and Charges Regulations).

- 5.2 The Petitioner further stated that its undertaking to carry out the work cannot be considered law. The provisions of the MERC Regulations overrule those of the GoM Policy and Guidelines.
  - 5.3 The Advocate of MSETCL and MSEDCL stated that they have filed their submissions and have nothing to add.
  - 5.4 A representative of MEDA stated that it has no say in the matter.
  - 5.5 The Commission directed the parties to file the additional submissions, if any, within 15 days.
6. Accordingly, the Petitioner and MSETCL made additional submissions, as recorded in the preceding part of the Order.
  7. The Commission notes that the Petitioner has sought a review of the impugned order. The grounds and submissions of the Petitioner and the Respondents, along with the Commission's analysis and ruling thereon, are elaborated in the following paragraphs.
    - 7.1. The Petition has been filed under Section 94 (1) (f) of the EA, **2003** read with Regulation 28 of MERC (Transaction of Business and Fees and Charges) Regulations, 2022. Regulation 28 of MERC (Transaction of Business and Fees and Charges) Regulations, 2022 provides as below:

*“28. Review of decisions, directions, and orders:*

- (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. –***  
*.....”*

- 7.2. The above Regulation 28(a) provides that the review Petition is maintainable if it is filed within the 45 days from the date of impugned Order and no appeal has been filed. Also, review is maintainable if there is a new fact on record which, after the exercise of due diligence, was not within the knowledge or could not be produced at the time of proceeding in the original case or if there is some mistake or error apparent from the face of the record, or for any other sufficient reasons.

- 7.3. In this case, the Commission has passed an impugned Order dated 18 May 2023 in Case No. 103 of 2022. Aggrieved with the impugned Order, the Petitioner filed this review Petition on 1 July 2023, i.e., within 45 days. Hence, the criteria for filing a review Petition within 45 days is satisfied. Also, there is no appeal against the impugned Order.
- 7.4. Further, it is a settled principle of law that the exercise of the power of review is limited and under the guise of review, the Petitioner could not be permitted to re-agitate and re-argue questions, which had already been addressed and decided by the Commission earlier. Therefore, the ambit of review is limited. The issues raised in this Review Petition are evaluated accordingly.
8. With the above background, the Commission frames the following issues for its analysis and consideration.

***Issue No. 1: Whether the Petitioner has submitted evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time of the proceeding in the impugned Order as specified in Regulation 28(a) of the MERC Transaction of Business and Fees and Charges) Regulations, 2022.?***

***Issue No.2: Whether the impugned Order was passed on account of some mistake or error apparent from the face of the record or any other sufficient reason as specified in Regulation 28(a) of the MERC Transaction of Business and Fees and Charges) Regulations, 2022.? And***

***Whether the provisions of the MERC RPO REC Regulations and the PPA justify the review of the Petition and refund of the evacuation expenses. ?***

The above issues are discussed in the following paragraphs.

***Issue No. 1: Whether the Petitioner has submitted evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time of the proceeding in the impugned Order as specified in Regulation 28(a) of the MERC Transaction of Business and Fees and Charges) Regulations, 2022.?***

### **Petitioner's Submission**

**The Petitioner has not carried the work of evacuation willingly. It has given the undertaking as per the demand of MSETCL:**

- 8.1 The undertakings dated 28 December 2013, 9 September 2014, 15 May 2015 and 20 November 2018 as referred in the impugned Order **states that the Petitioner** would not claim the loss of the generation because of delay in commissioning of Project/evacuation arrangement caused by MSETCL. The Petitioner has never given undertaking to construct the infrastructure beyond interconnection point willingly and at its own cost.
- 8.2 After the submission of the feasibility report by the Chief Engineer, EHV Construction Cum & O M Zone, Nashik, the Assistant Engineer (STU) MSETCL vide email dated 18 November 2013 communicated on the Official E-mail ID of the Petitioner "naccindia@gmail.com" to submit an undertaking on Rs.100/- Stamp Paper with Notary due to change in the connectivity. The aforesaid undertaking stated that the Petitioner is

ready to wait till commissioning of proposed 132 kV Rajur substation (S/s) (revised/changed connectivity).

- 8.3 Mr. Abhishek Sawant, Assistant Engineer, STU, vide email dated 18 December 2013 asked the consultant of the Petitioner Company, Mr. Jagdish Patel, to submit the undertaking on the bond of Rs.100 stamp paper by notarizing the same. The consultant forwarded the said email along with draft of the undertaking provided by MSETCL to the Petitioner on 19 December 2013.
- 8.4 The Petitioner could not produce the said emails during the proceeding in the original case in spite of making efforts to produce all the communications as emails were old and being with consultant. These emails amount to the discovery of new evidence which the Petitioner could not produce in spite of exercising the due diligence and on this ground alone the Review Petition is maintainable.
- 8.5 Moreover, the Petitioner had never given undertaking stating that, the Petitioner would bear the evacuation infrastructure cost and observation to that effect in **paragraph 14.26 and 14.40 of the impugned Order** is distortion of fact and is a mistake.

**MSEDCL's Submission:**

- 8.6 The Petitioner's statement that any undertaking given by it being in contradiction with Regulations has already been considered by the Commission in Impugned Order at paragraph 14.41 & 14.47. The Commission has rightly held that the Petitioner is not entitled to refund the evacuation expenditure on the basis of such undertaking.
- 8.7 As such, re-agitation of the same under the present Review Petition is not permissible in law. Hence, the review is not maintainable on this count.

**MSETCL's submission:**

- 8.8 The Petitioner has failed to satisfy the requirements of Section 94 (1)(f) of the Electricity Act 2003 read with Regulation 28 of the MERC (Transaction of Business Regulations) Regulations, 2022 which requires the Petitioner to bring **forward any discovery new and important evidence that could not be produced before.**
- 8.9 STU had granted grid connectivity to the Petitioner's Project from MSETCL's existing 132 kV Akole S/s vide letter dated 6 June 2011. The Petitioner had requested a grid connectivity from proposed 132 kV Rajur S/s vide letter dated 23 July 2013. In response to the said letter of the Petitioner, MSETCL rejected the Petitioner's request vide letter dated 11 September 2013 stating that the commissioning of 132 kV Rajur S/s is not matching with the commissioning of hydro power project. However, the Petitioner vide letter dated 10 October 2013 had yet again raised the request for change in aforementioned grid connectivity. In light of the said events, MSETCL sought an undertaking from the Petitioner stating that the Petitioner would not claim any loss of generation and that MSETCL would not be responsible for the same. The undertaking was sought due to the fact that the Petitioner had persistently sought a change in grid connectivity despite being informed about the commissioning timeline mismatch.

- 8.10 Therefore, the Petitioner’s contentions are misleading and erroneous. Moreover, the email exchanges attached by the Petitioner to its Rejoinder have no ground of relevance as the said emails do not exhibit any form of coercion to compel the Petitioner.

**MEDA’s Submission:**

No specific submission on this issue of undertaking as new fact.

**Commission’s Analysis and Rulings**

- 8.11 The Commission notes the submission of the Petitioner, stating that it has kept the new fact on record in an email from MSETCL dated 18 December 2013, asking for the undertaking that could not be produced during the proceedings of the original Petition, as this document was old and was with the consultant of the Petitioner.

- 8.12 Based on the records submitted by the Parties, the Summary of the email communications between the Petitioner and MSETCL is as below:

**Table No. 1: Summary of Email correspondences.**

Sr. No	Email Date	From	To	Description of Email
1	18 Nov. 2013 (15.21 Hrs)	Mr Abhishekh Sawant (AE STU) Email id: (AE1SYS @mahatransco.in)	Petitioner Email id (naccindia@gmail.com)	Subject: Revised Feasibility for evacuation of power from the proposed 2 x 3.5MW Petitioner’s Hydro Power Plant.  The email mentions that after submission of the feasibility report from the Chief Engineer, MSETCL, Nashik, the Petitioner has to submit an undertaking on Rs. 100/- Stamp paper with notary, stating that the Petitioner is ready to wait till commissioning of MSETCL’s proposed 132 kV Rajur S/s.
2	18Dec. 2013 (3.52 pm Hrs)	Mr Abhishekh Sawant (AE STU) Email id (AE1SYS	Mr. Jagdish Patel(consultant of the	Subject: Undertaking for seeking grid connectivity through SCDC Line on proposed substation.

		@mahatransco.in)	Petitioner)- Email id (super.cnst @gmail.co m	The email states that please submit the undertaking on Rs. 100/- stamp paper with seal of the Petitioner's company and the notary.
3	19 Dec2013( 9.03 am )	Mr. Jagdish Patel (super.cnst @gmail.com)(co nsultant of the Petitioner)	naccindia @gmail.co m (Petitioner)	Subject: Undertaking for seeking grid connectivity through SCDC Line on proposed substation.  It is a forwarded email dated 18 Dec.2023 originated from Mr Abhishekh Sawant.  The email provides the draft affidavit from MSETCL. It mentions that print on stamp paper, scan along with covering letter and send it to “ ae1sys@mahatransco.in and <a href="mailto:cestu@mahatransco.in">cestu@mahatransco.in</a> ”

8.13 The extract of the Undertaking provided by MSETCL to the Petitioner and to be signed by the Petitioner as referred in the above emails' correspondence is as follows:

*“ -----We wish to connect our said project to MSETCL's proposed 132 kV Rajur S/s at 132 kV through SCDC line.*

*In this regard, We, M/s New Asian Infrastructure Development Pvt. Ltd. hereby undertake that:*

*1.The grid connectivity for our 2 X 3.5 MW co-generation plant on single circuit line from MSETCL's 132 kV Rajur substation is at our own risk, and we will be solely responsible for the same.*

*2. In the case of tripping and /or outage on this 132 kV Single circuit line and /or 132 kV bay , there will be loss of our generation, and which will be our responsibility and MSETCL will not be held responsible for the said loss.*

*3. We will not claim for the loss of generation whatsoever may be the reason from MSETCL. -----*

*Considering the above undertaking , the Chief Engineer (STU) is humbly requested to grant the permission for connecting our 2 x 3.5 MW Co-Generation Power Plant at*

- 8.14 The above email correspondence shows that the undertaking given by the Petitioner is mainly related to “not claiming the loss of generation” if there is tripping and/or outage of the proposed 132 kV SCDC line, or a delay in the commissioning of MSETCL’s proposed 132 kV Rajur Substation, and MSETCL will not be held responsible for said generation loss. From the above, it appears that the aforesaid undertaking is not related to the claim for a refund of evacuation expenses incurred by the Petitioner.
- 8.15 The argument of the Petitioner is that these emails are new facts on record that could not be produced during the proceedings in the original case despite making efforts to produce all communications, as these emails were old and with its consultant. In this regard, it is worth noting that the Petitioner itself, in the aforesaid submission, stated that Assistant Engineer (STU) MSETCL, via email dated 18 November 2013, communicated on the Official E-mail ID of the Petitioner “naccindia@gmail.com” to submit an undertaking on Rs.100/- Stamp Paper with Notary. Also, STU informed the same to the Petitioner’s consultant via email dated 18 December 2013. The consultant of the Petitioner forwarded the email to the Petitioner on 19 December 2013.
- 8.16 Regulation 28(a) of the MERC (Transaction of Business and Fees and Charges) Regulations, 2022 provides that the review is allowed upon the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the knowledge or could not be produced when the impugned order was passed.
- 8.17 From the above-referred email communications, it is clear that the email dated 18 November 2013 was sent by MSETCL to the Petitioner itself, establishing direct communication between them. Further, the Petitioner’s consultant forwarded MSETCL’s email to the Petitioner on 19 December 2013. Hence, the contention of the Petitioner that the email was with its consultant is not justifiable. Furthermore, there is no evidence that the Petitioner has taken reasonable efforts and carried out due diligence to submit the email communication during the proceedings in the original case. Additionally, the undertaking sought by MSETCL via the aforesaid emails was not to claim loss of generation because of delay in the commissioning of Rajur SS or mismatch of the commissioning of the hydro generation project and its revised evacuation arrangement. The aforementioned undertaking is not related to the claim for a refund of evacuation expenses for which the original petition as well as the review petition has been filed. Hence, this undertaking is neither an important nor a new fact to justify the review for a refund of evacuation as specified in Regulation 28 (a) of MERC (Transaction of Business and Charges) Regulations, 2022.
- 8.18 The Commission also notes the submission of the Petitioner that it had never given an undertaking to bear the evacuation infrastructure cost, and the Commission’s observation to that effect in paragraphs 14.26 and 14.40 of the impugned Order is a distortion of fact and a mistake. In this regard, the Commission’s rulings in paragraphs 14.26, 14.40, 14.41, and 14.47 of the impugned Order are as follows:



“14.26 The contention of MSETCL and MSEDCL is that Petitioner’s HEP is 7 MW capacity and hence it is not entitled for refund of evacuation expenses in terms of GoM Policy 2008 and procedure 2010. MSETCL has clarified the same in its approval. Further, as per the GoM Policy 2015, it is not MSETCL’s responsibility to refund the evacuation expenses. Also, neither the Petitioner has obtained the infrastructure clearance from MEDA nor handed over the assets to MSETCL as mandated in the GoM Policy. Further, the Petitioner has constructed the evacuation arrangement willingly with its own cost. Hence, the Petitioner is not entitled to refund evacuation expenses.--  
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**Table No.1 : Chronology of Evets:**

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Sr.No.	Date	Description
15)	10 October 2013	The Petitioner again requested STU for change in grid connectivity from 132 kV Akole S/s to 132 kV Rajur S/s. -----
16)	28 Dec. 2013	The Petitioner gave the undertaking and accepted the responsibility of any loss to the generation because of change in connectivity from Akole SS to proposed Rajur SS. The Petitioner also stated that it will not raise any financial claim for any delay in commissioning of Rajur Substation.
19)	2September 2014	The Petitioner requested MSETCL to grant permission for construction of LILO line for MSETCL, as HEP was completed and work at Substation at Rajur was not completed. The work of 132 kV LILO line was not started. To mitigate loss of generation in absence of evacuation arrangement, the Petitioner proposed to volunteer <b>to take up the work of evacuation line subject to reimbursement by concerned department.</b>
20)	9September 2014	The Petitioner’s HEP work and 132 kV transmission line from project site to proposed 132 kV Rajur substation was completed. Accordingly, the Petitioner to avoid the loss of generation in absence of evacuation facility, requested MSETCL for executing pending work of LILO on 132 kV Akole-Khirvale (Kombhalane) line at proposed Rajur SS voluntarily with its own cost. The contents of the said letter are as follows: “– Our generation system along with switchyard and transmission line is ready upto 132 kV proposed substation at Rajur and to commission the same we have decided to complete LILO line from 132 kV DC Akole Khirvale to Rajur substation <b>under ORC project which we expect to be completed in 2 to 3 months’ time.</b> Since the work of 132 kV Rajur SS has been just initiated and this will take at least 12-15 months for completion, to avoid the delay for commissioning of the said SHP we request you to grant us temporary Grid connectivity by tapping arrangements to existing 132 kV DC Akole – Khirvale line with the help of LILO line.”
23)	15 May 2015	The Petitioner submitted undertaking about its readiness to carryout balance scope of work.

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----- 14.40 The Commission notes that the Petitioner relied on the provisions of the PPA to refund evacuation expenses. The PPA between the Petitioner and MSEDCL was signed on 8 May 2013. The PPA provides that refund of evacuation expenses beyond the interconnection point up to the substation will be under purview of MSETCL. The

*PPA also provides that refund of evacuation shall be done by MSETCL as per its norms and procedure. In this regard the Commission notes that in spite of the provisions of the PPA dated 8 May 2013, the Petitioner gave the undertaking on 9 September 2014 to execute evacuation infrastructure at its own cost. This also indicates the change in stand of the Petitioner as per its convenience.*

*14.41 Further, in spite of the provisions of the RPO REC Regulations and PPA for refund of evacuation expenses, the Petitioner choose to execute the evacuation expenditure at its own cost as outright contribution. Neither MSETCL nor STU forced to do so. Also, the Petitioner's claim of refund of evacuation expenses and capital subsidy is as per the provisions of the GOM Policies. -----*

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*14.47 The Commission notes that the Petitioner has agreed to execute the balance works and accordingly gave undertaking to STU on 20 November 2018. Hence, the argument of the Petitioner that it gave undertaking under force and under undue influence complete the balance work for the end bay at 132 kV Rajur Substation is not based on merit. Further, the Petitioner never raised the issue in the past before MSETCL.----”*

8.19 As discussed in the rulings above, four undertakings given by the Petitioner are as follows:

- a) Petitioner's Undertaking dated 28 December 2013 is related for not to claim the loss of generation because of the change in connectivity from Akole SS to proposed Rajur SS and the Petitioner will not raise any financial claim for any delay in commissioning of Rajur Substation.
- b) Petitioner on 2 September 2014 gave the undertaking requesting MSETCL to grant permission for the construction of the LILO line for MSETCL to mitigate loss of generation in the absence of evacuation arrangement. The Petitioner proposed to volunteer to take up the work of the evacuation line subject to reimbursement by the concerned department.
- c) The Petitioner on 9 September 2024 gave the undertaking stating that the generation system along with switchyard and transmission line is ready up to 132 kV proposed substation at Rajur. To commission the project, the Petitioner had decided to complete LILO line from 132 kV DC Akole Khirvale to Rajur substation under Out Right Contribution (ORC) project.
- d) The Petitioner on 15 May 2015 submitted undertaking about its readiness to carryout balance scope of work at 132 kV Rajur SS.

8.20 The bare perusal of the Petitioner's undertaking dated 9 September 2014 clarifies that the Petitioner has agreed to complete the LILO line from 132 kV DC Akole Khirvale to Rajur substation under ORC to avoid the delay in commissioning of the Hydro Project. Hence, the argument of the Petitioner that it had never given an undertaking to bear the evacuation infrastructure cost is not based on merit.

8.21 In view of the above discussions , the Commission rules that in terms of the provisions of the Regulation 28 of the MERC (Transaction of Business and Fees and Charges) Regulations, 2022, the review is not maintainable to the extent of the emails dated 18 November 2013 and 18 December 2013 as these emails are not the new and important evidence which, after the exercise of due diligence, was not within the Petitioner’s knowledge or could not be produced when the impugned order was passed.

9. ***Issue No.2: Whether the impugned Order was passed on account of some mistake or error apparent from the face of the record or any other sufficient reason as specified in Regulation 28(a) of the MERC Transaction of Business and Fees and Charges) Regulations, 2022 as alleged by the Petitioner.? And***

***Whether the provisions of the MERC RPO REC Regulations and PPA justify the review of the Petition and refund of the evacuation expenses.?***

### **Petitioner’s Submission**

9.1 **Ignore settled position in law amounts to mistake, error apparent on the face of record and is a ground of review:**

a) The Commission has notified RPO REC Regulations, 2010, on 7 June 2010 which provides that, the concerned licensees shall be responsible for development of evacuation infrastructure beyond the inter-connection point. Similar are the provisions of the RPO REC Regulations 2016.

b) When the regulations with legislative intent mandate that, the licensee should bear the evacuation expenditure beyond the interconnection point, it cannot be denied and ignored. The Petitioner is entitled for the entire evacuation expenditure borne by him for the construction of evacuation of power. The Electricity Act is a special statute, and the Regulation thereunder are also special. The statutory regulations prevail of the Government resolutions, guidelines and Circular etc. and hence regulations must be implemented.

c) The communication letter dated 6 June 2011 from MSETCL refers to the Hydropower plant as a proposed project and allowed the connectivity under the Provisions of Electricity Act 2003 and directed to execute the agreement with the Utilities. The agreement between the Petitioner and Water Resource Department was executed on 23 August 2010. The Project of the Petitioner is completed on 30 September 2013 and commissioned on 30 January 2015. During this period MSETCL sanctioned change in Grid Connectivity several times.

9.2 The Commission in Case No 73 of 2014 has held that, “Regulation 17.1 of MERC (RPO -REC) Regulation, 2010, clearly stipulates the responsibility of the concerned Licensee with regards to evacuation arrangements. It also provides the evacuation infrastructure cost beyond the interconnection point is to be borne by the Licensee and recovered from the consumers through a suitable framework developed by the Commission. The responsibility of licensee cannot be modified or capped by any contrary. This

observation of the Commission is also law and distinguishing the applicability of the law on the ground of undertaking is also a mistake and error apparent on the face of record.

9.3 The transmission network would help and be utilized by the MSETCL for the transmission business till the existence of the framework. MSETCL can recover the cost of the same from consumers. As such the Petitioner is entitled to the cost of evacuation infrastructure being legal and contractual right. Denying the legal claim to developer without proper justification would amount to discrimination.

9.4 MSETCL is bound by the Principle of Promissory Estoppel and cannot deny refund the evacuation infrastructure cost:

- a) The Hon'ble Apex Court in case of Monnet Ispat Vs. Union of India, (2012) 11 SCC 1 has held that, "The doctrine of Promissory Estoppel is now firmly established and is well accepted in India.
- b) When statutory regulations were in force stating that licensee has to bear the cost of evacuation infrastructure, the same was mentioned in the Government Policy and also was promised by way of PPA. Therefore, the respondents are bound by the principle of promissory estoppel.
- d) The Government Policy cannot put such capping stating that the refund of evacuation expenses and capital subsidy is applicable to the project up to 5 MW capacity. The MERC RPO REC Regulations never made an exception to the entitlement of refund of evacuation infrastructure on the grounds of capacity of the project. The observation to that effect in the impugned order is ignoring a settled position of law that, the statutory Rules/ Regulation prevail and have overriding effect over the Government policy, GR, circular which are merely guiding in nature. If the statutory regulations are not implemented, legislative intent behind the same gets defeated. The law must be implemented as it is.

9.5 The Petitioner is entitled for the cost of evacuation infrastructure of Rs. 7,61,40889/- (Seven crores sixty-one lakhs forty thousand eight hundred eighty-nine/-) for Hydro Power Plant with interest.

9.6 Also, there was no Petition or counter claim filed by the Respondent MSETCL seeking directions against the Petitioner to complete the remaining work of 132 kV Rajur Substation. Therefore, the Petitioner ought to not have been directed to complete the remaining work at 132 kV Rajur SS.

9.7 The Contention of the Respondent MSETCL that, review petition of the Petitioner is not maintainable has no substance.

9.8 As such the present review petition is maintainable on the grounds of mistakes as well as errors apparent on the face of the record.

**MSEDCL's submission:**

- 9.9 The Petition under guise of review is essentially an Appeal. The observation and finding of the Commission in original Order dated 18 May 2023 has been agitated on merits and not on the settled principle of any error apparent in the order.
- 9.10 The Review Petition has essentially raised the submissions of non-consideration of Regulation 17 of MERC RPO REC Regulations, 2010/2016. However, the said aspect was raised by the Petitioner in the original proceedings. Hence, once an issue has been decided on merits, grievance against the same on merits under the guise of the Review Petition is not permissible in law. Hence Review Petition deserves to be dismissed at the outset.
- 9.11 In absence of any error apparent on record, review petition is not maintainable by seeking re-appreciating the original order on merits.
- 9.12 The Hon'ble Supreme Court in the judgment of Hari Das v. Usha Rani Banik, (2006) 4 SCC 78, has laid down the limited events wherein a review will be maintainable. The relevant extract of the said order has been reproduced hereunder:
- “15. A perusal of Order 47 Rule 1 shows that the review of a judgment or an order could be sought:*
- a. from the discovery of a new and important matters or evidence which after the exercise of due diligence, were not within the knowledge of the applicant;*
  - b. such important matter or evidence could not be produced by the applicant at the time when decree was passed or order made; and*
  - c. on account of some mistake or error apparent on the face of the record or any other sufficient reason.”*
- 9.13 PPA dated 08 May 2013 signed between the Petitioner and MSEDCL, provides that the refund of evacuation expenses beyond the interconnection point up to the substation will be under the purview of MSETCL. It also provides that the refund of evacuation shall be done by MSETCL as per its norms and procedure. Therefore, in spite of the provision of the PPA, the Petitioner volunteered to execute the evacuation infrastructure at its own cost, which indicates the change in stand of the Petitioner as per its convenience.
- 9.14 The evacuation infrastructure has been erected by the Petitioner for its own benefit and MSEDCL never forced the Review Petitioner to do so. Moreover, the Review Petitioner has no cause of action for filing the present Review Petition as there is no breach of PPA dated 08 May 2013 and MERC (RPO REC) Regulations 2010.
- 9.15 As the capacity of the Petitioner's project is more than 5 MW and therefore, as part of the Government Policy dated 14 October 2008 and 14 July 2010 the Petitioner is not entitled for any refund as claimed.
- 9.16 Commission while passing the Impugned Order has observed that the project of the Petitioner was to be executed as per the applicable GoM Policy. It was envisaged and

accepted that the Petitioner has to construct the dedicated transmission line. Accordingly, the Petitioner in the project estimate has included the cost of evacuation arrangement.

- 9.17 The Petitioner assured to complete the balance works at Rajur SS to which STU has also granted provisional connectivity as per request of the Petitioner to avoid the generation loss. However, even after six years, the Petitioner did not complete the balance work in spite of repeated follow up by MSETCL. It shows the casual appearance of the Review Petitioner to complete the works as agreed post evacuation of power through temporary connectivity.
- 9.18 STU had not granted the final connectivity to the Review Petitioner's 7 MW Nilwande HEP. Consequently, MEDA has not processed the submission of the Review Petitioner for capital subsidy. The inadequate work by the Review Petitioner jeopardises the dependability of the Network and overthrow the purpose for which the scheme was designed/planned.

**MSETCL's submission:**

- 9.19 Review Petition is not maintainable as there is no error apparent in the impugned Order. The contentions of the Petitioner are mere repetition and hence denied. The Petitioner, vide Letter dated 09 September 2014 clearly stated that it had decided to complete the LILO line from 132 kV D/C Akole-Khirvale to Rajur Substation under Out Right Contribution (ORC) project. Moreover, the Petitioner's contention stating that the aforementioned Letter is invalid is fallacious as MSETCL, at no given point in time, coerced or put the Review Petitioner in any such alleged circumstances.
- 9.20 Construction of dedicated transmission line was the duty of the Petitioner as per Section 10 of the Electricity Act, 2003. The said Section envisages the duties of the generating companies with respect to establishing, operating, maintaining generating stations, tie-lines, sub-stations, and dedicated transmission lines.
- 9.21 Therefore, the Petitioner's contentions stating that they have not accepted the construction of dedicated transmission line is erroneous and against the established law. Moreover, the construction of the said dedicated transmission line has been communicated to the Petitioner by the MSETCL vide Letter No. MSETCL/CO/STU/302B/341 dated 06 June 2011.

**MEDA's submission:**

- 9.22 The GoM RE Policy 2015 dated 20 July 2015 for grid connected projects has been superseded by the RE Policy 2020. The RE Policy 2020 does not have any provision of benefits to the SHP.
- 9.23 Therefore, the Petitioner's Nilwande SHP is not eligible for refund of evacuation expenditure.

**Commission's Analysis and Rulings**

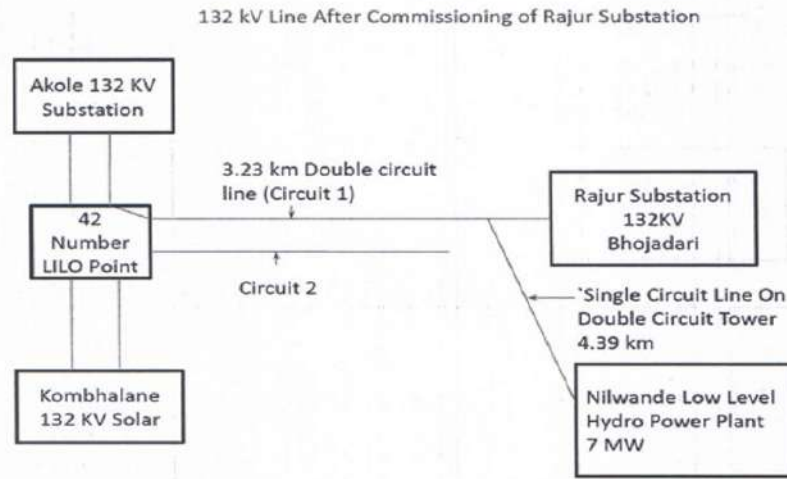
9.24 The Commission notes that the Petitioner sought the review of the impugned Order stating that there is apparent error in the impugned Order. The Petitioner sought the review on the following grounds:

- I. **The MERC RPO REC Regulations 2010 and 2016 prevail over the provisions of the GoM RE policies/Guidelines/Circular etc. As per the provisions of the PPA dated 8 May 2013, the Petitioner is entitled to refund evacuation expenses beyond the interconnection point of the generation project. The Petitioner is entitled to a refund being legal and contractual rights.**
- II. **The Commission in its past Orders has allowed the refund as per the provisions of the MERC RPO REC Regulations.**
- III. **The Principle of Promissory Estoppel binds MSETCL and cannot deny a refund of the evacuation infrastructure cost.**
- IV. **The Commission has wrongly directed the Petitioner to complete the balance work of 132 kV Rajur SS without argument by MSETCL.**

9.25 Per-contra the MSETCL and MSEDCL argue that the Commission has rightly denied the refund of evacuation expenses and there is no error apparent in the impugned Order. Hence, the Petitioner is not entitled to a refund of evacuation expenses.

9.26 At the outset, the Commission notes that:

- I) As per the revised grid connectivity approved by the STU vide letter dated 11 November 2014, the Petitioner was required to execute the following scope of work for evacuation of the power:
  - i. Construction of LILO arrangement one circuit of existing 132 KV DC Akole – Kombhalne line at Hydro Plant (approximate 4.7 km)
  - ii. Installation of suitable ABT metering arrangements capable of measuring 4 quadrant reactive energy and
  - iii. Installation of SCADA/RTU-DC for visibility of generation to SLDC for real-time monitoring of SLDC's requirement etc.
- II) The Petitioner in the review Petition as well as in the impugned Order submitted the following Single Line Diagram showing the evacuation grid connectivity for its Hydro Project:



III) As regards the balance completion of works at Rajur Substation, the Petitioner in the impugned Order made the following submissions:

3.14 The Executive Engineer EHV Nashik vide letter dated 10 January 2017 informed the Petitioner that the work of 132 kV Rajur SS was pending. Hence granted the temporary connectivity for LILO on 132 kV Akole Kombhalane (Khiravile) DC line to HEP Nilwande. MSETCL also asked the Petitioner to carryout balance work of 132 kV Rajur SS end Bay to evacuate power from 132 kV Rajur SS. Further, Vide emails dated 07 August 2017 and 12 August 2017 MSETCL informed the Petitioner that LILO arrangement was on temporary basis and instructed to complete bay work on priority.

IV) The Petitioner vide letter dated 30 September 2016, approached MSETCL to refund the actual total amount of Rs.7,61,40,889/- incurred towards evacuation expenditure. The work has been completed and the transmission assets are in use for evacuation of power.

V) The Commission notes that the refund amount claimed by the Petitioner is as per its estimate. The Petitioner has not provided the details of work executed against which the refund is sought such as the proposed/estimated scope of work/cost vis-a-vis actual scope of work executed and its cost etc. Also, the Petitioner has not submitted the details of the actual cost claimed (as prayed) such as Substation cost, line work, SCADA/RTUC-DC/Visibility of SLDC/Communication work, etc. Also, MSETCL has not submitted any comments on the amount claimed by the Petitioner.

9.27 The grounds of review agitated by the Petitioner vis a vis the rulings of the Commission in the impugned Order are elaborated in the subsequent part of the Order.

**I) The MERC RPO REC Regulations 2010 and 2016 prevail over the provisions of the GoM RE policies/Guidelines/Circular etc. As per the provisions of the PPA dated 8 May 2013, the Petitioner is entitled to refund evacuation expenses beyond the interconnection point of the generation project. The Petitioner is entitled to a refund being legal and contractual rights.**

**A) Provisions of the MERC RPO REC Regulations:**



9.28 Regulation 17.1 of the MERC RPO REC Regulations 2010 in respect of the refund of the evacuation of expenditure provides as follows:

*“ 17.1 The licensees shall be responsible for development of evacuation infrastructure beyond the inter-connection point while developer/generating company will have to develop evacuation infrastructure from generation facility up to the inter connection point at its own expense;*

*Provided that, the evacuation infrastructure cost beyond the Inter-connection Point shall be borne by the licensees and shall be recovered from the consumers as per suitable pricing framework developed by the State Commission;*

9.29 The interconnection point is defined in the RPO REC Regulations 2010 as follows:

*“ 2.1 (j) "Inter-connection Point" shall mean the interface point of renewable energy generating facility with the transmission system or distribution system, as the case may be:-----*

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*(ii) in relation to mini/micro hydro power, small hydro power, biomass power, non-fossil fuel-based co-generation power projects and solar thermal power projects, the inter-connection point shall be line isolator on outgoing feeder on HV side of generator transformer.*

9.30 As per Regulation 2.1(j) of the RPO REC Regulations 2010, the interconnection point for a Small Hydro Project (upto 25 MW) is line isolator on the outgoing feeder on the High Voltage (HV) side of the generator transformer. Further, Regulation 17.1 of the RE RPO Regulations 2010 provides that the evacuation infrastructure cost beyond the interconnection point shall be borne by the licensees i.e MSETCL in this case. Hence, the scope of work beyond the line isolator on the outgoing feeder on the HV side of the generator transformer is under the purview of MSETCL.

9.31 Further, Hon'ble ATE in an Order dated 24 March 2015 in Appeal No. 103 of 2012 (Maruti Suzuki India Ltd. Vs. HERC) has held that while discharging statutory functions under Section 86(1) and 86(3) of the Act, the Commission is bound by its Regulations framed under Section 181 of the Act. The rulings of the Hon'ble ATE Order are as follows:

*“ 10--i. While discharging its statutory functions under Section 86(1) and 86(3) of the Act, the Commission is bound by its own Regulations framed under Section 181 of the Act.*

*ii. This Tribunal has no jurisdiction to decide the validity of the Regulations framed by the Commission under Section 181 of the Act. The validity of the Regulations may, however, be challenged by seeking judicial review under Article 226 of the Constitution of India.*

iii. The term 'shall be guided' used in Section 61, 86 and 79 of the Act cannot be termed as mandatory and any direction hampering the statutory functions of the Commission cannot be considered as binding upon the Commission.

iv. The Commission decided to adopt the provisions of the Tariff Policy relating to reduction of CSS at linear rate of 20% with effect from 2010-11 and has reduced the CSS for 2011-12. **In the light of our findings that determination of CSS is a statutory function assigned to the Commission under Section 42 of the Act and any policy hampering the statutory functions of the Commission cannot be binding.-----**

9.32 Further, the Commission in the impugned Order has ruled that the said Petition has been filed under Section 86(1)(f) of the EA 2003. The relevant rulings in the impugned Order are as follows:

*“ Commission’s Analysis and Rulings:*

*13.9 The Commission notes that the Petition has been filed on 11 May 2022 under Section 86(1) (f) of the EA 2003.*

*13.10 In this regard the Commission notes that the provisions of Section 86(1) (f) of the EA are as follows:*

*“ Section 86. (Functions of State Commission): --- (1) The State Commission shall discharge the following functions, namely: -*

*---*

*(f) adjudicate upon the disputes between the licensees, and generating companies and to refer any dispute for arbitration;---”*

9.33 The impugned Order is silent on the issue that the statutory MERC RPO REC Regulations prevail over the Government Policies/ Guidelines and undertaking given by the Petitioner. Further, the undertaking against the provisions of the Regulations/ law is not a valid ground for denial of the claim.

#### **B) Provisions of the PPA dated 8 May 2013:**

9.34 The provisions of Article X(A) of the PPA provide that refund of evacuation expenses beyond the interconnection point up to the substation end is under the purview of MSETCL. The provisions of the PPA regarding the refund of evacuation expenses under the purview of MSETCL are as follows:

*“ Article X(A) Evacuation facilities*

*1) Evacuation*

*The electrical energy generated from the Facility based on Hydro shall be evacuated to MSEDCL’s system through MSEDCL’s substation /MSETCL’s EHV substation.*

***The 7 MW SHP of Ms New Asian Development Pvt. Ltd. has been permitted grid connectivity at 132 kV level by MSETCL vide letter No. MSETCL/CO/STU/302B/341 dated 6.6.2011 and No. 281 dated 5.1.2012***

***As such , the refund of evacuation expenses beyond the interconnection point up to the substation end is under purview of MSETCL. The refund of the same shall be done by MSETCL as per the norms and procedure. Ms. New Asian Development Pvt. Ltd. shall approach MSETCL directly. ---”***

- 9.35 Further, the Hon’ble ATE vide its Order dated 22 February 2024 in Appeal No. 313 of 2018 (M/S Gadre Marine Export vs. MERC) has ruled that PPA holds a sacred status governing the relationship between contracting parties. Hence it is essential to uphold the agreed-upon terms of the agreement to maintain its sanctity and ensure compliance. The relevant rulings of the Hon’ble ATE are as follows:

***“ 31. The Tribunal in its earlier orders have also emphasized the importance of honoring binding contractual terms and highlighted that the PPA was a legally enforceable agreement that could not be unilaterally terminated by the Appellants. We would like reiterate that the PPA holds a sacred status as the pivotal document governing the relationship between contracting parties and it is essential to uphold the agreed-upon terms of the agreement to maintain its sanctity and ensure compliance with the parties' original intentions. Therefore, PPA is the sacrosanct document between the contracting parties and no interpretation averse to the consensus ad idem can be given to the PPA.***

- 9.36 The Hon’ble SC in Gujarat Urja Vikas Nigam Limited’s vs. Solar Semiconductor Power Co. (India) (P) Ltd., ( 2017 16 SSC498/20) has held that contract entered between GUVNL and the first respondent with a clear understanding of the terms of the contract. The Commission cannot invoke its inherent jurisdiction to substantially alter the terms of the contract between the parties. The relevant rulings of the Hon’ble ATE are as follows:

***“60. In the case at hand, rights and obligations of the parties flow from the terms and conditions of the Power Purchase Agreement (PPA). PPA is a contract entered between GUVNL and the first respondent with clear understanding of the terms of the contract. A contract, being a creation of both the parties, is to be interpreted by having due regard to the actual terms settled between the parties. As per the terms and conditions of the PPA, to have the benefit of the tariff rate at Rs 15 per unit for twelve years, the first respondent should commission the solar PV power project before 31-12-2011. It is a complex fiscal decision consciously taken by the parties. In the contract involving rights of GUVNL and ultimately the rights of the consumers to whom the electricity is supplied, the Commission cannot invoke its inherent jurisdiction to substantially alter the terms of the contract between the parties so as to prejudice the interest of GUVNL and ultimately the consumers.”***

- 9.37 The Commission in the Impugned Order, in respect of the provisions of the MERC RPO REC Regulations 2010 and the PPA, has ruled as follows:

*“14.38 The Petitioner also relied on the provisions of the Regulation 17.1 of the RPO REC Regulations 2010 and Regulations 2016. In this regard, the Commission has notified RPO REC Regulations, 2010 on 7 June 2010 which provides that the concerned licensees shall be responsible for development of evacuation infrastructure beyond the inter-connection point. **Similar are the provisions of the RPO REC Regulations 2016. It is a fact on record that the process of setting up of 7 MW Nilwande SHP was initiated way back in the year January 2009 i.e., even before the notification of RPO REC Regulations 2010 and 2016.** Thereafter most of the correspondence seeking refund of evacuation expenses took place according the GoM Policies and procedures. MSETCL has declined the proposal of the Petitioner vide letter dated 30 November 2017 stating the provisions of the GoM Policy 2008 and procedure 2010. Thereafter, the Petitioner first time on 22 December 2017 approached MSETCL seeking refund of evacuation expenses as per the provisions of the RPO REC Regulations. This is change in stand of the Petitioner. Hence, claim of the Petitioner referring to the provisions of the RPO REC Regulations is an afterthought.-----*

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*14.40 The Commission notes that the **Petitioner relied on the provisions of the PPA to refund evacuation expenses. The PPA between the Petitioner and MSEDCL was signed on 8 May 2013.** The PPA provides that refund of evacuation expenses beyond the interconnection point up to the substation will be under purview of MSETCL. The PPA also provides that refund of evacuation shall be done by MSETCL as per its norms and procedure. In this regard the Commission notes that in spite of the provisions of the PPA dated 8 May 2013, the Petitioner gave the **undertaking on 9 September 2014 to execute evacuation infrastructure at its own cost.** This also indicates the change in stand of the Petitioner as per its convenience.*

*14.41 Further, in spite of the provisions of the RPO REC Regulations and PPA for refund of evacuation expenses, the Petitioner choose to execute the evacuation expenditure at its own cost as outright contribution. Neither MSETCL nor STU forced to do so. Also, the Petitioner’s claim of refund of evacuation expenses and capital subsidy is as per the provisions of the GOM Policies. -----”*

9.38 From the above rulings of the Commission, it is clear that the Commission in the impugned order has recorded the provision of the MERC RPO REC Regulations 2010 as well as PPA, which provides that MSETCL shall be responsible for the development of evacuation infrastructure beyond the interconnection point.

9.39 The Commission notified its RPO REC Regulation 2010 on 7 June 2010. However, MSEDCL signed the PPA on 8 May 2013 for the 7 MW Project after notification of the MERC RPO Regulation 2010 i.e. after three years. The project was commissioned in November 2015. RPO REC Regulations 2010 as well as the PPA provided a refund of evacuation expenditure by MSETCL which can be recovered from the Tariff by MSETCL.

- 9.40 The contention of MSEDCL that the Petitioner has no cause of action to file the Petition as there is no violation of the PPA is not based on merit as the PPA provides the refund of evacuation expenses beyond the interconnection point.
- 9.41 It is a settled position in the law that the provisions of the RPO REC Regulations prevail over the GoM Policy / Guidelines. Also, the provisions of the PPA are sacrosanct and shall be followed. However, the Commission in the impugned Order held that the Petitioner is not entitled to a refund of evacuation expenses as per the provisions of the GoM Policy, which is an error apparent. Hence the review is maintainable to that extent. The Petitioner is entitled to a refund of actual evacuation expenses as per the scope of work stipulated in the revised grid connectivity of MSETCL.

**II) The Commission in its past Orders has allowed the refund as per the provisions of the MERC RPO REC Regulations.**

- 9.42 The Commission in the past in the following cases has allowed the refund of evacuation expenses as per the provisions of the MERC RPO REC Regulations.
- a) The Commission vide its Order dated 30 March 2012 in Case No. 10 of 2012 (Suo Moto Order for RE Tariff) has held that it is the responsibility of the transmission licensee or distribution licensee as the case may be to arrange for the evacuation of power from generating station beyond the interconnection point. The relevant rulings of the Commission in the said Order are as follows:

*“ 1.7 1.7. SHARING OF EVACUATION COST -----*

*Commission’s rulings*

*Regulation 17 of MERC (RPO-REC) Regulations, 2010 clearly specifies and demarcates the responsibility for development of evacuation infrastructure. The relevant extract of the said Regulation 17.1 is reproduced hereunder:*

*“17.1 The licensees shall be responsible for development of evacuation infrastructure beyond the inter-connection point while developer/generating company will have to develop evacuation infrastructure from generation facility up to the interconnection point at its own expense;*

*Provided that, the evacuation infrastructure cost beyond the Inter-connection Point shall be borne by the licensees and shall be recovered from the consumers as per suitable pricing framework developed by the State Commission;-----”*

- b) The Commission vide its Order dated 27 October 2014 in Case No. 73 of 2014 (Case of WTPL for evacuation arrangement for its SHP) has ruled that as per the provisions of the Regulation 17.1 of the MERC (RPO-REC) Regulations, 2010, WTPL is entitled to refund of evacuation expenses. The relevant rulings of the Commission in the said Order are as follows as follows:

*“15. Regulation 17.1 of the MERC (RPO-REC) Regulations, 2010, clearly stipulates the responsibility of the Distribution Licensee with regard to the evacuation arrangements. It also provides that the evacuation infrastructure cost beyond the*

*inter-connection point is to be borne by the Licensee and recovered from the consumers through a suitable pricing framework developed by the Commission. This responsibility of the Licensee cannot be modified or capped by any contrary dispensation in IE&LD's Policy dated 14 July 2010 or any other such instrumentality. -----*

- 9.43 The above rulings of the Commission clarify that the refund of the evacuation expenses needs to be in accordance with the MERC RPO REC Regulations. However, the Commission in the impugned Order denied the refund of evacuation expenses by referring to the GoM Policy. Hence, there is an error apparent in the impugned Order to that extent.

**III)The Principle of Promissory Estoppel binds MSETCL and cannot deny a refund of the evacuation infrastructure cost.**

- 9.44 The Petitioner in the impugned Order has agitated the issue of Promissory Estoppel. The Commission in the impugned Order has ruled that the principle of the Promissory Estoppel is not applicable. The relevant rulings in the impugned Order are as follows:

*" 14.37 The Commission notes that since inception of project, MSETCL's stand was that refund will not be applicable to the Petitioner's HEP being 7 MW higher than specified in the GoM policy i.e., 5 MW. The said stand of MSETCL has been accepted by the Petitioner and it agreed to execute the project at its own cost. Accordingly, MSETCL did not made the budget provision for refund of evacuation expenses. MSETCL had never committed to the Petitioner for refund of evacuation expenditure. Evacuation arrangement has been carried out by Petitioner at its own cost as outright contribution without provision of refund by MSETCL. Hence, the contention of the Petitioner that MSETCL has violated the contractual obligation and promissory estoppel is not tenable. The deviation from MSETCL's decision will result in financial burden on MSETCL and consumers of Maharashtra. Hence, the Petitioner's stand seeking refund of evacuation expenses is an afterthought and breach of contractual agreement to execute the work at its own cost.---"*

- 9.45 The Petitioner in the impugned Order has agitated the issue of the Principle of Promissory Estoppel, and the Commission has addressed it and denied its applicability. However, the rulings of the Commission in the impugned Order were based on the provisions of the GoM Policy. As ruled in Para 9.41 above, the Petitioner is entitled to a refund of the actual evacuation expenditure. The PPA is an agreement between the MSEDCL and the Petitioner, and the Regulations provide a statutory framework, according to which the Petitioner is entitled to a refund of evacuation expenses. Hence, the Principle of Promissory Estoppel is applicable in this case.

**IV)The Commission has wrongly directed the Petitioner to complete the balance work of 132 kV Rajur SS without submission of MSETCL.**

- 9.46 The Commission notes that in the impugned Order on the issue of balance work at Rajur SS, MSETCL has submitted as follows:

*“MSETCL’s submission*

*14.20.....*

*l) STU on 24 April 2015 issued temporary grid connectivity to the Petitioner with tapping one circuit of existing 132 kV Akole-Kombhalane line till completion of balance works of LILO line. The Petitioner on 15 May 2015 submitted undertaking about its readiness to carryout balance scope of work.*

*m) HEP has been commissioned on 13 November 2015 & power evacuation started as per temporary grid connectivity arrangement.—”*

9.47 Accordingly, based on the submission of MSETCL, the Commission in the impugned Order has ruled as follows:

*“ 14.46 In the instant matter, MSETCL, since November 2015, after commissioning of the Rajur SS, multiple times followed with the Petitioner for completion of the balance works. In reply to the follow up by MSETCL, the Petitioner assured to complete the balance works at Rajur SS. STU has also granted provisional connectivity as per request of the Petitioner to avoid the generation loss. However, even after six years, the Petitioner did not complete the balance work in spite of repeated follow-up by MSETCL. It shows the casual appearance of the Petitioner to complete the works as agreed post evacuation of power through temporary connectivity. Hence, STU has not granted the final connectivity to the Petitioner’s 7 MW Nilwande HEP. Accordingly, MEDA has not processed the application of the Petitioner for capital subsidy. The incomplete work by the Petitioner jeopardises the reliability of the Network and defeats the purpose for which the scheme was designed/planned.*

*14.47 The Commission notes that the Petitioner has agreed to execute the balance works and accordingly gave undertaking to STU on 20 November 2018. Hence, the argument of the Petitioner that it gave undertaking under force and under undue influence complete the balance work for the end bay at 132 kV Rajur Substation is not based on merit. Further, the Petitioner never raised the issue in the past before MSETCL.*

*14.48 ----- The Commission also directs the Petitioner to complete the balance works within six months from the date of this Order, which would serve the purpose for which the scheme was designed/planned.---*”

9.48 From the aforesaid rulings, it is clear that the Commission in the impugned Order has directed the Petitioner to complete the balance work as per the submission of MSETCL. Also, MSEDCL in this Petition has agitated the issue of balance work at 132 kV Rajur SS. Hence, the contention of the Petitioner that the Commission directed the Petitioner to complete the balance work at Rajur SS without submission from MSETCL is not based on fact. It is a considered and cautious ruling of the Commission, and no error is apparent in the impugned Order. Further, as discussed in Para 9.26 of this Order, the Petitioner also accepted that the balance work of evacuation is pending.

**10** In view of the above rulings on Issue No. I and II , the Commission’s rulings are summarised as follows:

<b>Sr. No.</b>	<b>Ground for review</b>	<b>Decision on Review</b>
1	Evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by the Petitioner at the time proceeding in the impugned Order	Not allowed as ruled at Para 8 of this Order
2	Provisions of the RPO REC Regulations and the PPA	Allowed at Para 9 of this Order
3	Commission's Past Orders	Allowed at Para 9 of this Order
4	Wrong direction of the Commission to complete the balance work of 132 kV Rajur SS	Not Allowed at Para 9 of this Order

**11** Further, the Commission notes that the Petitioner has not obtained the final grid connectivity from STU. Hence, the Commission directs the Petitioner to complete the balance work at MSETCL's Rajur Substation as per the scope of works given by STU/MSETCL if any and to obtain the final connectivity by completing the formalities as specified by MSETCL/STU.

**12** As discussed above at Para 9.26, the refund amount of Rs. 7,61,40889 /- claimed by the Petitioner is estimated (not actual as prayed for refund) and claimed by the Petitioner without any verification from MSETCL. MSETCL remains silent regarding the correctness of the refund claim. Hence, the Commission directs MSETCL to assess the refund amount claimed by the Petitioner after the completion of any remaining work at Rajur substation. Furthermore, MSETCL shall complete all necessary formalities, such as verification of the assets and handing over or taking over of the assets, in accordance with the prevailing procedures of STU/MSETCL. After completing these activities in all respects, MSETCL shall refund the actual evacuation expenses within three months thereafter, with a simple interest rate as per the prevailing MERC RE Tariff Regulations. Regulation 14.2 of the MERC RE Tariff Regulations 2010 provides a normative interest rate as the average of the State Bank Advance Rate (SBAR) prevalent during the previous year plus 150 basis points.

**Refund of interest claim of the Petitioner:**

**13** The Commission in the impugned Order has ruled that the claim of the Petitioner is not barred by the law of limitation. The relevant rulings of the Commission are as follows:

*“ 13.17 Further, MSETCL/ MSEDCL contends that the limitation period starts from 13 November 2015 i.e., date of commissioning of evacuation arrangement is not based on merit as MSETCL never rejected the claim of the Petitioner before 30 November 2017.*

*13.18 As referred at Para 13.4 above, in terms of the Suo Moto Order of the Hon'ble SC dated 10 January 2022, in WP No. 3 of 2020, including exemption period due to Covid 19 Pandemic, the Petition was to be filed by 30 May 2022. The Petition has been filed on 11 May 2022 within the time.*



13.19 Hence, the claim of the Petitioner is not time barred in terms of the Hon'ble SC Order dated 10 January 2022.-----"

- 14** Hence, the Petitioner is entitled to a refund of evacuation expenses with interest (simple interest rate) from the date of commissioning of the evacuation system i.e. 13 November 2015.
- 15** The Commission notes that the Petitioner also prayed for action against MSETCL for non-compliance with the provisions of the Electricity Act, MERC (RPO-REC) Regulations, 2010, and the Commission's Order as per Sections 142, 146, and 149 of the Electricity Act 2003. However, after analysing the issues involved and the aforesaid ruling to refund the evacuation expenses, the Commission is not inclined to accept the said prayer of the Petitioner.
- 16** Hence, the following Order.


**ORDER**

- 1. The Review Petition in Case No. 184 of 2023 is partly allowed in terms of the rulings at 10 of this Order.**
- 2. The Petitioner is to complete the remaining work at MSETCL's Rajur Substation as per the scope of works provided by STU/MSETCL, if any, and obtain the final connectivity by completing the formalities specified by STU/MSETCL..**
- 3. MSETCL shall assess the refund amount claimed by the Petitioner after the completion of the remaining work at MSETCL's Rajur Substation, if any, by the Petitioner. MSETCL shall complete all necessary formalities, such as verification of the assets and handing over/taking over of the asset as specified by STU/MSETCL. After completing these activities in all respects, MSETCL shall refund the evacuation expenses within three months, with interest as ruled in Para 14 of this Order.**

Sd/-  
**(Surendra J. Biyani)**  
Member

Sd/-  
**(Anand M. Limaye)**  
Member

Sd/-  
**(Sanjay Kumar)**  
Chairperson

  
**(Dr. Rajendra G. Ambekar)**  
Secretary

