

**RECORD OF PROCEEDINGS**

**Combined hearing of Case Nos. 54 of 2007 & Case No. 59 of 2007 on 21.11.2007 at 15.00 hrs**

**(i) CASE No. 54 of 2007**

PETITIONERS : Purti Sakhar Karkhana Ltd. (“PSKL”)  
RESPONDENTS : 1. Tata Power Company Limited (“TPC”)  
2. Reliance Energy Limited (“REL”)  
3. Reliance Energy Trading Company Limited (“RETCL”)  
4. Maharashtra State Electricity Transmission Company Limited (“MSETCL”)  
5. Maharashtra State Electricity Distribution Company Limited (“MSEDCL”)

MATTER : Petition filed by PSKL seeking directions upon MSETCL and MSEDCL not to deny transmission open access of energy generated at their cogeneration unit to RETCL, in the matter of implementation of the energy purchase agreement between PSKL and RETCL

**(ii) CASE No. 59 of 2007**

PETITIONERS : MSEDCL  
RESPONDENTS : 1. Purti Sakhar Karkhana Ltd. (“PSKL”)  
2. Maharashtra State Load Despatch Centre (“SLDC”)

MATTER : Petition filed by MSEDCL seeking directions upon respondents for (i) injunction on the sale of energy from PSKL to any utility/entity other than MSEDCL, (ii) supply of energy from PSKL through transmission open access only to MSEDCL and not to any third party, (iii) being jointly and severally liable for the losses suffered by MSEDCL, which losses should be made good through bills that will become payable by MSEDCL to PSKL, and (iv) direction upon SLDC to take appropriate actions strictly in accordance with Section 32(2)(a) of the Electricity Act, 2003, deny open access to PSKL, and ensure that the energy purchase agreement between MSEDCL and PSKL is honoured

CORAM : Chairman and Members

Subsequent to the initiation of proceedings by PSKL under Case No. 54 of 2007, MSEDCL filed a petition on November 5, 2007 seeking directions as mentioned above with respect to Case No. 59 of 2007. The Commission scheduled the hearing in Case No. 59 of 2007 for November 21, 2007, along with the second hearing for Case No. 54 of 2007 as fixed on the same date, in the presence of four consumer representatives authorised on a standing basis under the Electricity Act, 2003 ("EA 2003"). Notices were issued accordingly.

2. At the combined hearing held in the matters on November 21, 2007, Shri. S.P. Dharmadhikari, Counsel, appeared for PSKL. Shri. Vikas Singh, Additional Solicitor General of India, appeared for MSEDCL. Shri. M.R. Khadgi (Chief Engineer) and Shri. Amitabh Saha (Consultant) appeared for SLDC.

3. Shri. Vikas Singh apprised the Commission that subsequent to the hearing in Case No. 54 of 2007 before the Commission on November 6, 2007, PSKL has initiated a Writ Petition before the High Court, Bombay (Nagpur Bench). A copy of the order dated November 13, 2007 as passed in the said Writ Petition was filed in this regard. It was submitted that despite the clear direction given by the Commission on November 6, 2007 during the hearing in Case No. 54 of 2007 for injection of power from the co-generation unit of PSKL to the Grid, PSKL, as recorded in the said order dated November 13, 2007, had not injected power in the Grid as on November 13, 2007. Shri. Vikas Singh submitted that SLDC should be directed to submit necessary details on the current status. Referring to the arguments advanced by Shri. Pradeep Sancheti (counsel for PSKL) on the interpretation of Clause 7.4 of the energy purchase agreement entered into by MSEDCL with PSKL, as advanced on November 6, 2007 during the hearing in Case No. 54 of 2007, Shri. Vikas Singh submitted that the data that SLDC has been directed to submit on November 6, 2007, should ascertain as to whether the first course of commercial generated power from PSKL through transmission open access has flown to RETCL or MSEDCL. In this regard, SLDC should be directed to submit necessary data at least within two days hereof, and the hearing in the matters may therefore be adjourned. MSEDCL shall file reply considering the submissions of SLDC. It was submitted that the petition as filed by MSEDCL on November 5, 2007 [Case No. 59 of 2007] is not a reply to the main petition filed by PSKL filed on September 18, 2007 under Case No. 54 of 2007. Shri. Vikas Singh further submitted that MSEDCL could not file any reply in Case No. 54 of 2007 owing to the pendency of Writ Petition as initiated by PSKL before the High Court, Bombay (Nagpur Bench).

4. Shri. S.P. Dharmadhikari opposed adjournment on the reason furnished by MSEDCL that reply in Case No. 54 of 2007 could not be filed owing to the pendency of Writ Petition initiated by PSKL before the High Court, Bombay (Nagpur Bench). It was submitted that the said Writ Petition was initiated by PSKL seeking, *inter alia*, the destination point for PSKL to sell power. On the said Writ Petition being withdrawn, as recorded in the order dated November 13, 2007, the stand of MSEDCL for not filing reply in Case No. 54 of 2007 owing to the pendency of the said Writ Petition is not tenable. It was submitted that the petition filed by PSKL under Case No. 54 of 2007 may be considered as a reply to the petition filed by MSEDCL under Case No. 59 of 2007, as the said petitions are 'diagonally opposite'. It was

submitted that if any adjournment is being granted to the hearing in the present matters, PSKL should be permitted to sell power from its cogeneration unit to RETCL, to whom PSKL is contractually bound to supply power, in terms of a separate energy purchase agreement.

5. The Commission enquired of the representatives present on behalf of SLDC as to the present status on the injection of power from the cogeneration unit of PSKL. Shri. M.R. Khadgi submitted that on and from November 14, 2007, PSKL has been generating power, which is being injected in the State Grid. The allocation of this generated power to any entity has not yet been made by SLDC. The Commission enquired of the provisions of law under which SLDC has allowed PSKL to inject power into the Grid. Shri. Amitabh Saha submitted that SLDC has allowed PSKL to inject power into the Grid under Section 32(2)(a) of the EA 2003, as per the directions of the Commission during the hearing held on November 6, 2007 in Case No. 54 of 2007. Referring to the transmission open access procedure that has been drafted by SLDC, it was submitted that parties to an open access arrangement are required to submit all existing documents and agreements for the grant of allocation of power. Allocation of power has not been made in favour of RETCL due to the existence of agreements/arrangements that PSKL has already entered into with MSEDCL, a third party, which sufficiently run contrary to the energy purchase agreement between PSKL and RETCL. On being informed by MSEDCL of the existence of an energy purchase agreement that PSKL has entered into with MSEDCL and further, a tripartite agreement that PSKL has entered into MSETCL and MSEDCL, SLDC had directed PSKL to obtain a written non-objection from MSEDCL in the matter of allocation of generated power in favour of RETCL. It was submitted that till date, PSKL has not submitted any such written non-objection. It was submitted that based on the information received from MSEDCL, SLDC had never directed PSKL to shut down generation but had only cancelled open access consumption by RETCL.

6. Shri. S.P. Dharmadhikari refuted the submissions made by Shri. Amitabh Saha. It was vehemently contended that the issue as to whether the existing arrangement of PSKL with MSEDCL (and MSETCL) fetters the open access arrangement of PSKL with RETCL, is strictly a subject matter of adjudication under Case No. 54 of 2007. SLDC should not have cancelled open access consumption by RETCL on the written recommendations of MSEDCL, which is a competing litigant in Case No. 54 of 2007, when being aware of the pendency of Case No. 54 of 2007. This amounts to usurpation of the powers of the Commission by SLDC. The conduct of MSEDCL and SLDC have been far from *bona fide* in causing such an act, and pre-empting the passing of interim orders in Case No. 54 of 2007. The Commission observed that SLDC has the power to decide on the allocation based on contracts entered into between users as the integrated grid operation controller in real time, even during the pendency of proceedings. It was submitted that even for argument's sake if it is assumed that SLDC has the power to decide on allocation of power generated through open access on real time basis during the pendency of proceedings, the exercise of the same has not been *bona fide* considering that consumption of generated power was cancelled at the instance of MSEDCL, a competing litigant in the said proceedings. Counsel submitted his arguments in writing together with a compilation of case laws.

7. The Commission observed that the data relating to injection of power from PSKL to the State Grid is most essential for the disposal of the matters. The Commission directed SLDC to submit on affidavit the said data and also reply on the issues raised by both the parties in their affidavits/ submissions by November 22, 2007, with copy to parties. The hearing in the matters was adjourned for November 27, 2007. Parties were further directed to submit their replies in writing before the said next date as fixed.

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**List of Persons present at the combined hearing held on November 21, 2007**

1. Shri. D. Radhakrishanan, Director, Deear Fossil Fuel Pvt. Ltd.
2. Shri. Sant Deshmukh, Director, Deear Fossil Fuel Pvt. Ltd.
3. Shri. H.M. Parate, Marketing Assistant, Deear Fossil Fuel Pvt. Ltd.
4. Shri. S.P. Dharmadhikari, Counsel for Purni Sakhar Karkhana Ltd. (PSKL).
5. Shri. B.G. Kulkarni, Advocate for PSKL.
6. Shri. Vijaya Mishra, Advocate for PSKL.
7. Shri. S.W. Dive, Managing Director, PSKL.
8. Shri. P.K. Kukde, Director, PSKL.
9. Shri. P.S. Channe, Company Secretary, PSKL.
10. Shri. B.H. Gujrathi, Exe. Engineer, SLDC.
11. Shri. M.R. Khargi, Chief Engineer, SLDC.
12. Shri. N.K. Madholkar, PSKL.
13. Shri. R.M. Chinchwadkar, Officer, PSKL.
14. Shri. U.V. Deo, Dy Executive Engineer, MSEDCL.
15. Shri. F.E. Padhye, MSEDCL.
16. Shri. D.D. Wangikar, Suptd. Engineer, MSEDCL.
17. Shri. S.M. Mainkar, Jr. Engineer (Commercial), MSEDCL.
18. Shri. Amitabh Saha, Consultant, SLDC.
19. Shri. M.N. Menghrajani, Project Manager, Dodson Lindblom Hydro Power Ltd.
20. Shri. Abhishek, Advocate for MSEDCL.
21. Shri. Ravi Prakash, Advocate for MSEDCL.
22. Shri. Vikas Singh, Counsel for MSEDCL.
23. Ms. Amrita, Advocate for MSEDCL.
24. Shri. P.S. Pandya, Sr. Consultant, REL.
25. Shri. P.V. Anvekar, Sr. Executive Engineer, TPC.
26. Shri. S.N. Joshi, Sr. Executive Engineer, TPC.
27. Shri. V.H. Wagle, Sr. Manager, TPC.
28. Shri. R.G. Sonawane, Suptd. Engineer (TRC), MSEDCL.
29. Shri. R.G. Malamne, Executive Engineer (TRC), MSEDCL.
30. Shri. M.R. Dharaskar, Suptd. (BEST).