

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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Case No. 68 of 2010

In the matter of

Petition filed by Ispat Industries Ltd seeking Open Access under the provisions of the Electricity Act, 2003, the MERC (Distribution Open Access) Regulations, 2005, MERC (Transmission Open Access) Regulations, 2005 and Procedure for Distribution Open Access

Shri V. P. Raja, Chairman
Shri Vijay L. Sonavane, Member

M/s. Ispat Industries Ltd.
Park Plaza, 71 Park Street,
Kolkota-16.

.....Petitioner

V/s

1. M/s. Maharashtra State Electricity Distribution Company Ltd.
Prakashgad, Bandra (East),
Mumbai- 400 051.

2. M/s. Maharashtra State Electricity Transmission Company Ltd.
C-19,E-Block,Prakashganga,
Bandra Kurla Complex, Bandra(East),
Mumbai-400 051

3. M/s. Indian Energy Exchange
1st Floor, Malkani Chamber,
Off Nehru Road,
Vile Parle (East),
Mumbai- 400 099.

4. M/s. Power Exchange India Ltd.
3rd Floor, 'B' Wing, Exchange Plaza,
Bandra Kurla Complex, Bandra (East),
Mumbai-400 051.

5. M/s. Maharashtra State Load Dispatch Centre
State Load Dispatch Centre,
Thane-Belapur Road, Post Airoli,
Navi Mumbai-400 708.

6. The Secretary (Energy)
Industries, Energy & Labour Department,
Government of Maharashtra,
Mantralaya, Mumbai- 400 032.

....Respondents

M/s Pudumjee Industries Ltd.
Thergaon, Chinchwad,
Pune 411 033

....Intervener No. 1

M/s Pudumjee Pulp & Paper Mills Ltd
Thergaon, Chinchwad,
Pune 411 033

....Intervener No. 2

M/s Tata Motors Ltd
Pimpri,
Pune 411 018

....Intervener No. 3

M/s Serum Institute of India Ltd
212/2, Hadapsar,
Pune 411 028

....Intervener No.4

Present during the proceedings:-

For the Petitioner: Shri. T. Tripathi, Advocate
Shri M.S Ramchandran ,Advocate

For the Respondents: Shri. Ravindra Chile, Advocate, Respondent No.1, MSEDCL
Shri. Rahul Sinha, Advocate, Respondent No.1, MSEDCL
Shri. R.G. Sonwane, Respondent No.1, MSEDCL
Shri. A.V. Deo, Respondent No. 2, MSETCL
Shri. Rahul Nayak, Respondent No. 3, Indian Energy Exchange
Shri Santosh, Respondent No. 4, PXIL
Shri. S.G.Kelkar, Respondent No.5, MSLDC

For the Interveners: Shri. L. K. Dwivedi, Intervener 2, Pudumjee Pulp & Paper Mills Ltd.
Shri. K.G Patel, Intervener No. 3, Tata Motors
Shri Rajesh Mahajan, Intervener No 4, Serum Institute Ltd

ORDER

Dated: 15 June, 2012

M/s. Ispat Industries Ltd. submitted a Petition on October 20, 2010 seeking Open Access under the provisions of the Electricity Act, 2003, MERC (Distribution Open Access) Regulations, 2005, MERC (Transmission Open Access) Regulations, 2005, and the procedure for Distribution Open Access stipulated by Respondent No. 1 on its website.

2. The Petitioner has prayed as follows:

“

- a) *That the Hon'ble Commission be pleased to direct the Respondent Nos.1 and 2 to grant the Applicant the electricity through open access including power exchanges;*
- b) *That the Hon'ble Commission be pleased to issue a direction to the Respondent No.1 and 2 to complete all formalities including calibration and authentication of electric meter etc within a period of two weeks of the passing of the order in terms of prayer (a);*
- c) *For such further and other reliefs as the nature and circumstances of the case may require*
- d) *For cost of the present Application.”*

3. The Petitioner submitted as follows:

- a) The Petitioner M/s Ispat Industries is a company incorporated under the provisions of the Companies Act, 1956 and engaged in the business of manufacture of iron and steel. The first Respondent is the Distribution Licensee and is engaged in the business of distribution of power in the State of Maharashtra. The Respondent Nos. 1 and 2 are undertakings of the State of Maharashtra and the Respondent No. 3 and 4 are Power Exchanges. Though the Petitioner does not seek specific relief against Respondent No 3 and 4 yet they are necessary for the proper adjudication of issues raised in the present Petition.
- b) That the current Petition is being preferred pursuant to the Order dated October 6, 2010 passed by the Hon'ble High Court of Judicature at Bombay (“Hon'ble Bombay High Court”), directing the Petitioner to file appropriate

application/representation before the Maharashtra Electricity Regulatory Commission within a period of two weeks from the date of this Order and granting the liberty to revive the Petition if any jurisdictional issue arises as to whether the Commission can decide such matters.

- c) The Petitioner made applications dated February 5, 2010 and April 30, 2010, to the Respondent MSEDCL, for Open Access. The Petitioner submitted that in addition to paying for the cost of electricity to the Respondent MSEDCL, the consumer seeking Open Access has to pay for wheeling charges and a cross-subsidy surcharge to meet the requirements of current level of cross subsidy within the area of supply of the Distribution Licensee (MSEDCL). Thus the Respondent, MSEDCL is well protected as the cost of use of the infrastructure is covered by wheeling charges and the element of cross subsidy being covered by the cross subsidy surcharge.
- d) The Petitioner referred to the MERC (Distribution Open Access) Regulations, 2005, and submitted that Regulation 4.2 deals with the application to be made by a consumer seeking Open Access (*hereinafter referred to as "OA"*). Regulation 4.2.7, to extent relevant, has been extracted as under:-

“

4.2.7 Notwithstanding anything contained in Regulation 4.2 the provision of Open Access to an eligible consumer of a Distribution Licensee shall be subject to settlement of all dues of the Distribution Licensee upto the date of termination of the agreement or reduction in Contract demand, as the case may be:

Provided that where there is a dispute between the Distribution Licensee and an eligible consumer relating to any charges for electricity or sum other than a charge for electricity claimed by the DL from such consumer, then such consumer shall be allowed Open Access upon deposit of such amount with the Distribution Licensees, in accordance with Section 56 of the Act, pending disposal of such dispute.”

It is the Petitioner's contention that the aforesaid provisions are the only provisions / ground on which an OA application can be refused that is if the pending dues are not paid. The said Regulation does not envisage refusal of OA in the event any dispute is pending between the consumer and the Distribution Licensee for refund or in respect of any other dispute.

- e) The Petitioner also referred to the procedure for processing an Application for OA which was made by the Respondent No. 1 under Regulation 4 of MERC (Distribution Open Access) Regulations, 2005 and uploaded on its website. According to Clause 2 of the 'Procedure for Distribution OA' issued by

Respondent No. 1 MSEDCL, the Respondent MSEDCL is supposed to convey the acceptance or refusal to the Applicant within seven days after the receipt of application and that the application may be rejected on account of any arrears due to the said Respondent, or any legal case pending in any statutory /judicial/quasi judicial authority. It submitted that Clause 2 of the procedure which was made under the MERC (Distribution Open Access) Regulations, 2005 was beyond the ambit of this aforesaid Regulation.

- f) As Respondent No. 1 MSEDCL failed to decide upon the application made by the present Petitioner, it had filed a Writ Petition No. 1349 of 2010 before the Hon'ble Bombay High Court on June 21, 2010.
- g) In response to the Petition filed, MSEDCL replied to the Petitioner's application for OA through letter dated July 14, 2010 and called upon the Petitioner, to provide details of the quantum of energy to be procured from Power Exchange India Ltd. and the required contract demand.
- h) The Petitioner vide letter dated July 27, 2010 replied to MSEDCL stating that there is no column in the format of the 'Application for No Objection' with respect to OA wherein the applicants are supposed to provide the details of the quantum of energy to be procured from Power Exchange India Ltd. and hence the said details were not furnished at the time of filing the application. The Petitioner stated that it would be procuring power from either of the Power Exchanges (Respondent 3 or 4) on a day ahead basis which is dependent on factors such as requirement/quote, market clearing price, quantum of power available with either of Power Exchanges. The Petitioner also submitted that its required contract demand was provided in the Application for No Objection.
- i) Further the Hon'ble Bombay High Court vide its Order dated July 27, 2010, directed MSEDCL to decide the Petitioner's application within 30 days from the date of receipt of this Order and clarified that the duration is given without going into the merits of Petitioner's claim. Accordingly MSEDCL vide letter dated August 30, 2010 informed the Petitioner that the 'Application for No objection' of OA was rejected on the basis of non compliance of certain requirements i.e. (a) Injection point details not provided (b) Single line diagram showing point of injection/drawl not submitted (c) The applicant was in the arrears to the tune of Rs 61.48 Crores (d) Copy of LOA/MOU/PPA entered into between the buyer /seller /trader is not submitted. The Petitioner was asked to submit a fresh application supplying the aforesaid information.

- j) As regards the single line diagram showing injection/drawl point, sought by MSEDCL, the Petitioner submitted that, it is practically impossible to provide the same. In case of purchase of power from the exchange, the injection point is Western Regional periphery as a whole as no single injection point can be mentioned. The drawl point has been mentioned in its application for OA.
- k) As regards the arrears as a ground of rejection, the Petitioner submitted that the amount of Rs.61.48 Crores being outstanding is incorrect as it appears to be the monthly energy bill of July 2010 along with certain other charges. The Petitioner further stated that the monthly electricity bills are being paid by it, with applicable delay charges and the same is accepted by MSEDCL, through its letter dated August 30, 2010. MSEDCL has accepted Rs 30 Cr against monthly energy bill of July, 2010 and further Rs 28.10 Cr by September 3, 2010 along with interest and delayed payment charges. Thus, the outstanding regular monthly energy bill has been cleared by September 3, 2010 and the same cannot be reckoned as arrears.

The Petitioner further referred to Clause 4.2.7 of the MERC (Distribution Open Access) Regulations 2005, which provides that in case of dispute between the Consumer and the Distribution Licensee with regard to the electricity charge the consumer shall be allowed OA upon deposit of such amount and it was mandatory to give a 15 days' notice to enable the consumer to make payment of arrears, however the Respondent has not issued any such notice.

- l) As regards the submission of LOA/MOU/PPA, the Petitioner submitted that, in case of Power Exchange there cannot be any such agreement and hence such requirement can never be complied with.
- m) Finally, the Petitioner submitted that on a perusal of Regulation 4 of the MERC (Distribution Open Access) Regulations, 2005 it would demonstrate that the only ground on which the OA application could be refused is if pending dues remain unpaid. The dispute has to be in regard to the amounts to be received by the Distribution Licensee (Respondent No.1) from the consumer (the Petitioner).
4. The Commission vide Notice dated November 1, 2010 fixed a hearing in the matter on November 15, 2010 and directed the Petitioner to serve a copy of the Petition on the Respondents and Authorized Consumer Representatives.
5. Hearing in the matter was held on November 15, 2010. The Petitioner reiterated its case as averred in its Petition. The Counsel appearing for MSEDCL submitted that Maharashtra State Load Despatch Centre (MSLDC) should be impleaded as a Respondent in the matter.

6. Accordingly, on directions from the Commission MSLDC was impleaded as a Respondent in the matter. Further, on directions from the Commission Government of Maharashtra (GoM) through the Secretary (Energy) was impleaded as a necessary Respondent, as the matter could have consequential impact on the Subsidy budget of the State.
7. The Petitioner was directed to serve a copy of its Petition on both MSLDC and GoM. The MSLDC and the GoM were directed to file their reply latest by November 30, 2010 and the matter stood over to December 14, 2010.
8. The Respondent No 1. MSEDCL vide its affidavit dated, December 1, 2010 submitted as follows :
 - a) MSEDCL submitted that the application of the Petitioner for Open Access was solely rejected on the basis of insufficient information. In the absence of information like injection point and single line diagram it would not be possible to calculate the Transmission & Distribution loss as well as wheeling charges. It is further, submitted that if such calculation is not carried out then the tariff structure of other consumers will be adversely affected as losses and wheeling charges will alter with the change in the sources of energy.
 - b) Respondent No 1 submitted that the facility of delayed payment was granted to M/s Ispat Industries and it has been availing this facility since long (about a year). The mere acceptance of the facility does not mean that there are no dues payable by Ispat, which at present is in arrears of Rs 61,48,49,187/-. It further submitted that though the Petitioner has issued post dated cheques the sums claimed by the MSEDCL from the Petitioner remain outstanding at the time of filing this Petition.
 - c) The present MERC (Distribution of Open Access) Regulations, 2005 made under Section 181 of the Act do not deal with and contemplate sourcing of power from Power Exchanges.
 - d) It submitted that lack of information relating to quantum of energy on firm basis, for drawl of energy by the Petitioner, at any point of time, would obstruct, hinder and gravely prejudice the Respondent to follow load shedding protocol as approved by the Commission.
 - e) It submitted that the pending arrears are not disputed by either of the parties. Therefore, Clause 4.2.7 of MERC (Distribution Open Access) Regulations, 2005 is not applicable in the present facts and circumstances. It confirmed that the demand notice for paying the arrears and the disconnection of the power was served upon the Petitioner. Consequently, the Petitioner approached the Respondent vide letters dated July 6, 2010, August 7, 2010 and September 7, 2010 seeking extension of time for making payment of arrears and hence the contention of the Petitioner that no notice was served is incorrect .

9. The Respondent No. 2, MSETCL filed its reply, vide affidavit dated December 1, 2010 and submitted as under:
- a) It relied upon regulations 4.2.1 and 4.2.2 of the MERC (Distribution Open Access Regulations), 2005, with respect to the termination of agreement to supply power and reduction of contract demand to the extent of capacity applied for under Open Access.
 - b) It submitted that the Petitioner had not requested for termination of agreement or for reduction in contract demand and thus would continue to draw power upto 300 MW, provided the same was not procured from the Power exchanges. This would create operational problems for MSLDC.
10. The Respondent No. 5, MSLDC filed its reply vide affidavit dated December 1, 2010 and submitted that it would like to put forward some operational issues for the consideration of the Commission as stated below:
- a) It submitted that as per regulation 4.2 of the MERC (Distribution Open Access) Regulations, 2005 when a consumer applies for OA to the Distribution system in order to obtain supply from any third party other than the Distribution Licensee then necessary steps should be taken by the consumer and Distribution Licensee for termination of agreement for supply of electricity and discontinuance of supply to such consumer. In case the consumer opts for Open access the Distribution Licensee shall reduce the contract demand of such consumer to the extent of capacity applied for under Open Access.
 - b) Where Open Access is granted to the consumers and the quantum of power transacted through Open Access is substantial, the inability of the State supplier to supply that much quantum will cause problem in the Grid Operation.
 - c) In case of Open Access consumer, who intends to purchase the power through power exchange there is no reliability that the consumer may get power. Hence it would be very difficult for MSLDC to manage the Grid stability and security and under such circumstances, if the State is unable to overdraw that much power from the grid, then for ensuring the Grid stability and security MSLDC will have no option other than to carry additional load shedding in the distribution area.
11. The Respondent No 3, Indian Energy Exchange filed its reply dated December 7, 2010 and submitted that under the MERC(Distribution Open Access) Regulations,2005 and the detailed procedure issued by the Central Transmission Utility the points of injection and drawl are to be specified in case of scheduling of bilateral transactions for short term Open Access, whereas in case of “collective transactions” (short term transaction) the point of injection is not required to be furnished and cannot be known in advance because of inherent nature of anonymity of

the bidding process through power exchanges. Also, the entity proposing to import the power cannot execute LOA/MOU/PPA with exchanges.

12. Further hearing in the matter was scheduled on December 14, 2010. During the hearing, the Commission observed that three Intervention Applications have been received in this matter from (i) M/s Pudumjee Pulp & Paper Mills (ii) M/s Pudumjee Industries and (iii) M/s Tata Motors. All these interveners submitted that despite having the statutory qualifications to get Open Access through power exchanges and several reminders, the denial of the same by MSEDCL is malafide and illegal. Further, another Intervention application was filed by M/s. Serum Institute of India Ltd in this matter on December 22, 2010 and the relief sought by it were the same as that sought by the Petitioner. All the Interveners contended that since the facts, circumstances and grievances of the case are almost similar to M/s Ispat Industries Ltd; hence in the interest of justice the interveners may be heard in the present case. The Commission admitted these Intervention Applications.

13. During the hearing held on December 14, 2010, the Chief Engineer, MSLDC submitted that there are some operational and technical issues which need to be addressed before granting Open Access. He further explained in detail the issues involved, in case of Open Access consumer and OA generator which could lead to emergency load shedding in the State. The Intervener, M/s Pudumjee Pulp & Paper Mills Ltd ,submitted that the responsibility of MSLDC while granting short term open access, is to check two parameters, i.e. availability of transmission capacity and availability of metering infrastructure and also that the Intervener has no intention to reduce its contract demand with MSEDCL and would opt for part purchases from power exchanges. The Commission observed that, in order to address these issues relating to Open Access, a meeting needs to be conducted by the Committee set up for review of draft Open Access Regulations, wherein information could be shared with the Petitioner and the Interveners. The Commission directed the Petitioner, and the Respondents to serve a copy of their respective Applications and submissions to the Interveners. The Interveners were also directed to serve a copy of their submissions to the Petitioner and the Respondents.

14. As observed by the Commission during the course of the hearing held on December 14, 2010 a meeting was conducted by the Committee set up for review of Draft MERC Open Access Regulations on December 22, 2010 at the Commission's office, wherein all the concerned were invited for discussions, with a view to address the OA related issues. During the said meeting ICRA Management Consulting Services Ltd who is assisting the Commission in finalizing Open Access Regulations made presentation on the draft Open Access Regulations. Thereafter, various issues related

to Open Access such as Standby supply, Open Access through Power Exchanges, connectivity issues etc were discussed.

15. Further, the Petitioner filed an affidavit in rejoinder dated February 18, 2011 submitting the following :-

- a) As regards the Single Line Diagram requirement, the Petitioner submitted that it proposes to purchase power from the Power Exchange wherein the suppliers would be different at different point of time, hence no firm injection point can be determined. Further that it is connected at 220 kV wherein the wheeling charges and distribution losses are not applicable and only standard transmission losses from the State and Regional transmission may be applicable.
- b) As regards the submission of LOA/MOU/PPA, the Petitioner reiterated that, in case of collective transactions for short term OA the point of injection cannot be submitted as it cannot be known in advance. It submitted that the entity intending to trade through the Power Exchange can produce evidence of registration with the power Exchange as a proof of its intention to transact through the Exchange.
- c) It submitted that though the OA user purchases power from other than the incumbent Distribution Licensee, he continues to pay the demand charges to the Distribution Licensee, hence it is commercially beneficial for the Respondent MSEDCL and in view of the same the contract demand cannot be reduced.

16. Further hearing in this matter was held on February 24, 2011. During the course of hearing, the authorised Consumer Representative, Vidarbha Industries Association (VIA) submitted some additional points on the matter as follows:

- a) Some States like Punjab ,Haryana ,Uttarakhand ,Himachal Pradesh Madhya Pradesh ,Rajasthan and Tamil Nadu are permitting consumers to purchase power from the Energy Exchange without reducing the contract demand of the consumers.
- b) It submitted that reduction of contract demand is to be done in accordance with the Electricity Supply Code Regulation as is specified in clause 4.2.1 and 4.2.2 of Distribution Open Access Regulation 2005. The Licensee cannot force the Applicant to reduce the contract demand since the demand charges shall be paid by the Applicant (OA user) though the power may come from different sources. As regards the stability of grid Operation in case of failure of supplier, it is submitted that the issue is already addressed in UI (Unscheduled Interchange) transaction and the procedures being followed by other States.
- c) A Power Point Presentation regarding the impact on the revenue of Distribution Licensee by allowing Open Access was made by VIA.

The Commission directed the Respondent, MSEDCL to have further discussions with the Petitioner on the various technical aspects of the matter for grant Open Access smoothly.

17. Further, in compliance of the Commission's directions, the Respondent MSEDCL conducted a meeting on February 28, 2011 along with the three Representatives of the Petitioner at Respondent No. 1's Prakashgad office. The same was intimated to the Commission via email dated February 28, 2011 sent by the Advocate of Respondent No. 1. It was stated therein that the Respondent MSEDCL had put its proposal to the representatives of the Petitioner for their consideration, however the Petitioner had not provided any directions to the representatives.
18. Further hearing in the matter was held on March 1, 2011.
19. Respondent No. 1 submitted that the MERC (Distribution of Open Access) Regulations, 2005 made under Section 181 of the Act does not deal with and contemplate sourcing of power from Power Exchanges. However, it is settled law that Regulations are not a pre-condition to effectuate a right which is otherwise provided in law. The right to open access is provided in Section 2(47) read with Section 42(2), Section 42(3).
20. It is true that Power Exchanges (Respondent No. 3 and 4) were set up under orders dated 31.8.2007 and 27.5.2008 of the Central Electricity Commission that is much after the MERC (Distribution of Open Access) Regulations, 2005 were notified. Hence, these regulations need to be made in a manner that effectuates open access for sale or purchase of power through power exchanges. The Hon'ble Bombay High Court came to examine these issues in Writ Petition No. 1552/2011 filed by Respondent No. 1 including the issue as to whether this Commission should be restricted to grant open access for transactions using power exchange platforms until regulations provide for the same dealing with all operational and technical issues incidental thereto. In the subsequent paragraphs, Hon'ble High Court's order dated 11-10-2011 have been discussed where *inter alia* the answer as to whether this Commission should be restricted to grant open access has been given.
21. Para 5.7 of the National Electricity Policy lays down as follows:-

“Enabling regulations for inter and intra State trading and also regulations on power exchange shall be notified by the appropriate Commissions within six months.”

22. It is necessary to understand how power could be bought or sold on power exchanges. All day ahead transactions, on Power Exchange(s) operating at inter – state level with the permission of the Central Electricity Regulatory Commission (“Central Commission”), are inter-state transactions. As per the usual Contracts specifications of Power Exchanges delivery point is the periphery of Regional Transmission System in which the buyer / supplier is located. Power Exchange gives the scheduling request for collective day ahead transactions to National Load Despatch Centre as regional entity wise. National Load Despatch Centre does not schedule for entities within the State. The power exchange has to comply with CERC (Open Access in Inter – State Transmission) Regulations, 2008 as amended from time to time. The procedure for scheduling and delivery are as per the provisions set out in the procedure for scheduling for collective transaction issued by Central Transmission Utility (CTU) which are approved by Central Commission. As per CERC (Open Access in Inter – State Transmission) Regulations, 2008 and amendment 2009, any participant on power exchange which is a state utility or intra-state entity has to obtain a “No Objection” or a “Prior Standing Clearance” from State Load Despatch Centre. This form specifies maximum MW ceiling allowed for injection or drawal from the State grid. It is the concurrence given by the SLDC that the Intra-state Transmission system / distribution network has the required transfer capability for transfer of power to / from the State grid as per the specified ceiling. This concurrence is given for the inter-state transaction. Power Exchange has to apply to National Load Despatch Centre (NLDC) for Open Access. NLDC is a nodal agency for collective transaction (day ahead market) on power exchange. Delivery point usually mentioned in the contract specification of power exchanges also mention “Regional entity of seller”. In case the contract is financially settled, the settlement price is “Average of daily System Prices of Day-Ahead Market of Indian Energy Exchange (IEX) for delivery during the contract month”. Price discovery methodology which has been approved by the Central Commission for Power Exchange in case of collective transactions in day ahead market on power exchange is double-sided closed bid auction. All purchase and sale bids are aggregated for tracing a demand and supply curve respectively. The point of intersection of aggregated demand and aggregated supply curve determines the market clearing price and the market clearing volume. All the buyers and sellers pay / receive the uniform price. These transactions are collective transactions – means a set of transactions discovered on power exchange through anonymous, simultaneous competitive bidding by buyers and sellers. The point of physical off take and delivery of power is defined at the regional periphery. Hence the buyer and seller are always mandated to pay regional transmission charges and regional losses. This is irrespective of where he is located. Hence these tantamount to interstate transactions. The CERC has also notified the CERC (Power Market) Regulations, 2010 towards the establishment and management of the Power Exchanges and dealing with the creation of a comprehensive market structure and enabling the transaction, execution and contracting all types of possible products in the electricity markets.

23. As the applicant's / petitioner's transaction involves using the platform of power exchanges, the specific issues that arise for consideration are as follows:-

- a) In case of sale or purchase of power using the Power Exchanges, can the OA application be rejected for (i) Non submission of Single Line Diagram showing point of injection, (ii) Non-submission of copy of LOA/MOU/PPA between the Buyer/Seller/Trader?
- b) Is it mandatory to terminate agreement for supply of electricity or reduce contract demand in case of Open Access for power to be transacted through Power Exchanges?
- c) What type of dues could be the subject matter of denial of open access ?

24. The Commission held in its Order dated September 9, 2011 in Case 43 of 2010 that *....if there are any specific operational issues **the same could be taken care of while finalizing the Draft MERC (Transmission Open Access) Regulations, 2011 and Draft MERC (Distribution Open Access) Regulations, 2011.** All the stakeholders may bring before the Commission specific operational issues with full justification and concrete proposals in this regard to enable the Commission to consider the same in such process.*"

Hence, the issues raised would need to be addressed while finalizing the new MERC (Transmission Open Access) Regulations and Draft MERC (Distribution Open Access) Regulations.

25. In Writ Petition No. 1552/2011 filed by Respondent No. 1, Hon'ble Bombay High Court passed an order dated 11-10-2011 which *inter alia* reads as follows:-

"The Learned Additional Solicitor General states on instructions that the Maharashtra Electricity Regulatory Commission has initiated the process of reviewing the existing regulations on open access. The Learned Additional Solicitor General further states that in the event that the Draft Regulations which have been published by the Commission do not contain a specific regulation relating to sourcing of power through power exchanges, the Commission is ready and willing to consider the grievance of the Petitioner in relation to the sourcing of power through power exchanges and all operational problems relating thereto which are sought to be raised in the Petition. In the event that the Petitioner seeks to supplement the objections which it has already raised before the Commission, it would be at liberty to do so within four months from today. In view of the statement which has been made by the Learned Additional Solicitor General and the direction as aforesaid, no further directions are sought in respect of prayer clause (a) of the Petition. Counsel appearing on behalf of the Petitioner states that prayer clause (b) does not survive at this stage. In this view of the matter, the Petition shall stand disposed of

accordingly since Learned Counsel for the Petitioner does not press any other point.”

{Emphasis added}

26. In view of the aforesaid order dated 11-10-2011 of the Hon’ble Bombay High Court, the issues raised would need to be addressed while finalizing the new MERC (Transmission Open Access) Regulations and Draft MERC (Distribution Open Access) Regulations. However, that does not fetter this Commission from disposing of any applications for open access being filed by consumers for sourcing/selling power through power exchanges, till such time that the Commission has dealt with the issues raised before it by framing appropriate regulations as the Hon’ble Bombay High Court has recorded MSEDCL’s statement in its aforesaid Order that prayer clause (b) does not survive at this stage. Prayer clause (b) in Writ Petition No. 1552/2011 filed by Respondent No. 1, reads as follows:-

“b. This Hon’ble Court may restrain the Respondent by way of an appropriate writ or order or direction from disposing of any further applications for open access being filed by consumers for sourcing power through power exchanges, till such time that the Commission has dealt with the issues raised before it by framing appropriate regulations.”

{Emphasis added}

The Special Leave to Appeal (Civil) No(s).14984/2011 with SLP(C) NO. 15048 of 2011 from the Hon’ble Bombay High Court’s orders, filed by Respondent No. 1 MSEDCL before Hon’ble Supreme Court by its Order dated 23/05/2011, came to be dismissed.

27. Subsequently, the suggestions and objections of Respondent No. 1 MSEDCL have been submitted vide letter dated 3rd March 2012 (received by this Commission on 5th March 2012) with regard to the draft of the new MERC (Transmission Open Access) Regulations and MERC (Distribution Open Access) Regulations. That is how, it has taken some time for disposal of this petition.

28. The suggestions and objections of Respondent No. 1 MSEDCL are being considered while finalizing the said Regulations.

29. In light of the above, Respondent Nos.1 and 2 are hereby directed to complete all formalities, within a period of Four weeks hereof, to enable the Applicant to transact on power exchanges.

With the above, Case No. 68 of 2010 stands disposed of. No order as to costs.

Sd/-
(Vijay L. Sonavane)
Member

Sd/-
(V. P. Raja)
Chairman