



Madhya Pradesh Electricity Regulatory Commission

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Petition No. 01/2007

SUB :- IN THE MATTER OF PERMISSION UNDER MPERC (TERMS & CONDITIONS FOR INTRA-STATE OPEN ACCESS IN MADHYA PRADESH) REGULATION, 2005 TO SUPPLY POWER GENERATED FROM GENERATING STATION (CPP) OF SATNA CEMENT WORKS (A UNIT OF BIRLA CORPORATION LTD.,) TO UNIVERSAL CABLES LIMITED.

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M/s Universal Cables Ltd., Satna	-	Petitioner
V/s		
M.P. Poorv Kshetra Vidyut Vataran Co.Ltd, Jabalpur	-	Respondent

ORDER (Passed on this day 03rd April 2007)

Shri P.L. Nene, Consultant and Shri Narendra M. Sharma, Advocate appear on behalf of the petitioner.
Shri P.V. Sathe, Addl.S.E. (Comm.) O/o. CMD (EZ) appears on behalf of the Respondent Company.

2. The petitioner has filed this review petition on the date 02-01-2007 in the matter of Permission under MPERC (Terms & Conditions for Intra-state Open Access in Madhya Pradesh) Regulation, 2005 to Supply Power generated from Generating Station (CPP) of Satna Cement Works (A Unit of Birla Corporation Ltd.,) to Universal Cables Limited. It is stated in the petition that in the petition No. 94/2006 the petitioner had submitted to the Commission that arrangement for availing power from captive power plant of M/s Satna Cement Works and cross subsidy surcharge may also be fixed. The Commission vide order dated 18/10/2006 has passed an order that M/s Satna Cement Works cannot be allowed to sell its power to the third party consumer (M/s Universal Cables Ltd) unless it obtains a license from MPERC. The Commission further directed that M/s Universal Cables Ltd may seek Open Access if they wish to source their requirement from a generating station other than the licensee of the area.

3. Now the petitioner has submitted this petition for review of the Commission's order mentioned above on the following grounds:

i) The reliance of the Commission on the said judgments passed by the Hon'ble Bombay High Court in W.P. 882/2005 (titling Bhushan Steels & Strips Ltd.) is erroneous inasmuch as in the said case the petitioner did not pray for Open Access and the relevant Open Access regulation not being enforced till the passing of the said order, and the said case was not for permission for seeking the open access.

ii) In view of the clause 3 of MPERC (Terms & Conditions for Intra-State Open Access in MP) Regulation, 2005 it appears that the submission made by the petitioner have escaped the attention of the Commission which has resulted into passing of the order dated 18.10.2006. This order suffers from errors apparent on the face of the record. As per clause 3.1 of the said Regulations, Open Access customers are eligible to avail open access through Intra-State distribution Licensee and such an open access shall be available for use by an open access customer on payment of such charges as may be determined by the Commission. In view of this Regulation no license is required for a CPP to supply the electricity to a consumer availing the Open Access. **The only requirement of the Open Access Regulations is to avail the supply through the system of the State distribution licensee.**

iii) The petitioner has also brought on record the reasons why the petitioner cannot avail supply from the existing system of the state distribution licensee because the specific requirement of the petitioner is to receive uninterrupted and quality supply of power, but the respondent has failed to supply uninterrupted power to the petitioner. In all aforesaid circumstances the petitioner proposed laying of a transmission line from generating plant to the load center, so that the quality of supply is maintained and in order to meet the requirement of the relevant regulations for open access. The petitioner also proposes to hand over the line to the licensee after payment of supervision charges and also payment of operation & maintenance charges as per schedule approved for O&M of dedicated lines by MPERC.

4. The respondent East Discom in its reply submitted on 03-03-2007 stated that there is no error-apparent in the order passed by the Commission as it has clearly directed the petitioner to seek open access if they wish to source their requirement from a generating station other than licensee of the area. With regard to the reliability and quality of power from the licensee, the respondent stated that the licensee is supplying power to a number of other such consumers and the supply has been quite reliable and of good quality. In view of the Section 2 (16) of the Electricity Act, 2003, the proposed line by the petitioner is not connected to a transmission line, sub-station generating station or a load center. It is, in fact, an inter-connection between two HT consumers. Therefore, the line is not covered within the definition of the dedicated transmission lines as per the Electricity Act, 2003.

5. It is further stated by the Respondent that under Section 2 (47) of the Electricity Act 2003, "Open Access" means the non-discriminatory provision for the use of transmission lines or distribution system or associated facilities with such lines or system by any licensee or consumer or a person engaged in generation in accordance with the regulations specified by the Appropriate Commission. It is clear that Open Access is a transaction where supply is injected at any point of the grid system and drawal at another point. It is also stated by the respondent that the metering can only read the quantum of energy flow but it cannot distinguish as to whether the energy flow is through the captive power plant or from one connection to the other of the supply of distribution licensee.

6. The respondent submitted that as already mentioned above, the said line is not covered under the definition of dedicated transmission lines as per the Act not does it fulfil the condition of Open Access. In view of the above, the respondent submitted that the review petition is not admissible and review petition having no ground for review be dismissed.

7. The Commission heard both the parties. During the hearing petitioner's Advocate has drawn the attention of the Commission to the Provisions of Section 10(2), 42(2) and 12 of Electricity Act, 2003. The

petitioner has also referred the Provision of clause 3.1 of MPERC (Terms & Conditions for Intra State Open Access in MP) Regulation, 2005. The Commission is of the view that section 42 (2) deals with the provisions relating to Distribution Licensee. As per above Section 42(2) the Commission shall introduce Open Access in phases subject to such conditions regarding cross subsidy and operational constrains as may be specified in the Regulation. Similarly provision of section 10 (2) of Electricity Act 2003 is also subject to the Regulation made under section 42 (2) of the above Act. Therefore the requirement of Open Access is to avail the supply from the licensee or from other generating company but through the system of the distribution licensee. In this case petitioner wants to supply to the UCL through its dedicated feeder. Section 12 of the Act provides that no person shall transmit or distribute or undertake trading of Electricity unless he is authorized to do so by license issued under section 14 or is exempt under section 13.

8. On behalf of the petitioner, it is submitted that Generating Company includes Captive Power Generators and as per the provision and section 42 (2) of the Electricity Act 2003 and clause 3.1 of Open Access Regulation, Open Access customers are eligible to avail open access through Intra State distribution system of the State distribution licensee and such an open access shall be available for use by an open access customer on payment of additional cross subsidy if required, as may be determined by the Commission. The petitioner submits that this is also in conformity with clauses of National Electricity Polity and Tariff Policy. The Electricity Act, enables generating companies to sell Electricity to consumers for whom Open Access in distribution is introduced by the Commission through the Regulation. Petitioner's Advocate also submitted that judgment passed by the Hon'ble Bombay High Court is not applicable in this case as in the said case the petitioner did not pray for Open Access and open access regulation was not being enforced till that time.

9. Having heard both the parties the Commission is not agreeable with the arguments submitted by the petitioner. Section 9(2) of the Electricity Act provides that "Every person, who has constructed a captive generating plant and maintains and operates such plant, shall have the right to open access for the purposes of carrying electricity from his captive generating plant to the destination of his use". In this case petitioner wants to supply the power generated by the captive power plant to other consumers without obtaining license. The petitioner has also accepted in his petition that only requirement of Open Access regulation is to avail the supply through the system of the State Distribution Licensee. The contention of the petitioner to fulfil this requirement by handing over the line to the licensee is also not acceptable. Petitioner's allegation is denied by the respondent that he is not supplying power of good quality. The Commission finds no error in the order passed by the Commission on the date 18-10-2006 in petition No. 94/2006. Therefore on the grounds mentioned above, the Commission finds no merit in this review petition and the same is rejected.

10. With the above directions the Commission decides to close the case.

Ordered accordingly.

Sd/-
(R.Natarajan)
Member (Econ.)

Sd/-
(D.Roybardhan)
Member (Engg.)

Sd/-
(J.L. Bose)
Chairman