

**MADHYA PRADESH ELECTRICITY REGULATORY COMMISSION
BHOPAL**

Sub: In the matter of petition under Regulation 9(1) of the MPERC (Conduct of Business) Regulations, 2004 read with Regulation 8(40) of the MPERC (Terms and Conditions for Intra-State Open Access in Madhya Pradesh) Regulations, 2005.

Petition No. 22 of 2017

ORDER

(Date of Order: 16th August' 2019)

M/s J.K. Mineral

Main Road, Balaghat – 481 001

- Petitioner

Vs.

1. The Managing Director

M.P. Power Transmission Company Ltd.,
Block No. 2, Shakti Bhawan, Rampur, Jabalpur – 482008

2. The Managing Director

M. P. Paschim Kshetra Vidyut Vitaran Co. Ltd.
GPH Compound, Pologround, Indore.

3. M/s. Indore Treasure Island Pvt. Ltd.,

Plot No. 11, South Tukoganj, Indore

- Respondents

Shri Parinay Deep Shah, Advocate appeared on behalf of the petitioner and Respondent No. 3.

Shri Anand Tiwari, SE and Shri R.C. Chakraborty, EE appeared on behalf of M.P. Power Transmission Company Ltd., Jabalpur.

Shri Shailendra Jain, Dy. Director appeared on behalf of M. P. Paschim Kshetra Vidyut Vitaran Co. Ltd., Indore.

2. M/s. J.K. Minerals, the petitioner had earlier filed the subject (Petition No. 22 of 2017) before this Commission under Regulation 9(1) of MPERC (Conduct of Business) Regulations, 2004 read with Regulation 8(40) of MPERC (Terms and Conditions for intra-state open access in MP) Regulations, 2005 in the matter of non-clearance of long term open access of power by Respondent No. 2 i.e. M.P. Paschim Kshetra Vidyut Vitaran Co. Ltd., Indore. Vide Order dated 15th September' 2017, the Commission, while disallowing the request of the petitioner disposed of the aforesaid petition. Aggrieved by the aforesaid Commission's order, M/s. J.K. Minerals filed Appeal No. 21 of 2018 before the Hon'ble Appellate Tribunal for Electricity seeking the following relief:

- (a) Allow the appeal;
- (b) Set aside Respondent No. 2 Letter No. 04-02/P9/OA-JK-Minerals/F-194/2900, dated 15.10.2016, rejecting Appellant's application seeking LTOA; and
- (c) Direct Respondents Nos. 2 and 3 to grant LTOA to the Appellant for third party sale of 1 MW solar power generated by Appellant to M/s. Indore Treasure Island Pvt. Ltd. Direct Respondent No. 3 and Respondent No. 2 to make good the loss of INR 82,50,444 suffered by the Appellant due to refusal of open access along with interest

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(d) In the alternative, direct the distribution licensee to adjust the units of power already generated by the Appellant and injected into the grid against the future drawl of M/s. Indore Treasure Island Pvt. Ltd.

3. Vide order dated 19th March' 2019 in Appeal No. 21 of 2018, Hon'ble Appellate Tribunal for Electricity has set aside the Commission's order dated 15.09.2017 in Petition No. 22 of 2017 and remitted back the matter to the Commission to reconsider the same afresh in accordance with law after affording reasonable opportunity of hearing to all the parties. Accordingly, the Petition No. 22 of 2017 has been reopened by the Commission for hearing.

4. In the first hearing held in the subject petition on 22nd April' 2019, Ld. Counsel for the petitioner stated the grounds for reconsideration by the Commission in the subject matter. He mentioned the contents of correspondence made between Respondent No. 1 and Respondent No. 2 for granting long term open access in the subject matter. The representative appeared on behalf of Respondent No. 2 (M.P. Paschim Kshetra Vidyut Vitaran Co. Ltd.) stated his concern on the safety of 33 kV systems in case of any over loading due to open access power. He also stated that besides applying for the open access, it is not clear whether Respondent No. 3 would reduce the Contract Demand from the Discom. In case the Contract Demand remains the same and Respondent No. 3 is allowed to avail long term open access, then Respondent No. 3 would be entitled for availing the load capacity equal to sum of open access load and the Contract Demand. The Discom would have to keep that much of the capacity spare in the 33 kV corridor.

5. Vide Commission's Daily Order dated 22nd April' 2019, the following directives were issued to the parties:

- (i) The petitioner was directed to file its contention alongwith all supporting documents to the Commission after serving a copy of same on other side also.
- (ii) The Respondent No. 1 i.e. M.P. Power Transmission Company Ltd., was directed to file its written submission in the subject matter alongwith all supporting documents in light of its role as nodal agency for granting open access in the matter.
- (iii) The Respondent No. 3 was directed to appear personally or through its authorized competent representative in the next hearing and file its reply to the Commission in the subject matter.

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- (iv) Respondent No. 3 was also directed to inform whether he will go for any change in existing Contract Demand if long term open access permission is granted.
- (v) Respondent No. 2 i.e. M. P. Paschim Kshetra Vidyut Vitaran Co. Ltd. was directed to file its written submission as to why open access cannot be granted in the subject matter duly supported with technical feasibility and the loading details of concerned 33 kV System/ feeder for last two years. He was also directed to submit monthly loading details for last two years in respect of connection of Respondent No. 3 with the Discom.

6. During next hearing held on 28th May'2019, the Commission noted the following status of written submissions filed by the parties in this matter:

- (i) The petitioner, M/s J.K. Minerals filed its written submission on 21.05.2019.
- (ii) Respondent No.3 i.e. M/s Indore Treasure Island (P) Ltd also filed its written submission dated 21.05.2019 received on 27.05.2019.
- (iii) Respondent No. 1 i.e. MPPTCL filed its written submission by affidavit dated 21.05.2019.
- (iv) By affidavit dated 21.05.2019, the Respondent No.2 i.e. MPPKVVCL, Indore filed its reply alongwith the information regarding loading details of concerned 33KV feeder as well as the monthly Maximum demand recorded in respect of the connection of Respondent No.3.

7. Ld. Counsel of the petitioner and Respondent No. 2 placed their detailed arguments before the Commission. They were directed to file their written submissions in support of their arguments by 6th July' 2019. By affidavit dated 06th July'2019, the Respondent No. 2 (MP Paschim Kshetra Vidyut Vitaran Co. Ltd Indore) filed its written notes of arguments in the subject matter. By Affidavit dated 11.07.2019, the petitioner also filed its final written submission in the subject matter.

Submissions of Petitioner and Respondents in the matter:

(i) Respondent No.1 (MP Power Transmission Co. Ltd Jabalpur)

8. By affidavit dated 21st May' 2019, Respondent No. 1 – M.P. Power Transmission Co. Ltd., Jabalpur filed its reply to the subject petition mentioning the following:

- “(1) The M.P. Power Transmission Co. Ltd. with headquarter at Jabalpur is looking after the function of Intra-State transmission in Madhya Pradesh and the activities of*

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Distribution and Sale of energy are being looked after by concerned Discom (s). M.P. Power Transmission Co. Ltd. had been designated as nodal agency for Intra-state Long Terms Open Access as per MPERC (Terms & Conditions for Intra State Open Access in Madhya Pradesh) Regulation 2005.

- (2) *The role of Nodal Agency for granting open access is outlined here under:*
- (i) *The applicant submits the LTOA application in the format provided in MPERC (Terms & Conditions for Intra State Open Access in Madhya Pradesh) Regulation 2005 alongwith all the supporting documents of injection & drawal points including NRED registration letter issued by the office of Commissioner, NRED, Bhopal to the Nodal Agency. On receipt of application, the Nodal Agency examines the documents provided by the applicant & forwards the same to the concerned Discom(s) where the generator injects power and in whose area of supply, the point of drawal exists. The concerned Discom(s) then forward the feasibility report (if required, in consultation with other agencies/ licensees involved) indicating whether LTOA may be granted to customer without or with system strengthening after carrying out study of the existing network to which the drawal point(s) of the captive/ 3rd party customer has been connected.*
 - (ii) *After receipt of feasibility report in respect of injection & drawal points, if the open access is found feasible (without system strengthening), the Nodal agency grants the LTOA permission to the applicant by incorporating all the conditions as informed by the concerned Discom(s)/ MPPMCL and requests the applicant to submit their acceptance of terms & conditions as stipulated in the LTOA permission within 30 days of issuance of permission letter. On receipt of acceptance the same is forwarded to MPPMCL/ concerned Discom(s) for execution of PPWA. If there is system strengthening involved due to congestion in existing 33 KV network from which 3rd party/ captive consumers are connected, the same is informed to the applicant for bearing the cost of network modifications at his cost for taking LTOA permission for 3rd party sale/ captive consumption. It is pertinent to mention here that 33 KV & below distribution networks are in the jurisdiction of concerned Discom(s). Therefore, the final decision regarding feasibility as intimated by the concerned Discom(s) is conveyed by the Nodal Agency to the applicant.*

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(3) *In the matter of instant petition, the MPPTCL as Respondent No. 1 had submitted the reply vide letter No. 04-02/PS/OA-J K Minerals/F-194/1753 dated 13.07.2017 & subsequently by letter No. 04-02/PS/OA-J K Minerals/F-194/2239 dated 01.09.2017 against the rejoinder submitted by the petitioner M/s. J.K. Minerals, Balaghat.*

(4) *That the matter materially lies between the petitioner and the Respondent No. 2 (M.P. Paschim Kshetra V.V. Co. Ltd., Indore) & the Respondent No. 1 is entrusted with a function as a nodal agency in the matter, for facilitating the processing and disposal of LTOA applications."*

(ii) Petitioner (M/s JK Minerals)

9. The petitioner broadly submitted the following:

"(i) It is submitted that as a matter of practice, Respondent No. 2, the Nodal Agency, grants LTOA with terms and conditions. The conditional approval that is granted by Respondent No. 1 specifically mentions that Open Access will be granted subject to an undertaking produced by an applicant that it will not exceed the Contract Demand maintained with the distribution licensee. Only after such an undertaking is given, LTOA is granted with the aforementioned condition that the consumer/ applicant will draw power, including power under Open Access, not exceeding its Contract Demand and that there will be no excess load on feeder due to Open Access.

(ii) It is submitted that Respondent No. 2 has rejected the LTOA to the Petitioner on the ground that the maximum load recorded on 33 KV MG-I feeder emanating from 132/33 KV Chambal S/S, which is feeding to M/s Treasure Island is 302 Amp and that the size of the conductor is Raccoon (80 Sq MM Al. equivalent). As per Respondent No. 2 the aforementioned is causing network congestion and hence NOC for LTOA cannot be issued (Please see Annexure P-3 at page 85 of the Petition). Respondent No. 2 has rejected grant of LTOA on the ground of network congestion only on the feeder emanating from 132/33 KV Chambal S/S, which feeds power to M/s Treasure Island. However, it is pertinent to note that LTOA has been granted to another generator M/s Ujjas Energy Limited, which supplies 1 MW power, from the same feeder, to M/s Treasure Island.(Please see Annexure P-5 of the Petition at page 87). Furthermore, the Solar Power Plant will be connected to Ujjas Feeder at 132/33 KV substation at Bercha, Shajpur which is 130 kilometers away and will not increase any load on 33 KV

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MG-1 feeder emanating from 132/33 KV Chambal substation.

(iii) *It is further submitted that electricity is supplied by displacement. There is no difference between power supplied under Contract Demand and Open Access demand. Thus, no additional transmission capacity is required for transfer of power under Open Access as long as it is within the maximum Contract Demand. Once the consumer undertakes to not draw power beyond the Contract Demand i.e., to never exceed the transmission capacity allocated to Contract Demand, in such a scenario denial of Open Access would be in complete contravention of the purpose, objective and provisions of EA, 2003 and without any logic.*

(iv) *Respondent No. 2 has contended that the undertaking provided by M/s Treasure Island to Respondent No. 1 (Please see Annexure P-4 at Page No. 86 of the Petition) serves no purpose since once the permission for Open Access is granted then M/s Treasure Islands would be entitled to receive power over and above the Contract Demand and as such Contract Demand cannot be substituted with Open Access demand. It is submitted that this assertion of Respondent No. 2 is incorrect. It is relevant to refer to Regulation 13.2 of Open Access Regulations, 2005 which provides as under:*

“13.2 All Open Access users must make reasonable endeavors to ensure that their actual demand or actual sent out capacity, as the case may be, at an inter-connection does not exceed the contract maximum demand or actual sent-out capacity for that inter-connection.

Provided that for carrying out balancing and settlement of energy and demand at all entry and exit points relating to access agreements, the licensee shall strictly adhere to the Balancing and Settlement Code to be approved by the Commission and thereafter, as amended from time to time by the Commission. Provided further, that till such time the Balancing and Settlement Code is approved by the Commission, the terms and conditions for energy and demand balancing as set out in the existing agreement shall continue to apply.”

Therefore, in terms of Regulation 13.2, all Open Access consumers are obligated to ensure that their actual demand does not exceed the Contract Demand. Therefore, it is clear that the Open Access demand in the State has to be within the maximum Contract Demand. Hence, there is no reason to deny Open Access to the Petitioner as long as M/s Treasure Island agrees to never exceed its maximum demand. Furthermore, if the contentions of Respondent No. 2 are to be believed then there would be no reason to

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take an undertaking and Regulation 13.2 would be redundant. Also, it may be noted that Respondent No. 2 has been consistently of the view that the said undertaking has sanctity and binds the consumers that procure power through Open Access and also Contract Demand. Once an undertaking is given, Respondent No. 2 would be empowered to punish for the violation of its terms in the same manner as it would be empowered to punish a consumer of Contract Demand who consumes more power than the maximum Contract Demand allocated to it. In such a scenario, there is no reason for denying grant of Open Access to the Petitioner.

(v) It is further important to consider the view taken by Respondent No.1 in its letter dated 08.09.2016, wherein it has contradicted the stand of Respondent No.2 and stated that the Petitioner's is a fit case for grant of Open Access.

(vi) In terms of Regulations 8.11 and 8.12 of the Open Access Regulations, 2005, the Nodal Agency i.e. Respondent No. 1, is required to allow or reject the application for LTOA. Respondent No. 1, despite taking the correct view in its letter dated 08.09.2016 as extracted below, blindly followed the view of Respondent No. 2, without application of mind. Further, Respondent No. 1, despite being the Nodal Agency and the authority responsible for grant of LTOA did not even make any submissions or express its view before the Hon'ble Commission during adjudication of Petition No. 22 of 2017.

The relevant extract of letter dated 08.09.2016 is as below:

"The contents of the Order of the Hon'ble MPERC on petition no. 31/2016 have been analyzed by this Office, in relation to the issue of congestion in the distribution network due to availing partial Open Access supply to customers. The observations regarding the same are as follows:

(1) The aforesaid order of this Hon'ble MPERC does not stipulate anything about network congestion in case of partial Open Access consumers; instead, it stipulates and clarified the methodology of billing in terms of the Hon'ble Commission's most recent retail tariff order dated 05.04.2016.

(2) The stipulated methodology considers and admits the concept of demand separately attributable to partial Open Access and specifies the method to calculate the monthly billing demand for the retail HT connection, by considering the injection/drawl in each of the 15 minutes time blocks as per the MRI data;

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- (3) *If a retail HT consumer is already connected to the network and drawing power from the distribution network, then availing partial Open Access by him cannot mean a sudden artificial increase in the power demand, otherwise, if the aforesaid order of the Hon'ble Commission in petition no. 31/2016, is interpreted in any other way, then it would lead to violation of the primary condition of non-discriminatory Open Access mandated by the Electricity Act, 2003 and various relevant regulations, ruled and procedures;*
- (4) *If partial Open Access consumer, already connected to the network as a retail consumer, maintains or gives an undertaking to maintain his power drawl within the contract demand for the HT connection, then Open Access cannot be denied to him on grounds of network congestion, Moreover, there is a provision in the Tariff Order dated 05.04.2016 and as also stipulated in Hon'ble Commission's Order dated 01.07.2016, for penal billing in case of actual demand exceeding the contract demand as per agreement for HT retail connection, the conditions are exactly identical for an ordinary retail consumer and for a partial Open Access consumer. Therefore, how can the excess demand (if any) of an ordinary retail consumer be allowed and that for a partial Open Access consumers disallowed- all the other things being identical;*
- (5) *On the whole, the rights and interests of the distribution company/utility and the partial Open Access consumers are evenly balanced from the point of view of non-discriminatory Open Access, if the Order of the Hon'ble Commission on petition no. 31/2016 is interpreted as indicated in the preceding paragraphs. Otherwise, it will lead to unfair denial of Open Access in any perfectly legitimate and eligible case. "*
- (vii) *It is submitted that once the Nodal Agency has taken a view in terms of Regulations 8.11 and 8.12 of the Open Access Regulations, 2005, it is mandatory that the said view be implemented. It is not for Respondent No. 2 to allow or reject grant of Open Access and contrary to the view of Respondent No. 1. It is submitted that the Hon'ble Commission and Respondent Nos. 1 and 2 are all bound by the Open Access Regulations, 2005.*
- (viii) *Respondent No. 2 has sought the denial of Open Access to the Petitioner on the ground of network congestion. In its Reply dated 21.05.2019, Respondent No. 2 has stated that there cannot be any substitution of Contract Demand with Open Access demand as the*

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two have distinct and separate characteristic. The Respondent No. 2 has failed to explain what these distinct and separate characteristics are. It is submitted that in fact, the submissions of the Respondent No. 2 are incorrect and misplaced because there exists no such distinction. Irrespective of the nature of demand, the electricity supplied into the grid has the same characteristics and once electricity is supplied in the grid, it is impossible to ascertain the nature of agreement entered into between parties, prior to injecting such energy. It is submitted that when the consumer draws power from the grid it is impossible to tell the source of injection of power. The generator supplying power for Open Access and the generator supplying power to distribution licensee, both inject into the grid. Subsequently, the power is drawn from the grid by the Open Access consumers as also the Contract Demand consumers. To understand this better, a grid can be imagined to be a pond where generators pour electricity and from where consumers draw electricity. There is no tangible difference between transmission of Open Access power and contract power. Further, the delivery point for the consumer always remains the same. Therefore, if contracted power can be delivered to the consumer, Open Access power can also be delivered to the consumer and to assert otherwise, is incorrect. Therefore, the Respondent No. 2's argument is without any logic or merit and is liable to be rejected.

- (ix) *The Respondent No. 2 further submits that once an Open Access contract is entered into with the Petitioner or any other consumer, it is the obligation of the distribution licensee to maintain or have infrastructure/ arrangement to make power available to the extent agreed under such arrangement of Open Access. Respondent No. 2 further says that a consumer having a Contract Demand and an Open Access demand is entitled to draw both the agreed power simultaneously. Respondent No. 2 has also submitted that the computation of available capacity is a matter essential for processing of LTOA application. Therefore, the available distribution capacity cannot include the capacity already considered under Contract Demand. In addition to this, Respondent No. 2 has also submitted that so long as a consumer has Contract Demand with the distribution licensee, the distribution licensee has an obligation to supply power to the consumer and even if the consumer avails Open Access, the obligation of distribution licensee to supply power against the Contract Demand does not cease. The Respondent No. 2 has made these assertions to imply that if the transmission/ distribution system must at all times be strong enough to bear the load arising out of any agreement entered into between the consumer and the distribution licensee and*

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also any contract entered into between the consumer with any other generator. In the instant case, as per the Respondent No. 2 own submissions, the Open Access without system strengthening can be granted only if the additional power flow can be accommodated in the available capacity of existing distribution system. It is submitted that M/s Treasure Island did not seek an enhancement of its Contract Demand and had also not applied for any additional load. Consequently, grant of LTOA as requested for by the Petitioner, could not result in any additional burden on the distribution licensee's feeder supplying power to M/s Treasure Island. Therefore, Respondent No. 1 was wrong to deny the LTOA to the Petitioner for supplying power to M/s Treasure Island.

(x) There is no network congestion and that there shall be no burden on the transmission lines if Open Access is granted to the Petitioner. Open Access is nothing but setting off power between the injection and drawl points. There is no network congestion at the injection end as the Petitioner has commissioned its Plant on 20.09.2016 and has been supplying 1 MW of power to the grid till date. There cannot be any network congestion at the drawl end as M/s Treasure Island is a retail consumer with Respondent No. 2 and is consuming power as per the Contract Demand on a monthly basis.

(xi) Furthermore, M/s Treasure Island also confirmed and clarified to Respondent No. 1 that it has not applied for any additional Contract Demand or consumption or load and shall be consuming power as per the existing demand and consumption only. Consequently, there will be no impact or additional load on the feeder due to Open Access granted to the Petitioner. It is relevant to mention that M/s Treasure Island is already drawing 1 MW of energy, through Open Access from M/s Ujjaas Energy Ltd. and the same was allowed by the Respondents Nos. 1 and 2 vide letter dated 28.06.2016 (Please see Annexure P-5 of the Petition at page no. 87) and even after M/s Treasure Island started sourcing 1 MW through LTOA from M/s Ujjaas Energy Ltd., since June, 2016, the collective load on 33 KV MG-1 feeder emanating from 132/33 kV Chambal station has not increased. M/s Treasure Island has given an undertaking vide letter sent by the Petitioner to Respondent No.1, dated 02.09.2016 that it will not exceed its Contract Demand nor will it apply for additional Contract Demand while drawing power under Open Access. It is submitted that, as a matter of practice, Respondent No. 1 being the Nodal Agency grants LTOA subject to certain terms and conditions. The conditional approval specifically mentions that Open Access will be

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granted subject to an undertaking produced by the applicant that they will not be exceeding the Contract Demand maintained with the distribution licensee. Therefore, once M/s Treasure Island was ready to give the undertaking that it shall not exceed the Contract Demand the LTOA application should have been allowed. Further, M/s Treasure Island is already sourcing 1 MW of energy and the maximum demand of M/s Treasure Island over the last six months is within the Contract Demand.

(xii) It is unjustified to deny grant of LTOA on the presumption or apprehension that the Open Access consumer may exceed its Contract Demand. M/s Treasure Island is currently an embedded consumer with Respondent No. 2 and is also meeting a part of its energy demand through Open Access. It is submitted that if the over drawl can be allowed for a retail consumer, then Respondent No. 2 cannot claim network congestion and disallow Open Access on the ground that it may overdraw and exceed Contract Demand. Therefore, if such presumption or apprehension is the ground for denial of LTOA then no consumer may be granted Open Access. It is submitted that the EA 2003 favors the grant of Open Access. Even the Open Access Regulations, 2005 are drafted for a simplified procedure for granting of permission for Open Access Regulations, 2005. This is to bring competition and increase efficiency in the energy sector. In accordance to the laws, rules and regulations, the Petitioner, with legitimate expectations of grant of Open Access entered into the PPA with M/s Treasure Island. Therefore, it is unjust and unfair to deny Open Access to the consumers based on mere apprehensions of damage to the transmission systems. These apprehensions are rendered baseless considering the fact that M/s Treasure Island already has an existing Contract Demand of 2.2 MW with Respondent No. 2 and has willfully provided an undertaking to the Respondent No.1 that it shall not exceed this Contract Demand. In light of the existing Contract Demand which guarantees that the transmission system is strong enough to bear the load of 2.2 MW power coupled with the undertaking by M/s Treasure Island that it shall not exceed the Contract Demand, there is no legal justification for denying Open Access demand to the Petitioner for supplying power to M/s Treasure Island.

(xiii) It is submitted that it is the statutory responsibility of Respondent No. 2 to develop and maintain an efficient network as a result of which the feeders are unduly overloaded. As a result of its own failure to provide more feeders for the overall connected load, Respondent No. 2 is denying the grant of LTOA to the Petitioner. In doing so,

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Respondent No. 2 has failed to promote the letter and spirit of EA, 2003.

- (xiv) *Respondent No. 2 has submitted that in terms of Regulation 6 of Open Access Regulations, 2005, the priority is to be given to the distribution licensee over the LTOA applicants and the allotment priority for distribution licensee cannot be curtailed in any manner. This assertion of Respondent No. 2 is without merits. In the present circumstance, 2.2 MVA of transmission capacity is reserved for the Petitioner in form of Contract Demand. By sourcing power under the Open Access within the maximum Contract Demand, there is no impact whatsoever on priority of distribution licensee over the Open Access consumer. In this case power from the distribution licensee and Open Access are not competing for the same transmission network, in fact M/s Treasure Island is choosing to allocate the transmission capacity dedicated to its requirements, to Open Access. Even if M/s Treasure Island were to not procure Open Access, it would still use the same transmission capacity i.e., the transmission capacity used by M/s Treasure Island does not change and this is regardless of where it sources power from.*
- (xv) *It is submitted that the objective of EA, 2003 is to provide non-discriminatory Open Access. As per Section 42 (2) of EA 2003, it is the duty of the Hon'ble Commission to introduce Open Access in the State on payment of the Open Access charges. It is the duty of the State transmission licensee and distribution licensee under Sections 40 and 42 of EA, 2003 to provide non-discriminatory Open Access to the applicants. The Hon'ble Commission must take a strict note of the fact that not only have the licensees in the State of Madhya Pradesh failed to strengthen the system but are now blatantly refusing to accommodate the need of Open Access consumers who are simply requesting for grant of LTOA within their maximum Contract Demand, i.e., no additional burden on the network. Therefore, not only has the distribution licensee been in dereliction of its duties, it is now brazen about forcing the consumers in the State to suffer for its failure on flimsy and hypothetical grounds.*
- (xvi) *It is submitted that in its feasibility report dated 22.08.2016, Respondent No. 2 had stated that the maximum load recorded on 33 KV MG-1 feeder emanating from 132/33 KV M/s Treasure Island, is 302 Amp and therefore there is a network congestion. Later, as per submissions dated 14.08.2017 of Respondent No. 2 before the Hon'ble Commission, it is established that in the month of May 2016, the maximum recorded*

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demand was 375 Amp. Therefore, Respondent No. 2, which is responsible for developing and maintaining an efficient network has failed its duties under Section 40 of EA, 2003 to strengthen the network and the Hon'ble Commission may take note of it. It is also submitted that in passing Order dated 15.09.2017, the Hon'ble Commission has only looked at the feeder load on June, 2016. Further, the load on the feeder catering to M/s Treasure Island has not exceeded 291 Amps. It is imperative that the Hon'ble Commission takes a holistic approach of these facts and circumstances.

- (xvii) It is submitted that, Respondent No. 2 has given a Contract Demand of 2.2 MVA to M/s Treasure Island, which means that the transmission system is capable of carrying at least 2.2 MVA of power. It states that the law provides that a consumer can avail both the Contract Demand along with Open Access. A consumer is subject to penal billing in the event it exceeds its demand beyond the sum of its Contract Demand and Open Access demand.*
- (xviii) Therefore, as per its own submissions, Respondent No. 2 admits the case of the Petitioner for grant of LTOA to supply power to M/s Treasure Island. As per the assertions made above, it is evident that the transmission system is strong enough to bear the load of the Contract Demand that is to be supplied to M/s Treasure Island.*
- (xix) It is submitted that Respondent No. 2 has never said that the transmission system is incapable of supplying power to M/s Treasure Island and the Respondent No. 2 is itself supplying power to M/s Treasure Island. Respondent No. 2 has also not reduced the quantum of Contract Demand of M/s Treasure Island. In fact, during this entire time, the power that Respondent No. 2 has been supplying to M/s Treasure Island is received from the same feeder as it would if the power were supplied by the Petitioner. Therefore, it may concluded that the transmission system is capable of supplying 100% power (1 MW only) from the Petitioner's Solar Power Plant to M/s Treasure Island. Respondent No. 2 is now retracting from its own admission. Respondent No. 2's refusal to grant NOC is solely on the ground of network congestion. But going by the aforementioned facts, it is abundantly clear that the transmission system for supply of power to M/s Treasure Island has been and continues to be strong enough to bear a load of a minimum 2.2 MVA. As such, there is no case of network congestion.*
- (xx) Furthermore, both the Petitioner and M/s Treasure Island have been willing to give an undertaking to keep the energy consumption within the maximum Contract Demand.*

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In fact, as has been explained before, as per Regulation 13.2 the Open Access demand in the State has to be within the maximum Contract Demand. As such, since the Petitioner and M/s Treasure Island are willing to give an undertaking to not exceed the maximum Contract Demand, LTOA cannot be denied. In not accepting the undertaking in the present case, the Respondent Nos. 1 and 2, are treating the Petitioner and M/s Treasure Island differently from other generators and consumers whose undertaking has been treated as a legal document with sanctity while granting Open Access.

(xxi) It is reiterated that in terms of the Open Access Regulations, 2005 and the principles laid down by the Hon'ble Commission, the drawl of power through Open Access should not exceed the Contract Demand. Therefore, the grant of Open Access and Contract Demand is always interdependent and grant of Open Access is on the basis of the allowed Contract Demand. Therefore, there is no basis to deny LTOA to the Petitioner.

*(xxii) The Petitioner commissioned its Solar Power Plant on 20.09.2016. Being a Solar Power Plant, the Petitioner had no option but to start injecting power into the grid. Despite a PPA being executed between the Petitioner and M/s Treasure Island, due to unfair denial of LTOA by Respondent No. 1, the Petitioner was injecting this power without any payments. Furthermore, even M/s Treasure Island was not able to draw power from the Petitioner under Open Access and was forced to take power from Respondent No. 2 at a higher price. It is pertinent to note that Respondent No. 2 has sold this power without any payment of tariff to the Petitioner. Therefore, Respondent No. 2 has continuously and unduly benefitted by refusing to grant NOC for granting of LTOA to the Petitioner. It is also submitted that on refusal of Respondent Nos. 1 and 2 to grant Open Access to the Petitioner, the Petitioner having no other alternative, started to look for other consumers to whom it could sell its power. After much struggle, the Petitioner was able to sign an agreement with a new consumer for supply of power from its Solar Power Plant from 11.05.2018. Letter dated 11.05.2018 sent by Respondent No. 1 to the Petitioner granting LTOA for supply of power to a third party beneficiary is annexed hereto and marked as **Annexure-1***

(xxiii) It is submitted that the Hon'ble APTEL has upheld the case of the Petitioner and remanded the matter to the Hon'ble Commission. Therefore, the Hon'ble Commission may deem that the Petitioner has been granted Open Access since 22.08.2016, which is the date on which the Director (Commercial) of Respondent No. 2 denied the request for LTOA to the Petitioner on the ground of network congestion. It is submitted that on

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considering 22.08.2016, as the deemed date of grant of LTOA, and 10.05.2018 as the last date for supply of power from the Petitioner to M/s Treasure Island, the Petitioner has injected 25,103,50(after deducting wheeling loss from actual generation)units of electricity into the grid without any payment. These 25,103,50 units may be deemed to have been sold by Respondent No. 2 to M/s Treasure Island under Contract Demand. It may be appreciated that as of now the Petitioner has supplied 25,103,50 units of electricity to the grid, without any payment, the Respondent No. 2 has made undue profits by selling this power at the rate of approx. INR 6.50 per/unit.

(xxiv) It is submitted that the power for Contract Demand is sold to M/s Treasure Island at approximately INR 6.50 per unit as opposed to approximate average INR 5.50 per unit at which it would have procured power from the Petitioner under Open Access. Consequently, M/s Treasure Island has had to bear additional cost of INR 1per unit, resulting in total loss of INR 25,103,50 to M/s Treasure Island and a loss of INR 1,39,9926 to Petitioner. Since the Order dated 15.09.2017 has been passed erroneously, as has also been noted by Hon'ble APTEL, the Petitioner and M/s Treasure Island deserve to be compensated. Accordingly, Respondent No. 2 is liable to credit 2510350 units of electricity to the account of M/s Treasure Island on monthly basis for period from September 2016 to 10.05.2019 by revising M/s Treasure Island's old MPEB bills. The Petitioner and M/s Treasure Island will make the financial adjustments between them. Date providing the units injected into the grid by the Petitioner from September 2016 to 10th May 2018 and the losses incurred by the Petitioner and M/s Treasure Island on account of refusal of grant of Open Access by Respondent No. 1 has been annexed in the First Written Submissions and marked as Annexure-2 (Colly) of the Written Submissions dated 21.05.2019.

(xxv) Respondent No. 2 has relied on an Order of this Hon'ble Commission dated 01.07.2016 passed in Petition No. 31 of 2016. Respondent No. 2 has asserted that as per the aforesaid Order, the total demand of any consumer is required to be considered as sum of the Contract Demand against HT connections and the sanctioned demand towards Open Access as far as fulfillment of technical criteria is concerned. It is submitted that this is not the correct position. It is submitted that the Petition No. 31 of 2016 was for quashing of impugned bill/ notice/ demand issued by Respondent No. 2. The Order does not deal with denial of Open Access in the event of network congestion but clarifies the consequence of drawing power in excess of Contract Demand. The

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aforementioned Order clarifies the methodology for penal billing. Nowhere does the Order provide any methodology for calculation of a consumer's total demand. At all times, consumer's total demand will be the Contract Demand maintained with the distribution licensees. In the instant case, M/s Treasure Island has not applied for any enhancement of Contract Demand. Accordingly there is no extra load.

(xxvi) Respondent No. 2 has further relied upon Order dated 20.06.2017 of this Hon'ble Commission passed in Petition No. 16 of 2017 to defend rejection of the Petitioner's LTOA application. Respondent No.2 has submitted that by this Order, this Hon'ble Commission rejected the contention that Open Access may be allowed within Contract Demand. It is submitted that Respondent No. 2 has wrongly relied on the aforementioned Order. The application for LTOA cannot be compared to Petition No. 16 of 2017 which was filed by M/s SRF Ltd. for approval of short term open access/group captive of power ("STOA"). It is pertinent to note that under Regulation 8.19 of the Open Access Regulations, STOA shall be granted subject to the availability of capacity. Thus while the Regulations provide for denial of STOA, there is NO SUCH Regulation for denial of LTOA.

(xxvii) On 25.06.2019, during the course of the arguments, Respondent No. 2, also submitted Letter dated 14.09.2016 and argued that based on this letter the Petitioner cannot be allowed any compensation. This letter is written by Madhya Pradesh Power Management Company Ltd., ("MPPMCL") which is the holding company of all the discoms in the State of Madhya Pradesh and addressed to Respondent Nos. 1 and 2. Vide this letter MPPMCL informed Respondents Nos. 1 and 2 that certain Solar Power Plants, including the Petitioner, have requested that they be allowed to commission their plants and inject power into the grid till such time their LTOA application is approved. The letter further records the following:

*"In this regard, this is to intimate that request made by aforesaid have been considered and it has been decided that they may be allowed to commission their plants, on the date of readiness and inject power in to the grid **at free of cost, subject to feasibility of grid connectivity, till obtaining of open access permission for respective plants.** Till such time no payment shall be made for the injected energy."*

It is submitted that the Petitioner's Solar Power Plant was one of the Solar Power Plants given the consent to commission its Solar Power Plant and inject energy into the grid.

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Sub: In the matter of petition under Regulation 9(1) of the MPERC (Conduct of Business) Regulations, 2004 read with Regulation 8(40) of the MPERC (Terms and Conditions for Intra-State Open Access in Madhya Pradesh) Regulations, 2005.

(xxviii) *It is submitted that Respondent No. 2 has incorrectly relied on this Letter dated 14.09.2016 to state that it need not compensate the Petitioner and/or M/s Treasure Island for the loss caused due to wrongful denial of LTOA. From a perusal of the Letter it is evident that the Petitioner agreed to inject energy into the grid, free of cost, from the date of commissioning till date of LTOA approval. However, in the instant matter the Petitioner's application for LTOA was denied incorrectly and thus, the Petitioner is entitled to receive payment/compensation from the date on which the application for LTOA was rejected by Respondent No.1. Accordingly, the letter dated 14.09.2016 is inapplicable with respect to the Petitioner's Plant.*

(xxix) *The Petitioner submits that as held by the Hon'ble APTEL, the rejection of the Petitioner's application for LTOA by the Respondent No. 1 and 2 was wrongful. In appeal this Hon'ble Commission had said that the application of the Petitioner for open access cannot be allowed. The Hon'ble APTEL has disagreed with the reasoning of the Hon'ble Commission and held that the Petitioner is entitled to LTOA. It is submitted that it is a settled principle of law that no action of a court of law shall prejudice anyone. Since in the instant case, the Petitioner and M/s Treasure Island have been wrongfully denied the execution of the PPA, resulting into financial loss, it is imperative that both of them be put in the same position that they would be in, had the Respondent No. 1 allowed the application for LTOA or had this Hon'ble Commission allowed Petition No. 22 of 2017 in the first instance. Therefore, the Petitioner and M/s Treasure Island may be put in the same position that they would have been in but for the wrongful rejection of the application for LTOA. This may be done by deeming that the application for LTOA was allowed by the Respondent No. 1 on 22.08.2016 until 10.05.2018. Accordingly, it may be deemed that Petitioner has injected 25,103,50 units of electricity into the grid for supply to M/s Treasure Island. Therefore, the Petitioner is entitled to payments for this energy injected at the rate fixed in the PPA and M/s Treasure Island is entitled to pay for the said units of energy as per the PPA. Since the Petitioner was not paid for the energy supplied and M/s Treasure Island had to incur higher energy cost in purchasing power from Respondent No. 2, therefore, the loss suffered by them must be made good by adjusting the units of energy injected into the grid by the Petitioner for supply to M/s Treasure Island in terms of the Petitioner's prayer in its final Written Submissions dated 21.05.2019.*

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Regulations, 2004 read with Regulation 8(40) of the MPERC (Terms and Conditions for Intra-State Open Access in Madhya Pradesh) Regulations, 2005.

(xxx) *Therefore, in retrospect, the Petitioner was wrongfully denied the grant of Open Access. Since an act of a court can do no wrong, therefore, the Petitioner and M/s Treasure Island must be put in the same financial position, as the grant of Open Access would have ensured. Accordingly, the Petitioner prays the Hon'ble Commission to grant its prayers and:*

- a. *Direct Respondent No. 2 to adjust the units of power generated by the Petitioner and injected into the grid from 22.08.2016 to 10.05.2018 against the future drawl of M/s Treasure Island or revised old bills for the period;*
- b. *In the alternate, direct Respondent No. 2 to make good the loss of INR 1,39,993,26 suffered by the Petitioner and INR 25,103,50 to M/s Treasure Island due to refusal of Open Access along with interest.*
- c. *Pass any such further Orders as this Hon'ble Commission deems fit in the interest of justice."*

(iii) Respondent No. 3 (M/s Treasure Island Pvt. Ltd)

10. By affidavit dated 21.05.2019, Respondent No. 3 for the first time in the complete proceedings of this matter i.e. before passing the Impugned Order and this order, has filed its reply mentioning that M/s Indore Treasure Island supports the case of the petitioner as well as all statements and contentions made by the petitioner. In its written submission, the Respondent No.3 has almost reiterated the submission and contention of the petitioner mentioning in Para 17 of its submission that M/s Treasure Island had given an undertaking to Respondent No.2 that it will never exceed its Contract Demand or apply for additional Contract Demand. It has further submitted that this undertaking should have been considered as a binding legal document on M/s Treasure Island for grant of LTOA and to hold it accountable and levy penalty, in the event it exceeds its maximum Contract Demand and the Open Access demand. The Respondent No. 3 further submitted that M/s Treasure Island undertakes that in the event an LTOA is granted to the petitioner for supply of power to M/s Treasure Island, it will not apply for any change in its existing Contract Demand.

(iv) Respondent No.2 (MP Paschim Kshetra Vidyut Vitaran Co. Ltd Indore)

11. By affidavit dated 06th July' 2019, M.P. Paschim Kshetra V.V. Co. Ltd., Indore submitted the following:

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Sub: In the matter of petition under Regulation 9(1) of the MPERC (Conduct of Business) Regulations, 2004 read with Regulation 8(40) of the MPERC (Terms and Conditions

for Intra-State Open Access in Madhya Pradesh) Regulations, 2005.

- "(a) That the grievance of the petitioner in the present case are as follow:
- i. Long term open access (hereinafter referred as LTOA) was not permitted to them, despite they were ready to give undertaking that they will not draw energy over and above the sanctioned load of consumer.
 - ii. During pendency of this dispute between 22.02.2016 to 10.05.2018 energy was injected to the grid for which no payment was taken.
- (b) That, the petitioner had filed their written submission dated 21.5.2019 and from the prayer made there under it appears that they had abandon their prayer for long term open access (LTOA) and restricted for adjustment of energy injected into the grid/compensation to the loss which is allegedly caused due to denial of open access.
- (c) That 1st argument raised by the petitioner was that Hon'ble Appellate Tribunal for Electricity (APTEL) has made certain observation which is binding in nature, however the answering respondent respectfully submits that Hon'ble APTEL has remanded the matter for passing speaking order and has clearly concluded that order of set aside is not based on its merit and demerits, thus once the Hon'ble tribunal itself has concluded that the order is not based on merit or demerit, the reliance placed on certain part of order by the petitioner is misconceived as this Hon'ble Commission exercises its independent jurisdiction and if observation are not made on merit, the same are not binding.
- (d) That, the petitioner has tried to give an impression that LTOA has been totally denied, which is an incorrect statement because the answering respondent were always ready to give LTOA subject to petitioner bears cost of up gradation of feeder, the said demand is reasonable in the light of relevant provision of MPERC (Terms and Conditions for Intra-State Open Access in Madhya Pradesh) Regulations, 2005 and Madhya Pradesh Electricity Supply Code 2013. In this regard kind attention is drawn towards the letter dated 22/08/2016 (Annexure P-3 to the petition) vide which answering respondent has conveyed feasibility to nodal officer (LTOA). The relevant extract of the same is reproduced as under:
- "In view of above the applicant may please be informed about non availability of capacity in the feeder. If the applicant is desirous of bearing cost of network modification at his cost then same may please be informed so that network study could be conducted."

Sub: In the matter of petition under Regulation 9(1) of the MPERC (Conduct of Business) Regulations, 2004 read with Regulation 8(40) of the MPERC (Terms and Conditions for Intra-State Open Access in Madhya Pradesh) Regulations, 2005.

- (e) *That the answering respondent has acted as per the provision of Electricity Act and Regulations framed there under, LTOA has been denied without up gradation of system as the system is already overloaded and could not bring a additional load. The undertaking offered by the petitioner /consumer do not have any legal backing as it is well settled preposition that open access consumer can consume a sanctioned load over and above contract demand. Thus grant of permission put the petitioner under legal obligation to bear the cost of system up gradation. The petitioner during the pendency of this petition has applied for LTOA for supply 100% power from the petition solar plant to M/S Deepak Fastntar Ltd. which has been granted. Thus answering respondent has never made any disagreement in grant of open access. However it was denied in the present case because of following constraints in this case.*
- i. *That, the size and type of concerned 33 KV feeder namely MG 1 (Manoramaganj 1) is 100 Sqmm DOG Conductor. The current carrying capacity of Dog conductor is 254 Amp. As per loading details of the concerned feeder it emerges that in the month of May, 18, Jun 18, July 18, March 19 and April 19 the maximum load (amp) recorded as 385, 335, 270, 305 and 310 respectively. It may be seen that present recorded load (amp) is much beyond the current carrying capacity of the concerned feeder. Therefore long term open access to supply of power to respondent No. 3 is not technically feasible.*
- ii. *That, the maximum permissible connected load on a 33 kV feeder with dog conductor is 14.5 MVA. However present connected load with the feeder under consideration is 25.05 MVA. Therefore on this parameter also long term open access is not feasible.*
- (f) *That, the instant petition filed by the petitioner seeking Long term open access to supply 100% power generated from the petitioner's solar plant. However from the perusal of the written submission filed by the petitioner it is observed that that long term open access for supply 100% power from the petitioner's solar plant to M/s Deepak Fastners Ltd has already been granted by the respondent No. 1. Therefore the cause of action (i.e refusal of open access) to file the instant petition now being not alive owing to the changed circumstances as reflected in the written submission filed by the petitioner itself.*
- (g) *That, in present circumstances of the case it is appropriate to refer the judgment of Hon'ble Supreme Court in Dhartiipakar Madan Lal Vs Rajiv Gandhi (1987 [SUPP]*

Sub: In the matter of petition under Regulation 9(1) of the MPERC (Conduct of Business) Regulations, 2004 read with Regulation 8(40) of the MPERC (Terms and Conditions for Intra-State Open Access in Madhya Pradesh) Regulations, 2005.

SCC 93), wherein Hon'ble Supreme Court observed that court should not undertake to decide an issue unless it is a living issue between the parties. If the issue is purely academic, its decision one way or the other would have no impact on the position of the parties, it would be waste of public time to engage itself in deciding it. Similarly in the case of Arnit Das Vs State of Bihar [2001] 7 SCC 657), the Hon'ble Apex Court has held that the court does not decide matters which are only of academic interest on the facts of a particular case.

(h) That, in the present case since long term open access for 100% supply of power from the petitioner's plant has already been granted no adjudication is required from this Hon'ble Commission on the availability of open access.

(i) That, petitioner in its written submission has made following prayer:

The petitioner most humbly prays the Hon'ble Commission to:

- 1. Direct the distribution licensee to adjust the units of power generated by the Petitioner and injected into the grid from 22.08.2016 to 10.05.2018 against the future drawl of M/s Treasure island or revised old bills for the period.*
- 2. In the alternate direct, direct Respondent No.2 to make good the loss of INR 1,39,993,26 suffered by the petitioner and INR 25,103,50 to M/s Treasure Island due to refusal of Open Access along with interest.*
- 3. Pass any further such orders as this Hon'ble Commission deems fit in the interest of Justice.*

(j) That, petitioner has contended that Hon'ble APTEL (ref para 35 &36) has upheld the case of the petitioner hence either the credit of units injected into the grid from 22/08/2016 (date of denial of open access by respondent No. 2) to 10/05/2018 may be given in the bills of respondent 3 or compensation for loss to the petitioner & respondent No. 3 due to refusal of open access be granted.

(k) That, it is wrong and denied that Hon'ble APTEL has upheld the case of the petitioner. Hon'ble APTEL in its Judgement dated 19/03/2019 has not expressed any opinion on the merit of the case. The relevant part of the same is reproduced as under:

11.....Therefore, we are of the considered view that the impugned Order cannot be sustainable and is liable to be vitiated on the ground that the impugned Order passed by the 1st Respondent/ MPERC is not a speaking order and it would suffice this Tribunal to meet the ends of justice, pass an appropriate

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order without going further into merits or demerits of the case in the interest of justice and equity.

ORDER

For the foregoing reasons, as stated supra, the instant appeal, being Appeal No. 21 of 2018, filed by the Appellant is allowed in part. The impugned Order dated 15.09.2017 passed in Petition No. 22/2017 on the file of the Madhya Pradesh Electricity Regulatory Commission, Bhopal, 1st Respondent herein, is hereby set aside. The matter stands remitted back to the 1st Respondent MPERC to reconsider the matter afresh and pass an appropriate order in accordance with law after affording reasonable opportunity of hearing to the Appellant and the Respondent Nos. 2 to 4 and other interested parties and dispose of the same as expeditiously as possible, at any rate, within a period of six months from the date of the appearance of the parties in the interest of justice and equity.

.....

All the contentions of both the parties are left open.

- (l) *That, in view of above it is clear that Hon'ble APTEL has left the open all the contention of both the parties therefore no adjustment of units/ compensation can be granted as prayed by the petitioner. It is further submitted that the petitioner prayer of adjustment/ compensation is based on the hypothetical premises and is not sustainable under the law.*
- (m) *That, as per clause (vii) and (viii) of 'in principal approval of grid connectivity' (Annexure-R2/1) of petitioner's solar plant it was specifically made clear that for sale of power from power plant long term open access need to obtain as well PP&WA is required to execute. The relevant part of the said approval is reproduced as under:*
- “(vii) The investor/ developer will have to obtain Long Term Open Access from CE (Plg. & PS) MPPTCL, Jabalpur if generated power is intended for sell to third party.*
- (viii) The Developer/ investor will have to execute power purchase and wheeling Agreement with MPPMCL, Jabalpur for sale of their 1 MW generated power.”*
- (n) *That, in view of above express conditions no adjustment/ compensation can be provided without any agreement with the petitioners.*

Sub: In the matter of petition under Regulation 9(1) of the MPERC (Conduct of Business) Regulations, 2004 read with Regulation 8(40) of the MPERC (Terms and Conditions for Intra-State Open Access in Madhya Pradesh) Regulations, 2005.

(o) *That, it is pertinent to mention that petitioner was well informed that matter of obtaining long term open access may take time due to compliance of procedure prescribed in the regulation/ order issued by the Hon'ble Commission. Hence, petitioner itself requested to MP Power Management Co. Ltd (MPPMCL) to provide grid connectivity without payment of any charges for supply of energy into the grid. MPPMCL vide letter no. 674 dated 14/09/2016 (**Annexure-R2/2**) accepted the request of the petitioner.*

(p) *That, answering respondent has sufficient tied up capacity of power to meet the requirement of power of its consumers. Therefore injection of power by the petitioner without any agreement/ scheduling doesn't accrue any benefit to the answering respondent therefore question of any undue profit through the units injected by the petitioner doesn't arises. In this regard kind attention is drawn towards the judgment of the Hon'ble Commission in the matter of Appeal No. 120 of 2016 & IA No. 272 of 2016. Relying upon some earlier judgments on the issue, Hon'ble APTEL has held as under:*

*" iv. The Respondent No. 1 had also quoted two more judgements of this Tribunal in appeal nos. 267 of 2014 and appeal no. 68 of 2014. In the judgement dated 15.4.2015 in appeal no. 267 of 2014 this Tribunal has held that the Appellant (M/s Cauvery Power Generation Pvt. Ltd.) is not entitled to claim payment of infirm power injected into the grid without the approval from the Respondent (TANGEDCO) for specific duration as mentioned in the judgement till TANGEDCO conveyed its consent to purchase infirm power. In the judgement dated 30.5.2016 in appeal no. 68 of 2014 this Tribunal has disallowed the payment by Respondent (TANGEDCO) towards injection of power from COD of the Appellant (M/s OPG Power Generation Pvt. Ltd.) till approval of third party sales by TANTRANSCO as the energy was injected to the grid without the consent/knowledge of the distribution licensee and SLDC. The crux of these two judgments is also **that a generator cannot pump electricity into the grid without having consent/ contractual agreement with the distribution licensee and without the approval/ scheduling of the power by the SLDC. Injection of such energy by a generator is not entitled for any payments.**"*

In view of above judgment of Hon'ble tribunal the petitioner is not entitled for any adjustment of energy/ compensation, as there was no contractual arrangement with

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the petitioner.

(q) *That, petitioner has also prayed for the compensation for respondent No. 3. In this regard it is stated that person aggrieved can seek relief for himself only from this Hon'ble Commission therefore prayer for any compensation for the respondent No.3 is not maintainable. It is also pertinent to mention that it is the petitioner who has applied for the open access and not the respondent No. 3 therefore respondent No. 3 has no locus standi to seek any compensation from the answering respondent.*

12. In its other submission, the Respondent No. 2 has stated that it was always ready to give LTOA to the petitioner subject to the condition that the petitioner has to bear the cost of up-gradation of feeder in accordance with the provisions under MPERC (Terms and Conditions for inter-state open access in Madhya Pradesh) Regulations, 2005 and M.P. Electricity Supply Code, 2013. The Respondent No. 2 has also referred to its letter dated 22nd August' 2016 vide which it has conveyed the following to nodal officer of LTOA:

"In view of above, the applicant may please be informed about non-availability of capacity in the feeder. If the applicant is desirous of bearing cost of network modification at his cost then same may please be informed so that network study could be conducted."

13. The Respondent No. 2 has also stated that the long term open access for supply of 100% power from petitioner's solar plant to M/s. Deepak Fasteners Ltd, Sehore has already been granted by the Respondent No. 1 i.e. M.P. Power Transmission Co. Ltd., Jabalpur vide their letter No. 04-02/PS/OA-J K Minerals/F-271/1061 dated 11.05.2018. The copy of the aforesaid letter granting permission for LTOA to the petitioner is filed by the petitioner in its written submission dated 21st May' 2019. With the aforesaid, the Respondent No. 2 has contended that the cause of action i.e. refusal of open access to the petitioner is not alive now as the 100% power of the petitioner's solar power plant has been given LTOA to M/s. Deepak Fasteners Ltd. on 11.05.2018 and therefore no adjudication is required from the Commission in the subject petition owing to the changed circumstances as informed by the petitioner in its written submissions.

14. In response to the contention and prayer of the petitioner "for adjustment of units of power generated and injected into the grid by the petitioner from 22nd August' 2015 to 10th May' 2016 against the future drawal to M/s. Treasure Island or revised old bills for the period OR to make good the losses of amount suffered by the petitioner and Respondent No. 3 due to refusal of open access", the Respondent No. 2 has contended that "**in principle approval of grid connectivity**" of

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petitioner's solar plant in its Clause (vii) and (viii) has specifically mentioned the following :

“(vii) The investor/ developer will have to obtain Long Term Open Access from CE (Plg. & PS) MPPTCL, Jabalpur if generated power is intended for sell to third party.

“(viii) The Developer/ investor will have to execute power purchase and wheeling Agreement with MPPMCL, Jablapur for sale of their 1 MW generated power.”

(Emphasis Supplied)

15. From the above express conditions, the Respondent No. 2 has contended that there is no cause for adjustment/ compensation to be provided to the petitioner/ Respondent No. 3 without any agreement. Respondent No. 2 has further stated that the petitioner was well informed by Respondent No. 2 that the matter of obtaining long term open access may take time due to compliance of procedure prescribed in the Regulations/ orders of the Commission and in view of the aforesaid, MPPMCL vide its letter No. 674 dated 14.09.2016 has specifically mentioned the following in respect of several solar power projects including the applicant's solar power plant for third party sell/ captive use:

*“In this regard, this is to intimate that request made by the aforesaid have been considered and it has been decided that they may be allowed to commission their plants, on the date of readiness and inject power into the grid **at free of cost, subject to the feasibility of grid connectivity till obtaining of open access permission for respective plants.** Till such time, no payment shall be made for the injected energy.”*

(Emphasis Supplied)

16. In view of the above, Respondent No. 2 has contended that the petitioner itself requested MPPMCL to provide grid connectivity without payment of any charge for supply of energy into the grid. Therefore, injection of power by the petitioner without any agreement/ scheduling does not accrue any benefit to the Discom/ Respondent No. 2. Therefore, there is no question of any undue profit earned by Respondent No. 2 on account of units injected by the petitioner. In this regard, Respondent No. 2 has mentioned the Judgment of Hon'ble APTEL in Appeal No. 120 of 2016 and IA No. 272 of 2016 wherein Hon'ble Tribunal has decided that the generator cannot pump electricity into the grid without having consent/ contractual agreement with the distribution licensee and without the approval/ scheduling of power by SLDC. It has also been held by the Hon'ble APTEL in aforesaid Judgment that injection of such energy by a generator is not entitled for any payments.

Sub: In the matter of petition under Regulation 9(1) of the MPERC (Conduct of Business) Regulations, 2004 read with Regulation 8(40) of the MPERC (Terms and Conditions for Intra-State Open Access in Madhya Pradesh) Regulations, 2005.

17. Considering all aforesaid submissions afresh and providing reasonable opportunity to hear all parties, the Commission has noted the following facts in this matter:

- (i) The application for grant of LTOA was submitted by the petitioner to Respondent No. 1 (MPPTCL being Nodal agency) on 20.07.2016. In its application, it was mentioned that the aforesaid application is for wheeling of 100% power generated from its 1.0 MW Solar PV Power Project installed at District Shajapur in MP to third party open access consumer M/s. Indore Treasure Island Pvt. Ltd. for the complete period of plant life. It was also mentioned in the application that the connectivity to its proposed solar PV plant to 132 KV sub-station Bercha was already laid by M/s. Ujjas Energy Ltd.
- (ii) Respondent No. 2 (MPPTCL) vide its letter No. 2238 dated 04th August' 2016 forwarded the above application to Respondent No. 2 (West Discom) wherein it was specifically mentioned that the injection and drawl points in this matter are under the jurisdiction of Respondent No. 2 (West Discom) and therefore the West Discom was requested to check feasibility for injection and drawl points and also to verify the proprietorship, map and certificate regarding metering arrangements, protection systems, contract demand of drawees etc. at injection and drawl points.
- (iii) In response to the above, the West Discom - Respondent No. 2 vide its letter No. 14543 dated 22nd August' 2016 informed Respondent No. 1 that it has examined the technical feasibility for allowing 1.0 MW Long Term Open Access (LTOA) power as sought by the applicant (Petitioner herein) in light of this Commission's order dated 1st July' 2016 in Petition No. 31 of 2016 and the NOC for LTOA cannot be issued due to network congestion on account of maximum load recorded on 33 KV MG-1 Feeder as well as the size of conductor laid on the feeder. In the aforesaid letter, the Respondent No. 2 has mentioned that the applicant may be informed about non-availability of capacity in the feeder and if the applicant is agreed to bear the cost of network modification, the same may be informed to West Discom for conducting network study.
- (iv) With regard to the aforesaid communication by Respondent No.2 (West Discom), the petitioner vide its letter dated 2nd September' 2016 informed the Respondent No. 1 that M/s. Indore Treasure Island Pvt. Ltd. has not applied for any additional contract demand or consumption or load on feeder but shall be consuming power as per existing contract demand and consumption only, hence there will be no affect or

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additional load on feeder due to open access. However, no such declaration was made by Respondent No.3 (M/s Indore Treasure Island) who is the HT consumer of Respondent No.2 and who has executed HT agreement with Respondent No.2 for the Contract Demand.

- (v) Respondent No. 1 (MPPTCL) vide its subsequent communication dated 8th September' 2016 while clarifying the Commission's order dated 1st July' 2016 in Petition No. 31 of 2016 (referred by West Discom in its letter dated 22nd August'2016) in light of Commission's retail supply tariff order dated 05.04.2016 requested Respondent No. 2 to reconsider and examine afresh its decision about technical unfeasibility in the instant case.
- (vi) Respondent No. 2 (West Discom) vide its letter No. 17089 dated 1st October' 2016 while offering its comments on the observations of MPPTCL and emphasizing that the open access consumer is entitled to avail open access power over and above the contract demand with licensee. With the aforesaid contention, Respondent No. 2 (West Discom) continued with its stand of technical unfeasibility in the subject matter.
- (vii) In light of the West Discom's aforesaid letter, the Respondent No. 1 (MPPTCL) vide letter dated 15.10.2016 informed the petitioner that its application for granting LTOA permission cannot be considered.
- (viii) The Respondent No. 2 vide its letter No. 13537 dated 30th July' 2016 accorded in principle approval/concurrence for **grid connectivity** to the subject 1.0 MW Solar Power Project being developed by the petitioner JK Minerals at Village Ranthbhanwar, Distt Shajapur wherein the following was categorically mentioned in clause (vii) and (viii):
- "(vii) The investor/ developer will have to obtain Long Term Open Access from CE (Plg. & PS) MPPTCL, Jabalpur if generated power is intended for sell to third party.***
- (viii) The Developer/ investor will have to execute power purchase and wheeling Agreement with MPPMCL, Jablapur for sale of their 1 MW generated power."***
- (ix) MP Power Management Co. Ltd Jabalpur, the holding company of Discoms vide letter

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dated 674 dated 14.09.2016 (endorsing a copy of same to M/s Ujaas Energy Limited) in the matter of “**Consent for commissioning of Solar Power Projects for third party sale/captive use and permission for injection of power in to grid for free of charges till obtaining Open Access permission**“ while mentioning a list of six Solar Power Generators including the petitioner’s plant had informed the following to concerned Discoms and SLDC Jabalpur:

*“It is to inform that following solar power generators have intimated that they registered/applied for registration.....they have planned to commission the plant by September’2016. They further informed that their open access approval(LTOA/STOA) may take some time due to process. Therefore, **they have requested to commission their plants and to inject power in the grid at free of cost, till the date of open access permission.....**”*

*In this regard, this is to intimate that request made by the aforesaid have been considered and it has been decided that they may be allowed to commission their plants, on the date of readiness and inject power into the grid **at free of cost, subject to the feasibility of grid connectivity till obtaining of open access permission for respective plants. Till such time, no payment shall be made for the injected energy.**”*

- (x) Thereafter, the petitioner commissioned its Solar Power Plant on 20.09.2016 and started injecting power to the grid.
- (xi) On the application dated 27.02.2018 of the petitioner seeking LTOA permission for 3rd party sale of its 100% power generated from its same 1.0 MW Solar Power Plant to another consumer i.e. M/s Deepak Fasteners Ltd at Sehore for the entire life of plant, the Respondent No.1 (MPPTCL) vide its letter no. 1061 dated 11.05.2018 has granted LTOA permission subject to fulfillment of certain conditions based on the feasibility reports of Central and West Discoms.

18. In view of all aforesaid facts on record, the findings of Commission in the subject matter are as given below:

- (i) The petitioner in its submissions has contended that it has already provided an undertaking to Respondent No. 1 that Respondent No.3 will not draw power over and above the contract demand. So, according to the petitioner, there was no reason to deny the open access to the petitioner as long as M/s. Treasure Island undertakes

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to restrict its drawl of power within the contract demand.

- (ii) The petitioner while quoting Regulation 13.2 of MPERC Open Access Regulations, 2005 has stated that all open access consumers must make reasonable endeavors to ensure that their actual demand or actual sent out capacity, as the case may be, at an interconnection does not exceed the contract maximum demand or actual sent out capacity for that inter-connection in terms of aforesaid Regulation 13.2. The petitioner has contended that Respondent No. 2 is empowered to punish for violation if any, made by the petitioner on the same terms and manner as Respondent No. 2 is empowered to punish a consumer which consumes power over and above the Contract Demand as per terms and conditions enumerated in Retail tariff order.
- (iii) The petitioner also submitted that Respondent No. 3, M/s. Treasure Island is neither seeking an enhancement of its contract demand nor applied for additional load. Thus grant of LTOA as requested by the petitioner could not result in any additional burden on the distribution licensee's feeder supplying power to M/s. Treasure Island. The petitioner has also contended that there will be no network congestion and burden on the system at the drawl end if M/s. Treasure Island being a retail consumer of Respondent No. 2 consumes total power including the partial open access within the contract demand on monthly basis.
- (iv) The argument of the petitioner on the issue of LTOA subsequently granted in case of M/s. Deepak Fasteners from the petitioner's same power plant is not of much relevance in the instant case because M/s. Deepak Fasteners and Respondent No. 3 are differently located and the loading on the concerned feeders may vary from time to time based on the addition/ reduction of load on the feeders due to several reasons in transmission/ sub-transmission system. Further, LTOA has been granted by the same parties in case of M/s. Deepak Fasteners, Sehore based on technical feasibility communicated by Respondent No. 2.
- (v) It is undisputed that the procedure followed by the Respondents in this matter while processing the application of the applicant seeking LTOA has been in accordance with Regulation 8 of MPERC (Terms and Conditions for Intra-State Open Access)

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Regulations, 2005. The State Transmission Utility (STU) has also issued guidelines and procedures of open access for LTOA customers in terms of Regulation 8.6 of MPERC (Open Access) Regulations, 2005. In Para 6.4 of the said guidelines, it is mentioned that STU shall inform the date of commencement to the open access customers within three days of furnishing the agreements subject to completion of infrastructure, metering, protection and operating system. It is also evident from the guidelines that the open access customers shall abide by Indian Electricity Grid Code, M.P. Electricity Grid Code and other instructions given from time to time by STU and SLDC. However, in the instant case, the Respondent No. 2 accorded in-principle approval /concurrence to the Petitioner for Grid connectivity on 30th July'2016 with the condition that approval of LTOA be obtained and Power Purchase and Wheeling Agreement (PPWA) be executed before sale of 1.0MW power to third party. On 22.08.2016, the Respondent No.2 had informed technical un-feasibility for issuing NOC for LTOA to the petitioner. Thereafter, on 14.09.2016, MP Power Management Co. ltd (MPPMCL) allowed commissioning of petitioner's solar power plant, on the date of readiness and to inject power into the grid at free of cost, subject to the feasibility of grid connectivity till obtaining of open access permission plant. It was clearly mentioned by MPPMCL that no payment shall be made for the injected energy. Therefore, the petitioner was well aware and informed with all aforesaid communications before commissioning its solar power plant on 20.09.2016 and injection of power into the grid.

- (vi) In Regulation 8.12 to 8.16 of MPERC (Open Access) Regulation, 2005, it is provided that the long term open access can be allowed in both the cases i.e. without further system strengthening and with further system strengthening based on the system studies/ technical feasibility of the system. The applicant shall reimburse the actual expenditure incurred by Respondent No. 1 and Respondent No. 2, as the case may be, for system strengthening. Accordingly, in case of LTOA with system strengthening in terms of technical feasibility, the long term open access customer may draw the power over and above its demand contracted in HT agreement with the Distribution Licensee. The billing demand and methodology of billing in case of partial open access customers have been placed/ provided by the Commission in Retail Supply Tariff order recently issued by the Commission on 9th August' 2019.

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(vii) Vide letter dated 2nd September' 2016, the petitioner M/s. J.K. Minerals mentioned the following on behalf of M/s. Indore Treasure Island:

"Our 3rd party consumer M/s. Indore Treasure Island Pvt. Ltd. has not applied for any additional contract demand or consumption or load on feeder but shall be consuming power as per existing contract demand & consumption only, hence there will be no effect or additional load on feeder due to open access."

The aforesaid letter written by petitioner to Nodal agency (MPPTCL) is considered as undertaking by the petitioner for restricting consumption within contract demand whereas, the petitioner is not a party in HT agreement executed between the Respondent No. 2 and 3. As per the provisions under M.P. Electricity Supply Code, Retail Supply Tariff Order and MPERC (Open Access) Regulations, 2005, the HT supply agreement (between the consumer and Distribution Licensee) and the Power Purchase and Wheeling Agreement (PPWA) (between the open access consumers and concerned power utility) are two different agreements. In the form of a plain undertaking for restricting its power within contract demand as provided by the petitioner to Respondent No.1, the demand sanctioned against open access application in PPWA cannot be restricted within the contract demand in HT Agreement until and unless the same is not agreed to by the parties in both the Agreements.

(viii) In view of the above and nature of generating source which is a renewable solar generating plant, the permission for long term open access may be granted to the petitioner from the existing network, if the Respondent No. 3 is agreed to restrict its maximum demand all the time within the Contract Demand as a HT Consumer by incorporating the condition of aforesaid restriction appropriately in both the Agreements i.e. PPWA & HT agreement with the concerned parties in this matter. In such case, the permission for LTOA shall be granted from the date of execution of aforesaid amendment/addendum in both the Agreements i.e. PPWA & HT agreement with the concerned parties The maximum demand, which would be the sum total of the power availed from the Respondent No. 2 and through open access from the petitioner's solar generating station, should not exceed the Contract Demand so that no additional load/ power is drawn from the Respondent No. 2's system. However, the billing demand and billing shall be as per Clause 1.5 in General Terms and Conditions under Retail Supply Tariff order issued by the Commission on 9th August' 2019.

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- (ix) The prayer of petitioner for “adjustment of units of power generated and injected into the grid by the petitioner from 22nd August’ 2016 to 10th May’ 2018 against the future drawl to M/s. Treasure Island or revised old bills for the period or to make good the losses of amount suffered by the petitioner and Respondent No. 3 due to refusal of open access”, is not considerable in light of the Commission’s observations in preceding Paragraphs 17 (viii) to 17 (ix) of this Order. Further, in Judgment passed on 8th May’ 2017 in Appeal No. 120 of 2016 & IA No. 272 of 2016 in the matter of Kamachi Sponge & Power Corporation Ltd Vs TNGDC and TNERC, Hon’ble Appellate Tribunal for Electricity has decided that the generator cannot pump electricity into the grid without having contractual agreement with the Distribution licensee and without the approval/scheduling of the power by SLDC. It has also been decided that injection of energy by a generator is not entitled for any payment. Moreover, in the instant case, as observed in Para 17 (viii) and (ix) and Para 18(v) of this order, the petitioner itself requested to commission its plant and to inject power in the grid at free of cost, till the date of open access permission and the grid connectivity was provided based on its aforesaid request and condition. The petitioner had pumped energy into the grid without any valid agreement/ contract with the Respondent No. 2. In fact, as mentioned above, the petitioner commissioned its power plant and injected energy into the grid with the request to supply the same at free of cost till the open access permission is not granted.
- (x) In view of above, the request of petitioner seeking adjustment of units of power generated and injected into the grid by it from 22nd August’ 2016 to 10th May’ 2018 against the future drawl to Respondent No.3 (M/s. Indore Treasure Island) or revise old bills for the period or to make good the losses of amount suffered by the petitioner and Respondent No. 3 due to refusal of open access has no merit.

19. Summary of Findings:

- (i) In terms of findings in Para 18 of this order, the prayer of petitioner seeking adjustment of units of power generated and injected into the grid by it from 22nd August’ 2016 to 10th May’ 2018 against the future drawl to Respondent No.3 (M/s. Indore Treasure Island) or revise old bills for the period or to make good the losses of amount suffered by the petitioner and Respondent No. 3 due to refusal of open access has no merit hence not considered in this order.

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- (ii) On the conditions of execution of amendment/addendum in PPWA and HT Agreement in terms of Para 18 (viii) of this order, the permission for long term open access may be granted to the petitioner from the existing network.

With the aforesaid observations and findings, the subject petition is disposed of

(Mukul Dhariwal)
Member

(Dr. Dev Raj Birdi)
Chairman