

**MADHYA PRADESH ELECTRICITY REGULATORY
COMMISSION
BHOPAL**

Sub: Petition under Section 86 of the Madhya Pradesh Electricity Act.

ORDER

**(Hearing through video conferencing)
(Date of Order: 31.05.2023)**

M/s Friends Salt Works & Allied Industries,
Registered Office: Maitri Bhawan,
Plot no. 18, Sector, Gandhi Dham, Kutch,
Gujrat

- **Petitioner**

Vs.

M.P. Power Transmission Company Limited.,
Through its Executive Director (CRA) Regd. Office,
Shakti Bhawan, Rampur, Jabalpur – 482008

- **Respondent**

Shri Raunak Choukse, Advocate appeared on behalf of the Petitioner.
Shri Manoj Dubey, Advocate appeared on behalf of the Respondent

The subject petition is filed petition under Section 86 of the Madhya Pradesh Electricity Act.

2. By affidavit dated 10.03.2023 the Petitioner broadly submitted the following:

- (i) That, the Petitioner is a partnership firm registered with the Registrar of firms and for raising the dispute, filing petition or to take any legal action/ proceeding, it has authorized on its behalf Shri Gourav Bapna. Hence, the same has been filed accordingly.*
- (ii) That, the present Petitioner in pursuance of power purchase and wheeling agreements entered into with the Respondent and other authorities has set up in the State of Madhya Pradesh, solar energy based power plants of 2.5 MW capacity at Village Gagorni Dist. Rajgarh (hereinafter referred to as 'Plant Rajgarh'), 4 MW capacity at Village Makdone Tehsil Tarana (hereinafter referred to as 'Plant Tarana'), 6 MW capacity at Village Bicholi Tehsil Icchawar (hereinafter referred to as Plant Icchwar) and 6 MW capacity at Village Dharakhedi Tehsil Siatamau (hereinafter referred to as 'Plant Siatamau').*
- (iii) That, the electricity produced by the said plant was supplied to third party consumers situated in the State of Madhya Pradesh through open access of the power system of the Respondent. That the Petitioner submits that the solar energy project of the Petitioner*

produces electricity from renewable source. The said project was established under the project category III of “Policy for implementation of solar power based projects in Madhya Pradesh, 2012” and therefore was highly subsidized and incentivized by the Respondent and its parent company Madhya Pradesh Power Management Company Limited.

- (iv) That, the Petitioner further submits that the Petitioner has been paying all the duties and charges levied by the Respondent from time to time as per the orders and sanction of this Hon’ble Commission.*
- (v) However, the Petitioner was shocked and surprised to receive notices issued by the Respondent dated 21.07.2022 for Plant Rajgarh, 20.07.2022 for Plant Sitamau, 28.07.2022 for plant Tarana, and 28.07.2022 for plant Icchawar. Along with the said notices, invoices for the months of April 2022, May-2022 and June-2022 were annexed and the Respondent in the said notices was asking the Petitioner to pay the transmission charges for the month April 2022, May-2022 and June-2022 in accordance with the MPERC (Terms and Conditions for Intra State Open Access in Madhya Pradesh) Regulations (Revision-I),2021, clarification issued vide MPERC/RE/2022/1166 dated 31.05.2022 in respect of applicability of charges read with MPERC Retail Supply Tariff Order dated 31.03.2022 and as per transmission charges approved in Multi-Year Transmission Tariff order dated 19.05.2021.*
- (vi) That, being aggrieved by the aforesaid arbitrary action on account of the Respondent, the Petitioner vide individual replies dated 31.08.2022 replied to all the aforesaid notices and contended that the Respondent is erroneously and falsely levying the transmission charges on the present Petitioner as the Multi Year Tariff order dated 19.05.2021 passed by the Hon’ble Commission in petition no. 45/2020 in Para 60 and 61 clearly provides that the transmission charges are provided for Non-Conventional Energy Source based generating units / Open Access Customers connected on 132 KV or above and supplying energy to customers other than Discoms /MPPMCL whereas the present Petitioner is not connected to grid on 132 KV level and is generating and evacuating power at 33 KV voltage level and connected to 33 KV M & B feeder. The Petitioner contends that the 33 KV line and also the feeder were installed at the Petitioner’s developer cost and are also maintained by the Petitioner’s developer M/s Ujaas Energy Ltd. Therefore, the Respondent is erroneously levying transmission charges on the present Petitioner. The Petitioner in the said reply called upon the Respondent to withdraw its erroneous notice and bills issued to the Petitioner seeking transmission charges.*
- (vii) That, the Respondent further issued a notice dated 14.09.2022 and 15.09.2022 to the Petitioner in reply to the aforesaid reply/representation of the Petitioner dated 31.08.2022 again falsely reiterating that the invoices have been issued to the Petitioner in accordance with the MPERC (Terms and Conditions for Intra State Open Access in Madhya Pradesh) Regulations (Revision-I),2021, clarification issued in respect of applicability of charges read with MPERC Retail Supply Tariff Order dated 31.03.2022 and as per transmission charges approved in Multi Year Transmission Tariff order dated*

19.05.2021. The Respondent further in the said notice stated that the invoice have been issued to the Petitioner for the usage of Intra State Transmission network irrespective of the voltage level and as such the contention of the Petitioner of not being connected to the 132 KV S/s is unacceptable.

- (viii) That, the Petitioner issued individual reply/responses dated 18.11.2022 for the bills received from the Respondent for all the aforesaid solar power plants and reiterated its contention that the Petitioner is not liable to pay the falsely levied transmission charges as the present Petitioner is not connected to the grid on 132 KV level and is generating and evacuating power at 33 KV voltage level and connected to 33 KV M & B feeder.
- (ix) The Respondent issued another notice dated 29.11.2022 to the Petitioner in reference to the Petitioner's reply dated 18.11.2022. The Respondent in the said notice itself stated that the applicability of transmission charges on such generators/OA customers has been further clarified by the Hon'ble MPERC vide letter no. 1166 dated 31.05.2022, which is explicitly clear in itself, same stipulated that applicability of transmission charges for such cases shall be the date of implementation of Retail Supply Tariff Order for FY 2022-23. The said notice of Respondent called upon the Petitioner to pay the transmission charges and in case of failure to do so was threatened with coercive action by the Respondent to the extent of disallowing energy adjustments for the energy being supplied to the open access customer, cancelation of LTOA permission granted by the Respondent and invoking Section 56 of the Electricity Act, 2003 for disconnection of power supply. The Petitioner contends that on perusal of the said letter dated 31.05.2022 issued by the Secretary of this Hon'ble Commission (which was never served on the Petitioner and nor was available on any portal and a copy of the same was shared with the Petitioner by another solar generator), it is clear that the same was in reply to a letter issued by the Respondent dated 26.04.2022. The Petitioner contends that the said letter issued by the Secretary of this Commission cannot supersede or provide for something which is not provided for in the orders and regulations issued by this Hon'ble Commission from time to time with regard to the levy of transmission charges.
- (x) That the Respondent issued further bill(s) to the Petitioner for payment of transmission charges for the month of November- 2022, December and January-2022 and the Petitioner to each of the bills issued a protest letter reiterating the fact that the Petitioner is not liable to make payment of the said bills as the present Petitioner is not connected to the grid on 132 KV level and is generating and evacuating power at 33 KV voltage level and connected to 33 KV M & B feeder and whereas the regulation of this Hon'ble Commission provides that the transmission charges are payable by generators/consumers connected to the grid at 132 KV.
- (xi) That the Respondent issued another notice to the Petitioner dated 14 February 2023 calling upon the Petitioner to pay the transmission charges for the period from April 2022 to January 2023 and surcharges due on or before 24.02.2023 and in case of failure to do so was threatened with coercive action by the Respondent to the extent of cancelation Long Term Open Access and disconnection.
- (xii) Hence, this petition on the following grounds:

FOUNDATIONS:

- a. *That, the impugned demand notice and the entire action of the Respondent in levying of transmission charges on the Petitioner is arbitrary, illegal, discriminatory, contrary to the provisions of Electricity Act, 2003 as well as the tariff orders issued by this Hon'ble Commission for various years.*
- b. *That the Respondent is erroneously and falsely levying the transmission charges on the present Petitioner as the Multi Year Tariff order dated 19.05.2021 passed by the Hon'ble Commission in petition no. 45/2020 in Para 60 and 61 clearly provides that the transmission charges are provided for Non-Conventional Energy Source based generating units/ Open Access Customers connected on 132 KV or above and supplying energy to customers other than Discoms / MPPMCL whereas the present Petitioner is not connected to grid on 132 KV level and is generating and evacuating power at 33 KV voltage level and connected to 33 KV M & B feeder. Hence, the action of Respondent is illegal and contrary to the provisions of multi-year tariff order issued by this Hon'ble Forum. The Regulations itself does not specify any charges. Any charges, if applicable are specified through Orders of the Hon'ble Commission. That the MYT Order dated 19.05.2021 is very specific that 43 Paise PU Transmission charges are only applicable to customers connected at 132 KV or above and to none others as displayed on Page 78 of the said order.*
- c. *That the Respondent in its notices to justify the levying of transmission charges on generators evacuating power on 33 KV level has relied upon the letter dated 31.05.2022 issued by the secretary of this Commission which the Petitioner contends is only a communication and not a law or order of the Commission. The Petitioner submits that a letter cannot serve as an order of this Hon'ble Commission or the same cannot append to an already passed order of the Commission. The Petitioner reiterates that the said letter cannot supersede or provide for something which is not provided for in the orders and regulations issued by this Hon'ble Commission from time to time with regard to the levy of transmission charges. The Petitioner submits that the Respondent ought to have filed a clarificatory petition before this Hon'ble Commission which is provided for under the rules. That the said letter is not an order of the Commission is also evident from the fact that the said letter was not even uploaded on the website of the Hon'ble Commission.*
- d. *That the **ruling of the Hon'ble Commission in FY 21-22 Retail Supply Tariff Order on page 100-101** provides the following scenario which is squarely applicable to case of the present Petitioner.*

“d) Scenario 4: Both generator and consumer are connected to the distribution system of any of the Distribution Licensee at 33 kV: The power generated by the open access generator will be consumed within the DISCOMs under the conditions of uniform retail tariff throughout the State of Madhya Pradesh and hence, it will contribute to meeting the demand of the open access consumer.

Therefore, there is no additional usage of transmission network in this transaction. Hence, such transactions shall attract only the wheeling charges. “

The analysis and ruling of Hon'ble Commission that use of transmission network is not involved in this case is conclusive and transmission charges are not applicable.

- e. That the levy of transmission charges on solar power generators is contrary to the scheme and object of the Electricity Act, 2003 and in particular Section 42(2), Section 61 (h) and Section 86(l)(e) of the said Act which mandates that the State Commission shall promote the renewable energy producers specifically by providing for measures for sale of electricity to any person. The said mandate is with the objective of environmental protection and promotion of environmentally friendly generation and to ensure that such generators are provided a preference over conventional generators. One of the primary measures for such promotion is by way of non- levy of transmission charges for the supply of electricity by renewable energy generators.*
- f. That the Petitioner has invested a huge amount of Capital based on the representation made by the government (through policy) and regulations framed by the Commission which are also in consonance with the Electricity Act, 2003. That by now imposing transmission charges mid-way upon the Petitioner, the right of legitimate expectation of the Petitioner is being violated as the Petitioner's power plant project is becoming less and less profitable by imposition of such charges. At one hand, the Ministry of Power, Gol is promoting Renewable Energy by reducing open access capacity to 100 kW but on the other hand, such charges discourage the RE generators to go for RE power sale through open access.*
- g. That, other grounds would be raised at the time of argument.*

With the aforesaid submissions the Petitioner prayed the following: -

- I. Quash the demand notices dated 20.07.2022, 21.07.2022, 28.07.2022, 14.09.2022, 15.09.2022, 18.11.2022 and 14.02.2023 issued by the Respondent along with all invoices raised for levying transmission charges on the Petitioner and also stay all consequential proceedings or coercive actions undertaken by the Respondent;*
- II. Direct the Respondent not to levy transmission charges in future invoices of the Petitioner;*
- III. Restrict the Respondent from taking any coercive action against the Petitioner for non-payment of the transmission charges;*
- IV. Issue any other direction or order as may deems fit, in the larger interest of justice.*

3. The Petitioner also submitted application on 13.03.2023 for urgent hearing and interim relief in which following submissions were made: -

- I. *That, the Petitioner has filed the present petition before this Hon'ble Commission for seeking quashment of the demand notices dated 20.07.2022, 21.07.2022, 28.07.2022, 14.09.2022, 15.09.2022, 18.11.2022 and 14.02.2023 issued by the Respondent along with all invoices raised for levying transmission charges on the Petitioner issued by the Respondent and stay of all consequential proceedings or coercive actions undertaken by the Respondent and other consequential reliefs.*
- II. *That, the Respondent has issued notice dated 14.02.2023 to the Petitioner calling upon the Petitioner to pay the transmission charges and in case of failure to do so has threatened the Petitioner with coercive action by the Respondent to the extent of cancellation of the Long-Term Open Access permission and/or disconnection.*
- III. *That, Petitioner is having a prima facie good case and hopes to succeed. Balance of convenience also lies in favor of the present Petitioner and hence, impugned recovery may be stayed and the Respondent be directed not to take any coercive action against the present Petitioner otherwise the present petition would be rendered in fructuous and if any coercive steps are taken by the Respondent Petitioner would suffer huge & irreparable losses.*

PRAYER

This Hon'ble Commission, may kindly be pleased to, hear the matter urgently and stay the impugned notices dated 20.07.2022, 21.07.2022 28.07.2022, 14.09.2022, 15.09.2022, 18.11.2022 and 14.02.2023 issued by the Respondent along with all invoices raised for levying transmission charges on the Petitioner issued by the Respondent and stay all consequential proceedings and direct the Respondent not to take any coercive actions against the Petitioner for recovery of transmission charges, during the pendency of the present petition, in the larger interest of justice.

4. At the motion hearing held on 21.03.2023, Shri Raunak Choukse, Advocate appearing on behalf of the Petitioner explained genesis of case. Having heard the Petitioner, the petition was admitted. Petitioner was directed to serve copy of petition to Respondent within 7 days. Respondent was directed to submit reply within 7 days thereafter. Case was listed for hearing on 25.04.2023.

5. Respondent, M.P. Power Transmission Co. Ltd. by Affidavit dated 20.04.2023 broadly submitted the following in its reply to the petition:

- i. *That, by way of instant petition, the Petitioner has challenged the impugned demand notices mentioned in the petition raised by the Respondent towards transmission charges. Dispute raised by Petitioner is regarding imposition of transmission charges by Respondent on its Solar Power Plants connected with the grid at 33 kV voltage level with effect from April 22 onwards on the grounds that transmission charges have been levied erroneously and falsely as the Multi Year Tariff order dated 19-05-2021 passed by the Commission in Petition no. 45/2020 provides that the transmission charges are applicable for Non-Conventional Energy Source based generating units / Open Access customers connected on 132 KV or above and supplying energy to customers other than*

DISCOMs whereas the Petitioner is not connected to grid on 132 KV level and is generating and evacuating power at 33 KV voltage level and connected to 33 KV feeder. The Petitioner has also stated that transmission charges are not applicable in their case in light of the provisions of scenario 4 of Retail Supply Tariff for FY 2021-22 which stipulates as under: -

“Scenario 4: Both generator and consumer are connected to the distribution system of any of the Distribution Licensee at 33 kV: The power generated by the open access generator will be consumed within the DISCOMs under the conditions of uniform retail tariff throughout the State of Madhya Pradesh and hence, it will contribute to meeting the demand of the open access consumer. Therefore, there is no additional usage of transmission network in this transaction. Hence, such transactions shall attract only the wheeling charges.”

- ii. The Petitioner further contends that Regulation 3.2 of the Open Access Regulations, 2021 provides that the open access shall be available for use by an open access customer on payment of such charges as may be determined by the Hon'ble Commission. Regulation 13 provides that only those charges or fees shall be levied on open-access customers as may be decided by the Commission from time to time. Table-1 (Annexure-1) of the said regulations only specifies the kind of charges to be recovered, but no transmission charges have been determined by Commission for the open access customers connected at 33 kV.*
- iii. According to Petitioner, clarification issued by Commission on 31-05-2022 regarding date of applicability of transmission charges on open access customers connected at 33 KV is only a communication between Secretary of Commission and Respondent and not a law or order of the Commission.*
- iv. It is submitted that the Petitioner has been granted Long Term Open Access (LTOA) by Respondent MP Power Transmission Company Ltd. from the EHV Sub-stations which are the part of Intra State Transmission System of MP. It is further submitted that the Petitioner is connected to Distribution System at voltage 33 KV level at EHV Sub-stations of MP Power Transmission Company Ltd. and their drawl beneficiaries also connected to Distribution System at voltage 33 KV level through 33 KV feeders emanating from EHV Sub-stations of Respondent MP Power Transmission Company Ltd. It is further submitted that injection of power is within the geographical jurisdiction of one Discom and drawl of power under Open Access is within the geographical jurisdiction of other Discom.*
- v. On 30-06-2021, the Hon'ble Commission passed an Order in Petition No. 05 of 2021 determining the Aggregate Revenue Requirement (ARR) and Retail Supply Tariff for FY 2021-22 based on the ARR & Tariff Petition filed by the Distribution Licensees, namely, Madhya Pradesh Poorv Kshetra Vidyut Vitaran Company Limited (East Distribution Licensee), Madhya Pradesh Paschim Kshetra Vidyut Vitaran Company Limited (West Distribution Licensee), Madhya Pradesh Madhya Kshetra Vidyut Vitaran Company Limited (Central Distribution Licensee), and M.P. Power Management Company Limited (MPPMCL). The said Order, inter-alia, provided for the applicable wheeling and transmission charges to be levied under different scenarios:*

“Applicability of wheeling charges under different scenarios

3.13 Various scenarios of location of Open Access generators and their consumers and the consequent applicability of transmission and wheeling charges shall be as below:

- a) **Scenario 1:** Generator is connected to Transmission network (EHT voltages), while the consumer is connected to the distribution network at 33 kV of Distribution Licensee: The scenario shall attract both transmission and wheeling charges since power required by the open access consumer will flow downstream from the transmission network through distribution network up to the consumer's connection.
 - b) **Scenario 2:** Generator is connected to distribution network at 33 kV of Distribution Licensee, while the consumer is connected to the transmission network (132 kV or above): In this scenario, the consumer's requirement will be met by power flow over transmission network alone. The power generated by the open access generator will be locally consumed within the DISCOMs and will not flow upstream to the open access consumer. Hence, such transactions shall attract only the transmission charges.
 - c) **Scenario 3:** Both Generator and consumer are connected to the transmission network (132 kV or above): Only transmission charges shall apply, since there is no usage of distribution network.
 - d) **Scenario 4:** Both generator and consumer are connected to the distribution system of any of the Distribution Licensee at 33 kV: The power generated by the open access generator will be consumed within the DISCOMs under the conditions of uniform retail tariff throughout the State of Madhya Pradesh and hence, it will contribute to meeting the demand of the open access consumer. Therefore, there is no additional usage of transmission network in this transaction. Hence, such transactions shall attract only the wheeling charges.
- vi. The Hon'ble Commission has determined the applicability of above charges for encouraging open access. Above formulations also conform to the principle that power flows on the network by displacement method.
- vii. On 17-12-2021, the Hon'ble Commission, in exercise of powers under Section 181 of the Electricity Act, 2003, notified the Madhya Pradesh Electricity Regulatory Commission (Terms & conditions for Intra State Open Access in Madhya Pradesh) Regulations, 2021 (Revision-1) (hereinafter '**Open Access Regulations, 2021**'). The Open Access Regulations, 2021, inter-alia, provides in Regulation 3.2 that the open access shall be available for use by an open access customer on payment of such charges as may be determined by the Hon'ble Commission in accordance with the Open Access Regulations, 2021.
- viii. In terms thereof, the Annexure- 1 to the Open Access Regulations, 2021 provides for levy of transmission charges to be applicable on such consumers who are within the State but falling within the areas of different distribution licensee. As the Petitioner and its beneficiary are located in the areas of two different Distribution Licensees, the Petitioner would be liable to pay transmission charges, in addition to the other charges specified in the Regulations.

ix. *It is submitted that, however, the transmission charges were not levied on the Petitioner during FY 2021-22 as the Retail Supply Tariff Order dated 30.06.2021 issued by the Hon'ble Commission was in force which provided under Scenario-4 that if the Generator and Consumer both are connected to the Distribution System of the Distribution Licensee at 33 KV then in such a case only wheeling charges will be applicable.*

x. *It is also to be submitted that as the stipulation under Scenario-4 of the Retail Supply Tariff Order dated 30.06.2021 was not consistent with the Open Access Regulations, 2021, MPPTCL submitted to the Hon'ble Commission on dated 02.03.2022 seeking to consider the following in Retail Supply Tariff order for FY 2022-23 as under:*

- a) The scenario-4 as aforesaid may kindly be incorporated in Retail Supply Tariff order to be issued under Petition No. 04/2022 of MPPMCL/ Discoms with applicability of transmission/wheeling charges where consumer is connected to Distribution System (at 33 KV level) and injection/drawl lies in areas of different Distribution Licensee within the State consistent with the Open Access Regulations notified on 17.12.2021.*
- b) The aforesaid applicability of transmission/wheeling charges will be for Long Term/Medium Term/Short Term Open Access customers seeking Open Access through MPPTCL/SLDC as the case may be.*
- c) Hon'ble Commission may kindly consider issue of directions for applicability in consonance with Open Access Regulations, 2021 for enabling commencement of billing of transmission charges by MPPTCL as per MYT order dated 19.05.2021 in respect of Long Term/Medium Term Open Access customers and by SLDC for Short Term Open Access customers as per stipulations in Open Access Regulations, 2021 read with MYT order dated 19.05.2021 falling under such scenario of injection and drawl of power both at 33 KV level (Distribution System) but within the jurisdiction of different Discoms under the State of MP.*
- d) Any other relief as the Hon'ble Commission may consider necessary for applicability of transmission charges in respect of Open Access customers connected to Distribution System (at 33 KV level) where injection and drawl of power is within the jurisdiction of same Distribution Licensee as in this case also usage of transmission system is involved.*
- e) On 31-03-2022, Hon'ble Commission passed an Order in Petition No. 04 of 2022 determining the Aggregate Revenue Requirement (ARR) for Control Period for FY 2022-23 to FY 2026-27 and Retail Supply Tariff for FY 2022-23 based on the ARR & Tariff Petition filed by the Distribution Licensees:*

“A3: WHEELING CHARGES, CROSS SUBSIDY SURCHARGE AND ADDITIONAL SURCHARGE:

.....

3.13 *Applicability of wheeling charges for the open access consumers depending on their connectivity shall be governed in accordance to the MPERC Open Access Regulations, 2021.*

.....

Issue Raised by Stakeholder

The stakeholder stated that the applicability of wheeling and transmission charges in different scenarios of location of Open Access generators and their consumers and consequent applicability of transmission and wheeling charges has been approved by the Commission at Para-3.13 of Retail Supply Tariff Order for FY 2021-22.

Open Access Scenario 4:

“Both generator and consumer are connected to the distribution system of any of the Distribution Licensee at 33 kV”

The power generated by the open access generator will be consumed within the DISCOMs under the conditions of uniform retail tariff throughout the State of Madhya Pradesh and hence, it will contribute to meeting the demand of the open access consumer. Therefore, there is no additional usage of transmission network in this transaction. Hence, such transactions shall attract only the wheeling charges.

The transmission charges are applicable in scenario-1, 2 & 3 while in scenario-4, only wheeling charges are applicable.

It is submitted here that in such case where Open Access Regulations, 2021 stipulates for applicability of Transmission Charges where injection and drawl both are at 33KV level (Distribution System) in areas of different Distribution Licensees within State is not in line with the scenario-4 as aforesaid mentioned in the Retail Supply Tariff Order for FY 2021-22.

Therefore, the Commission is requested to consider the following suggestions:

- The scenario-4 as aforesaid may kindly be incorporated in Retail Supply Tariff Order to be issued under Petition No. 04/2022 with applicability of transmission / wheeling charges where consumer is connected to Distribution System (at 33KV level) and injection / drawl lies in the areas of different Distribution Licensee within the State consistent with the Open Access Regulations notified on 17th Dec, 2021.*
- The aforesaid applicability of transmission / wheeling charges will be for Long Term / Medium Term / Short Term Open Access customers seeking Open Access through MPPTCL / SLDC as the case may be.*
- The Commission may kindly consider issue of directions for applicability in consonance with the Open Access Regulations, 2021 for enabling commencement of billing of transmission charges by the MPPTCL as per MYT order dated 19.05.2021 in respect of Long Term / Medium Term Open Access Customers and by SLDC for Short Term Open Access Customers as per stipulations in Open Access Regulations, 2021 read with MYT order dated 19.05.2021.*

- Any other relief as the Commission may consider necessary for applicability of transmission charges in respect of Open Access Customers connected to Distribution System (33 KV level) where injection and drawl of power is within the jurisdiction of same Distribution Licensee as in this case also the usage of transmission system is involved.

Commission's View

The Commission has noted the suggestion of the stakeholder and appropriately dealt the issue in Chapter A3 of this Order.”

- xi.** *In view of the above, on 26-04-2022, MPPTCL vide its letter sought clarification from the Hon'ble Commission with regard to the date of applicability of the aforesaid Open Access Regulations, 2021.*
- xii.** *On 31-05-2022, the Hon'ble Commission vide its letter was pleased to clarify the above position stating that Open Access Regulations shall be applicable from the date of implementation of Retail Supply Tariff order for FY 2022-23. The relevant part of the letter dated 31-05-2022, inter-alia, reads as under:*
- “In this regard, as directed, it is to clarify that effective date of applicability of transmission charges for the abovementioned cases, shall be date of implementation of Retail Supply Tariff order for FY 2022-23.”**
- xiii.** *Pursuant to the above, on 25-07-2022, MPPTCL issued Demand Notices to the Petitioner seeking payment of Transmission Charges for the months of April to June, 2022 based on State Energy Account being issued by Madhya Pradesh State Load Despatch Centre.*
- xiv.** *The demand raised by MPPTCL is in terms of the transmission charges as determined by the Hon'ble Commission in the Multi Year Tariff Order dated 19-05-2021(hereinafter '**MYT Order**') in Petition No. 45 of 2020, wherein the Hon'ble Commission has determined the Transmission Tariff for MYT control period from FY 2019-20 to FY 2023-24 as under:*

“61. Commission's Analysis

The Commission has determined ARR for the control period of MYT in this Order. Based on the approved ARR, the submissions of the Petitioner and the provisions of the applicable Regulations, the Commission approves the charges as under:

S.	Particulars	Unit	FY 2019-20	FY 2020-21	FY 2021-22	FY 2022-23	FY 2023-24
1	Annual Fixed Cost as per Tariff	Rs. Cr.	3610.27	3925.25	4141.56	4312.22	4392.45
2	Transmission System capacity	MW	19742.32	22607.44	23421.24	24657.15	25676.01
3	Transmission charges per MW per Annum	Rs.Lacs/MW	18.29	17.36	17.68	17.49	17.11
4	Capacity of Non-conventional Energy based Plants connected at 132 KV & above	MW	3834.11	5923.49	7494.84	8720.75	9739.61
5	Total Pooled Capacity	MW	23576.43	28530.94	30916.08	33377.90	35415.62
6	Pooled Cost Addition	Rs. Cr.	0.00	0.00	0.00	0.00	0.00
7	Total Pooled Cost	Rs. Cr.	3610.27	3925.25	4141.56	4312.22	4392.45
8	Energy expected to be transmitted	MU	69827.83	75705.04	80962.75	86056.17	91028.09
9	Energy generated by Non-conventional Energy based Plant at 20% CUF with MW capacity	MU	6717.36	10377.96	13130.95	15278.76	17063.80
10	Total Energy Handled	MU	76545.18	86083.00	94093.70	101334.93	108091.88
11	Transmission Charges per Unit	Rs. / Unit	0.472	0.456	0.440	0.426	0.406
			(Say 0.47)	(Say 0.46)	(Say 0.44)	(Say 0.43)	(Say 0.41)

xv. That, similar issues as raised in this petition were also involved in another Petition No. 89 of 2022, parties being M/s. Indra Vidya Power vs. M P Power Transmission Company Ltd. The Hon'ble Commission has been pleased to dispose of the same vide recent order dated 11-04-2023 passed therein while holding among other things that in case of Generators and Users are connected with distribution system of different Distribution Licensees of the State as per the scenarios of Annexure-1 of the MPERC (Terms & conditions for Intra State Open Access in Madhya Pradesh) Regulations, 2021, transmission charges would be applicable with effect from 08.04.2022. Further, in terms of the aforesaid order dated 11.04.2023, they are working on re-computation of the intra-state transmission charges to be applicable with effect from 08-04-2022 and to file a petition for re-computation of intra-state transmission charges applicable to non-conventional energy sources based generating plants and open access consumers considering the capacities of non-conventional energy sources based generating plants connected with the distribution systems of the different Distribution Licensees of the State as per the scenarios mentioned in Annexure 1 of the MPERC (Terms & conditions for Intra State Open Access in Madhya Pradesh) Regulations, 2021 in addition to the capacities of the generating plants connected at 132 kV level and above.

xvi. It is submitted that the present petition may also kindly be disposed of in terms of order dated 11-04-2023 passed by Hon'ble Commission in Petition No. 89/2022.

6. During hearing held on 25.03.2023, Shri Raunak Choukse, Advocate appearing on behalf of the Petitioner stated that they received the reply from Respondent only on 21.04.2023 and therefore require a short time for filing rejoinder. After hearing the parties, one week time was granted for filing rejoinder vide daily order dated 25.04.2023. Case was listed for final arguments on 9th May, 2023.

7. Petitioner, M/s. Friends Salt Works & Allied Industries by Affidavit dated 08.05.2023 submitted the following in its rejoinder to the petition:

- I. *That the Petitioner at the outset only denies all the facts and grounds raised by the Respondent in its reply unless specifically admitted hereinafter.*
- II. *That with regards to paras 1 to 3 of the reply, the Petitioner submits that the same relates to the contents of the petition of the Petitioner and are admitted.*
- III. *That with regards to para 4 of the reply, the Petitioner submits that the same do not present the correct facts. The Petitioner reiterates that it is generating and evacuating power at 33 KV voltage level only. Further, the Petitioner submits that even its consumers are also consuming power at 33 KV voltage level. It is a matter of record that LTOA was issued by MPPTCL and therefore needs no reply. The Petitioner without prejudice further submits that the Open Access Regulation, 2021 under Table 1 provides the charges on the basis of the location of the drawal and injection point of the consumer connected to the Distribution system and the Tariff orders on the basis of the connectivity. The Petitioner submits that the Petitioner's point of connectivity at the injection point (at the meter) is at 33 KV only.*
- IV. *That in reply to Para 5 and 6, the Petitioner submits that the case of the Petitioner falls under Scenario 4 of the said regulation of this Hon'ble Commission in very clear words has provided as under which scenarios the wheeling charges and transmission charges are applicable and not applicable. The Petitioner further submits that the Scenario 4 of Retail Supply Tariff for FY 2021-22 of this Hon'ble Commission provides as under*

"d) Scenario 4: Both generator and consumer are connected to the distribution system of any of the Distribution Licensee at 33 kV: The power generated by the open access generator will be consumed within the DISCOMs under the conditions of uniform retail tariff throughout the State of Madhya Pradesh and hence, it will contribute to meeting the demand of the open access consumer. Therefore, there is no additional usage of transmission network in this transaction. Hence, such transactions shall attract only the wheeling charges."

The analysis and finding of the Hon'ble Commission that the use of the transmission network is not involved in such a scenario is conclusive and therefore, transmission charges are not applicable on generators and consumers connected at 33 KV. Furthermore, the Hon'ble Commission in Regulation 3.14 has further opined that "The Commission has determined the applicability of above charges for encouraging open access. Above formulations also conform to the principle that power flows on the network by displacement method."

- V. *That in reply to Para 7 to 9, the Petitioner submits that the Open Access Regulations, 2021, in Regulation 3.2 provide that the open access shall be available for use by an open access customer on payment of such charges as may be determined by this Hon'ble Commission. The Petitioner further submits that Regulation 13 provides that only those charges or fees shall be levied on open-access customers as may be decided by this Hon'ble Commission from time to time. The Petitioner emphatically denies that as per the Table-1 of the said regulations, the Petitioner automatically is liable to pay the transmission charges. The Petitioner humbly submits that the said table provides the general proposition about the kind of charges that can be levied on open access usage depending upon the location of the drawal point and injection point of the power. The said can be ascertained from the fact that the last entry in applicable charges is 'Any Other Charges, if any', therefore, as already stated above, any charges will be leviable as per*

the directions of the Hon'ble Commission in its tariff orders. The Petitioner reiterates at the risk of repetition that this Hon'ble Commission in many previous years' retail supply tariff orders including Retail Supply tariff order FY 2021-22 as well as the Transmission Multi-Year Tariff order for FY 2019-20 to FY 2023-24 has clearly laid down that the transmission charges are payable by only generators/customers connected on 132 KV or above on the basis of its analysis and findings that when both generator and consumer are connected to the distribution system of any of the Distribution Licensee at 33 kV, the power generated by the open access generator will be consumed within the DISCOMs under the conditions of uniform retail tariff throughout the State of Madhya Pradesh and hence, it will contribute to meeting the demand of the open access consumer. Therefore, there is no additional usage of the transmission network in such transactions, and hence, such transactions attract only the wheeling charges. The aforesaid is a finding of the Hon'ble Commission and that cannot be said contrary or not consistent with the Open Access Regulations,2021 as the Hon'ble Commission rightly has provided the scenarios under which the transmission charges are payable and not payable and out of the four scenarios in the Retail Tariff Orders has only in one scenario laid down that transmission charges are not applicable which is based on proper logic and reasoning as provided hereinabove.

- VI. *That in reply to Para 10 and 11, the Petitioner submits that the contention of the Respondent that the stipulation under Scenario-4 of the Retail Supply Tariff order FY 2021-22 was not consistent with the open access regulations 2021 is completely false for the reason stated hereinabove by the Petitioner in Para 5 of this rejoinder. That the Petitioner submits that the said issue with regards to Scenario 4 of the Retail Supply Tariff order FY 2021-22 raised by the Respondent is recorded as Issue no. 32 (at Pg 248 of the said order) in the order of this Hon'ble Commission dated 31.03.22 in petition no. 04 of 2022 determining ARR for FY 2022-23 to FY 2026-27 and Retail Supply Tariff Order for FY 2022-23. In the said order, this Hon'ble Commission's view of the said issue provides as under:-*

"Commission's View

The Commission has noted the suggestion of the stakeholder and appropriately dealt the issue in Chapter A3 of this Order."

That the Petitioner further submits that the Hon'ble Commission did not accept the contention of the Respondent and therefore, the Hon'ble Commission did not amend the aforesaid Scenario 4 and incorporate any change in the Retail Supply Tariff Order as requested by the Respondent. The Chapter A3 of the said order reads as under

"A3: WHEELING CHARGES, CROSS SUBSIDY SURCHARGE AND ADDITIONAL SURCHARGE

.....

3.13 Applicability of wheeling charges for the open access consumers depending " on their connectivity shall be governed in accordance to the MPERC Open Access Regulations, 2021."

The Petitioner humbly submits that the said chapter deals only with the application of wheeling charges and that too with regards to the open access customers and not non-

conventional energy generators like the Petitioner, thus, it is clear the Hon'ble Commission did not accept the issue/suggestions raised by the Respondent-stakeholder in its said order.

- VII. *That, in reply to Para 12 and 13, the Petitioner submits that in spite of the fact that this Hon'ble Commission did not provide for levying of transmission charges on generators and consumers connected at 33 KV level in the Retail Supply Tariff Order for FY 2022-23, the Respondent in its letter dated 26.04.2022 addressed to the Secretary of this Hon'ble Commission has falsely stated that pursuant to the Retail Supply Tariff Order for FY 2022-23, the billing for transmission charges as per provisions in the Open Access Regulations 2021 is to be commenced in such cases where the generator and open access customer are both connected to the distribution system at 33 KV but within the jurisdiction of different Discoms and only clarification is required as to from which date such charges are to be levied. The Petitioner most humbly submits that no regulation of this Hon'ble Commission specifically provides that transmission charges are to be levied on generators connected at 33 KV and on the contrary, as already stated above the Transmission Multi-Year Tariff order for FY 2019-20 to FY 2023-24 has clearly laid down that the transmission charges are payable by generators connected on 132 KV or above only and the Scenario-4 of the Retail Supply Tariff order FY 2021-22 clearly provides that only wheeling charges are to be paid when both generator and consumer are connected to the distribution system of any of the Distribution Licensee at 33 kV as there is no additional usage of the transmission network in such transactions.*

Furthermore, with regard to the letter dated 31.05.2022 of the Secretary of this Hon'ble Commission, the Petitioner has already submitted in the petition that the same was in reply to the aforesaid letter issued by the Respondent dated 26.04.2022 seeking clarification with regard to the date of applicability of transmission charges on the false assumption in the first place that such charges are applicable in cases of generators and customers connected at 33 KV level in spite of the fact that no regulation of this Hon'ble Commission specifically provides for that. The Petitioner contends that the said letter issued by the Secretary of this Commission cannot supersede or provide for something which is not provided for in the orders and regulations issued by this Hon'ble Commission from time to time with regard to the levy of transmission charges.

- VIII. *That, in reply to Para 14 and 15, the Petitioner submits that said paras relate to the letters/notices exchanged between the Petitioner and the Respondent and have already been discussed in detail by the Petitioner in its petition and therefore, the Petitioner for the sake of avoiding repetition is not discussing the same in this rejoinder. The Transmission Multi-Year Tariff order for FY 2019-20 to FY 2023-24 only provides for the transmission charges that are payable by generators connected on 132 KV or above and nowhere in the said order any charges are provided for the scenario when both generator and consumer are connected to the distribution system of any of the Distribution Licensee at 33 kV as there is no additional usage of the transmission network in such transactions. For argument's sake only and without admitting anything, the Petitioner submits that if the transmission charges are applicable in aforesaid scenarios after the Open Access Regulations, 2021 then they can be applied only prospectively and not retrospectively that is by inclusion of the same in the Hon'ble Commission's latest Transmission Multi-Year Tariff orders and Retail Supply Tariff Orders.*

- IX. *That, in reply to Para 16, the Petitioner submits that the Hon'ble Commission has passed*

order dated 11.04.2023 in the Petition 89 of 2022 wherein as per the Transmission Company, the Petitioner/generator (Indra Vidhya Power) was connected at 132 KV whereas in the present case the Respondent transmission company has itself admitted that the Petitioner is evacuating power at 33 KV only and also that its consumer is drawing power at 33 KV only, thus this case is on a different footing. Furthermore, the Petitioner humbly submits that in the case of Indra Vidhya Power, certain grounds raised by the present Petitioner in this petition and rejoinder were not raised before the Commission and hence this petition needs to be decided on its own merits. The Petitioner most humbly submits that the Hon'ble Commission in the order passed in the case of Indra Vidhya Power in addition to the above grounds raised by the present Petitioner has not considered the following issues:-

- i. That no justification or counter-argument has been provided to the Hon'ble Commission's own finding in the previous retail tariff orders that when both generator and consumer are connected to the distribution system of any of the Distribution Licensee at 33 kV, the power generated by the open access generator will be consumed within the DISCOMs under the conditions of uniform retail tariff throughout the State of Madhya Pradesh and hence, it will contribute to meeting the demand of the open access consumer. Therefore, there is no additional usage of the transmission network in such transactions, and hence, such transactions attract only the wheeling charges.
- ii. That whether the transmission charges are payable by the generator or the consumer as the Table 1 of the Open Access Regulations, 2021 provides the charges on the basis of the location of the drawal and injection point of the consumer connected to the Distribution system whereas the Tariff Orders of this Hon'ble Commission provide the basis of charges on the connectivity of the Generator i.e. at 33 Kv or 132 Kv and above.
- iii. Ownership of power changes at the Metering / Delivery Point.

The Hon'ble APTEL in Appeal No. 264 of 2019 along with other connected matters vide Order dated 03.11.2020 has held in para 12.3 of the Order that "It is well known fact that ownership of power changes after metering point. In distribution, the licensee is responsible for system up to meter only. Beyond meter it is the responsibility of the consumer. Similarly, ownership of power changes from BHPL to UPCL after metering point. Up to metering point BHPL/TPCL remains owner of the power supplied to UPCL, after metering point power belongs to UPCL. Ideally meter should have been provided at delivery point, however, in this case Meter has been provided at BHPL power station's bus bar as a special case as it cannot be provided at delivery point i.e. at Ghansali. Accordingly, BHPL or TPTCL are not required to seek open access from PTCUL for use of its intra-state transmission system for the reason that they are not using it at all".

Hence, by applying the ratio of said order, the Petitioner cannot be held liable for the payment of transmission charges, as the metering/delivery in the present case is at 33KV level on the Discom system and the ownership of power has changed at metering/ delivery point at the said location and the power belongs to the Discom. This establishes the principle followed by Hon'ble Commission in Scenario -2 of the Retail Supply Tariff Order 2021-22 that provided that power injected at 33 kV is locally

consumed within the Discom and does not flow upstream.

- IV. *Retrospective imposition of transmission charges when the Commission's Transmission Multi-Year Tariff order and Retail Supply Tariff Order issued after the Open Access Regulation, 2021 does not provide for the same.*

PRAYER:

It is, therefore, humbly prayed that the reply of the Respondent being devoid of merits should not be taken in to consideration and the Petitioner's petition should be allowed.

8. During hearing held on 09.05.2023, Shri Raunak Choukse, Advocate appearing on behalf of the Petitioner reiterated the submissions made in the petition and the rejoinder. Shri Manoj Dubey, Advocate, appearing on behalf of the Respondent Reiterated submissions made by the Respondent. He also stated that the Commission has already dealt with all the issues raised by Petitioner in its order dated 11.04.2023 passed in Petition No. 89/2022, M/s. Indra Vidhya Power Vs MPPTCL. Therefore, there was nothing more to add in the matter. After hearing the parties, case was reserved for orders.

9. **Commission's observations and findings:**

- i. It is noted that dispute raised by Petitioner is regarding imposition of transmission charges by Respondent on its Solar Power Plant of 2.5 MW at Village Gagorni Dist. Rajgarh , 4 MW at Village Makdone Tehsil Tarana , 6 MW at Village Bicholi Tehsil Icchawar and 6 MW at Village Dharakhedi Tehsil Siatamau connected with the grid at 33 kV voltage level with effect from April 22 onwards on the grounds that transmission charges have been levied erroneously and falsely as the Multi Year Tariff order dated 19.05.2021 passed by the Commission in petition no. 45/2020 provides that the transmission charges are applicable for Non-Conventional Energy Source based generating units / Open Access Customers connected on 132 KV or above and supplying energy to customers whereas the Petitioner is not connected to grid on 132 KV level and is generating and evacuating power at 33 KV voltage level and connected to 33 KV feeder. The Petitioner has also stated that transmission charges are not applicable in their case in light of the provisions of scenario 4 of Retail Supply Tariff for FY 2021-22 which stipulated as under: -

“Scenario 4: Both generator and consumer are connected to the distribution system of any of the Distribution Licensee at 33 kV: The power generated by the open access generator will be consumed within the DISCOMs under the conditions of uniform retail tariff throughout the State of Madhya Pradesh and hence, it will contribute to meeting the demand of the open access consumer. Therefore, there is no additional usage of transmission network in this transaction. Hence, such transactions shall attract only the wheeling charges.”

The Petitioner further contended that Regulation 3.2 of the Open Access Regulations, 2021 provides that the open access shall be available for use by an open access customer on

payment of such charges as may be determined by this Commission. Regulation 13 provides that only those charges or fees shall be levied on open-access customers as may be decided by the Commission from time to time. Table-1 of the said regulations only specifies the kind of charges to be recovered, but no transmission charges have been determined by Commission for the open access customers connected at 33 kV.

According to Petitioner, clarification issued by Commission on 31.05.2022 regarding applicability of transmission charges on open access customers connected at 33 KV with effect from 01.04.2022 is only a communication between Secretary of Commission and Respondent and not a law or order of the Commission.

Petitioner also submitted that in order dated 11.04.2023 of Commission in Petition no. 89/2022, it is mentioned that Transmission Company has stated that the Petitioner/ Generator (Indira Vidhya Power) was connected at 132 kV whereas in the instant case, petitioner is evacuating/ drawing power at 33 kV.

Moreover, according to Petitioner, Hon'ble APTEL in Order dated 03.11.2020 passed in Appeal No. 264 of 2019 has held in para 12.3 that "It is well known fact that ownership of power changes after metering point. In distribution, the licensee is responsible for system up to meter only. Beyond meter it is the responsibility of the consumer. Similarly, ownership of power changes from BHPL to UPCL after metering point. Up to metering point BHPL/TPCL remains owner of the power supplied to UPCL, after metering point power belongs to UPCL. Accordingly, BHPL or TPTCL are not required to seek open access from PTCUL for use of its intra-state transmission system for the reason that they are not using it at all". Hence, by applying the ratio of said order, the Petitioner cannot be held liable for the payment of transmission charges, as the metering/delivery in the present case is at 33KV level on the Discom system and the ownership of-power has changed at metering/ delivery point at the said location and the power belongs to the Discom. This establishes the principle followed by Hon'ble Commission in Scenario -2 of the Retail Supply Tariff Order 2021-22 that provided that power injected at 33 kV is locally consumed within the Discom and does not flow upstream.

- ii. The Respondent has submitted that the Commission in exercise of powers under Section 181 of the Electricity Act, 2003, notified the Madhya Pradesh Electricity Regulatory Commission (Terms & conditions for Intra State Open Access in Madhya Pradesh) Regulations, 2021 (Revision-1) on 17.12.2021. The Open Access Regulations, 2021, inter-alia, provides in Regulation 3.2 that the 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 accordance with the Open Access Regulations, 2021. In terms thereof, Annexure-1 to the Open Access Regulations, 2021 provides for levy of transmission charges to be applicable on such customers connected to Distribution System of different Distribution Licensees of the State. As the Petitioner and its beneficiary are located in the areas of two different Distribution Licensees of the State, transmission charges would be applicable. Since, Commission vide its letter dated 31.05.2022 has clarified that the transmission charges for customers connected at 33 kV under relevant scenario of Open Access Regulations, 2021

shall be applicable with effect from the date of applicability of Retail Supply Tariff Order for FY 22-23 i.e. with effect from 07.04.2022, demand for payment of transmission charges raised on Petitioner accordingly. Respondent also submitted that all the issues raised in the present petition has already been dealt and decided by this Commission in an identical petition no. 89/2022 filed by M/s Indra Vidhya Power vide order dated 11.04.2023.

- iii. We have noted that the issues regarding applicability of transmission charges on the customers connected at 33 kV as per the provisions of MPERC (Terms & conditions for Intra State Open Access in Madhya Pradesh) Regulations, 2021 have already been dealt in order dated 11.04.2023 passed by this Commission in petition no. 89/2022. The key issues no. 1 & 3 deliberated and decided in the said petition no. 89/2022 are also squarely applicable in the instant case as under: -

Issue No. 1- Whether transmission charges are applicable on the open access customers connected at Distribution level and what would be the date of applicability

Commission in Para 3.13 of its Retail Supply Tariff order dated 30.06.2021 passed in Petition No. 05 of 2021 for FY 2021-22 provided for the applicable wheeling and transmission charges to be levied under different scenarios. Scenario 4 of the Para 3.13 of the said order deals with the applicability of transmission and wheeling charges for Generators and Consumers connected to distribution system as under: -

“Scenario 4: Both generator and consumer are connected to the distribution system of any of the Distribution Licensee at 33 kV: The power generated by the open access generator will be consumed within the DISCOMs under the conditions of uniform retail tariff throughout the State of Madhya Pradesh and hence, it will contribute to meeting the demand of the open access consumer. Therefore, there is no additional usage of transmission network in this transaction. Hence, such transactions shall attract only the wheeling charges.”

The aforesaid tariff order dated 30.06.2021 was only applicable up to 07.04.2022.

Commission notified Madhya Pradesh Electricity Regulatory Commission (Terms & conditions for Intra State Open Access in Madhya Pradesh) Regulations, 2021 (Revision-1) (hereinafter referred as ‘Open Access Regulations, 2021’) on 17.12.2021. In Annexure-1 to the said Regulations, various scenarios were incorporated for applicability of open access charges including wheeling and intra-state transmission charges. Intra state transmission charges have been made applicable in addition to other applicable charges when Generator and User are connected to distribution systems of different Distribution Licensees of the State. These Regulations have come into effect

from 17.12.2021. Hon'ble Supreme Court in its judgement passed in in Civil Appeal 3902 of 2006, PTC India Ltd vs Central Electricity Regulatory Commission on 15 March 2010 observed in Para 43 as under: -

“43. The above two citations have been given by us only to demonstrate that under the 2003 Act, applying the test of "general application", a Regulation stands on a higher pedestal vis-à-vis an Order (decision) of CERC in the sense that an Order has to be in conformity with the regulations. However, that would not mean that a regulation is a pre-condition to the order (decision). Therefore, we are not in agreement with the contention of the appellant(s) that under the 2003 Act, power to make regulations under Section 178 has to be correlated to the functions ascribed to each authority under the 2003 Act and that CERC can enact regulations only on topics enumerated in Section 178(2). In our view, apart from Section 178(1) which deals with "generality" even under Section 178(2)(ze) CERC could enact a regulation on any topic which may not fall in the enumerated list provided such power falls within the scope of 2003 Act. Trading is an activity recognized under the said 2003 Act. While deciding the nature of an Order (decision) vis-à-vis a Regulation under the Act, one needs to apply the test of general application.....”

After notification of MPERC Open Access Regulation dated 17.12.2021, the provisions of retail tariff orders have to be in consonance with the Regulations dated 17.12.2021.

On a reference from Respondent and to have harmonious construction in respect of Tariff order and Open Access Regulations, Commission relaxed the applicability of transmission charges so far as connectivity at distribution system was concerned vide letter dated 31.05.2022 and allowed the continuation of provisions of scenario 4 of the Para 3.13 of Tariff order dated 30.06.2021 till its applicability i.e. upto 07.04.2022.

Retail supply tariff order dated 31.03.2022 already passed in Petition no. 04/2022 came into effect from 08.04.2022 which was in consonance with the Open Access Regulations, 2021. In this tariff order, the scenarios regarding applicability of wheeling and transmission charges were omitted as the same were already incorporated in the Annexure-1 of the Open Access Regulations, 2021.

In light of the above, Commission is of the view that in case of Generators and Users are connected with distribution system of different Distribution Licensees of the State as per the scenarios of Annexure-1 of the MPERC (Terms & conditions for Intra State Open Access in Madhya Pradesh) Regulations, 2021, transmission charges would be applicable with effect

from 08.04.2022.

Issue No. 3- Whether the intra-state transmission charges determined by the Commission in its order dated 19.05.2021 passed in Petition 45/2020 for MYT Transmission Tariff needs to be re-computed consequent to notification of MPERC (Terms & conditions for Intra State Open Access in Madhya Pradesh) Regulations, 2021.

The Commission is determining the transmission charges applicable to non-conventional energy sources based generating plants and open access customers in MYT Tariff order for Transmission Licensee. The Commission has determined the transmission charges applicable to non-conventional energy sources based generating plants and open access customers in its order dated 19.05.2021 passed in MYT Tariff Petition 45/2020 with control period from FY 19-20 to FY 23-24. The Commission has noted that the transmission charges have been determined under the heading “TRANSMISSION CHARGES FOR NON-CONVENTIONAL ENERGY SOURCE BASED GENERATING UNITS/ OPEN ACCESS CUSTOMERS CONNECTED ON 132 KV AND ABOVE”. The Commission has further noted that in computation of transmission charges in Table under Para 61, capacity of non-conventional energy sources based generating plants connected at 132 kV and above has only been considered. The Commission has notified Open Access Regulations, 2021 to be effective from 17.12.2021 which inter-alia provides for applicability of intra-state transmission charges on Generators and Users connected to distribution systems of Distribution Licensees of the State as per Annexure-1 attached to the said regulations. The Commission has however relaxed the applicability of intra-state transmission charges in respect of Generators / Users connected with distribution systems of Distribution Licensees of the State vide letter dated 31.05.2022 and allowed the continuation of provisions of scenario 4 of the Para 3.13 of Tariff order dated 30.06.2021 till its applicability i.e. upto 07.04.2022. The Commission tried up Transmission Tariff of M. P. Power Transmission Company Limited, Jabalpur for FY 2021-22 determined in Multi Year Tariff Order dated 19th May 2021 in Petition No. 45/2020. In this order dated 07.03.2023 passed in Petition 77 of 2022, in paragraph 65, it has already observed that consequent to notification of MPERC (Terms and conditions for Intra – State Open Access in Madhya Pradesh) Regulations (Revision – 1), 2021 on 17th December, 2021 read with clarification, in which transmission charges payable by LTOA and STOA customers for open access were revised, MYT Order dated 19.05.2021 stands modified to that extent accordingly.

Consequent to the above, Commission is of the considered view that the intra-state transmission charges determined in Table under Para 61 of the MYT Tariff order dated 19.05.2021 in Petition no. 45/2020 needs to be re-computed

considering the capacities of the non-conventional energy source based generating plants connected with the distribution systems of different Distribution Licensees within the State as per the scenarios mentioned in Annexure-1 of the MPERC (Terms & conditions for Intra State Open Access in Madhya Pradesh) Regulations, 2021. The intra-state transmission charges so re-computed shall be applicable with effect from 08.04.2022.

The Commission therefore directs the Respondent to file a petition for re-computation of intra-state transmission charges applicable to non-conventional energy sources based generating plants and open access consumers within a period of 30 days from the date of this order considering the capacities of non-conventional energy sources based generating plants connected with the distribution systems of the different Distribution Licensees of the State as per the scenarios mentioned in Annexure 1 of the MPERC (Terms & conditions for Intra State Open Access in Madhya Pradesh) Regulations, 2021 as amended from time to time, in addition to the capacities of the generating plants connected at 132 kV level and above. The Commission shall re-compute the intra-state transmission charges applicable to non-conventional energy sources based generating plants on the petition filed by Respondent. In the meanwhile, Respondent shall not insist on payment of intra-state transmission charges on the Petitioner and shall issue fresh demand of intra-state transmission charges based on the re-computed intra-state transmission charges by the Commission.

- iv. Having decided the above issues of applicability of transmission charges in respect of the consumers and renewable generators connected at distribution level, Commission would not dwell into these issues again and would only examine the other qualifying conditions of connectivity and consequent applicability of transmission charges in respect of the Petitioner in accordance with Annexure-1 of the MPERC (Terms & conditions for Intra State Open Access in Madhya Pradesh) Regulations, 2021. This issue is deliberated as under: -

Whether the Generators (Petitioner) and Users are connected to Distribution System of different Distribution Licensees of the State and whether transmission charges are applicable

It is noted that the generating plants of the Petitioner and their users are connected with the EHV sub-stations of Respondent as indicated in the table depicted below: -

Name of Applicant/LTOA Customer	Quantum of Open Access	Source Type	Open Access Applied (Captive Use/3rd Party Sale)	Injection Point	Drawl Point
M/s. Friends Salt Work, Gandhidham	6.0 MW	Solar	Third (3rd) Party Sale	132KV S/s Ichhawar (Central Discom)	132KV S/s Pithampur (West Discom)
M/s. Friends Salt Works, Allied Gandhidham, Kutch, Gujrat (Case-I)	2.5 MW	Solar	Third (3rd) Party Sale	220/132KV S/s Rajgarh (Biora) (Central Discom)	220/132KV S/s Pithampur (West Discom)
M/s. Friends Salt Works & Allied Industries (Project 2) Sitamau	6.0 MW	Solar	Third (3rd) Party Sale	132KV S/s Sitamau (West Discom)	220/132KV S/s Mandideep (Central Discom)
M/s. Friends Salt Works & Allied Industries Gandhidham	4.0 MW	Solar	Third (3rd) Party Sale	132KV S/s Makdon (Delchi) (West Discom)	132KV S/s Patheri Satna (East Discom)

- v. It is therefore observed that the injection and drawl points of all the generating stations of Petitioner in the instant case are located in the different Distribution Licensees of the State and the condition for applicability of transmission charges as per Annexure 1 of the MPERC (Terms & conditions for Intra State Open Access in Madhya Pradesh) Regulations, 2021 is met.

The Commission noted that the Respondent in Petition no. 89/2022 i.e., MP Power Transmission Company Limited has categorically mentioned that the Generating Plant of the Petitioner i.e. M/s Indira Vihar is connected to the 33 kV feeder at 132 kV S/s Agar of MPPTCL, therefore this issue raised by the Petitioner in its rejoinder dated 08.05.2023 has no substance.

The Commission further observed that Hon'ble APTEL in its order dated 03.11.2010 in Appeal No. 264 of 2019 has held that since BHPL/ TPCL was not using intra state transmission lines beyond the delivery point as the ownership of power changed to UPCL, transmission charges were not applicable. In the instant case however, power generated from generating stations of Petitioner is delivered to the beneficiaries i.e., the HT consumers located in other Discoms using open access of Distribution/ Transmission Systems, therefore even as per the ratio of aforesaid order of Hon'ble APTEL, transmission

charges would be applicable to the Petitioner.

10. The Commission is therefore of the view that the revised transmission charges as may be determined by the Commission as per observations in Para 9 (iii) shall be applicable to the Petitioner with effect from 08.04.2022. With the above observations, Commission holds that the petition is devoid of merit and disposed of accordingly.

(P.K. Chaturvedi)
Member

(Gopal Srivastava)
Member (Law)

(S.P.S. Parihar)
Chairman