

**MADHYA PRADESH ELECTRICITY REGULATORY COMMISSION**

**BHOPAL**

**Sub: In the matter of Amended Petition as per directions of Commission dated 17.02.2022 under Section 86 of the Electricity Act, 2003 read with Regulation 45 of the MPERC (Conduct of Business) (Rev.-I) Regulations, 2016 and Regulations 8.40 "Monitoring, Dispute resolution and review of decision" of MPERC (Terms and Conditions for Intra-State open Access in Madhya Pradesh) Regulations, 2005 read with Regulation 6, 10 and 11 and 12 of MPERC (Forecasting, Scheduling, Deviation Settlement Mechanism and related matters of Wind and Solar generating stations) Regulations, 2018 and amendment thereafter.**

**ORDER**

**(Hearing through video conferencing)**

**(Date of Order: 04<sup>th</sup> August' 2022)**

**M/s. Freewings Power & Infra Ltd,**

Village Kadodiya, Tehsil Tarana,

District Ujjain (M.P.)

- **Petitioner**

**Vs.**

**(1) The Managing Director**

**M.P. Power Management Company Ltd,**

Shakti Bhawan, Rampur, Jabalpur – 482008

**(2) The Managing Director,**

**M. P. Power Transmission Company Ltd.,**

Block No.2, Shakti Bhawan, Rampur

Jabalpur 482 008 (M.P.)

- **Respondents**

**(3) The Chief Engineer**

**State Load Despatch Centre**

M.P. Power Transmission Co. Ltd.

Block No. 2, Shakti Bhawan, Rampur, Jabalpur – 482 008

**(4) The Managing Director**

**M. P. Paschim Kshetra Vidyut Vitaran Co. Ltd.**

GPH Compound, Pologround, Indore-452003

Shri Ajay Porwal, Advocate and Ms. Bhakti Vyas, Advocate appeared on behalf of the petitioner.

Shri Manoj Dubey, Advocate appeared on behalf of Respondent No. 1 to 3.

Shri Nirmal Sharma, SE appeared on behalf of Respondent No. 4.

**2.** The petitioner has filed this amended petition pursuant to observations and directions of the Commission vide Order dated 17.02.2022 in petition No. 32 of 2021. The petitioner has broadly submitted the following in this petition:

*"1. The Petitioner No.1 is a company engaged in power generation through Solar power. It has developed a Solar power project with capacity of 2.55 MW at village Kadodiya, Tehsil Tarana, Dist. Ujjain in the state of Madhya Pradesh, under the project II and III of Policy for implementation of Solar power based projects in Madhya Pradesh, 2012.*

2. *The Respondent No. 3 is the nodal agency State Load Dispatch Centre is the apex body to ensure integrated operation of the power system in the State.*
3. *The Petitioner had obtained the registration for the Solar power project of 2.55 MW from New and Renewable Energy Department vide Regn No MPNRE/Solar/Private/100 dated 22.02.2017 at village Kadodiya Tehsil Tarana Dist. Ujjain on private land.*
4. *The Petitioner was granted in principle approval for grid connectivity for the aforesaid power project vide letter dated 17.08.2017 from the competent authority.*
5. *That the Petitioner had then applied for the Long term open Access to the Respondent no 2 under the MPERC (Term &Condition for the Intra State Open Access in Madhya Pradesh), Regulation 2005 vide application dated 26.08.2017. The same was denied to the Petitioner by the Respondent No.2 on the ground that their wires do not have capacity to wheel 2.55 MW power. The said application for long term Open Access was denied without procuring any feasibility report through an independent agency.*
6. *That the Petitioner therefore had to approach the Respondent for the grant of NOC for Short Term open Access for sale of power through the Power exchange.*
7. *Petitioner made an application FPIL/ENP/MPPKVVCL/PPA dated 28<sup>th</sup> August 2017 to Respondent 1 for signing of PPA for sale of surplus power.*
8. *That Petitioner also applied for Wheeling NOC to Respondent No. 1 vide application dated 27/11/2017 as per Requirement of Respondent 3. Respondent 4 vide letter ref MD/WZ/Com-HT/AK/22892 dated 27/11/2017 requested Respondent 1 for required wheeling agreement.*
9. *That vide letter ref CMD/WZ/05/Com-HT/23272 dated 02/12/2017 Respondent 4 confirmed regarding computation of deviation charges towards STOA.*
10. *That due to denial of long term open access permissions (LTOA) multiple times and loss of Renewable power generation and revenue, Petitioner opted for sale of power through Energy Exchange and approached respondent 3 for STOA permission for sale of power on power exchange vide letter ref FPIL/SLDC/STOA/08 dated 02/12/2017.*
11. *That the Petitioner was granted the first Short term open Access Standing NOC for sale of the power through Power exchange vide order/letter no REG-201/s/freewings power/3000 for the period from 5.12.2017 to 31.12.2017 and was subsequently granted Standing NOC for Short Term Open Access every month till 31.07.2018.*
12. *That on 20<sup>th</sup> April 2018 'Madhya Pradesh Electricity Regulatory Commission*

*(Forecasting, Scheduling, Deviation Settlement Mechanism and related matters of Wind and Solar generating stations) Regulations, 2018 was notified. (hereinafter referred as Regulation 2018).*

13. *That the objective of the Regulations, 2018 as stated in Regulation 3 is to facilitate large scale integration of wind and solar power while maintaining the grid stability, reliability and security as envisaged under the Grid Code, through forecasting, scheduling, and commercial mechanism for deviation settlement of wind and solar generators.*
14. *That Regulation 6(a) provides for the "procedure" to be adopted for the purpose of forecasting, scheduling and elimination of gaming. Further, Regulation 6(5) therein, provides that the plan for data telemetry, formats of forecast submission and other details, are to be provided in the "Detailed Procedure" to be prepared by the SLDC(the Respondent in the present case) and approved by the State Commission.*
15. *That Regulation 10 thereafter, mandates the Respondent to formulate, within three months of the notification of the said Regulations, the Operating Procedures and Business Rules for construction of State Power Committee, and the same is thereafter to be approved by the Commission.*
16. *Therefore, to meet the objective of the Regulation and facilitate the implementation of the Regulations 2018, an essential pre-requisite is of there being an approved detailed procedure formulated by the Respondent. The purpose of having the detailed procedure is to have clarity on many practical aspects which would otherwise cause difficulties in implementation of the Regulation, 2018*
17. *That Petitioner desired clarification from the Respondent regarding applicability of said regulation clearly stating that main and check meters are installed at Generator end after STEP UP TRANSFORMER 415 volts/33000 volts at generator end as per GoMP solar policy 2012 along with approved drawing by Respondent 3.*
18. *That from the SLD it is quite clear that all scheduling, deviations shall be measured by these meters at Generator end. Further standby ABT meter for both generators is also installed at Delchi (Makdone) 132 KV end. However Petitioner did not receive any reply to said letter from respondent 3 with regard to applicability of the said Regulations **nor any direction to lay a separate 33 KV line for sale of power on power exchange (deemed interstate sale).***
19. *That after lapse of two months Respondent 1, Vide letter ref 07-05/REG201/QC/MAL/155/1855 dated **19/06/2018** addressed to QCA and copy marked to Petitioner, required QCA to submit agreement for processing registration with Respondent 1.*
20. *That In this letter also Respondent No.3 did not require establishment of a*

separate 33 KV feeder from Petitioner and STOA for the month of May, June 18 was given to Petitioner. Hence the Petitioner appointed M/s Manikaran Analytic Limited (MAL) as its QCA for day ahead available capacity (AVC) and load forecasting and real time revision at pooling substation on 15 minute time block scheduling of generated power and signed required agreement with QCA as per requirement under the Regulation of 2018.

21. That vide letter ref FPIL/ENP/SLDC/02 dated 5<sup>th</sup> June 2018, Petitioner sent REMINDER to Respondent for clarification on its letter dated 30<sup>th</sup> April 2018 (Annexure 9) for clarification of applicability/compliance of said Regulations by Petitioner but no reply received from the Respondent 1.
22. That the Petitioner has been complying with all the necessary regulatory requirements issued from time to time and has been sending the daily forecasting of the power generation to the Respondents. The Respondent 4 had agreed to do the computation of the Deviation settlement Mechanism charges for the petitioner.
23. That the Petitioner to their utter shock found that Respondent no. 3 had suddenly and abruptly issued the letter/order ref. dated 11.07.2018 stating that as per the provisions mandated under the Regulation 2018, 2.55 MW Solar power plant of the petitioner does not fulfill the criteria for scheduling and for sale of power out of State.
24. The Petitioner submits that the Respondent has grossly misunderstood the provisions of the Regulation 2018 and without hearing or without affording any opportunity to the petitioner has passed an erroneous order dated 11.07.2018 in complete violation of the Regulation, 2018.
25. The applicability of the Regulation has been specifically mentioned under clause 3.2 that the regulation 2018 shall be applicable to the Solar Generators with the installed capacity of 5 MW and the capacity of the present solar generator of the petitioner is admittedly 2.55 MW as is evident from the documents annexed with the petition.
26. That The Petitioner had submitted a letter seeking clarification on the issue of applicability of the Regulation, 2018 immediately after the coming into effect of the Regulation, 2018, on the Petitioner having 2.55 MW solar power project dated 30.04.2018.
27. That the Petitioner had again applied for the Standing Clearance NOC for the period 01.08.2018 to 31.08.2018 but the same was rejected on the ground that as per Clause 6 (C) the Petitioner cannot be permitted to sell the power from 01.08.2018 through Short term Open Access.
28. That the Petitioner being aggrieved by the order dated 11.07.2018 and 24.07.2018 the impugned orders/letter herein has filed the Writ Petition being 16999/2018. The Hon'ble Court after hearing both the parties had disposed off the petition vide order dated 01.11.2018 with the following

directions:

***"In view of this, the writ petition is disposed off by giving liberty to the petitioner to approach the review committee. If such an application is filed by the petitioner, then the review committee will consider the same as expeditiously as possible preferably within a period of one month from filing of the application or in its first meeting itself held after the filing of such an application.***

29. *That the Hon'ble High Court had not commented on the merits of the case and had merely directed the Petitioner to approach the review committee for the redressal of its grievance.*
  30. *That the Petitioner had accordingly filed an application on 04.12.2018 before the Open Access Monitoring, Dispute Resolution Review Committee under the Open Access Regulation 2005 along with the copy of the order dated 01.11.2018 passed by Hon'ble High Court Indore in Writ Petition No 16999/2018, the said application was received by the office on 05.12.2018. The Petitioner herein had challenged the order of denial of the Short term Open Access passed by the Respondent dated 11.07.2018 and 24.07.2018 and to consider the Short Term Open Access permission from 01.08.2018 till the separate feeder was erected, before the Review Committee.*
  31. *That the Open Access Monitoring, Dispute Resolution Review Committee did not inform the Petitioner about the meeting nor conveyed any order. That the Petitioner was informed by the Advocate of the Respondent 3 through its reply dated 09.3.2021 that the Application of the Petitioner was rejected and that meeting was conveyed on 27.12.2018 at the office of MPERC Bhopal. However no such information or the copy of the order was received by the Petitioner.*
  32. *That on receiving the reply from the Respondent Advocate and considering the facts the Petitioner had preferred the P. No. 32/2021 and during the course of the hearing the Hon'ble Commission directed the Respondents to serve the copy of the order and thus the order of the Review Committee was served on the Petitioner vide e-mail dated 23.02.2022. The (Minutes of the Meeting is dated 27.12.2018 and the order conveying the minutes is dated 21.01.2019).*
  33. *That pursuant to the order of the Hon'ble Commission dated 17.2.2022 in Petition No 32/2021, the Petitioner prefers the amended petition challenging the order of the Review Committee dated 21.01.2019 received on 23.02.2022 and the order of denial of the Short term Open Access passed by the Respondent dated 11.07.2018 and 24.07.2018 on following amongst the other grounds*
- 3. GROUND:**
- a. *That the impugned orders dated 21.1.2019 the MOM dated 27.12.2018, order dated 11.07.2018 and 24.07.2018, issued by Respondents is illegal and without jurisdiction.*

- b. That the impugned orders dated 21.01.2019 the MOM dated 27.12.2018, order dated 11.07.2018 and 24.07.2018, issued by Respondents is violative of principles of natural justice as the impugned orders are passed without affording any opportunity of hearing to the petitioner.
- c. That the order of the Review Committee is passed without addressing the grievance of the Petitioner and without commenting on the order of the SLDC dated 11.07.2018 and 24.07.2018 whereby the STOA was abruptly denied to the Petitioner without giving any opportunity of hearing.
- d. The Review Committee has without hearing the Petitioner has only on the submissions of the Officer of the Respondent has passed the order without addressing on the core issue that the STOA of the Petitioner could not have been terminated without any notice and without giving an opportunity to explain.
- e. The review Committee and the respondents herein have failed to consider that the Petitioner had just began the solar power generation in December 2017 and within a year MPERC had notified the Regulation 2018 i.e in April 2018 and no time was granted to the Petitioner to comply with the Regulation and straight in August 2018 the Respondents denied the Short Term Open Access, which in turn has caused great financial implication on the Petitioner.
- f. That the Respondents have acted in high handed way that in the absence of approval of **“Operating procedure for implementation of MPERC (Forecasting, scheduling, Deviation settlement mechanism and related matters of wind and solar generating stations) 2018 as per clause 10.1 of the regulations, refusal of STOA by Respondent 3 on dated 11/07/2018 was illegal.**
- g. That the Review Committee have failed to consider that the Respondents had also sought time for the setting the procedure for the implementation of the **MPERC (Forecasting, scheduling, Deviation settlement mechanism and related matters of wind and solar generating stations) Regulations 2018 and therefore knowing the difficulty the Respondents ought to have considered the case of the Petitioner and should have not passed the impugned orders dated 11.07.2018 and 24.07.2018.**
- h. As per “clause 3(viii) Precondition of participation in deviation settlement mechanism allowed one year time for existing generators undertaking intra state and interstate transactions from a common feeder prior to the notification shall be allowed to undertake INTER STATE TRANSACTION from common feeder for a period of one year for obtaining separate connectivity through a separate feeder. That relevant part of the is reproduced below :-  
**“Operating for implementation of MPERC (Forecasting, scheduling, Deviation settlement Mechanism and related matters of wind and solar generating stations) Regulation 2018**

**Clause 3 (viii) Precondition of participation in deviation settlement mechanism :- In case of wind or solar generators as State entities intra- state and inter-state transactions on a common feeder , than the interstate shall be allowed provided that such generators are connected to separate feeders at LV side of the pooling station and metering, scheduling, energy accounting and deviation settlement account for such wind or solar generators are maintained separately. However the wind or solar generators connected on same pooling station and were taking Intra- state and Inter-state transactions prior to the date of notification of these Regulations shall be allowed to continue their transactions for a maximum period of one year from the date of this notification, and till that time the generator must obtain separate connectivity of a separate feeder. The deviation charges of such generators for aforesaid period shall be computed individually by considering the schedules and meter data at generators end.**

- i. That the Respondents have failed to consider the difficulties in installing the separate feeder and the procedure that undergoes from application to sanction, to erection of the separate feeder and that the same would consume atleast a year instead of giving time to the Petitioner despite the letters addressed to the Respondents seeking clarification which has remained unanswered. The entire procedure is explained in **Annexure P-18**
- j. That the Review committee failed to consider that the Petitioner was a small Solar generating Plant had acted accordingly post the amendment of the Regulation 2018 and had complied with all the necessary obligations.
- k. The Hon'ble Commission has in Petition No 16 /2020 also refer to the difficulties that would be faced by the generators and have observed as under:  

*“From the above comparison of the provisions under amended Regulations 2019 vis-à-vis the provisions under unamended Regulations 2018, it is noted that the amendment in certain provisions in unamended Regulations 2018 was made to give institutional strength to the existing Regulations .....*”
- l. That Respondents action of STOA denial prior to the approval of said procedure under the Amended Regulation under Regulation 3 (viii) supra was illegal and contrary to the provisions of Hon'ble Commission's said Regulations 2018.
- m. That despite of pointing out the various difficulties Respondents did not take corrective action.
- n. That the impugned orders dated 11.07.2018, 24.07.2018 and 27.12.2018 issued by Respondent 3 is contrary to the facts on record in as much as the impugned orders are passed without application of mind.

- o. That due to misinterpretation on the part of the Respondents of the Regulation 2018 the Petitioner has incurred great financial loss to the tune of Rs 1.30 crore.*
- p. That the Review committee and the Respondents have failed to consider and regard the “Must Run Status” of Renewable energy as per Regulation 5.2(u) and 6.5 (11) of IEGC.*
- q. That the stand taken by the Respondents that there was technical threat is completely baseless and unjustified. The Petitioner alleges that action of the respondent SLDC was in contravention of the Indian Grid Code provisions and MNRE Circulars for “MUST RUN STATUS” of solar power plant as there was no technical threats to the grid in continuation of the solar plant. In this connection Petitioner relies on the order of Hon’ble APTEL in APPEAL NO. 197 of 2019 & IA NO. 1706 of 2019 Dated 2nd August, 2021 the relevant para are reproduced hereunder:*

**“Compensation for energy backed down on the instructions of TNSLDC**

*124. Having held that SLDC in collusion with TANGEDCO had issued back down instructions to renewable generators for other than grid security reasons and in violation of the provisions of the Grid Code, it is to be seen if the deemed generation charges could be charged from TANGEDCO. Though the Commission has referred to the prayer for deemed generation charges as fresh prayer in the impugned order, it has been clarified by the Appellant that the prayer, being part of the prayers made in the Petition, was not a fresh prayer. The impugned order records the prayers made by the Appellant in the petition before Respondent Commission and from that we have noted that the Appellants did pray for compensation of deemed generation charges at PPA tariff. Be that as it may, the Respondent Commission did not accede to the prayer of Petition for the reasons stated in the impugned order. We have gone through the Energy Purchase Agreement signed by the members of the Appellant Association with TANGEDCO, which was brought on record. The Respondent Commission has rightly observed in the impugned order that there is no provision for payment of deemed generation charges in the contract.*

*125. At this stage, it would be significant to understand the gravity of this issue in the light of the special emphasis provided in the Act for promotion of renewable energy and the steps being taken by the Central Government for its promotion in the overall benefit of public at large. The emphasis of Government of India on Renewable energy to reduce dependence on fossil fuels and environmental consideration can be understood from the following submission made by Ministry of New and Renewable Energy (MNRE) before the Respondent Commission in the impugned order”*

***In present case also STOA was denied as Respondent SLDC expressed commercial difficulty in segregating Intrastate and Interstate transmission of power from COMMON FEEDER***

- r. *That the Respondents have without affording opportunity to the Petitioner have implemented the Regulation, 2018 retrospectively whereas bare perusal of the Regulation 2018 and the amendment thereafter makes it aptly clear that the Regulation are to be implemented prospectively and one year breathing time is also granted however the Respondents have in an absolute haphazard manner have completely ousted the jurisdiction and have forced the Petitioner to face the grave financial loss for the high handedness on the part of the Respondents.*
- s. *The Hon'ble Appellate Tribunal in various judgments has held that the 'Power to relax' can be invoked if the Regulations in any manner cause hardships to a party. Thus, the Hon'ble Commission has ample powers under the above Regulations to issue directions to the MP-SLDC in case of difficulties being faced by any concerned party in the implementations of the Regulations. The practical difficulties explained above are ample evidence of difficulties and issues having faced by the Petitioner.*
- t. *That even the Review Committee has failed to consider that there was a gross violation of the Regulation 2018 and amendment thereafter and has rejected the application of the Petitioner.*
- u. *That Petitioner failed to get paid for the power injected during the period of STOA denial from date 01.08.2018 to 12.10.2019 to date wherein it injected 4581613 Kwh (net after transmission losses @9% app) power as per the meter readings taken by SLDC for the purpose of REC account. **Annexure P-19** The loss calculations at the rate discovered from IEX during the period of STOA denial is Rs. 1,56,46,406/- That the Petitioner is now forced to bear the loss for the error committed by the Respondents.*

*A bare perusal of the operative part of the order of the Open Access Monitoring, Dispute resolution and decision Review Committee dated 27.12.2018 it is observed that there is no deliberation on the question of the denial of the Short term open access from 01.08.2018 rather the committee has vaguely directed for the short term open access till separate feeder is erected by the Petitioner. The Committee had deliberately remained silent on the core issue."*

3. With the aforesaid submissions made in the amended petition the petitioner prayed the following:

- (i) *That, the order of Review Committee dated 29.01.2019 passed in MOM dated 27.12.2018 be set aside.*
- (ii) *That the order of denial of STOA passed by Respondent dated 11.07.2018 be set aside*
- (iii) *The Respondent be directed to compensate the petitioner for the power injected during the period of STOA denial from 01.08.2018 to 12.10.2019 wherein it injected power as per meter readings taken by SLDC for the purpose of REC account. The loss*

*calculations at the rate discovered from IEX during the period of STOA denial is Rs. 1.57 crore along with interest @ 18% p.a. from date of rejection of STOA till disposal of this petition.*

4. At the motion hearing held on 26.04.2022, Respondent No. 1 and 3 sought two weeks' time to file reply to the amended petition. The representatives who appeared for other respondents submitted that they had not yet received copy of amended petition.

5. The subject petition was admitted and the earlier Petition No. 32 of 2021 was disposed of. The fee deposited with the aforesaid Petition No. 32 of 2021 was adjusted with the fresh amended petition. The petitioner was directed to ensure service of amended petition to all Respondents within two days. The Respondents were directed to file their replies to the amended petition within two weeks, thereafter. The petitioner was directed to file rejoinder within a week, thereafter.

6. At hearing held on 14.06.2022, the petitioner and Respondents concluded their arguments. The parties were allowed to file their written submissions within a week and the case was reserved for order.

7. Respondent No. 1 (MPPMCL) and Respondent No. 3 (SLDC) broadly submitted the following in their reply to the petition vide letters dated 08.06.2022 and 13.06.2022, respectively:

*"(1) The answering Respondent specifically denies each and every adverse allegations and submissions made by the Petitioner and states that the MoM dated 27-12-2018 is just and proper in its place and needs not to be disturbed, the STOA was rightly denied to the Petitioner vide letters dated 11-07-2018 and 24-07-2018 by the answering Respondent and the Petitioner is not entitled to any compensation.*

*(2) The MPERC (Forecasting, Scheduling, Deviation Settlement Mechanism and related matters of Wind and Solar generating stations) Regulations, 2018, herein after referred to as 'FSDSM Regulations, were enforced from on 20<sup>th</sup> April, 2018 and First Amendment to it were enforced from 4<sup>th</sup> October, 2019. In order to give sufficient time to the RE Generators to make necessary preparation for metering, data collection, forecasting close to actual so as to minimize financial burden in terms of Deviation Charges and also adhering to grid discipline, the answering Respondent had requested the Hon'ble Commission to allow commercial settlement under the said Regulations w.e.f. 1<sup>st</sup> August, 2018. The FSDSM Regulations could be implemented in the State without approval of the 'Detailed procedure' as the regulatory provisions of the same for computation of Deviation Charges were amply clear and did not require further clarification. Pertinent to mention here that there is no additional condition incorporated in the **Annexure-I** of the **First Amendments**.*

*(3) That, the 2.55 MW Solar Plant of the Petitioner and also another 2.55 MW Solar Plant of Porwal Auto Components Ltd, both, were connected through the common 33 KV line emanating from 132 KV sub-station, Makdone of M P*

*Power Transmission Company Ltd. Thus, the total capacity of the solar generation of both the solar plants connected with 132 KV sub-station Makdone through 33 KV line was 5.10 MW.*

- (4) *That, Regulation 3(2) of the FSDSM Regulations are, inter-alia, applicable on solar generators with an installed capacity of 5 MW and above and including those connected via pooling stations and selling power within or outside the State. Since, the power of the Petitioner and M/s. Porwal Auto Components Ltd. were being pooled through common 33 KV line, both were treated as a Solar Pooling Station for the purpose of Deviation Settlement for compliance of the provisions of Regulation 3(2) of the FSDSM Regulations.*
- (5) *That, further, Regulation 6(7)(c) of the FSDSM Regulations provide as:*  
*6(7)(c) In case of Wind or Solar Generators as state entities undertaking intra-state transactions and inter-state transactions shall be allowed provided that such generators are connected to separate feeders at LV side of the Pooling sub-station and metering, scheduling, energy accounting and deviation settlement account for such wind or solar generators are maintained separately.*
- (6) *That, for the reasons that the other solar generator – Porwal Auto Components was already transacting power on intra-state basis, the answering Respondent disallowed sale of the Petitioner, w.e.f. 1<sup>st</sup> August, 2018, who was operating on inter-state basis. This was done in light of Regulation 6(7)(c) of the FSDSM Regulations. Also, in view of the provisions of the Grid Code, the answering Respondent, giving priority to the M/s. Porwal Auto Components - a LTOA customer, had discontinued the STOA of the Petitioner. The Petitioner was well aware of the FSDSM Regulations. There was a possibility of both the solar energy generators to transact power either under intra-state or under inter-state with mutual consent to avoid generation loss to the Petitioner. In the circumstances, also, it was necessary to discontinue the STOA of the Petitioner for sale of power outside the State till it gets itself connected to a separate feeder. In pursuance for implementation of FSDSM Regulations, the answering Respondent had requested M/s. Manikaran Analytics Ltd., the QCA of the Petitioner, to get it registered with the SLDC in order to carry out the Petitioner's activities as per the provisions of the FSDSM Regulations.*
- (7) *That, the proceedings on the part of the answering Respondent have been in most just interpretation and application of the provisions of Regulation 6(7)(c) of the FSDSM Regulations and has been correctly upheld by the Open Access Monitoring, Dispute Resolution Review Committee of the Hon'ble Commission vide impugned order.*
- (8) *That, the Petitioner has pleaded that vide application dated 27-11-2017, it had applied to MPPMCL for Wheeling NoC and the Respondent No. 3 - SLDC had requested MPPMCL for required Wheeling Agreement.*
- (9) *That, it is not the contention of the Petitioner that the STOA under*

*consideration was denied for want of the said PPA or Wheeling NoC. Even otherwise it may not be anybody's case that the said PPA or Wheeling NoC was a necessary requisite for grant of STOA. The Petitioner has not challenged the non-execution of the PPA / PPWA or not granting of Wheeling NoC. The admitted fact remains that the Petitioner does not have a PPA / PPWA with MPPMCL or a Wheeling NoC.*

- (10) *That, vide its letter dated 31-07-2018, addressed to answering Respondent and with a copy endorsed to MPPMCL, the Petitioner requested answering Respondent to permit it to inject power into the grid at free of cost till the issue is settled by appropriate authority / MPERC regarding Petitioner's eligibility. The Petitioner, further, stated in the said letter that the said arrangement shall be valid from 01-08-2018 till it gets the NOC and shall not demand any charges for the injection of power from the Respondents and also requested to continue accounting for issuance of Renewable Energy Certificates (REC). In response to petitioner letter, SLDC vide letter dated 14.08.2018 intimated that SLDC do not allow any Generator to inject power into the MP Grid without any valid agreement with Buyer under Long Term, Medium Term and Short Term Open Access and requested to take up the matter with Chief General Manager (Comml), MPPMCL, Bhopal for supply of power to MPPMCL at free of cost. Despite the instruction of SLDC, the Petitioner had been injecting inadvertent power into the Grid for claiming REC. Thus, the Petitioner is not entitled for any sort of compensation for the power injected into the Grid by their own for claiming REC.*
- (11) *That, a bare perusal of the petition would reflect that the Petitioner has abandoned his claim for Long Term Open Access.*
- (12) *That, the alleged losses suffered by the Petitioner are not attributable to any of the Respondents including the answering Respondent for the simple reason that the STOA was denied to the Petitioner for it failed to get itself connected to a separate feeder in terms of statutory requirement. The reasons for the Petitioner not getting itself connected to a separate feeder are not attributable to any of the Respondents including the answering Respondent. Therefore, the Petitioner is not entitled to any compensation.*
- (13) *That, the compensation, as calculated by the Petitioner, is denied and disputed. The basis of determination of compensation is imaginary and is not acceptable in any manner. Even otherwise, the Petitioner is required to establish the basis of determination of damages beyond doubt and the same has not been done by it. The Petitioner is hereby called upon to strictly prove the damages alleged by it.*
- (14) *That, the Petitioner had no commercial agreement with the answering respondent which stipulated compensation of damages to the Petitioner. Hence, the Petitioner is not entitled to recover any damages from the answering Respondent.*
- (15) *That, the rate of interest, @18% p. a., as claimed by the Petitioner for delay in*

*payment of compensation is extremely on the higher side and is not acceptable in commercial transactions.*

(16) *That, in totality of the case, the petition is sans-merit and is liable to be dismissed.”*

8. Respondent No. 2 (MPPTCL) by letter dated 13.06.2022 submitted its following reply to the petition:

“1. *The MP Power Transmission Co. Ltd. (MPPTCL) is one of the successor companies of the erstwhile Madhya Pradesh State Electricity Board and the notified State Transmission Utility (STU) entrusted with the function of Intra-State Transmission in Madhya Pradesh and functions as provided under section 39 of the Electricity Act, 2003. MPPTCL with Headquarter at Jabalpur is a Company registered under Companies Act. MPPTCL has also been designated as the Nodal Agency for Intra-State Long Term Open Access {hereafter referred to as LTOA} in terms of MPERC {Terms and Conditions for Intra-State Open Access in Madhya Pradesh} Regulation. 2005, notified by the State Commission in exercise of the powers under Section 181 read with the other applicable provisions of the Electricity Act, 2003.*

2. *The Petition has been submitted by the Petitioner with the MP Power Management Co. Ltd. (MPPMCL), MP Power Transmission Co. Ltd. (MPPTCL), Chief Engineer (State Load Despatch Centre) and MP Paschim Kshetra Vidyut Vitran Co. Ltd. (MPPaKVVCL) as respondents No. 1,2,3 & 4 respectively in the matter of wheeling of energy through Short Term Open Access generated by their Solar Power Plant having a capacity of 2.55MW installed at Village-Kadodiya, Tehsil-Tarana, District-Ujjain(MP).*

**Reply to Para 3 (Point no.-5) :**

3. *It is to submit that MP Power Transmission Co. Ltd. (Respondent No.-2), as per Open Access Regulations, act as a nodal agency for processing the applications for grant of Long Term Open Access (LTOA) to customers/beneficiaries for 3<sup>rd</sup> party sale or captive use, as the case may be. After receiving the LTOA applications, MPPTCL forwards a copy of the application to the concerned Discom(s) in the cases where transaction of power involves Distribution network in order to ascertain feasibility at the points of injection and drawl. If open access is found feasible by the concerned Discom(s) at the points of injection and drawl, MPPTCL issues the permission for open access. If the open access is not found feasible and system strengthening is essential for providing open access, then the applicant is intimated accordingly for obtaining their consent for carrying out system studies to ascertain the works required and to work out the estimated cost. If the applicant gives consent and deposit the required cost, open access is permitted after completion of the system strengthening works.*

4. *That, the submission in Para 3 (5) of the petition regarding grant of Long Term Access to the Petitioner by Respondent No. 2 and the plea of petitioner that the LTOA was denied without procuring any feasibility report from independent agency is incorrect, misleading and has no basis. It is a well-*

*established practice being adopted by the nodal agency i.e. Respondent No. 2 for transmission network that they always carry out feasibility study and the same was carried out through concerned Distribution Licensee under whose jurisdiction injection/drawl points are situated, before grant of intra-state LTOA permission. The feasibility study from 3<sup>rd</sup> party / independent agency is not required since it has been done by the MPPTCL which is in consonance with clause No. 8.12 of MPERC (Terms and Condition for Intra-State Open Access in Madhya Pradesh) Regulation, 2005 which stipulates that the nodal agency shall carry out the study. In case, the transaction of power involves distribution network, the feasibility of the same is obtained by the nodal agency from concerned distribution licensee.*

*It is submitted that the Petitioner had applied to the CE(Planning & Design), the then Nodal Officer of MPPTCL for LTOA for availing Long Term Open Access for 3<sup>rd</sup> party sale of power to M/s H.D. Wires Pvt. Ltd., Indore for a period of total Plant's life from their 2.55MW Solar Power Plant installed at Village-Kadodiya, Tehsil-Tarana, District-Ujjain(MP) on dated-26.08.2017 **(Annexure-I)**. On scrutinizing the application, it was observed that the Injection & Drawal points are in the jurisdiction of MPPaKVVCL, Indore (West Discom) (Respondent No.-4). Therefore, the Nodal Officer (LTOA) vide their letter no. 2236 dated-31.08.2017 **(Annexure-II)** had requested Chief Engineer (Commercial), MPPaKVVCL, Indore (West Discom) to furnish the feasibility report in respect of injection and drawal points for availing of Long Term Open Access applied by the Petitioner. The Addl. Chief Engineer (Commercial), MPPaKVVCL, Indore vide their letter no. 18974 dated 22.09.2017 addressed to CE(Planning & Design), MPPTCL, Jabalpur **(Annexure-III)** intimated that in light of the guidelines given by Hon'ble MPERC in its order dated 1<sup>st</sup> July 2016 passed in petition No. 31/2016, it is observed that the maximum load recorded on 33KV New Industrial-B feeder emanating from 132/33KV S/s North Zone Indore, which is feeding the 3<sup>rd</sup> party consumer M/s H.D. Wires, Indore is 255 Amp. The size of conductor is Dog. In case of allowing 2.55MW open access to this feeder, the additional current of 49.52 Amp may be expected on the feeder. Thus total Amp loading on said 33KV New Industrial-B feeder may be expected to 274.52 Amp which is beyond the current carrying capacity of 254 Amp of Dog conductor which will lead to network congestion; hence the case was found technically unfeasible to allow 2.55MW LTOA at the drawl point for 3<sup>rd</sup> party use, therefore NOC for LTOA was not issued. The Addl. Chief Engineer (Commercial), MPPaKVVCL, Indore further informed that, the 3<sup>rd</sup> party HT consumer M/s H.D. Wires, Indore is having arrears of Rs. 91.46 Lakhs. In view of above, the applicant may please be informed about non availability of capacity in the 33KV New Industrial-B feeder. However, 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.*

*The Addl. CE (Planning & Design), Nodal Officer(LTOA) vide their letter No. 2508 dated 04.10.2017 **(Annexure-IV)** conveyed the feasibility report as detailed above to the petitioner stating that their application has been examined by MPPaKVVCL, Indore and it is technically unfeasible to allow*

2.55MW LTOA at the drawal point for 3<sup>rd</sup> party use and also requested that if the Petitioner is desirous of bearing cost of network modification at his cost then same may please be informed, so that network study could be conducted. The consent on the above proposal and payment arrears of Rs. 91.46 Lakhs was requested from the Petitioner so as to take further action in their application.

The Petitioner i.e. M/s Freewings Power and Infra Ltd. vide their letter no. LTOA/HD/Cancel/06 dated 12.10.2017 (**Annexure-V**) informed that they want to cancel their LTOA application as they are unable to bear the cost of modification of the network as proposed. On request of the petitioner i.e. M/s Freewings Power and Infra Ltd., the Nodal Officer(LTOA), MPPTCL cancelled the above said LTOA application of petitioner vide letter no. 04-02/PS/OA/Freewings/F-254/2605 dated-16.10.2017 (**Annexure-VI**).

**Reply to Para 3 (Point No.-10) :**

5. It is to submit that the Petitioner by application dated 11.10.2017 (**Annexure-VII**) again requested Respondent No. 2 (MPPTCL) for grant of Long Term Open Access permission for transaction of power from their aforementioned 2.55MW Solar Power Plant to the 3<sup>rd</sup> Party sale to consumer M/s Mittal Coin Pvt. Ltd., Pithampur connected at 33KV feeder emanating from 220KV S/s Pithampur (Sector-III). Based on the feasibility report received from MPPaKVVCL, Indore, the reason for denial of LTOA, has been intimated to the Petitioner vide MPPTCL letter no. 3241 dated-27.12.2017 (**Annexure-VIII**) mentioned that it is technically unfeasible to allow 2.55MW Long Term Open Access to petitioner generator to wheel power to HT consumer M/s Mittal Coin Pvt. Ltd., Pithampur as informed by Addl. CE(Comml.), MPPaKVVCL, Indore. Further the petitioner was also advised to intimate willingness for network modification at their cost as per provision of Regulation 8.12 & 8.13 of MPERC (Open Access in MP) Regulations 2005. The Petitioner i.e. M/s Freewings Power and Infra Ltd. vide their letter no. FPIL/LTOA/12 dated 11.10.2019 (**Annexure-IX**) informed that they want to cancel their LTOA application as it is not technically feasible, therefore on request of the M/s Freewings Power and Infra Ltd., MPPTCL has cancelled the above said LTOA application of petitioner vide No. 04-02/PS/OA-Freewings/F-265/2126 dated 15.10.2019 (**Annexure-X**).
6. In view of the submissions made above, the MPPTCL (Respondent No. 2) most humbly prays that the plea of petitioner regarding denial of Long Term Open Access without procuring any feasibility report from the independent agency is without any justification, has no basis and devoids of merits since the denial of LTOA was based on the technical feasibility reports established in conformity to Open Access Regulations, 2005. The averments made by the petitioner in this regard is wholly misconceived and deserves to be dismissed at the outset.
7. Regarding rest of the plea in the petition, which relate to Short Term Open Access and Regulations pertaining to forecasting, scheduling, deviation and settlement mechanism 2018, on which specific pointwise replies will be furnished by the State Load Despatch Centre (Respondent No. 3)."

9. Petitioner submitted the following in its written submission filed on 16.06.2022:
1. *Petitioner explained that it has received replied from all respondents and last reply received from respondent no 3 SLDC on 13/06/2022 and that Petitioner was ready for the final arguments. On query from Hon'ble commission respondent representatives also agreed for arguments.*
  2. *Petitioner narrated the contents of the Petition with arguments for set aside the Review Committee order dated 29/01/2019 and denial of STOA dated 11/07/2018 and dated 24/07/2018 by Respondent 2 and for compensation for energy injected based on IEX prices or at the negotiated rates as per prevailing regulations.*
  3. *Petitioner referred clause 6 (c) of regulation no 513/2018/MPERC dated 12<sup>th</sup> April 2018 "In case of wind or solar generators as state entities undertaking intra- state transactions and inter-sate transactions shall be allowed provided that such generators are connected to separate feeder at LV side of the pooling substation and metering, scheduling, energy accounting and deviation settlement account for such wind or solar generators are maintained separately."*
  4. *After notification of said regulation Petitioner wrote to respondent SLDC with approved copy of single line diagram showing pooling substation for 52 solar generators on dated 30/4/2018 for clarification but no reply received. Refer Annexure P-9, page 49,50,51 of Petition. Again a reminder letter dated 5<sup>th</sup> June 2018 sent to respondent SLDC but no reply received. Refer Annexure P-11, page 55 of Petition.*
  5. *Petitioner appointed Manikaran Analytics Ltd as it QCA and respondent SLDC acknowledge same vide its letter dated 19/06/2018. In this letter respondent SLDC as per para 2 and 3 required QCA to comply with various provisions like submission of day ahead Available capacity (AVC), load fore casting at pooling substation on 15 minutes time block as per forecasting format and also ensure ABT meters installed at the POOLING STATION are successfully integrated with AMR system for data downloading remotely at SLDC. Please refer Annexure P-10, page 53,54 of the Petition.*
  6. *Petitioner submits that respondent SLDC was well aware with the SLD, pooling station installed for pooling of 52 nos solar generators in the premises of the Petitioner (page 51 of the Petition) and thus acknowledged Petitioners step up substation as pooling station and never demanded separate 33KV feeder and bay for Petitioner.*
  7. *Petitioner also referred clause 3(viii) of Annexure I of amended regulation no 1322 /MPERC/2019 dated 25/09/2019 read as under:- " In case of wind or solar generators as state entities undertaking intra state and Inter state transactions on a common feeder than Inter State transactions shall be allowed provided that such generators are connected to separate feeders at LV side of the pooling Station and metering, scheduling, energy accounting*

*and deviation settlement of such wind or solar generators are maintained separately. However, the wind or solar generators connected on a same pooling station and were undertaking intra- state and inter -state transactions prior to date of notification of these regulations shall be allowed to continue the transactions for a maximum period of one year from the date of this notification and till at that time the generator shall obtain separate connectivity on a separate feeder . The deviation charges for such generator for such generator for the aforesaid period shall be computed individually considering by considering the schedules and meter data at generator end.”*

8. *Petitioner states that Hon’ble Commission rightly notified Annexure – I, clause 3(viii) in said amendment and rectified the lapses made by respondent SLDC, who failed to make “procedure” to be adopted for the purpose of forecasting, scheduling and elimination of gaming as per Regulation 6 (a). Kindly refer para 12,13,14,15,16 of the Petition.*
9. *Both Respondents SLDC and Open Access Review Committees not only failed to realize the objective of the regulation 2018 as stated in regulation 3 is to facilitate large scale integration of wind and solar power and not to put them off the grid and also that construction of new 33 KV feeder by Petitioner and construction of new 33KV bay by Respondent MPPTCL could not have been done in a month’s time by any way and respondent MPPKVCL takes months in sanction of new estimates for line and respondent MPPTCL requires 8/10 months in construction of new bay. Kindly refer Annexure P-18, page 82,83 of the Petition.*
10. *Petitioner also referred CEA regulation 12/X/STD(CONN)/GM/CEA dated 15<sup>th</sup> October 2013 as an amendment to regulation no 12/X/STD(CONN)/GM/CEA dated 21 February 2007 reproduced as under :- Following added to regulation 2 :- (b) in clause 14 the following paragraph shall be added at the end namely “ In case of Solar Photo voltaic generating station , each inverter along with associated models shall be reckoned as a separate generating unit”*
11. *The respondent MPPKVCL had inspected the premises of the Petitioner in line with supply code clause 4.53 and was aware Petitioner had installed 52 nos 50 KW inverters each with 58 KWp solar panels generating power at 415 volts low voltage and that pooling substation of 433V/33000 Volts, 3600 KVA was installed .Also an overhead 33 KV line was installed and connected at 33 KV bay at 132/33 KV Makdone grid of respondent MPPTCL as per SLD sanctioned ( refer annexure P-9 page 50 and 51 of the Petition)*
12. *The Copy of plant layout with 52 nos solar generator with Inverters and associated solar panels as per CEA definition of solar plants. This installation drawing was also approved by GOMP electrical inspector’s,(defined under supply code clause 2.1 (w) supply code 2013) enclosed as **Annexure P-20**.*
13. *GOMP electrical inspector also gave charging permission dated 15/09/2017 after installation and A class contractors test report already on record of*

respondents submitted at the time of meter installation (in line with MPERC supply code clause 4.61, 6.20 , 6.22 dated 30/08/2013) annexed herewith as **Annexure P-21**.

14. *Petitioner further explained to Hon'ble commission that even after installation of separate 33 KV feeder and separate connectivity and bay at 132/33 KV MPPTCL grid, the energy accounting is done on the basis of Main and check meters installed at generator end, however a stand by meter is further installed at MPPTCL end. Copy of revised SLD approved is annexed herewith as **Annexure P-22**.*
15. *Petitioner stated that action of respondent SLDC was contrary to provisions of Indian Grid Code and MNRE circulars for **Must Run Status** of solar generators as there was no threat to grid stability due to Petitioners solar generator. (Refer para q, page 15 of Petition mentioning order of hon'ble APTEL in appeal 197 /2019 and IA no 1706/2019 on must run status)*
16. *It is evident that there is no dispute with regard to "Must Run Status" of Renewable energy as per Regulation 5.2(u) and 6.5 (11) of IEGC.*
17. *The Petitioner says that Sun Pharma solar generator was allowed to inject power for Intra State power for captive use as well as Inter state transaction on IEX as per Respondent MPPTCL long term open access permission and IEX transaction as per **Annexure P- 23** and **Annexure P-24** respectively.*
18. *That the Respondents have not disputed the submissions made by the Petitioner with respect to the time taken in putting the separate feeder as it is not possible to erect the separate feeder within a month time. Respondent has also not disputed that there was no threat to grid and that Petitioner solar plant has **MUST RUN STATUS** and for commercial reasons it cannot be stopped.*
19. *That the Respondents have been merely taking shelter of the letter dated 01/08/2018 however the letter needs to be read in totality as the letter mentions that the power will be injected at free of cost till the issue is decided by the competent authority the Petitioner has not given up its right to demand compensation for the power injected since the Petitioner was not aware of the computation of the same.*
20. *That the Doctrine of estoppels shall not be applicable in the present case as the Petitioner had given the letter under the coercion of not allowing the REC benefits available under CERC-REC regulations."*

**10.** Vide letter dated 16.06.2022 Respondent No. 4, M.P. Paschim Kshetra Vidyut Vitaran Co. Ltd. submitted the following in its written submission:

1. *That, the petitioner has given a letter to SLDC on. 31.07.2018 by signing on the letterhead of his firm in which he has requested SLDC that till we do not get the permission of sale of power, we will inject power free of cost in your grid and we will never demand for it.*

2. *That, the SLDC vide letter dated 14.08.2018 had informed the petitioner that SLDC never gives permission to any generator to inject power “into the grid” without agreement and directed to stop the petitioner from injecting power into the grid. It was given that even after the instructions of SLDC, the petitioner was forcefully injecting power into the grid, which also threatened the security of the grid.*
3. *That, the petitioner arbitrarily injected power into the grid of SLDC illegally, without taking permission from SLDC to avoid the shutdown of his unit by not following the regulation 2018 for which the petitioner was not entitled to any compensation for the aforesaid illegal work and is liable to pay heavy cost to SLDC.*
4. *That, the petitioner has violated section 32 of Electricity Act 2003 and M.P. electricity grid code by not following the instructions of SLDC.*
5. *That, the petitioner has written in the letter dated 31.07.2018 that we will inject power in your grid for free of cost and we will never demand for this, then how can he demand compensation by filing petition before the Hon’ble commission, on the basis of this letter the petitioner’s petition is deserve to be rejected.*
6. *That, Evidence Act section 115, principal of Estoppel abstract on this letter of petitioner dated 31.07.2018. Section 115 Estoppel-when one person has, by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such believe neither he nor his representative shall be allowed in any suit or proceeding between himself and such person or his representative to deny the truth of death thing. Judgment of Madhya Pradesh High Court **MPLJ 2006 (2) 484 Machala bai v. Nanakram** is fully attracted to this case. That relevant para of the is reproduced below-*
  - (d) *“Evidence Act, SS. 115 and 21- Admission in written statement appellant is estopped from challenging admission is written statement- such admission is binding on appellant” **Judgment enclosed.***
7. *That, the petitioner has presented an (**Annexure P/18**) separate feeder to tell how many days it took in the construction, they have given only the details of the days in their list, the related documents have not been presented, so Annexure P/18 without document is irrelevant.*
8. *That, the petitioner line erect work has running in between 29.05.2019 to 16.12.2019. This time is also count by petitioner in Annexure P/18 so that is the reason Annexure P/18 is irrelevant and baseless.*
9. *That, the order passed by Review committee dated 27.12.2018 is lawful and maintainable.”*

**Commission's Observations and Findings:**

**11.** The Commission has observed following from the contents in this petition and the submissions of parties on record:

- (i)** The petitioner has developed a Solar power project with capacity of 2.55 MW at village Kadodiya, Tehsil Tarana, Dist. Ujjain in Madhya Pradesh. It had applied for Long Term Open Access (LTOA) on 26.08.2017 to Respondent No 2 for 3<sup>rd</sup> party sale of power to M/s H.D. Wires Pvt. Ltd., Indore from its 2.55 MW Solar Power Plant under the provisions of MPERC (Term & Condition for the Intra State Open Access in Madhya Pradesh), Regulation 2005. The petitioner has contended that its application for long term Open Access was denied by Respondent No.2 without obtaining any feasibility report by an independent agency.
- (ii)** As per submissions/documents placed on record on this issue, it is noted that the injection & drawl points were in the jurisdiction of Respondent No.4 (MPPaKVVCL, Indore) therefore, Respondent No. 2 (Nodal agency for Long term open access) requested Respondent No. 4 to furnish the feasibility report in respect of injection and drawl points for availing of Long Term Open Access applied by the Petitioner. Respondent No.4 vide letter No. 18974 dated 22.09.2017 intimated Respondent No.2 that the maximum load recorded on 33KV New Industrial-B feeder emanating from 132/33KV S/s North Zone Indore, which is feeding the 3<sup>rd</sup> party consumer M/s H.D. Wires, Indore is 255 Amp. The size of conductor is Dog. In case of allowing 2.55MW open access to this feeder, the additional current of 49.52 Amp may be expected on the feeder. Thus, the total loading on said 33KV New Industrial-B feeder may be expected to 274.52 Amp which is beyond the current carrying capacity of 254 Amp of Dog conductor and such situation will lead to network congestion. Accordingly, the case was found technically unfeasible to allow 2.55MW LTOA at the drawl point for 3<sup>rd</sup> party use and therefore NOC for LTOA was not issued. The Respondent No.4 also informed that the 3<sup>rd</sup> party HT consumer M/s H.D. Wires, Indore was having arrears of Rs. 91.46 Lakhs. In view of above, Respondent No.2 being Nodal Agency vide their letter No. 2508 dated 04.10.2017 conveyed the aforesaid feasibility report to the petitioner and requested that if the Petitioner is desirous of bearing cost of network modification at his cost then same may please be informed, so that network study could be conducted. The consent on the above proposal and payment arrears of Rs. 91.46 Lakhs was requested from the Petitioner so as to take further action on the application submitted by petitioner for LTOA.
- (iii)** The Petitioner i.e. M/s Freewings Power and Infra Ltd. vide its letter dated 12.10.2017 informed Respondent No.2 that the its LTOA application be cancelled as it are unable to bear the cost of modification of the network as proposed. On request of the petitioner, Respondent No.2 (MPPTCL) cancelled the above said LTOA application of petitioner on 16.10.2017.
- (iv)** Further, the Petitioner by application dated 11.10.2017 again requested Respondent No. 2 (MPPTCL) for grant of Long Term Open Access

permission for transaction of power from its aforesaid 2.55MW Solar Power Plant for 3<sup>rd</sup> Party sale to consumer M/s Mittal Coin Pvt. Ltd., Pithampur connected at 33KV feeder emanating from 220KV S/s Pithampur (Sector-III). Based on the feasibility report received from Respondent No.4 (MPPaKVVCL, Indore), the reason for denial of LTOA were intimated to the Petitioner by Respondent No.4 by its letter no. 3241 dated-27.12.2017. It was mentioned in the letter that it is technically unfeasible to allow 2.55MW Long Term Open Access to petitioner's generator to wheel power to HT consumer M/s Mittal Coin Pvt. Ltd., Pithampur as informed by Respondent No.4. Further, the petitioner was again asked by Respondent No.2 to intimate willingness for network modification at its cost as per provision under Regulation 8.12 & 8.13 of MPERC (Open Access in MP) Regulations 2005. The Petitioner vide letter dated 11.10.2019 informed to Respondent No.2 that its LTOA application be cancelled as it is not technically feasible. Therefore, on request of petitioner, the above said LTOA application of petitioner was also cancelled by Respondent No.2 on 15.10.2019.

- (v) In view of the above facts, the contention of petitioner regarding denial of Long Term Open Access without any feasibility report from an independent agency has no merit consideration since denial of LTOA was based on the technical feasibility reports obtained in accordance with the provisions under Regulation 8.12 of MPERC (Terms and Condition for Intra-State Open Access in Madhya Pradesh) Regulation, 2005. The Regulation 8.12 provides that the nodal agency shall carry out study and in case, the transaction of power involves distribution network, the feasibility of the same be obtained by the nodal agency from concerned Distribution Licensee
- (vi) As stated by petitioner, after denial of long term open access permissions (LTOA), Petitioner on 02.12.2017 applied for sale of power through Energy Exchange and approached Respondent 3 (SLDC) for Short Term Open Access permission for sale of power on power exchange. The petitioner was granted Short term open Access Standing NOC for sale of power through Power exchange for the period from 5.12.2017 to 31.12.2017 and it was further granted every month till 31.07.2018. Subsequently, Respondent No.3 vide letter dated 11.07.2018 informed the petitioner that the petitioner does not fulfil the criterion for scheduling and inter-state sale of power in accordance to the provisions under MPERC (Forecasting, Scheduling, Deviation Settlement Mechanism and related matters of Wind and Solar generating stations) Regulations, 2018.
- (vii) When the petitioner further applied for the Standing Clearance NOC for short term open access for the period 01.08.2018 to 31.08.2018, Respondent No. 3 rejected the application on the ground that as per Clause 6 (C) of MPERC (Forecasting, Scheduling, Deviation Settlement Mechanism and related matters of Wind and Solar generating stations) Regulations, 2018. the Petitioner cannot be permitted to sell power from 01.08.2018 through Short term Open Access.

- (viii) The petitioner challenged the letters dated 11.07.2018 and 24.07.2018 issued by Respondent No.3, before Hon'ble High Court in Writ Petition No. 16999/2018. Hon'ble High Court without going into the merits of case, disposed of the aforesaid petition vide order dated 01.11.2018 with the following directions:

***"In view of this, the writ petition is disposed of by giving liberty to the petitioner to approach the review committee. If such an application is filed by the petitioner, then the review committee will consider the same as expeditiously as possible preferably within a period of one month from filing of the application or in its first meeting itself held after the filing of such an application."***

- (ix) Accordingly, the petitioner filed an application on 04.12.2018 before the Open Access Monitoring, Dispute Resolution Review Committee under MPERC Open Access Regulation 2005. The Petitioner had challenged the order of denial of the Short term Open Access passed by the Respondent dated 11.07.2018 and 24.07.2018 and requested the Review Committee to consider the Short Term Open Access permission from 01.08.2018 till the separate feeder was erected.
- (x) Petitioner has submitted that he was informed by the Advocate of the Respondent 3 on 09.3.2021 that the application of the Petitioner has been rejected by the Committee. He further submitted that no such information or a copy of the aforesaid order of Review Committee was received by him.
- (xi) On receiving reply from the Respondent's Advocate, the Petitioner had filed a petition before this Commission (P. No. 32/2021). At the hearing held on 15.02.2022 in aforesaid petition, the petitioner stated that if the order of Review Committee is now made available to petitioner, it will be inclined to amend the petition and may approach the Commission with a fresh petition. As per directions of this Commission, copy of order of the Review Committee was served to the petitioner on 21.02.2022 by the office of Commission.
- (xii) In pursuance of Commission's order dated 17.2.2022 in Petition No 32/2021, the petitioner has filed this amended petition on 15.03.2022 challenging the order of the Review Committee dated 21.01.2019 and the order/ letters dated 11.07.2018 and 24.07.2018 passed by the Respondent No.3 for denial of the short term open access.

12. Let us now examine the issues for denial of short-term open access to petitioner by Respondent No.3 w.e.f. 01.08.2018 to 12.10.2019 and the decision of Review Committee in this matter

- i. The Petitioner has a solar power plant with a capacity of 2.55 MW. Power from this plant is evacuated through a 33 KV feeder connected to 132 KV substation "Makdone" of MP Power Transmission Company limited. On this 33 KV feeder

another solar power plant of capacity 2.55 MW of M/s Porwal Auto Components Ltd. was connected. So total capacity of both solar power plants connected to pooling station at 132 KV substation Makdone through this 33 KV feeder was 5.10 MW. On application of the Petitioner, Short term Open Access (STOA) was granted by Respondent no. 3 for a period from 5.12.2017 to 31.12.2017. This open access was allowed for sale of power to the Power Exchange for inter-state transaction. On applications of the Petitioner, Short term Open Access (STOA) was further allowed on monthly basis till 31<sup>st</sup> July, 2018.

- ii. While Petitioner was availing Short term Open Access, MPERC (Forecasting, Scheduling, Deviation Settlement Mechanism and related matters of Wind and Solar generating stations) Regulations, 2018 (**FSDSM Regulations**), was notified by the Commission on 20<sup>th</sup> April, 2018. Regulation 6(7)(c) of FSDSM Regulations provides that,

***“6(7)(c) In case of Wind or Solar Generators as state entities undertaking intra-state transactions and inter-state transactions shall be allowed provided that such generators are connected to separate feeders at LV side of the Pooling sub-station and metering, scheduling, energy accounting and deviation settlement account for such wind or solar generators are maintained separately.”***

- iii. “Pooling Station” is also defined in the FSDSM Regulations which provides as below:-

***“Pooling Station” means the sub-station where pooling of generation of individual wind generators or solar generators is done for interfacing with the next higher voltage level:***

*Provided that where there is no separate pooling station for a wind/solar generator and the generating station is connected through common feeder and terminated at a sub-station of distribution company/STU/CTU, the substation of distribution company/STU/CTU shall be considered as the pooling station for such wind/solar generator, as the case may be;*

- iv. Regulation 3(2) of FSDSM Regulations provides applicability of these Regulations on Solar/Wind generators. The Regulation 3(2) provides as under:

“These Regulations shall be applicable to Seller(s) and Buyer(s) involved in the transactions facilitated through short-term open access or medium-term open access or long-term open access in intra-state transmission or distribution of electricity (including intra-state wheeling of power), as the case may be, in respect of all wind generators having a combined installed capacity of 10MW and above and solar generators with an installed capacity of 5 MW and above including those connected via pooling stations and selling power

within or outside the State.”

Accordingly, FSDSM Regulations are applicable on solar generators with combined installed capacity of 5 MW and above including those connected via pooling stations and selling power within or outside the State. Since, transaction of power from solar plants of the Petitioner and M/s. Porwal Auto Components Ltd. was being pooled through common 33 KV line, connected to a pooling station, so these Regulations, were applicable on the Petitioner for purpose of Deviation Settlement.

- v. Accordingly, Respondent No. 3 vide impugned letters dated 11.07.2018 and 24.07.2018, while mentioning relevant provisions under Regulations, informed the petitioner that simultaneous inter-state and intra-state transactions could not be allowed through common feeder at one pooling station and STOA to petitioner can be permitted only when the petitioner obtains separate connectivity.
- vi. In its submission on the petition also, Respondent no. 3 SLDC mentioned that on aforesaid 33 KV feeder, M/s. Porwal Auto Components Ltd. was already transacting power through Long term Open Access on intra-state basis, therefore, in light of Regulation 6(7)(c) of FSDSM Regulations, the Petitioner who was transacting power through inter-state transaction to the power exchange, was disallowed Short term Open Access from 1<sup>st</sup> August, 2018 onward.
- vii. The matter was referred to the “Intra-State Open Access Monitoring, Dispute Resolution and Decision Review Committee” which had decided the following:
- “The Committee has opined that the existing provisions in the Regulations are amply clear wherein the applicant should have a separate feeder for Inter-state transactions. The applicant has the option of installing a separate feeder and erect a separate bay for which he has already approached the West Discom for sanctioning of estimate for second circuit 33 KV existing line for a separate bay. The applicant has requested to allow the short term open access for a temporary period of 4 months till separation of 33 KV circuit. The open access may be provided immediately after segregation of 33 KV circuit as per the provisions in the Regulations. However, the West Discom has been requested to expedite the work so that the consumer may be allowed Open Access at the earliest.”
- viii. It is also brought to the notice that the Petitioner does not have a PPA/PPWA with MPPMCL for Power transaction. Nor he was having Wheeling NoC. However, petitioner vide letter dated 31.07.2018, requested Respondent No.3 to permit it to inject power into the grid at free of cost till the issue is settled by Appropriate Authority / MPERC regarding Petitioner’s eligibility for STOA. In the aforesaid

letter, petitioner further stated that the said arrangement shall be valid from 01.08.2018 till it gets the NOC and it shall not demand any charges for the injection of power from the Respondents. In response to aforesaid letter, SLDC vide letter dated 14.08.2018 intimated the petitioner that it does not allow any Generator to inject power into MP Grid without any valid agreement with buyer under Long Term, Medium Term or Short Term Open Access. Despite aforesaid instruction of Respondent No. 3, the petitioner had injected inadvertent power into the Grid for claiming Renewable Energy Certificates (RECs).

- ix. Subsequently, the 1<sup>st</sup> amendment of FSDSM Regulations was notified on 04<sup>th</sup> October, 2019 relaxing condition under Regulation 6(7) (c) for a period of one year from the date of notification of this amendment. The petitioner had applied on 10.10.2019 for short term open access as per first amendment to MPERC FSDSM Regulations, 2018, for sale of electricity through Power Exchange. Pursuant to aforesaid application and under provisions of the first amendment, Respondent No. 3 allowed STOA to petitioner with effect from 13.10.2019.

**13.** In view of all foregoing observations, the Commission has found that the “Open Access Monitoring, Dispute Resolution and Decision Review Committee” has correctly decided the matter as per provisions under Regulations. Further, there is no merit in the prayer of petitioner to set aside the letters issued by SLDC on 11.07.2018 and 24.07.2018 for denial of STOA to the petitioner. Consequent to the aforesaid findings, other prayers in the subject petition stand decided.

With the above observations and findings, the subject petition is dismissed and disposed of.

**(Gopal Srivastava)**  
**Member (Law)**

**(Mukul Dhariwal)**  
**Member**

**(S.P.S. Parihar)**  
**Chairman**