

**MADHYA PRADESH ELECTRICITY REGULATORY COMMISSION
BHOPAL**

Sub: In the matter of petition under Regulation 18.9 of the MPERC (Terms and Conditions for Intra State Open Access in MP) Regulations, 2005 and in terms of the Order and Judgment dated 20.09.2019 passed by the Hon'ble High Court of MP in WP No. 3834 of 2019.

Petition No. 19 of 2020

ORDER

**(Hearing through Video Conferencing)
Date of Hearing: 04th December'2020
(Date of Order: 18th December'2020)**

M/s. Prism Johnson Limited

305, Laxmi Niwas Apartments, Ameer Pet,
Hyderabad

- **Petitioner**

Vs.

- (1) M. P. Paschim Kshetra Vidyut Vitaran Co. Ltd.**
GPH Compound, Pologround, Indore – 452003 (M.P.)
- (2) State Load Despatch Centre**
M.P. Power Transmission Co. Ltd.
Nayagaon, Rampur, Jabalpur – 482 008 (M.P.)
- (3) M/s. Ujaas Energy Limited**
Formerly M&B Switchgear Ltd.,
701 Business Park, Vijay Nagar, Indore – 452 015 (M.P.)
- (4) M/s. SKP Bearing Industries**
Through its Director
Survey No. 2127, Mulchand Road, Wadhwan City,
District Surendra Nagar (Gujarat) – 363 035
- (5) M/s. Seattle Power Solutions Pvt. Ltd.**
Through its Director
N-3, Saket Nagar, Indore – 452 018
- (6) M/s. J K Minerals**
Through its Director
Main Road, Balaghat – 481 001 (M.P.)
- (7) M/s. Ankit Gems Pvt. Ltd.**
Through its Director
D-Tower, G-Block, Bharat Diamond Bourse,
BKC, Bandra (East), Mumbai – 400 051
- (8) M/s. Atul Sharma**
80, Civil Line, Jhansi (U.P.)

- **Respondents**

Shri Venkatesh Advocate, appeared in the hearing through video conferencing on behalf of the petitioner.

Shri Shailendra Jain appeared on behalf of the Respondent No.1.

Shri Anurag Mishra appeared on behalf of the Respondent No.2.

None appeared on behalf of other Respondents at S. No. 3 to 8.

The subject petition was filed under Regulation 18.9 of the MPERC (Terms and Conditions for Intra State Open Access in MP) Regulations, 2005 and in terms of the Order and

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Judgment dated 20.09.2019 passed by the Hon'ble High Court of MP in WP No. 3834 of 2019.

2. The petition was admitted on 14th May' 2020 with directions to the petitioner to serve copy of subject petition on all the Respondents. The Respondents were directed to file their reply to the petition within 15 days.

3. At the hearing held on 13th October' 2020, the following was observed by the Commission:

- (i) The Respondent No.1 filed reply to the subject petition on 09.07.2020.
- (ii) The Respondent No.2 filed reply to the subject petition on 23.06.2020.
- (iii) No reply was filed by other Respondents at S.No. 3 to 8.
- (iv) It was stated by Ld. Counsel of the petitioner that the replies filed by the Respondents No.1 and 2 were not received by the petitioner.

4. In view of the above, vide Commission's order dated 19.10.2020, the Respondents No.1 and 2 were directed to ensure service of their reply to the petitioner within three days. The Respondents No. 3 to 8 were also directed to file their reply to the subject petition by the 26th October'2020. It was also mentioned in the aforesaid order that the copy of aforesaid replies be served to the petitioner simultaneously. The petitioner was directed to file rejoinder on the replies of the respondents by the 11th November'2020.

5. At the last hearing held on 4th December' 2020, the Commission observed the following:

- (i) The Respondents No. 3 to 8 have not filed any reply to the subject petition.
- (ii) The subject petition has been filed under Regulation 18.9 of MPERC (Terms and Conditions for Intra-State Open Access in Madhya Pradesh) Regulations, 2005, which provides as under:

"18.9 Any dispute or complaint relating to open access, such as unfair practice, delay, discrimination, lack of information or any other matter shall be reported to the Committee, which will investigate and endeavour to resolve the grievance.

Apart from the above, Regulation 18.10 empowers the Commission to adjudicate upon unresolved disputes. Regulation 18.10 is reproduced below:

18.10 The Commission shall adjudicate upon unresolved dispute regarding the availability of transmission facility."

- (iii) Further, Regulations 8.31 and 8.32 of the aforesaid Regulations provide as under:

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“8.31 The Commission shall constitute a Committee, to be known as the ‘Open Access Monitoring, Dispute Resolution and Decision Review Committee (hereinafter referred to as “the Committee”).

8.32 The Committee shall consist of one representative each from the State Load Dispatch Centre, the State Transmission Utility and Distribution Licensee, to be approved by the Commission and one person to be nominated by the Commission from amongst its staff. The representative of the Commission shall be its Coordinator. The State Load Dispatch Centre, the State Transmission Utility, the Distribution Licensee and the Commission, may nominate one alternate member whose views shall be construed to be the views of the incumbent member whom he represents:

Provided that the members representing the State Load Dispatch Centre, the State Transmission Utility and the Distribution Licensee shall not, unless otherwise approved by the Commission in writing, be officers of a rank below the rank of the Superintending Engineer or equivalent.”

- (iv) Regulation 8.40 of MPERC (Terms and Conditions for Intra-State Open Access in Madhya Pradesh) Regulations, 2005, provides that the customer may file the petition with the Commission for seeking the order, if he is not satisfied with the order of the Committee.
- (v) The Commission vide order No. MPERC/Secy/PA/3501 dated 21st December' 2012 has constituted “Open Access Monitoring, Dispute Resolution and Decision Review Committee” for monitoring and resolution of disputes of open access consumers.

6. In view of the above-mentioned provisions, the petitioner should have first approached the Committee for resolution of the dispute before filing the subject petition. In fact, the Hon'ble Court in its order passed on 20.09.2019 in WP-3834/2019, has recognized that in terms of Clauses 18.9 and 18.10 of the Intra-State Open Access Regulations 2005, any dispute or complaint relating to open access is to be first resolved by the Committee and unresolved disputes are to be adjudicated upon by the Commission. The order further mentioned that the Commission vide order dated 21.12.2012 has constituted “Open Access Monitoring Dispute Resolution and Decision Review Committee” for monitoring and resolution of disputes of open access consumers in terms of the Regulation 2005.

7. In view of the provisions as stated above and the order passed by the Hon'ble High Court Bench Indore, the petitioner is hereby directed to first approach the abovementioned Committee for resolution of the dispute. The Committee is directed to investigate the matter

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and submit its findings within a period of three months from the date when the petitioner approached the Committee. The Commission Secretary would provide all documents on record to the Committee. In case the petitioner is aggrieved by the decision of the Committee, he shall be at liberty to approach the Commission under relevant Regulation.

With the aforesaid observations and direction, the subject petition is disposed of.

(Shashi Bhushan Pathak)
Member

(Mukul Dhariwal)
Member

(S.P.S. Parihar)
Chairman