

**Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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Case No. 82 of 2023

Case of Mindspace Business Parks Pvt. Ltd. for removal of difficulties in operationalising Open Access.

Mindspace Business Parks Pvt. Ltd. (MBPPL)

-----Petitioner

V/s

Maharashtra State Load Despatch Center (MSLDC)

-----Respondent

And

Case No. 83 of 2023

Case of Gigaplex Estate Pvt. Ltd. (GEPL) for removal of difficulties in operationalising Open Access.

Gigaplex Estate Pvt. Ltd. (GEPL)

-----Petitioner

V/s

Maharashtra State Load Despatch Center (MSLDC)

-----Respondent

Coram

**Sanjay Kumar, Chairperson
Anand M. Limaye, Member
Surendra J. Biyani, Member**

Appearances:

For the Petitioner:

Mr. Ghanshyam Thakkar (Rep.)

For the Respondent:

Mr. Umesh Bhagat (Rep.)

ORDER

Date: 27 December 2023

1. Mindspace Business Parks Pvt. Ltd. (**MBPPL**) and Gigaplex Estate Pvt. Ltd. (**GEPL**)[Petitioners] have filed Petitions in Case No. 82 of 2023 and 83 of 2023 respectively on 28 April 2023 under Regulation 37 of MERC (Distribution Open Access) Regulations, 2016 for removal of difficulties in operationalising Open Access (**OA**).
2. **Common Order:** Perusal of these Petitions shows that the issues as well as prayers in both the Petitions are similar. The respondent Maharashtra State Load Despatch Center (**MSLDC**) has filed the common reply. Also, the combined hearing for both these cases was held. Hence, the Commission is deciding these cases through this Common Order.
3. **Prayers of the Petitioners in both Cases are as follows:**
 - A) **Case No.82 of 2023**
 - a) *“Issue appropriate and necessary directions to remove operational difficulties mentioned in paragraphs 12 and 13 of the present Petition for implementation of open access.*
 - b) *Allow the Petitioner to levy Cross Subsidy Surcharge (CSS) as computed for consumers opting Open Access. ---”*
 - B) **Case No.83 of 2023**
 - a) *“Issue appropriate and necessary directions to remove operational difficulties mentioned in paragraphs 12 and 13 of the present Petition for implementation of open access.*
 - b) *Allow the Petitioner to levy Cross Subsidy Surcharge (CSS) as computed for consumers opting Open Access. ---”*
4. **Background of the Cases:**
 - 4.1. MBPPL is a deemed Distribution Licensee in its IT & ITeS Special Economic Zone (**SEZ**) area at Plot No.3, Kalwa, TTC Industrial Area, MIDC, Thane. Similarly, GEPL is a deemed Distribution Licensee in its IT & ITeS Special Economic Zone (SEZ) area at Airoli and Dighe, District Thane.
 - 4.2. MBPPL and GEPL had filed their respective MTR Petition (MBPPL in Case No. 216 of 2022 and GEPL in Case No. 215 of 2022) seeking approval of Truing up of FY 2019-20, FY 2020-21 and FY 2021-22, Provisional Truing up of FY 2022-23, and Revised Aggregate Revenue Requirement (ARR) and Tariff for FY 2023-24 and FY 2024-25 for their Distribution Business.

4.3. The Commission in its MTR Orders dated 31 March, 2023 in Case No 216 of 2022 and 215 of 2022 (impugned Orders), by exercising powers under Regulation 39 of MERC (DOA) Regulations, 2016 has allowed open access for all consumers of the Petitioners irrespective of their load (i.e., relaxing OA threshold limit of 1 MW). Further, the Commission in the said Orders has also relaxed the condition for installing the Special Energy Meter (SEM). The Commission in the impugned Orders has relaxed the provisions of the OA Regulations for enabling consumers to opt for alternate source of power as MBPPL's as well GEPL's tariff was required to be increased substantially for allowing full recovery of revenue gap.

4.4. Also, the Commission in the impugned Orders has granted liberty to the Petitioners to file a separate Petition for removal of difficulties in operationalizing the Open Access. Aforesaid relaxation given by the Commission is likely to result in certain operational difficulties for granting OA. Accordingly, the present Petitions have been filed by the Petitioners.

5. At the e- hearing through video conferencing held on 7 November 2023:

5.1. The Petitioners reiterated the submission made in the Petition and raised the following three operational issues that would arise because of the relaxation of the provisions of the open access Regulations in the impugned Orders dated 31 March 2023:

- a) Difficulty in adjustment of Green Energy sourced/obtained by open access consumers on 15 minutes basis in absence of Time of Day (ToD) slots in tariff and financial impact on the non-open access consumers due to grant of OA.
- b) Difficulty in energy accounting and settlement due to absence of SEM/ABT metering at consumers end to compute energy on 15 minutes time block basis.
- c) Computation of Cross Sub Subsidy (CSS) if the consumers avail OA.

5.2. In support of the difficulties in CSS, the Petitioners have cited the Hon'ble APTEL Judgment dated 26 November 2014 in Appeal No. 294 of 2013 and batch.

5.3. In reply to the queries of the Commission, the representative of the Petitioners has stated that the Commission has not determined the CSS for all the SEZ in Maharashtra.

5.4. The representative of SLDC stated that it has filed the common written submissions in both cases and nothing to add to it.

6. To analyze the Petitions, the Commission frames the following issues involved in the matter:

7. Issue No. I: Difficulty in adjustment of Non-Firm/Green Energy obtained by Open Access consumers on 15 minutes basis in absence of Time of Day (ToD) slots in Tariff and financial impact on the non-open access consumers.

Petitioners submission:

7.1. The Commission in its MYT Orders dated 30 March, 2020 in Case No. 328 of 2019 (MBPPL) and in Case No. 330 of 2019 (GEPL) has approved flat tariff in view of the submission of the Petitioner that:

- a) There was no shift of load on account of ToD tariffs.
- b) The peak load of the Petitioners remains constant throughout the day.
- c) The Petitioners had tied up power in accordance with its load curve.

7.2. Similarly, in the MTR Orders dated 31 March 2023 in MBPPL and GEPL matters, there is no ToD tariff and flat rate is applicable. Also, the Commission has ruled that there is no proposal by MBPPL and GEPL to start ToD Tariff. The Commission has continued this approach for the remaining Control Period (i.e., till FY 2024-25) as per MYT Order.

7.3. The Commission in the MTR Orders have ruled that ToD tariffs were introduced as a Demand Side Management measure to reduce the peak power procurement. The relevant rulings of the Commission's MTR Order are as follows:

“ 5.4.20 ToD tariffs were introduced as a DSM measure to mitigate diurnal variation in the load curve which would help the Distribution Licensee to reduce its peak period power procurement at relatively higher rate. Based on request of MBPPL, the Commission had discontinued the ToD tariff for MBPPL in the MYT Order as it is procuring power based on its Load Curve. There is no proposal by MBPPL to start ToD Tariff. The Commission has continued this approach for remaining Control Period as per MYT Order.” (Emphasis Supplied)

7.4. The Petitioners, in the past, while discontinuing ToD tariff has not considered the impact on power purchase cost in the event open access allowed to consumer along with banking facility for non-firm power. Further, as per the past tariff orders, no request for open access has been received by the Petitioners. Hence the impact on power purchase cost due to banking being permitted for non-firm power was never taken into consideration.

7.5. In absence of the ToD tariff (time slots), the situation may arise wherein non-firm power injected during any time of the day including night hours will be offset during the month as against peak hours during the day. Thus, the credit for the excess power injected during night hours will have to be allowed to be offset for energy consumed by the open access consumer during daytime. However, the power during daytime will have to be purchased by the Petitioners to supply to the consumers during the daytime. In such a scenario, the Petitioners will continue to purchase power during daytime without any recovery if surplus power is injected during night hours. It will lead to an under recovery and eventually the cost will be passed on to other consumers of the Petitioners who have not opted for open access. Similar situation may also arise, if surplus power is injected during daytime from 6 AM to 6 PM (solar generation hours) and the same will be allowed to be offset for consumption during 6 PM to 10 PM, which is peak period.

7.6. Further, above mentioned settlement of banked energy will be contradictory with respect to the settlement methodology stipulated by Commission in the DOA Regulations, 2016.

7.7. Hence, it is requested to issue appropriate directions to remove the aforesaid operational difficulty.

SLDC's Submission:

7.8. There is no submission on this issue.

Commission's Analysis and Rulings:

7.9. The Commission in the impugned Orders for the Petitioners' supply area has relaxed the following provisions of the DOA Regulations 2016 and its first amendment for the Petitioners' consumers for availing the OA:

- a) Threshold limit of 1 MW.
- b) ToD Slot/Tariff
- c) Requirements of SEM/ABT metering for availing OA.

7.10. The Commission notes that the Petitioners raised the difficulties regarding adjustment of the energy consumed by the prospective open access consumers in absence of the ToD slots in the tariff determined by the Commission. Hence, sought removal of difficulties on this issue.

7.11. The Commission in the MYT Orders dated 30 March 2020 as well as in the MTR Order dated 31 March 2023, in the matter of MBPPL and GEPL, has approved the flat tariff based on the submission of the Petitioners that there was no shift of load on account of ToD tariffs.

7.12. Further, the Petitioners have clarified that since operationalization, till date, even after issuance of the impugned Orders, no consumer has been approached to the Petitioners to avail OA. The Petitioners filed the Petitions considering the future difficulties if the consumers approached them seeking OA.

7.13. The DOA Regulations 2016 provides the banking facility in case an OA Consumer obtains supply from a Renewable Energy Generating Station identified as non-firm/Green Energy power. Also, the DOA Regulations 2016 provides illustration of ToD slots for the banking of OA credit adjustment during peak and off-peak power with specific time slots/blocks. The relevant provisions of the DOA Regulations 2016 are as under:

“ 20.4

Provided that the credit for banked energy shall not be permitted during the months of April, May, October and November, and the credit for energy banked in

other months shall be as per the energy injected in the respective Time of Day ('TOD') slots determined by the Commission in its Orders determining the Tariffs of the Distribution Licensees;

Provided further that the energy banked during peak TOD slots may also be drawn during off-peak TOD slots, but the energy banked during off-peak TOD slots may not be drawn during peak TOD slots. Illustration: Energy banked during:

- *Night off-peak TOD slot (2200 hrs – 0600 hrs) may only be drawn in the same TOD slot.*
- *Off-peak TOD slot (0600 hrs – 0900 hrs & 1200 hrs – 1800 hrs) may be drawn in the same TOD slot and also during Night off-peak TOD slot (However, the energy banked during night off peak and off peak shall not be drawn during morning peak and evening peak)*
- *Morning peak TOD slot (0900 hrs – 1200 hrs) may be drawn in the same TOD slot and also during Off-peak and Night off-peak TOD slots.*
- *Evening peak TOD slot (1800 hrs – 2200 hrs) may be drawn in the same TOD slot and also during Off-peak and Night off-peak TOD slots.*

.....”

7.14. If the consumers avail OA, in order to recovery of burden from Open Access consumers and credit adjustment of banking as per the DOA Regulations, ToD slots in tariff are required to be in place as determined. As per the provisions of the DOA Regulations 2016, TOD slots to be determined by the Commission in the Tariff Orders of the Distribution Licensees. Also, other Distribution Licensees such as MSEDCL, BEST, TPC-D, AEML-D etc., have ToD slots in their Tariff structure.

7.15. The Commission notes that the Petitioners sought for removal of difficulties only citing the provisions of the DOA Regulations 2016. The Petitioners also raised the issue of credit adjustment of OA consumption in different time slots and its impact on the non-open access consumers. However, the Petitioners have not suggested the different remedies and procedure for addressing the difficulty which can be allowed with exemption of ToD slots in Tariff. The Petitioners have not provided the financial impact considering various scenarios. Also the Petitioners did not propose the ToD slots suitable to their load profile variation of the supply area.

7.16. Under such circumstances, the Commission deem it fit to direct the Petitioners to prepare the procedure/methodology in consultation with their consumers as well as stakeholders such as STU, SLDC and consumers. The procedure prepared based on the consultation shall be submitted for approval of the Commission under removal of difficulties within three months from the date of this Order.

7.17. The Petitioners have clarified that existing meters installed at customer end are ToD meters and measure energy on 30-minute time block basis. It means that though the Petitioners has opted for flat tariff, measurement of energy of prospective OA consumers in different time zones as provided in the DOA Regulations 2016 is possible.

7.18. Meanwhile, before approval of the procedure by the Commission as submitted by the Petitioners and discussed above, if any consumer approaches for OA, the Petitioners may consider notional ToD slots for energy credit adjustment/settlement under Open Access in accordance with the slots approved by the Commission as provided in the DOA Regulations 2016 and same is summarised as below:

Particulars	ToD Slots
Night Off-Peak	22:00 Hrs to 6:00 Hrs
Off-Peak	06:00 Hrs to 9:00 Hrs and 12:00 Hrs to 18:00 Hrs
Day Peak	9:00 Hrs to 12:00 Hrs
Evening Peak	18:00 Hrs to 22:00 Hrs

7.19. The Commission further notes that Open Access Regulations provides various compliances by the Petitioners. The perusal of the website of the Petitioners shows that it has complied the following provisions:

- a) Compliance with the first proviso to the Regulation 4.1 of the DOA second amendment Regulations 2023: To provide on website, the information requirements, procedures, application forms and fees, in downloadable format, necessary for applying for Connectivity or Open Access to its Distribution System.
- b) Compliance with the first proviso to the Regulation 5.8 of the DOA second amendment Regulations 2023: to provide format for Connection Agreement on its website.
- c) Compliance with Regulation 6.2 of the DOA Regulations 2016: to provide the format of the open access Agreement on its website.
- d) Compliance of the Regulation 8.2 of the DOA Regulations 2016: To provide on its website the name, designation and contact details of the nodal officer who will be a single point contact for all Open Access and Connectivity related matters in accordance with these Regulations.

7.20. Further, the Commission on 10 November 2023 has notified the second amendment to the DOA Regulations 2016. The Regulation 3.3 of the DOA Second Amendment Regulations 2023, provides that the consumers having Contract Demand or Sanctioned Load of 100 kW or more or as may be amended in the Rules from time to time shall be

eligible to take power from Green Energy through Open Access. The revenant provisions of the said Regulations related to the green Open Access are as follows:

“3.3 Notwithstanding anything contained in Regulations 3.2, Consumers having Contract Demand or Sanctioned Load of 100 kW or more or as may be amended in the Rules from time to time, or Entity through multiple connections aggregating 100 kW or more located in same electricity circle of a Distribution Licensee, shall be eligible to take power from Green Energy through Open Access :

Provided that there shall be no limit of supply of power for the captive consumers taking power under Green Energy Open Access ;

Provided further that the above licence area restriction shall be applicable to the Maharashtra State Electricity Distribution Company Limited (MSEDCL) only and for all other Distribution Licensees, the area to be considered shall be equal to the entire licence area ; ”

7.21. Further, the 5th proviso to the Regulation 8.1 of the DOA Second Amendment Regulations 2023 provides that concerned Distribution Licensee shall provide all required details to the Nodal Agency so as to enable them to comply with the timelines stipulated in Rules and procedure for Green Open Access framed by the Central Nodal Agency. Also, the Regulation 8.11 of the DOA Regulations 2016 provides that the Distribution Licenses shall provide the facility of on-line submission of Applications for Connectivity and Open Access Applications within ninety days from the notification of DOA Regulations 2016.

7.22. On enquiry of the above compliance status, it is learned that the above compliances at Para 7.20 and 7.21 are still under progress and yet to be complied by the Petitioners. The web portal provides facility of on-line submission of Applications for Connectivity and Open Access Applications is under development.

7.23. In view of the above provisions of the DOA Second Amendment Regulations 2023, the Commission directs the Petitioners to ensure the compliance with the provisions of the DOA Regulations and **submit the compliance report along with the procedure/methodology.**

8. Issue II: Relaxation to the installation of ABT/SEM Meter for availing Open Access:

Petitioner’s submission:

8.1. The Commission in the impugned Order has relaxed condition of installing SEM/ABT Meter for availing OA. The existing meters installed at the Consumer premises are not capable of recording energy consumed in a 15-minute time block. However, the settlement of energy drawn by OA consumers from firm sources is to be done on a 15-minute time block basis.

- 8.2. Further, DOA Regulations allow consumer to opt for full open access wherein the consumer has zero contract demand with Distribution Licensee. Energy Accounting for such a full open access consumer is to be done in a 15-minute time block.
- 8.3. In such a scenario, the normal course of action would have been to replace the existing meter with ABT meter. However, the Commission has relaxed the condition for installing SEM/ABT meter. Hence, the Petitioners requested to issue necessary directions to remove the aforesaid difficulty of not having data for 15 minute time-block as required under DOA Regulations 2016 for consumers opting for OA from sources including parallel distribution licensee which are not identified as ‘non-firm power’ by the Commission in its Regulations for energy settlement.
- 8.4. As per Regulation 16.2 of the DOA Regulations, 2016, Intra-State Open Access transactions in respect of full open access Consumers connected to Distribution System shall be scheduled by MSLDC in accordance with the provisions of the State Grid Code. Existing meters are not capable of 15 minutes recording facility. Therefore, it is necessary to take a view of MSLDC for any difficulty in scheduling of power/energy accounting of open access consumer.

SLDC submission:

- 8.5. The Commission in the impugned Order has relaxed the provisions of the SEM/ABT meters for the consumers irrespective of their load.
- 8.6. For partial Open Access consumers, MSLDC follows the Regulation 16.2 of DOA Regulations 2016. The relevant provisions of the Regulations are as follows:

“16.2. Intra-State Open Access transactions in respect of Full Open Access Consumers connected to Distribution System and all Generating Stations connected to Transmission System shall be scheduled by MSLDC in accordance with the provisions of the State Grid Code:

Provided that the Open Access Consumer, Generating Station or Licensee, as the case may be, shall also intimate its Day-Ahead schedule to the Distribution Licensee by 10:00 hours of the preceding day, for incorporation in the Distribution Licensee’s schedule to be provided to the MSLDC;

Provided further that a Partial Open Access Consumer of a Distribution Licensee and Generating Stations connected to the Distribution System shall submit the schedule to such Distribution Licensee.”

- 8.7. If any consumer of MBPPL or GEPL wanted to full open access with an InSTS connectivity, then it has to get connect to InSTS. Further, scheduling will be carried out as per the provisions of Transmission Open Access Regulations, 2016.
- 8.8. MERC (Deviation Settlement Mechanism and related matters) Regulations, 2019, are applicable for all Buyer(s) including distribution licensee(s), deemed distribution licensee(s) located in the state and full open access consumers connected to InSTS.

8.9. In view of the above, ABT/SEM meters are required for full open access consumer. InSTS connectivity has to follow the MERC (Deviation Settlement Mechanism and related matters) Regulations, 2019 and relevant procedure formulated under these Regulations.

Commission's Analysis and Rulings:

8.10. As per the Regulation 18.1 of DOA Regulations 2016, the full as well as partial open access users shall install the SEM/ABT for recording active/reactive energy, voltage and grid frequency accurately and in a tamper-proof manner in pre-defined time interval of 15-minutes time block basis. The Commission, while relaxing the provisions of the ABT/SEM meter has ruled that all consumers of the Petitioners irrespective of their load are eligible for seeking OA. Also, considering the plug and play model being implemented by the Petitioners in their SEZ, if all such consumers are asked to install SEM/ABT meter before opting for Open Access, then it would unnecessarily increase cost of Petitioners. Hence, the Commission has relaxed condition of installing ABT meters. The Petitioners are required to facilitate their consumers seeking open access from cheaper source of power. Anticipating the operational difficulty, due to relaxation of the provisions of the SEM/ABT meters, the Petitioners have filed the Petition for removal of difficulty.

8.11. The Petitioners have clarified that existing meters installed at the HT and LT Consumer premises are capable of recording energy consumed in 30-minute time block only.

8.12. Also it is worthwhile to note that:

a) In Mumbai parallel licensing scenario (Changeover Consumer/ Low Tension (LT) Full OA Consumer are supplied and wheeled by TPC-D on the wires of AEML-D), LT changeover consumer energy settlement at SLDC level is being settled through load profile mutually settled by TPC-D and AEML-D. Accordingly, settlement of energy is being carried out by SLDC for such changeover/LT changeover consumers.

b) Further, second proviso to the Regulation 17.1 of the DOA Second Amendment Regulations 2023 provides that Green Energy Open Access to consumer with Contract Demand lower than 1 MW shall be allowed based on Special Energy Meter for all High Tension Consumers and ToD meter for all eligible Low Tension Consumers.

8.13. The Commission notes that the Petition is for removal of difficulties in absence of SEM/ABT metering. Accordingly, the Petitioners could have studied the difficulties involved and provided the different alternatives and remedies available in addressing the difficulty. However, the Petitioners as well as MSLDC stated that the SEM/ABT meters are required as per the provisions of the MERC (Deviation Settlement Mechanism and related Matters) Regulations, 2019 and DOA Regulations 2016 and distanced themselves from suggesting the different options/alternatives to implement the relaxation.

- 8.14. In view of the foregoing discussion, the Commission deem it fit to directs the Petitioners to study the various aspects involved in operationalizing the open access in absence of SEM/ABT meters in consultation with their consumers. The Petitioner also shall consult with the stakeholders such as STU, SLDC, AEML-D and TPC-D.
- 8.15. Accordingly, the Petitioners shall prepare the procedure for operationalization of the open access to its consumers in absence of ABT/SEM meters and submit it to the Commission for approval within three months from the date of this Order.
- 8.16. Meanwhile, if any consumer approaches open access, the Petitioners may consider energy recorded in consumer meter for 30-minute time block to be split equally in 15-minute time block for consumers opting for Open Access from different sources.

9. ***Issue III: Determination of cross-subsidy surcharge (CSS) for Open Access consumers:***

Petitioner's submission:

- 9.1. The Commission in the impugned Orders has held that tariff of the Petitioners is determined at 100% of the Average Cost of Supply (ACoS). Hence, there is no need to determine the CSS, as there will be no loss of Cross Subsidy in case of any migration of consumers to open access. The Commission has held the same on the premise that Cross Subsidy is equal to CSS and that there is no loss of cross subsidy. These findings of the Commission is contrary to the Hon'ble APTEL judgment dated 26 November, 2014 in Appeal No 294 of 2013 and batch. The Hon'ble APTEL held that the CSS and Cross Subsidy may not be equal. Also the Hon'ble APTEL has ruled that tariff is determined based on ACoS and not on category wise cost of supply. Also fixed cost recovery by the licensee is not only from Fixed Charge but also from energy charge. Further the Hon'ble APTEL Judgment also clarified that the licensee is entitled to recover the fixed cost either from wheeling charges or from CSS so determined by the Commission.
- 9.2. The Commission in the impugned Orders has allowed recovery of only 63% and 59% of total fixed cost through fixed charges for FY 2023-24 and FY 2024-25 respectively. The balance fixed cost is being recovered through energy charges. If the consumer opts for open access, the Petitioners will not be able to recover the portion of the fixed cost included in the energy charges. If CSS was determined as per Tariff Policy formula, the Petitioners would have recovered the same from CSS. In the impugned Order the Commission has determined 'nil' CSS.
- 9.3. In such a scenario, if the Consumer opts for open access without CSS, it will lead to under recovery of fixed cost and the burden of such under recovery will be passed onto other consumers who have not opted for open access.
- 9.4. Accordingly, the Petitioners requested to allow recovery of CSS from open access consumers as per Tariff Policy formula.

SLDC's Submission:

9.5. There is no submission on this issue.

Commission's Analysis and Rulings:

9.6. The CSS is to be determined as per the formula specified in the Tariff Policy. The computation of CSS is to compensate the Distribution Licensee. The Commission notes the contention of the Petitioners that the Commission did not determine the CSS to be paid by the OA consumers for the SEZ Deemed Distribution Licensees.

9.7. The Petitioners in the impugned Orders have also claimed the CSS. Considering the submission of Petitioners, the Commission in the impugned Orders has held that the tariff being determined is at 100% of the ACoS. Hence, there is no need to determine the CSS as there will be no loss of cross subsidy in case of any migration of consumers to open access. The relevant rulings of the Commission in the impugned Order is as follows (Commission's ruling in case of GEPL are similar) :

“ 5.7.5 The basic intent of the levy of Cross Subsidy Surcharge as per the Electricity Act, 2003, is to compensate the Distribution Licensee (DL) for the loss of cross subsidy due to migration of its (cross subsidizing) consumers to open access. Further the Act also mandates that such Surcharge and cross subsidy is required to be progressively reduced by the State Commission.

5.7.6 In this Tariff Order, the Commission has determined the tariff of the consumers in such a manner that there is no cross-subsidy between the consumer categories. As the Cross subsidy between the consumer categories does not prevail and the consumers are paying the tariff equivalent to Average Cost of supply, hence the question of loss of cross subsidy does not arise. Therefore, as the tariff being determined is at 100% of the average cost of supply, the Commission is of the view that there is no need to determine the Cross Subsidy Surcharge, as there will be no loss of cross subsidy in case of any migration of consumers to open access.

5.7.7 It is important to highlight here that in the past also the Commission has been determining the tariff for various consumer categories of MBPPL without any cross-subsidy. But still in respective tariff Order in the past, the Commission had determined cross-subsidy surcharge by using formula stipulated in Tariff policy. However, none of the Consumers have opted for Open Access as tariff of MBPPL was lower. Now when tariff of MBPPL is required to be increase substantially, it is important to have correct approach towards determination of CSS. As stated earlier, as there is no cross-subsidy in tariff structure, the Commission in this tariff order has not determined any CSS for MBPPL. With such nil CSS, consumers in MBPPL area can opt for third party power procurement through Open Access as per the provisions.”

9.8. The ruling of the Commission in the impugned Orders is clear. Even if the consumer avail open access , there is no loss to the Petitioners as the average cost of supply is equal to average billing rate. Even if the consumer avail open access, it has to pay the wheeling charges and other charges as per the DOA Regulations 2016. Hence, the contention of

the Petitioners that if the consumers avail OA then its burden will be passed onto other consumers is not based on the merit.

- 9.9. The Commission notes the citation of the Hon'ble APTEL Judgment dated 26 November 2014 in Appeal No. 294 of 2013 and batch by the Petitioners. In the said Appeal, the Commission's Order dated 22 August 2013 in Case No. 9 of 2013(*Petition of Reliance Infra-Distribution for approval of ARR and determination of MYT for Second Control Period (FY 2012-13 to FY 2015-16)*) was challenged. It is worth noting that in the said Order the ratio of ABR to ACoS for different categories of consumers was different. Ex. At Para 5.5.5.3 , Page No. 211 , the ratio of ABR to ACoS for LT-I is 40 %. Similarly the said ratio for LT II(a) is 107 %.
- 9.10. However, in the impugned Orders relevant for the Petitioners CSS, the ratio of ABR to ACoS is 100 % for all the categories of the Consumers. Ex as per Annexure I , Page 146 of the impugned Order, ratio of ACoS to ABR for HT industry and HT commercial is 100 %.
- 9.11. In view of the above it is clear that the tariff philosophy in the impugned Orders and the Order challenged in the Appeal No. 294 of 2013 is different. Hence, the Hon'ble APTEL Order dated 26 November 2014 in Appeal No. 294 of 2013 is not applicable in the present matter.
- 9.12. The Commission's decision to determine the nil CSS is a considered decision. Hence, the Commission is not inclined to accept the Petitioners prayer to determine the CSS under removal difficulties. Further, the CSS issue is not related to the open access operational difficulty for which the Petition has been filed.

10. Hence, the following Order.

ORDER


- 1. The Petitions in Case Nos. 82 of 2023 and 83 of 2023 are partly allowed.**
- 2. The Commission directs the Petitioner :**
 - a) As ruled at Para 7.16 of this Order, the Petitioners shall prepare the procedure/methodology and submit for approval of the Commission within three months from the date of this Order.**
 - b) As ruled at Para 8.15 of this Order, the Petitioners shall prepare the procedure for operationalization of the open access to its consumers in absence of ABT/SEM meters and submit it to the Commission for approval within three months from the date of this Order.**
- 3. The Commission's decision to determine the nil Cross Subsidy Surcharge (CSS) is a considered decision. Hence, the Commission is not inclined to accept the Petitioner's prayer to determine the CSS.**

4. As ruled at Para 7.23 of this Order, the Petitioners shall comply the provisions of the DOA Regulations 2016 as amended in 2019 and 2023 and submit the compliance report alongwith the procedure/methodology for removal of open access operationalization difficulty.

Sd/-
(Surendra J. Biyani)
Member

Sd/-
(Anand M. Limaye)
Member

Sd/-
(Sanjay Kumar)
Chairperson


(Dr. Rajendra G. Ambekar)
Secretary

