

**Before the  
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION  
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**Case No. 141 of 2016**

**And**

**Miscellaneous Application No. 26 of 2016 in Case No. 141 of 2016**

**Dated: 20 April, 2017**

**CORAM: Shri Azeez M. Khan, Member  
Shri Deepak Lad, Member**

**In the matter of  
Petition of M/s. OPGS Power Gujarat Pvt. Ltd. regarding arbitrary and wrongful delay  
in granting the Distribution Open Access  
(Case No. 141 of 2016)**

**And**

**Miscellaneous Application of Maharashtra State Electricity Distribution Co. Ltd for  
clarification of Daily /Interim Order dated 10 November, 2016 passed by the  
Commission.**

**(Miscellaneous Application No. 26 of 2016)**

M/s. OPGS Power Gujarat Pvt. Ltd. ....Petitioner

V/s.

Maharashtra State Electricity Distribution Co. Ltd. (MSEDCL) ....Respondent

**Appearance:**

For the Petitioner: Shri Sitesh Mukherjee, (Adv)

For the Respondent: Shri. Ashish Singh (Adv)  
Shri. A. W. Mahajan (Rep)

Authorized Consumer Representative: Dr. Ashok Pendse, TBIA

## Daily Order

Heard the Advocates/ Representatives of the Petitioner, Respondent and Authorized Consumer Representative.

1. The Petitioner submitted that:

- a) MSEDCL had given its consent for the Petitioner's Inter-State Short Term Open Access (STOA) from April, 2016 onwards up to September, 2016. However, MSEDCL had withheld its consent for October and November, 2016, on the ground of being in the process of reassessment of its Group Captive status, although there is no provision in the Distribution Open Access Regulations for withholding Open Access (OA) permission on this ground.
- b) The Commission, vide Daily Order dated 10 November, 2016, has granted ad-interim relief to the Petitioner for grant of OA and, accordingly, MSEDCL has complied by giving its consent.
- c) Regulation 8.3 of the DOA Regulations, 2016 provides that the procedure for Inter-State Open Access shall be as per the Central Commission's Regulations. First, the Generator has to apply for Inter-State Open Access to WRLDC. WRLDC requires consent from MSLDC as the OA Consumer is situated in Maharashtra, and MSLDC in turn should obtain the consent of MSEDCL. MSEDCL is required to provide its consent to the SLDC for the Inter-State STOA. MSEDCL is involved to that extent.
- d) Regulation 8.10 of the DOA Regulations, 2016 provides that MSEDCL has to grant Medium-term or Short-term Open Access if the resultant power flow can be accommodated in the existing Distribution System. The Electricity Rules, 2005 stipulate that Group Captive Power Plant (CPP) status may be checked annually. At that stage, if the CPP does not meet the criteria in the Electricity Rules, 2005, then Cross Subsidy Surcharge (CSS) may be levied on the OA consumer. Hence, Open Access cannot be denied on the grounds cited by MSEDCL.
- e) To a query of the Commission, Advocate of the Petitioner stated that the accounting of energy is done by the Load Despatch Centre (RLDC/SLDC). Since the Group CPP discloses its number of consumers' along with shareholding and consumption details, assessment can be done by the Distribution Licensee. Regarding the jurisdiction issue, CSS is being determined by the State Regulatory Commissions for the Distribution Licensees, to be levied on OA consumers. Hence the State and not the Central Regulatory Commission has jurisdiction on the issue.
- f) The issues of "setting up" of CPP and the shareholding pattern of a Group CPP were settled by the Appellate Tribunal of Electricity (ATE) and this Commission in its earlier Orders.

g) The Petitioner has suffered financial loss of Rs 17 Crore due to denial of Open Access for October and November; 2016. The Advocate of Petitioner cited the Judgment of ATE in Appeal No. 175 of 2012 with regard to compensation for damages.

**2. Advocate of MSEDCL stated that:**

- a) Except for compensation, the matter has now become infructuous as the OA permission has been granted to the Petitioner according to the directions of the Commission in its Daily Order dated 10 November, 2016, and FY 2016-17 is now over.
- b) On the issue of financial loss of Rs. 17 Crore, Advocate of MSEDCL stated that the Petitioner has not submitted any details of financial loss in its Petition. Further, the Judgment of ATE in Appeal No. 175 of 2012 is not applicable in this matter as there is no willful /deliberate default on the part of MSEDCL.
- c) On the issue of jurisdiction of Central Electricity Regulatory Commission (CERC), Advocate of MSEDCL stated that this is a peculiar case where at least three States are involved. Based on the details of shareholding and consumption data of OA consumers from these States, CERC is the appropriate authority to determine the Group CPP status, while the CSS determined by the respective State Commission would be applicable or otherwise depending on CERC's finding, regarding fulfillment of the criteria specified in the Electricity Rules, 2005.

The Commission directs the Petitioner to file its submission on the issue of compensation of loss within a week. MSEDCL may file its Rejoinder, if any, within a week, thereafter.

The Commission clarifies that the ad-interim relief granted through Daily Order dated 10 November, 2016 is no longer operational since FY 2016-17 is now over.

MSEDCL is free to assess the Petitioner's status for grant of OA under Group CPP principles and precedents of ATE and the Commission for the new financial year.

**The Case is reserved for the Order.**

**Sd/-  
(Deepak Lad)  
Member**

**Sd/-  
(Azeez M. Khan)  
Member**