

**Before the  
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION  
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**Case No. 180 of 2017 and Interlocutory Application**

**Dated: 14 December, 2017**

**CORAM: Shri Anand B. Kulkarni, Chairperson  
Shri Deepak Lad, Member**

**Interlocutory Application (IA) of OPGS Power Gujarat Private Ltd. to Stay the operation of the letters dated 28.11.2017 04.12.2017 and 05.12.2017, raised by MSEDCL on the captive users of the Applicant/ Petitioner till the pendency of the accompanying/ main petition**

OPGS Power Gujarat Private Ltd. (OPGS) .....Petitioner

V/s

Maharashtra State Electricity Distribution Company Limited.(MSEDCL) ..... Respondent

**Appearance:**

For the Petitioner : Shri. Vijay Thorat (Adv.)

For the Respondent : Shri Ashish Singh (Adv.)

**Daily Order**

Heard the Advocate for the Petitioner and Respondent.

1. Advocate of OPGS stated that:

- (i) OPGS has Group Captive Power Plant (GCPP) having installed capacity of 150 MW in Kutch District, Gujarat with Group Captive Consumers situated across the country, including the State of Maharashtra (i.e. Gujarat, Madhya Pradesh, Maharashtra and Punjab). OPGS supplies power to captive OA consumers situated in MSEDCL's Distribution area.

- (ii) MSEDCL vide letter dated 28 November, 2017 communicated to the OPGS that the data for Open Access provided by OPGS is incomplete for ascertaining the Group Captive status of OPGS for FY2015-16 and FY2016-17. As a consequence, MSEDCL raised the invoices of Cross Subsidy Surcharge (CSS) and Additional Surcharge (ASC) on 4 December 2017 and 5 December, 2017 to the captive users. OPGS requested to stay these invoices.
- (iii) OPGS has provided all the required documents/ data to MSEDCL which categorically demonstrate that the OPGS is a Captive Generating Plant supplying power to its captive users in accordance with the provisions of Rule 3 of the Electricity Rules, 2005.
- (iv) MSEDCL in its communications has only made a general observation that the requisite data for verification of the captive status of the OPGS is incomplete. It has not indicated any discrepancy in the data already furnished by the OPGS.
- (v) To a query of the Commission for jurisdiction for adjudicating the matter, Advocate of OPGS stated that this Commission has a jurisdiction under Section 86 1(f) of the Electricity Act, 2003 and Electricity Rules, 2005.

2. Advocate of MSEDCL stated that:

- (i) The captive status of OPGS for FY2015-16 and FY2016-17 cannot be ascertained as data provided by OPGS is incomplete. In this situation, MSEDCL has right to levy the CSS and ASC. Accordingly, it has levied CSS and ASC through its letters dated 4 December, and 5 December, 2017.
- (ii) As captive users of OPGS are situated in various States, the jurisdiction of determination of Group Captive Status and its disputes remains with CERC and this Commission has no jurisdiction to adjudicate Inter-State Open Access disputes.

3. The Commission after considering the materials placed on record as well as after hearing the parties observes as follows:

- i. OPGS is a Captive Generating Plant having consumers in multiple States. Hence, to ascertain the Group CPP status of OPGS or its consumers within the ambit of Rule 3 of Electricity Rules, 2005, requisite data from multiple States such as Gujarat, Madhya Pradesh, Maharashtra and Punjab needs to be analyzed.
- ii. The dispute with MSEDCL forms one of the part of the overall Captive status of OPGS and its consumers. As the Captive consumers are spread in various States, data of each concerned State LDCs with respect to scheduling and consumption of each Captive consumer need to be looked into to ascertain the

group captive status of entire arrangement.

- iii. As this being a Case of Inter-State Open Access and involve multiple Utilities across various States, RLDCs and SLDCs in determination of Group Captive status, the Commission is of the opinion that matter would best be agitated by OPGS before the Central Electricity Regulatory Commission (CERC).
- iv. In view of the above the Commission directs OPGS to agitate the matter before CERC and seek appropriate relief, if they deem fit, within one month. The Commission also directs MSEDCL not take any coercive action during this period.

**The Case along with IA is reserved for Order.**

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

**Sd/-  
(Anand B. Kulkarni)  
Chairperson**