



Maharashtra State Electricity Distribution Co. Ltd.

(A Govt. of Maharashtra Undertaking)
CIN : U40109MH20005SGC153645

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PLOT No. G-9, PRAKASHGAD
Prof. ANANT KANEKAR MARG
BANDRA (East)
MUMBAI-400051

No. CE/Com/OA/Legal/

No 255.26

Date:

26 OCT 2018

To

The Secretary,

Maharashtra Electricity Regulatory Commission,

Mumbai.

Sub: MSEDCL's review petition in respect of order passed by Hon'ble MERC in Petition filed by M/s. Classic Citi Investment Pvt. Ltd. under Section 42 (2) of the EA, 2003 read with Regulation 32 of the MERC (DOA) Regulations, 2016 challenging the validity of Circular dated 31.12.2016 by MSEDCL and the consequent bills and the wrongful rejection of application for Medium-Term Open Access (**Case No. 36 of 2017**).

Ref: MERC Order dated 04.05.2018 in Case No. 36 of 2017

Dear Sir,

Please find enclosed herewith MSEDCL's review petition in respect of order passed by Hon'ble MERC in Petition filed by M/s. Classic Citi Investment Pvt. Ltd. under Section 42 (2) of the EA, 2003 read with Regulation 32 of the MERC (DOA) Regulations, 2016 challenging the validity of Circular dated 31.12.2016 by MSEDCL and the consequent bills and the wrongful rejection of application for Medium-Term Open Access (**Case No. 36 of 2017**).

Thanking You,

Yours faithfully,

Encl: as above


Superintending Engineer (Commercial)

Copy s. w. r. to:

The Director (Commercial), MSEDCL, Mumbai.

Copy to:

- 1) M/s. Classic Citi Investment Pvt. Ltd., 262, Bund Garden Road, Pune 411 001.
- 2) Maharashtra Energy Development Agency, II Floor, MHADA Complex, Tridal Nagar, Pune-411006.
- 3) Prayas (Energy Group), Amrita Clinic, Athawale Corner, Deccan Gymkhana Karve Road, Pune 411 004.
- 4) Mumbai Grahak Panchayat, Grahak Bhavan, Behind Cooper Hospital, Vile Parle (West), Mumbai 400 056.
- 5) The General Secretary, Thane Belapur Industries Association, Robale Village, Post Ghansoli, Navi Mumbai 400 701.
- 6) Vidarbha Industries Association, 1st Floor, Udyog Bhavan, Civil Line, Nagpur 440 001.

BEFORE THE HON'BLE MAHARASHTRA ELECTRICITY

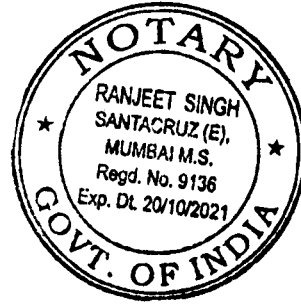
REGULATORY COMMISSION

AT MUMBAI

REVIEW CASE NO: _____ OF 2018

IN

CASE NO: 36 OF 2017



IN THE MATTER OF:

REVIEW PETITION UNDER REGULATION 85 OF MAHARASHTRA ELECTRICITY REGULATORY COMMISSION (CONDUCT OF BUSINESS) REGULATIONS, 2004 READ WITH SECTION 94 (1) (F) OF THE ELECTRICITY ACT, 2003.

AND

IN THE MATTER OF:

REVIEW OF ORDER DATED 04.05.2018 IN CASE NO. 36 OF 2017 PASSED BY THE HON'BLE COMMISSION.

AND

IN THE MATTER OF:

Petition of Classic Citi Investments Pvt. Ltd. challenging Maharashtra State Electricity Distribution Co. Ltd.'s Circular dated 31.12.2016, rejection of Medium-Term Open Access applications and related issues

**THE MATTER OF:**

Maharashtra State Electricity Distribution Co. Ltd
Through its The Chief Engineer (Commercial)
5th Floor, Plot No G-9, Station Road,
Prakashgad, Bandra (East), Mumbai- 400051

....Review Petitioner/Applicant

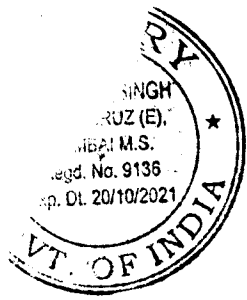
Versus

Classic City Investment Private Limited
G 262, Bund Garden Road
Pune, Maharashtra- 411 004

....Respondents

MOST RESPECTFULLY SHOWETH:**1. DESCRIPITON OF PARTIES:****PETITIONER:**

(i) Maharashtra State Electricity Distribution Company Limited (*hereinafter referred to as "MSEDCL" or "The Petitioner"*) is a Company constituted under the provisions of Government of Maharashtra General Resolution No. PLA – 1003 / C. R. 8588 dated 25th January 2005 and is duly registered with the Registrar of Companies, Mumbai on 31st May 2005. The Petitioner Company is functioning in accordance with the provisions envisaged in the Electricity Act, 2003 and is engaged, within the framework of Electricity Act, 2003, in the business of distribution of



electricity to its consumers situated over the entire State of Maharashtra, except Mumbai City & its suburbs (excluding Mulund & Bhandup).

RESPONDENTS:

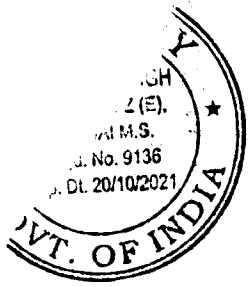
(ii) Classic City Investment Private Limited (*hereinafter referred to as "CC IPL" or "Respondent"*) is an open access consumer of MSEDCL.

2. PROVISIONS FOR REVIEW:

- Regulation 85 of the Maharashtra Electricity Regulatory Commission (Conduct of Business) Regulations, 2004:

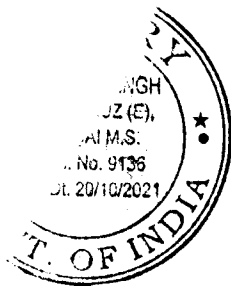
85. Review of decisions, directions, and orders:

- (a) *Any person aggrieved by a direction, decision or order of the Commission, from which (i) no appeal has been preferred or (ii) from which no appeal is allowed, may, **upon the discovery of new and important matter or evidence which**, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the direction, decision or order was passed or on account of **some mistake or error apparent from the face of the record**, or for any*



***other sufficient reasons**, may apply for a review of such order, within forty-five (45) days of the date of the direction, decision or order, as the case may be, to the Commission.*

- (b) *An application for such review shall be filed in the same manner as a Petition under these Regulations.*
- (c) *The Commission, shall for the purposes of any proceedings for review of its decisions, directions and orders be vested with the same powers as are vested in a civil court under the Code of Civil Procedure, 1908.*
- (d) *When it appears to the Commission that there is no sufficient ground for review, the Commission shall reject such review application.*
- (e) *When the Commission is of the opinion that the review application should be granted, it shall grant the same provided that no such application will be granted without previous notice to the opposite side or party to enable him to appear and to be heard in support of the decision or order, the review of which is applied for.*



Section 94 (1) (f) of Electricity Act, 2003:

Section 94. (Powers of Appropriate Commission):

(1) *The Appropriate Commission shall, for the purposes of any inquiry or proceedings under this Act, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 in respect of the following matters, namely: -*

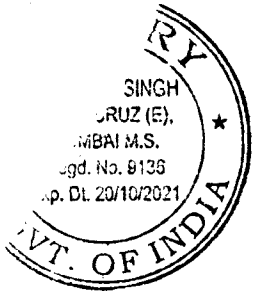
(a)

(f) *reviewing its decisions, directions and orders;*

.....

3. IMPUGNED PORTION OF THE ORDER UNDER REVIEW:

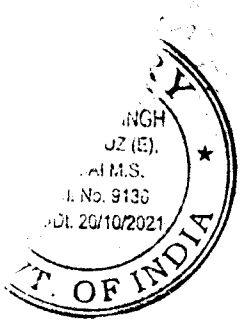
10.11 *As CCIPL has availed STOA (for December, 2016 and January, 2017) instead of MTOA (not granted by MSEDCL), the Commission is not inclined to direct any compensation to it for these two months. However, the Commission directs MSEDCL to issue the Generation Credit Notes for the energy injected (if any) by the Generator for CCIPL in*



February and March, 2017 and to give adjustment for these units in the ensuing billing cycle. {Annexure – A}

4. ISSUES RAISED IN REVIEW (WITHOUT PREJUDICE TO ONE ANOTHER):

- (i) Whether the order passed by the Hon'ble Commission is correct in the specific facts and circumstances of the case?*
- (ii) Whether the Hon'ble Commission has rightly appreciated the discrepancies in the Respondents' own MTOA application.*
- (iii) Whether the Respondent moved the Hon'ble Commission immediately after denial of MTOA i.e on 10.01.2017?*
- (iv) Whether the Hon'ble Commission has appreciated that the Petition was only filed on 28.02.2017 i.e only after the power for the month of February had flown in the system without valid permission?*



- (v) *Whether the Respondent after rejection of MTOA for the period December, 2016 to March, 2017, applied for STOA for the month of December, 2016 and January, 2017 only which was accordingly granted?*
- (vi) *Whether the Respondent after rejection of MTOA for the period December, 2016 to March, 2017, applied for STOA for the month of February, 2017 which was rejected due to incomplete application?*
- (vii) *Whether the Respondent applied for STOA for the month March, 2017 and if not then what stopped it from doing so?*
- (viii) *Whether the bonafides of the Respondent is completely defected by his own conduct in view of moving a petition before the Hon'ble Commission at a belated stage that too not even after applying for STOA for the month of December, 2016 January, 2017 and February, 2017 and not for the remaining month i.e. March, 2017?*



- (ix) *Can the Respondent keep injecting power into the grid without valid open access permission and can he get the benefits of the same at a later date?*
- (x) *Whether this Hon'ble Commission has time and again reiterated that there can be no injection of power into the grid by a generator/consumer without valid open access permission.*

5. GROUNDS (WITHOUT PREJUDICE TO ONE ANOTHER):

- (i) That the Hon'ble Commission's order is vitiated by error apparent as the Hon'ble Commission has failed to correctly appreciate that the documents submitted by the Respondent alongwith its MTOA application were itself incomplete.
- (ii) Assuming without admitting that even if old formats for open access could have been used by the Respondent; still it cannot proceed to file incomplete applications i.e. without SEM report, inconsistent consumer and generator details and no details of usage of multi generator open access. Such incomplete applications cannot be allowed in any case.



- (iii) That open access being operated in a regulated manner cannot have any room for mistakes. However, the MTOA filed by the Respondent had glaring deficiencies which could not have been allowed by MSEDCL.
- (iv) That it is the responsibility of a person seeking permission or making an application to complete all formalities and any defects in completing the formalities would then have its own consequences which such person shall have to face. The Respondent at this belated stage cannot shift his defaults and wrongdoings on MSEDCL.
- (v) That application of STOA for the month of December, 2016, January, 2017 **{Annexure – B}** and February 2017 **{Annexure – C}** clearly proves that the Respondent was aware of its rights to avail open access through separate mechanism i.e. STOA, and there was no stopping him from making further STOA applications for the month of March, 2017 which it did not do for reasons best known to the Respondent.
- (vi) That the Hon'ble Commission's order is vitiated by error apparent as the Hon'ble Commission has failed to correctly appreciate that the Respondent



approached the Hon'ble Commission belatedly after the cause of action was already over. The Respondent only filed a petition on 28.02.2017 whereas it was communicated on 10.01.2017 about denial of MTOA. This clearly reflects on the conduct of the Respondent.

- (vii) That the conduct of the Respondent can be gauged from the fact that it applied for STOA for the months of December, 2016, January, 2017 and February 2017 wherein February 2017 application was incomplete **{Annexure – C}** and so rejected but did not apply for any open access be it STOA for the month of March, 2017. This clearly suggests that the power which has flown into the grid has flown inadvertently which the Respondent now seeks to take benefit of at this belated stage citing faults with MSEDCL.
- (viii) That the Hon'ble Commission's order is vitiated by error apparent as the Hon'ble Commission has failed to correctly appreciate that there is no explanation given by the Respondent as to why it applied for STOA for the month of February, 2017 with incomplete application **{Annexure – C}** and not apply for STOA for the months of March, 2017




when it kept injecting power into the grid through its generator without a valid permission.

- (ix) That the Hon'ble Commission's order is vitiated by error apparent as the Hon'ble Commission has failed to correctly appreciate that a generator/consumer cannot keep injecting power into the grid without a valid open access permission/consent/knowledge of the Distribution Licensee. It is a matter of fact that the Respondent injected the power into the grid for the month of February, 2017 and March, 2017 without a valid open access permission/consent/knowledge of the Distribution Licensee.

6. Left with no other efficacious remedy, the Petitioner is constrained to approach this Hon'ble Commission vide the present Review Petition.

7. The Petitioner states that this Hon'ble Commission has the jurisdiction to adjudicate the present dispute.

8. The Petitioner states that there is delay of 132 days in filing the review petition. MSEDCL most respectfully submits that the delay is neither deliberate nor intentional and has occasioned mainly on account of several orders being



uploaded/passed by the Hon'ble Commission in a very short span of time during the month of April and May, 2018. This took the concerned department a little time to meticulously study all such orders and move appropriate approval notes for perusal and necessary directions from the competent authority. Moreover, some delay has also occasioned on account of MTR Petition being decided by the Hon'ble Commission in the intervening period.

9. The Petitioner craves leave of this Hon'ble Commission to add/amend/substitute the present petition with the prior permission of this Hon'ble Commission.

PRAYER

In view of the above, it is therefore most respectfully prayed that this Hon'ble Commission may graciously be pleased to:

- a) Review the order dated 04.05.2018 passed in Case No. 36 of 2017 to the extent as prayed herein and more specifically Para 10.11 of the order under review;
- b) Declare that the Respondent is not entitled to any relief as has been awarded in Para 10.11 of the order under review;
- c) Hold and declare that the Respondent/Generator cannot inject power into the grid without a valid permission/open access.

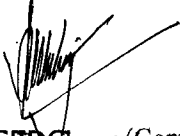
d) Condone the delay in filing of the Review Petitioner as per the explanation given in Para 8 hereinabove;

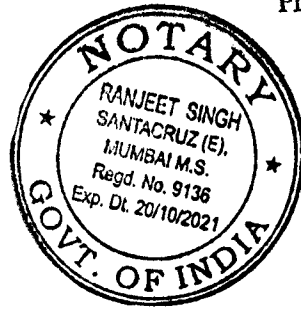
e) Pass such further orders as this Hon'ble Commission deems fit and proper in the interest of justice and good conscience.

It is prayed accordingly.

Date: 26.10.2018

Place: Mumbai


Superintending Engineer (Commercial)
M.S.E.D.C.L. Prakashgad, 5th Floor.
Prof. Anant Kanekar Marg, Bandra (E),
Mumbai-400 051.



**BEFORE THE HON'BLE MAHARASHTRA ELECTRICITY
REGULATORY COMMISSION**

AT MUMBAI

REVIEW CASE NO: ____ OF 2018

IN

CASE NO: 36 OF 2017

IN THE MATTER OF:

REVIEW PETITION UNDER REGULATION 85 OF MAHARASHTRA
ELECTRICITY REGULATORY COMMISSION (CONDUCT OF BUSINESS)
REGULATIONS, 2004 READ WITH SECTION 94 (1) (F) OF THE
ELECTRICITY ACT, 2003.

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IN THE MATTER OF:

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PASSED BY THE HON'BLE COMMISSION.

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IN THE MATTER OF:

Petition of Classic Citi Investments Pvt. Ltd. challenging Maharashtra
State Electricity Distribution Co. Ltd.'s Circular dated 31.12.2016,
rejection of Medium-Term Open Access applications and related issues

AND

IN THE MATTER OF:

Maharashtra State Electricity Distribution Co. Ltd
Through its The Chief Engineer (Commercial)
5th Floor, Plot No G-9, Station Road,
Prakashgad, Bandra (East), Mumbai- 400051

....Review Petitioner/Applicant

Versus

Classic City Investment Private Limited
G 262, Bund Garden Road
Pune, Maharashtra- 411 004

....Respondents

AFFIDAVIT VERIFYING THE REVIEW PETITION

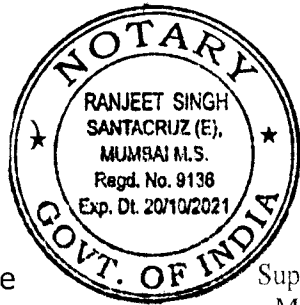
I, Anil Wasudeo Mahajan, age 50 years, having office at MSEDCL, Prakashgad, Plot No.G-9, Anant Kanekar Marg, Bandra (East), Mumbai 400 051 do solemnly affirm and say as follows:

- 1 I say that I am the Superintending Engineer (Commercial), of the Applicant above named. I have read the copy of the present Review Petition filed by the Petitioner and also the records and proceedings to the present proceedings as available in my office and therefore, able to depose on the same as duly authorized by the Applicant above named.
- 2 The statements made in paragraphs 1 to 13 of the petition are true to my knowledge and belief and are based on information

and I believe them to be true. That the statements made in Para 3 to 7 are legal submissions based on the advice of my advocate.

3 I say that there are no proceedings pending in any court of law/tribunal or arbitrator or any other authority, wherein the Applicant are a party and where issues arising and/or reliefs sought are identical or similar to the issues arising in the matter pending before the Commission.

Solemnly affirm at Mumbai on this 26th day of October, 2017 that the contents of the above affidavit are true to my knowledge, no part of it is false and nothing material has been concealed therefrom.



Identified before me

Mumbai

Dated: 26.10.2018

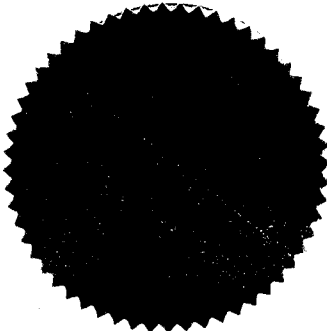
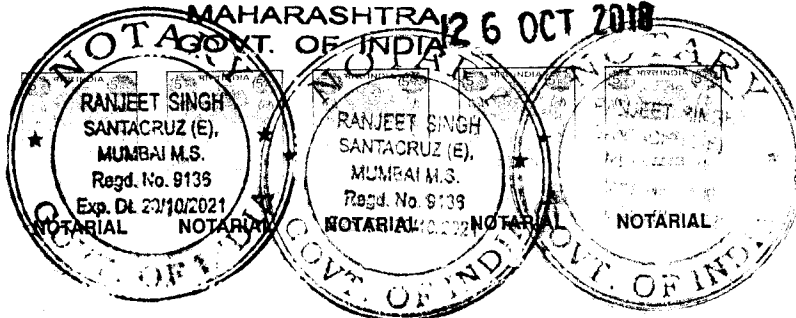
Superintending Officer (Commercial)
M.S.E.D.C.L. Prakashgad, 5th Floor,
Prof. Anant Kanekar Marg, Bandra (E),
Mumbai-400 051.

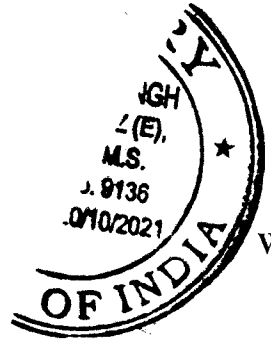
BEFORE ME

RANJEET SINGH
M.Sc.LL.B.

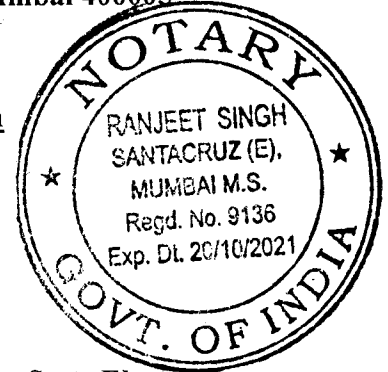
NOTARY
MAHARASHTRA
GOVT. OF INDIA

26 OCT 2018





Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
World Trade Centre, Centre No.1, 13th Floor, Cuffe Parade, Mumbai 400005
Tel. 022 22163964/65/69 Fax 22163976
Email: mercindia@merc.gov.in
Website: www.mercindia.org.in / www.merc.gov.in



Case No. 36 of 2017

In the matter of

Petition of Classic Citi Investments Pvt. Ltd. challenging Maharashtra State Electricity Distribution Co. Ltd.'s Circular dated 31.12.2016, rejection of Medium-Term Open Access applications and related issues

Coram

Shri Azeez M. Khan, Member
Shri Deepak Lad, Member

M/s Classic Citi Investments Pvt. Ltd ...Petitioner

V/s

Maharashtra State Electricity Distribution Co. Ltd. ...Respondent

Appearance:

For the Petitioner : Shri N. M. Kumar
For the Respondent : Shri N.M. Choudhary
Authorised Consumer Representative : Dr. Ashok Pendse, TBIA

ORDER

Dated: 4 May, 2018

M/s Classic Citi Investments Pvt. Ltd (CCIPL), G-262, Bund Garden Road, Pune, 411004, has filed a Petition, citing Section 42 (2) of Electricity Act (EA), 2003 read with Regulation 32 of the MERC (Distribution Open Access) Regulations, 2016 ('DOA Regulations'), on 28 February, 2017 challenging the validity of Maharashtra State

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Electricity Distribution Co. Ltd. (MSEDCL)'s Circular dated 31 December, 2016 and rejection of Medium-Term Open Access (MTOA) applications.

CC IPL's prayers are as follows:

- (a) *"Admit the Petition;*
- (b) *Set aside the Circular dated 31.12.2016 in so far as it contravenes the MERC Open Access Regulations;*
- (c) *Direct the MSEDCL not to issue any bills for wheeling charges based on the Circular dated 31.12.2016 and forthwith direct MSEDCL to revise the bills already issued;*
- (d) *Hold that the denial of Medium -Term Open Access to the Petitioner by MSEDCL is in contravention of the MERC Open-Access Regulations;*
- (e) *Direct MSEDCL to pay compensation to the Petitioner for wrongful denial of MTOA;*
- (f) *Direct the Respondent to pay the costs of the present petition;... "*

Interim Prayer

- (a) *Stay the Operation of the Circular dated 31.12.2106;*
- (b) *Stay the bills raised by MSEDCL on the basis of the Circular dated 31.12.2016;*
- (c) *Direct that no coercive steps will be taken against the Petitioner for non-payment of bills raised by MSEDCL on the basis of the Circular dated 31.12.2016; ... "*

3. The Petition states as follows:

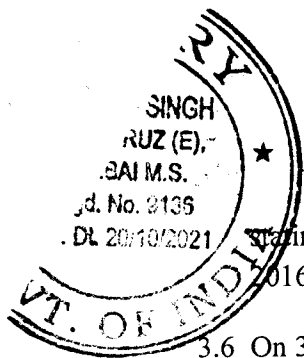
3.1 CC IPL has obtained partial Short Term Open Access (STOA) from MSEDCL.

3.2 CC IPL has filed the Petition challenging the validity of MSEDCL'[s Circular dated 31 December, 2016 providing for incorrect methodology of billing of Wheeling Charges which is in contravention of the DOA Regulations, 2016. CC IPL is also challenging the consequent bills raised by MSEDCL. MSEDCL has wrongfully denied MTOA to CC IPL.

3.3 On 01 September, 2016, CC IPL applied for MTOA from December 2016 to March 2017 as per Regulation 10 of the DOA Regulations, 2016.

3.4 DOA Regulations, 2016 provides the timelines for deciding MTOA Applications specifying that the Nodal Agency shall convey its decision regarding grant or refuse of MTOA within 60 days and no Application shall be rejected by the Nodal Agency without communicating the reasons in writing, including by electronic means.

3.5 On 10 January, 2017, MSEDCL has rejected the MTOA application of CC IPL



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stating that it had not applied in the new formats prescribed under DOA Regulations, 2016.

3.6 On 31 December, 2016, MSEDCL issued an internal Circular providing as under:

"5. As per reference 4, in case of Short Term Open Access billing software is modified to charge transmission and wheeling charges as below

i. Condition 1:

In case of Short Term Open Access, if the injected units are 'Zero' or less than the allocated capacity (generation CAP) continuously for more than four hours during the transaction period (month), then the levy of transmission and wheeling charges are as per following methodology:

A. Transmission Charges:

1) For Conventional:

*a. Actual Injected power = Higher of Open Access CD OR (Maximum Injected Power)*4*

*b. Transmission Charge = Actual Injected power * 24 * No of days in transaction period * applicable transmission charge.*

2) For Non-Conventional:

*a. Transmission Charge = Open Access CD * 24 * No of days in transaction period * applicable transmission charge.*

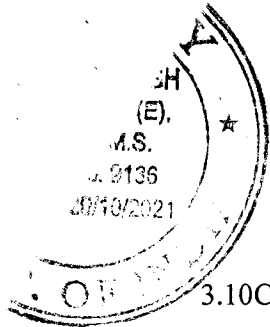
*b.. Wheeling Charges for Conventional and Non-Conventional: Wheeling Charge = Open Access CD * 24 * No of days in transaction period * applicable wheeling charge."*

3.7 On the basis of the revised methodology of Wheeling Charges, the bills from December 2016 have been revised and there is an exorbitant increase in the monthly Wheeling Charges being billed on CCIPL.

3.8 The Circular dated 31 December, 2016 is in contravention of DOA Regulations, 2016. On the basis of this circular, MSEDCL is seeking to deviate from the DOA Regulations, 2016 and has charged CCIPL Wheeling Charges and Transmission Charges on the basis of Contract Demand instead of actual consumption of units.

3.9 DOA Regulations, 2016 provides that Wheeling Charges have to be paid on the basis of actual drawal at the consumption end:

"14.6....An Open Access Consumer, Generating station or licensee, as the case may be, using a Distribution System shall pay to the distribution licensee such Wheeling Charges, on the basis of actual energy drawal at the consumption end, as may be determined under the Regulations of the



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commission governing Multi-year Tariff;”

3.10CCIPL has received the Open Access (OA) Energy bills from December 2016 onwards where MSEDCL has charged Wheeling and Transmission charges on Contract Demand and Fuel Adjustment Charge (FAC). The rates provided for Wheeling Charges and Transmission Charges of Rs. 0.82 and Rs. 0.28 per kWh respectively, had been charged on the capacity by applying a skewed formula by MSEDCL. As per the DOA Regulations, 2016 and Multi-Year Tariff (MYT) Order these charges are to be levied on the actual energy drawal at the consumption end..

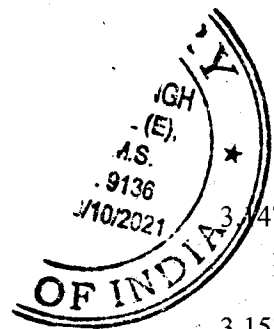
3.11The calculations by MSEDCL for Wheeling and Transmission Charges as billed and the illustrated calculations as per the DOA Regulations are as follows for December 2016 and January 2017:

<u>Charge</u>	<u>Units (capacity)</u>	<u>Units (actual Drawal)</u>	<u>Rate</u>	<u>Total as per MSEDCL</u>	<u>Total as per DOA Regulations, 2016</u>	<u>Excess Charged</u>	<u>Excess in Rs. Per Kwh</u>
Wheeling Charges – December 2016	4650000	409839	0.82	3813000	336068	3476932	8.48
Transmission Charges – December - 2016	4650000	358334	0.28	1302000	100334	1201666	3.35
Wheeling Charges – January 2017	3906000	120650	0.82	3202920	98933	3103987	25.73
Transmission Charges January 2017	3906000	105488	0.28	1093680	29537	1093680	10.37

3.12The above Table makes a clear distinction between the calculation provided by MSEDCL and calculation as per DOA Regulations, 2016. The use of capacity as the basis for the above calculations by MSEDCL is clearly in contravention of the DOA Regulations, 2016.

3.13The Commission has issued MYT Order dated 03 November, 2016 in Case No. 48 of 2016 dealing with this issue as under:

“While the option of OA available to eligible consumers is intended to encourage competition and choice, exercising such choice would depend upon several factors, including the retail Tariff of the Distribution Licensee and the applicable OA charges.”



(21)

3.14 The Commission has fixed the Wheeling Charges per kWh basis. This is also reflected in the approved Tariffs for 2016-17, 2017-18 & 2018-19 in the Order.

3.15 The Circular dated 31 December, 2016 and the bills raised by MSEDCL are contrary to Law and need to be set aside with immediate effect. During the pendency of the matter, the bills need to be stayed.

3.16 CCIPL has applied MSEDCL for MTOA on 1 September, 2016. As per Regulation 10.5 of DOA Regulations 2016, MSEDCL was supposed to decide MTOA application within 60 days and convey its decision to the applicant. As against the timeline of 60 days, CCIPL's application has been rejected on 10 January, 2017 by MSEDCL after 4 months on the frivolous reason that it was not applied in the new formats.

3.17 CCPIIL had made the application on 1 September, 2016, however the new format has been introduced much after that. It was therefore completely unreasonable to expect the application under new formats.

3.18 MSEDCL has failed in its duty to reply to the application within 60 days and has further given absurd reasons for rejection. The only criterion for processing MTOA has been provided for in Regulation 8.10 of the DOA Regulations, 2016 as below:

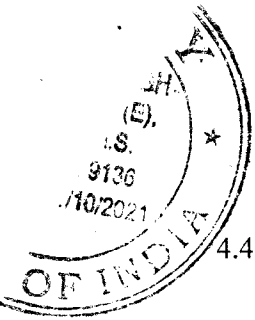
"8.10 The Nodal Agency shall grant Medium-Term or Short-Term Open Access if the resultant power flow can be accommodated in the existing Distribution System or the Distribution System under execution"

4. In its additional submission dated 16 May, 2017, CCIPL stated as below:

4.1 DOA Regulations, 2016 provides that the Nodal Agency shall convey its decision to grant or refuse MTOA within 60 days and no Application shall be rejected by the Nodal Agency without communicating the reasons in writing, including by electronic means.

4.2 MSEDCL's internal Circular dated 31.12.2016 is in contravention of the MERC Open Access Regulations. On the basis of this circular, MSEDCL is seeking to deviate from the MERC Open Access Regulations and charge CCIPL Wheeling Charges and Transmission Charges on the basis of Contract Demand instead of actual consumption of units.

4.3 The Commission had issued two Practice Directions under the DOA and Transmission Open Access (TOA) Regulations, 2016 dated 19 October, 2016 and 08 March, 2017 which are clarificatory in nature, binding on the Utilities from the date of issue of the DOA Regulations, 2016 and so they are sacrosanct in Law. These directions have clarified almost all the issues raised by CCIPL in the Petition with clear directions to MSEDCL to settle the issues raised by it. Unfortunately, MSEDCL continues to be in the denial mode as far as the OA applications are



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concerned.

4.4 CCIPL acknowledges the part reversal of the wrongful energy bills of Wheeling Charges in December 2016 and January 2017. MSEDCL has reversed the energy bills partly and refunded an amount of Rs. 8842369.95. There is a short paid amount of Rs. 33895 and an interest amount of Rs. 114728 is pending. MSEDCL has not responded to CCIPL's correspondence,

4.5 As against the set timeline of 60 days, CCIPL's application has been rejected after 92 days by MSEDCL on the frivolous reason that it was not applied in the new format and other reasons on metering data not submitted in the prescribed format.

4.6 When the new format may have been introduced as the applications were made online on 01 September, 2016 which date is much after CCIPL had made the application. It was therefore completely unreasonable to expect the application to have been made in the new format by CCIPL after 92 days at the time of the rejection on the one hand has failed in its duty to reply to the application within 60 days of it being made and has further given absurd reasons for rejection of the same.

4.7 The only criterion for processing MTOA has been provided for in Regulation 8.10 of the Open Access Regulations which reads as under –

"8.10 The Nodal Agency shall grant Medium-Term or Short-Term Open Access if the resultant power flow can be accommodated in the existing Distribution System or the Distribution System under execution"

4.8 MSEDCL has acted against the specific provisions of the DOA Regulations, 2016 and the Practice Directions dated 8 March, 2017 which reads as:

"Regulation 10.5 of the DOA Regulations requires the Distribution Licensee to convey its decision on a MTOA Application within 60 days, along with reasons in case it is. The Distribution Licensee shall convey, within the next 15 days, its decision, reasons for rejection if relevant, on all those Applications which are presently for decision or reply beyond the stipulated period. As regards the that some MTOA Applications have not been responded to by the Licensee as stipulated in the Regulations since April, 2016 and considering such Applications had to be made at least 3 months in advance, the Distribution may be liable for the consequences arising from the delay in deciding or its decision on such Applications its decision on a MTOA Application within 60 days, along with reasons in case it is. The Distribution Licensee shall convey, within the next 15 days, its decision, reasons for rejection if relevant, on all those Applications which are presently for decision or reply beyond the stipulated period. As regards the that some MTOA Applications have not been responded to by the Licensee as stipulated in the Regulations since April, 2016 and considering such Applications had to be made at least 3 months in advance, the Distribution may be liable for the consequences arising from the delay in deciding or its decision on such Applications."

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4.9 MSEDCL has denied STOA permissions for May, 2017 and MTOA from June 2017 to March 2018 also. The reason mentioned in e-mail dated 26 April, 2017 is as below:

“With respect to your STOA application ID No 4622, 4619 and 4617 for the period 01.06.17 to 31.03.2018 for OA CD 7.25 MW. It is observed that, your MSEDCL Contract Demand is 2.1 MW and Open Access applied considering CUF is 1.6675 MW. The resultant power is 3.768 MW. . It is stated that the present petition is within the jurisdiction of the Hon'ble Commission.”

4.10 The issue of the resultant power was settled in the Practice Directions dated 08 March, 2017.

4.11 CCIPL's additional / revised prayers are as below:

- (a) *“Admit the Petition;*
- (b) *Set aside the Circular dated 31.12.2016 in so far as it contravenes the MERC Open-Access Regulations;*
- (c) *Direct the MSEDCL to settle the issues of all the billing disputes for wheeling charges based on the Circular directions in order dated 08/03/2017 and forthwith direct MSEDCL to revise the bills already issued;*
- (d) *Hold that the denial of Medium-Term Open Access to the Petitioner by MSEDCL is in contravention of the MERC Open-Access Regulations;*
- (e) *Direct to issue STOA permissions for the denied portion for the months of July and August 2016.*
- (f) *Direct the Respondent to issue the denied open access permissions for May-2017 & Jun – 2017 to March -2018.*
- (g) *Direct MSEDCL to pay compensation to the Petitioner for wrongful denial of MTOA;*
- (h) *Direct the Respondent to compensate for the financial losses for the wrong denial of the open access permissions.*
- (i) *Direct the Respondent to pay the costs of the present petition; ... ”*

5. In its Reply dated 22 May, 2017, MSEDCL stated that :

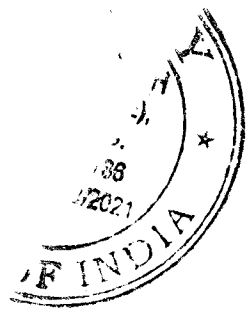
5.1 CCIPL is challenging the validity of MSEDCL's Circular dated 31 December, 2016. In the said Circular, the Transmission and Wheeling Charges in respect of STOA consumers were levied on units calculated on the basis of allocated OA capacity of consumer. The Circular was issued for levying Transmission and Wheeling Charges in respect of STOA consumers who have neither utilized the load as per allocated OA capacity nor informed the MSEDCL about inability to utilize the allocated capacity. The Circular dated 31 December, 2016 was in accordance with Clause 11.9



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of DOA Regulations, 2016. However, as per Practice Directions dated 8 March, 2017 issued by the Commission, the Transmission Charges and Wheeling Charges recovered under the Circular have been already been refunded to the Petitioner in March 2017.

- 5.2 CCIPL has alleged that MSEDCL has partially reversed the alleged bills of Wheeling Charges in December 2016 and January 2017. Further, it is alleged that MSEDCL has short paid the amount of Rs. 33,895/- and interest amount of Rs.1,14,728/-. The points raised are purely billing disputes and reconciliation issues which CCIPL can agitate before appropriate forum. The Commission does not have jurisdiction to entertain issues involving Billing and Reconciliation. Further, the dispute does not fall under Section 42 (2) of Electricity Act 2003 and Regulation 32 of DOA Regulations, 2016.
- 5.3 The second issue raised by CCIPL is in respect of alleged wrongful rejection of MTOA application. Once the new Regulations i.e. DOA Regulations, 2016 were introduced in 30 March, 2016, all the concerned parties are bound by it. CCIPL on 01 September, 2016 applied for MTOA under DOA Regulations, 2014 which is incorrect. Further, in the event of dispute, CCIPL should have tried to resolve the same under former Regulations i.e. DOA Regulations, 2014 stating that since permission is granted under DOA Regulations, 2014, it becomes binding contract between CCIPL and MSEDCL. In such eventuality, CCIPL or MSEDCL may have faced contractual difficulties. Therefore, MSEDCL is justified in rejecting wrongly submitted application of CCIPL.
- 5.4 Various applications were received under MTOA (each for one Generator). While scrutinizing the same following discrepancies were observed:
- (i) CCIPL has submitted Annexure – IV as per DOA Regulations, 2014 i.e. Annexure – IV is not in format prescribed in DOA Regulations, 2016.
 - (ii) Annexure – IV form were incomplete or not readable.
 - (iii) There was mismatch in consumer number mentioned in Annexure – IV and other documents
 - (iv) Special Energy Meter (SEM) report was not enclosed.
 - (v) The covering letter regarding sourcing of power from Multi-Generator is not included.
- 5.5 All these discrepancies were communicated to CCIPL while rejecting his MTOA applications.
- 5.6 The other issue raised by CCIPL is in respect of rejection of MTOA for want of Distribution System Augmentation. While granting OA permission, it is necessary to verify whether the existing Distribution System has correct infrastructure like CT, etc. to safely accommodate the load of the consumer. On verification of application



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of CCIPL, it was observed that CCIPL was applying for MSEDCL Contract Demand of 2.1 MW and OA Contract Demand of 7.25 MW. Considering the Capacity Utilization Factor (CUF), the OA Contract Demand of CCIPL was 1.6675 MW, i.e. the total Contract Demand of Petitioner was 3.768 MW. As the resultant power flow that can be accommodated in present Distribution System (metering equipment) was 1.9052 MW, the system was incapable of accommodating total Contract Demand of CCIPL. Therefore, the application of Petitioner for grant of OA was rejected.

5.7 The permission for MTOA was rejected and was informed that it has liberty to submit fresh applications.

6. At the hearing held on 23 May, 2017,

6.1 CCIPL stated that:

- (i) It has raised two issues in the Petition:
 - (a) Denial of STOA / MTOA on frivolous grounds, and
 - (b) Wrongful levy of Wheeling and Transmission Charges
- (ii) On 1 September, 2016, CCIPL applied for MTOA for the period from December 2016 to March 2017 which MSEDCL rejected on 10 January, 2017, stating that CCIPL has not applied in the new formats prescribed under the DOA Regulations, 2016 and may apply afresh.
- (iii) From December, 2016 onwards, MSEDCL has levied the Wheeling charges and Transmission Charges on the basis of Contract Demand instead of actual consumption of units. The issue has been clarified by the Commission through its Practice Directions on 8 March, 2017. Accordingly, MSEDCL should recalculate Wheeling Charges or Transmission Charges on actual energy drawal at the consumption end and refund any amount recovered in excess of these stipulations within a month, with applicable interest. MSEDCL has now revisited the issue and the bills are being corrected accordingly, but, there are still differences with respect to the actual amount of refund due.
- (iv) CCIPL submitted STOA application for May, 2017 to MSEDCL on 1 April, 2017 which was rejected and informed to CCIPL vide e-mail dated 26 April, 2017. CCIPL also submitted MTOA application for June 2017 to March 2018 on 23 February, 2017 which was also rejected and communicated by MSEDCL vide its email dated 29 April, 2017. The reason for the rejection in both the cases was that the resultant power flow after considering CUF cannot be accommodated in the network.

