Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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CASE No. 131 of 2016

In the matter of

Petition of Cosmo Films Ltd. regarding denial of Short-Term Open Access by Maharashtra State Electricity Distribution Co. Ltd. for Day-Ahead transactions through Power Exchanges, and for compensation

Coram

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

M/s. Cosmo Films Limited …..Petitioner

V/s

Maharashtra State Electricity Distribution Co. Ltd. …..Respondent No. 1
Maharashtra State Load Despatch Centre …..Respondent No.2

Appearance:

For the Petitioner : Shri T. N. Agarwal
Shri Satish S. Shah

For Respondent No. 1 : Shri Ashish Singh (Adv.)
Shri Anil Mahajan

ORDER

Date: 25 January, 2018

1. M/s Cosmo Films Limited (‘Cosmo’), Plot No. B-14/89, MIDC Industrial Area, Bajaj Nagar, Waluj, Aurangabad, has filed a Petition on 27 September, 2016, citing
Regulations 32 and 35 of the MERC (Distribution Open Access) Regulations (‘DOA Regulations’), 2016 and Section 42 of the Electricity Act (EA), 2003 seeking directions to Maharashtra State Electricity Distribution Co. Ltd. (MSEDCL) to grant Short-Term Open Access (STOA) as per the Regulations and seeking compensation.

2. Cosmo’s prayers are as follows:

   i. “Admit the petition;
   
   ii. Direct MSEDCL to immediately process and grant the short term open access strictly as per the provisions of the MERC and CERC Open Access Regulations;
   
   iii. Compensate the Petitioners for the wrongful denial of open access by MSEDCL for July 2016 and till the time this wrongful action continues;
   
   iv. Issue practise directions under Regulation 35 for processing Standing clearance/NOC in future cases to MSEDCL;...”

3. The Petition states as follows:

   3.1 An Application was made by Cosmo to MSEDCL seeking its No Objection for STOA for collective transactions through the Power Exchange.

   3.2 Vide e-mail dated 24 June, 2016, MSEDCL sought clarification as to how the Application for Day-Ahead transaction could be treated under STOA.

   3.3 On 27 June, 2016, Cosmo replied that purchase of power through Power Exchange amounts to Inter-State Open Access and needs to be processed as per the Central Electricity Regulatory Commission (CERC) Open Access Regulations. Cosmo also clarified that the advance STOA and Day-Ahead Open Access are the types of Open Access which consumers can avail subject to payment of the applicable charges and following the procedure. Once such Open Access has been granted, it is for the consumer to choose the transaction that he wishes to participate in, including through Day-Ahead purchase.

   3.4 No response was received from MSEDCL. Vide its letter dated 18 July, 2016, Cosmo requested the Commission to issue Practice Directions under Regulation 35 of the DOA Regulations, 2016 to clarify that such Open Access can be availed for purchasing power through Power Exchange.

   3.5 Power procurement through Power Exchange is an Inter-State transaction since buyers and sellers from across the country place their bids and, after transactions are finally cleared, the power is delivered at the State boundary. In such transactions, the buyers and sellers are unaware of their counter-parties and,
therefore, such transactions are termed ‘collective transactions’ and have been defined in the DOA Regulations, 2016.

3.6 Hence, such transactions are Inter-State in nature. The DOA Regulations, 2016 also recognize the fact that power purchase through collective transaction from the Power Exchanges is governed by the CERC Open Access Regulations.

3.7 Regulation 8.3 of the DOA Regulations, 2016 specifies that, for Inter-State and hence the Power Exchange transactions, the CERC procedures for Inter-State Open Access will be applicable.

3.8 The inter-play between the CERC Open Access Regulations and any State Commission’s Open Access Regulations has also been discussed by the Appellate Tribunal for Electricity (APTEL) in its Judgment dated 13 November, 2013 in Appeal No. 210 of 2012 (BALCO v. CSERC & Anr):

“35. Thus, the legislative field is clearly given to the Central Commission so far as the procedure for inter-State short term open access is concerned and to the extent that the State Grid is intended to be used in the procedural requirements applicable to the users of the State transmission network is made applicable. This is in consonance of the scheme of the inter-State transmission system under the 2003 Act. The procedure laid down in 2008 Regulations is therefore, the governing procedure which is relevant in the present case.”

3.9 MSEDCL is misinterpreting the DOA Regulations, 2016 on Advance and Day-Ahead Open Access under Regulations 11.2 and 11.3, respectively. However, these Regulations are not applicable in the present case.

3.10 One of the primary objectives of the EA, 2003 is to promote competition and to provide choice to consumers to avail supply of electricity from a source of their choice and not necessarily from the Distribution Licensee. The concept of Open Access has been introduced in EA, 2003 for ensuring benefits to the consumers on account of such competition.

3.11 Even as per the DOA Regulations, 2016, the Open Access to be granted to a consumer is to be decided in terms of system margins and not based on the transaction which the consumer may choose.

3.12 The nature of transaction to be conducted by the consumer is different from the categories of Open Access allowed in the Regulations.

3.13 Practice Directions are necessary to ensure that no hurdles are created in the processing of Inter-State Open Access, which is to be governed by the CERC Open Access Regulations. The Practice Directions to be issued pertain to the following aspects:
i. Whenever there is a case of power purchase through the Power Exchanges, MSEDCL/ the Maharashtra State Load Despatch Centre (MSLDC) will proceed as per the CERC Open Access Regulations;

ii. MSEDCL cannot apply the provisions of the Commission’s DOA Regulations to make the CERC Open Access Regulations redundant;

iii. The Open Access NOC/Standing Clearance is to be issued by MSLDC only and even the fees are to be collected by MSLDC in coordination with MSEDCL;

iv. The MSLDC and MSEDCL ought to coordinate to perform their respective roles under the CERC Open Access Regulations.

4. In its Reply dated 24 January, 2017, MSEDCL stated as follows:

4.1 The main relief sought by Cosmo has already been granted. Vide its letter dated 30 December, 2016, MSEDCL has informed Cosmo that STOA through Power Exchanges has already being given to eligible applicants and Cosmo may contact its office for any query regarding such permissions.

4.1 On 10 June, 2016, Cosmo had applied for STOA through Power Exchange for the month of July, 2016.

4.2 This Application did not mention any specific “product” from the Power Exchange regarding bidding for procurement of power. Further, it was revealed that the consumer is bidding for power on Day-Ahead basis. Accordingly, vide e-mail dated 24 June, 2016, Cosmo was informed to apply under Day-Ahead Open Access procedure specified in the DOA Regulations, 2016.

4.3 The earlier Regulations, i.e. the DOA Regulations, 2014, permitted Open Access through Power Exchanges depending upon the “product” offered by the Exchanges, i.e. Week Ahead. Those Regulations did not permit Open Access through Power Exchange on Day-Ahead basis. There is a major change in DOA Regulations, 2016 in this respect.

4.4 Power through Power Exchanges can be sourced by bidding for a “product” offered by a Power Exchange, and that product would decide the corresponding Regulation in DOA Regulations, 2016. In the present case, as it was learnt that Cosmo is applying for a Day-Ahead product, the corresponding procedure was informed to it vide e-mail dated 24 June, 2016.

4.5 Vide its Practice Direction dated 19 October, 2016, the Commission has issued clarification regarding Day-Ahead Open Access through Power Exchange.
4.6 In compliance with the above Practice Direction, MSEDCL has started issuing Open Access permissions/clearances for Day-Ahead Open Access from Power Exchanges under STOA to all eligible consumers who have submitted the complete application for the same and who have fulfilled the conditions in the DOA Regulations, 2016.

5. At the hearing on 16 February, 2017, Cosmo stated that, after the filing of the present Petition, the Commission has issued a Practice Direction on the DOA Regulations, 2016. Hence, most of the issues raised in the Petition are now resolved. However, Cosmo sought 3 weeks to amend the Petition for including a few other issues. MSEDCL stated that it had no objection and confirmed that, after the Commission’s Practice Direction, the Open Access permissions are being granted.

6. At the hearing held on 13 June, 2017, Cosmo circulated its additional submission to MSEDCL and the Commission. It stated that, although the Open Access permissions have been granted after the Practice Directions, the issue of compensation for the financial loss on account of denial of Open Access for July, 2016 still remains. The calculations for such compensation were provided in the additional submission. MSEDCL stated that no amended Petition had been filed, and that its additional submission needs to be examined, to which MSEDCL would file its response within two weeks.

7. In its additional submission circulated during the hearing on 13 June, 2017, Cosmo stated that it has reviewed its Petition and concluded that there are no major points requiring an amended Petition, except for prayer No. 3 about compensation which has been not covered by MSEDCL in its Reply. The calculation details of the compensation sought by Cosmo are as follows:

a. Due to failure of MSEDCL to issue NOC for STOA for July, 2016, Cosmo has lost the financial benefit of saving in power cost for 31 days. The estimation is as below:

- Volume of Open Access for Waluj Plant, Aurangabad: 7.5 MW
- Average RTC Rate (Exchange rate in July, 2016): Rs. 2.10/unit
- Landed rate of Exchange including all charges: Rs. 4.86/unit
- Group Captive landed rate: Rs. 5.77/unit
- MSEDCL Tariff: Rs. 7.13/unit
- MSEDCL landed rate: Rs. 7.60/unit
- Energy saving lost (7.60-4.86): Rs. 2.74/unit
- Difference between Exchange and CGP (5.77-4.86): Rs. 0.91/unit
- Total Units for 31 days( 7.5 x 1000 x 24 x 31 x 90%): 50,22,000 units
- Loss suffered: (5022000 x 0.91): Rs. 45.70 Lakh
b. The STOA Application proceeding fees Rs. 30,000 to be compensated.
c. The cost of the Petition (Rs. 5,000) to be compensated.
d. Compensation towards mental agony and other miscellaneous expenses to the tune of Rs. 1 lakh is also to be compensated.
e. To take penal action under Sections 142 and 146 of the EA, 2003 for non-compliance of the DOA Regulations, 2016, and action against erring officers for deliberate non-compliance.

8. In its response dated 21 July, 2017, MSEDCL stated as follows:

8.1 The energy through Power Exchanges can be purchased by opting for the “products” available at the Exchanges. The methodology for purchasing each product is different. For purchasing a “Day Ahead product”, the party has to bid on day-ahead basis. Regulation 11.3 of the DOA Regulations, 2016 has rightly made a provision for Day Ahead Open Access.

8.2 In response to Cosmo’s STOA application for Open Access through Power Exchange for the entire month of July, it was informed vide e-mail dated 24 June, 2016 that, if Cosmo is opting for Day-Ahead Open Access, the procedure laid down in Regulation 11.3 of the DOA Regulations, 2016 has to be followed.

8.3 Cosmo could have availed Open Access through the Power Exchange for the month of July, 2016 by applying under Regulation 11.3. However, Cosmo applied as per the STOA procedure and not as per the Day-Ahead Open Access.

8.4 Subsequently, the Commission issued a Practice Direction on 19 October, 2016. The relevant extract with regard to Day-Ahead Open Access for sourcing power from Power Exchanges is as follows:

“Where an application is made for Short Term Open Access (other than one day prior) for availing power from any source, including through Power Exchanges, the Nodal Agency has to follow the procedure specified in Regulation 11.2 of the DOA Regulations and Regulation 11.1 of the Transmission Open Access Regulations, as the case may be; and the procedure specified in Regulation 11.3 to 11.6 of the DOA Regulations and Regulation 11.2 of the TOA Regulations for Day Ahead Open Access. Day Ahead Open Access refers to only short term open access applied for a day in advance, and not to any particular type of source or a specified product of a Power Exchange.”

8.5 Following the above Practice Direction, MSEDCL has started issuing Open Access permissions/ clearances from the Power Exchange under STOA also to all the eligible consumers who have fulfilled the conditions in the DOA Regulations, 2016. MSEDCL has been submitting standing clearances to MSLDC for the collective transactions of consumers from the Power Exchanges.
8.6 At the time of application by Cosmo in July, 2016, MSEDCL had raised queries in accordance with the provisions of the DOA Regulations, 2016. It was only in October, 2016 (subsequent to the month in question, i.e. July, 2016) that the Commission issued the Practice Direction clarifying that Day-Ahead Open Access refers only to STOA applied for a day in advance, and not to any particular type of source or a specified product of a Power Exchange. Hence, Cosmo’s claim for compensation on account of financial loss suffered during July, 2016 due to non-issuance of NOC for Open Access through Power Exchange is not correct. Therefore, the question of compensation does not arise.

8.7 There was an alternate remedy available to Cosmo for sourcing power through a Power Exchange by applying in line with Regulation 11.3, which Cosmo did not avail even after it was informed by MSEDCL. Hence, Cosmo itself is responsible for loss, if any.

8.8 Cosmo had applied for STOA permission through Group Captive under Regulation 11.2 of the DOA Regulations, 2016. MSEDCL had accorded approval to Cosmo for STOA accordingly. Hence, the claim of Cosmo that it has suffered loss on account of denial of NOC for STOA is frivolous and without any basis.

8.9 In the event that such alternative source of power was allowed to Cosmo during July, 2017, the financial claim becomes meaningless. Cosmo has not disclosed the correct facts to the Commission and is portraying its case which is not as per facts. Hence, the Commission may dismiss the claim of Cosmo in view of its conduct and new facts which were not disclosed by it at any point in time.

8.10 Without prejudice to the above, the calculation for relief provided by Cosmo is not correct as certain parameters have been erroneously considered by it as explained below:

a. Cosmo has assumed that Round-the-Clock (RTC) power from the Exchange would be available at all times. However, it is very difficult to envisage that power from the Exchange would be available easily on a continuous basis for the entire month. Hence, the assumption of continuous availability of power from Power Exchange is erroneous.

b. Average RTC rate of July, 2016 has been taken as Rs. 2.10 per unit for calculation of relief. Cosmo should have taken time block-wise rate of trading on a daily basis for the month of July, 2016 for calculation of relief, if any. The calculation of relief will undergo change after considering the time block wise rate in power Exchange during July, 2016 since the peak and off peak rates will impact the results.
c. Cosmo was interested in opting for firm power through the Power Exchange. It is mandatory to submit the Day-Ahead schedule for sourcing firm power through Open Access. The relevant Regulation is reproduced below:

“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.”

d. As per the methodology for bidding for Day-Ahead Open Access through Power Exchange, the consumer is to submit its bid at the Exchange for requirement of power on Day-Ahead basis at 10 am and would come to know about status of its bid at around 5 pm the same day. In case the consumer does not receive the required quantum of power from the Power Exchange for whatsoever reason, it would deviate from the OA quantum scheduled with MSLDC/ Distribution Licensee. In such scenario, Imbalance Charges will be applicable to the Generator as specified in Regulation 19 of the DOA Regulations, 2016:

19.3. Settlement of deviations from schedule: Deviations between the schedule and the actual injection in respect of Open Access taken by a Generating Company, or a Trading Licensee on behalf of a Generating Company, shall be settled as follows:...

19.3.2. Under-injection

Any injection below that scheduled by the Open Access Generating Company shall be met from the grid and will be paid for by that entity to the Distribution Licensee at the UI charge applicable under the Inter-state ABT mechanism or the SMP plus other Incidental charges (Net UI charges, additional UI charges) or any other intra-State ABT settlement charges stipulated under the mechanism operating in Maharashtra, whichever is higher; and also any congestion charge stipulated by RLDC and/or MSLDC as payable to the Distribution Licensee to fulfil the obligations of the Open Access Generating Station.”
e. In case of an Exchange-related transaction, as the Generator is not disclosed, it has to be the sole responsibility of the consumer to observe the Day-Ahead schedule and penalty for deviation in schedule has to be levied on the consumer. Hence, a situation might have arisen wherein Cosmo would have been liable for penalty on account of such deviations from schedule. MSEDCL, in its Reply to the main Petition, has already raised these issues and requested the Commission to kindly issue necessary Practice Direction.

f. Cosmo has actually availed STOA through Group Captive mechanism for the month under consideration. The actual energy bill for the month of July, 2017 is submitted. It can be seen from the energy bill that the loss claimed by Cosmo is hypothetical.

g. In view of the above, it may also be argued that Cosmo might have benefited by not availing the STOA for the month of July, 2016 from the Exchanges.

h. Thus, the parameters assumed by Cosmo for calculation of compensation are erroneous and MSEDCL is not liable to pay any compensation to Cosmo.

i. As per Annexure III: Format for Short-Term Open Access Format-STI, the Application fee for STOA permission is non-refundable. Hence, MSEDCL is not liable to pay Rs. 30,000, which is the STOA processing fee.

j. MSEDCL has followed a suitable procedure in the case of Cosmo’s Application for STOA. As mentioned earlier, there was lack of regulatory clarity with regard to STOA permission for Power Exchange transactions. Hence, MSEDCL acted in accordance with the DOA Regulations, 2016 when Cosmo applied for STOA permission in July, 2016. After the issuance of the Practice Directions in October, 2016, MSEDCL has started issuing Open Access permissions/ clearances from the Power Exchanges under STOA also to all eligible consumers who have submitted the complete information and fulfilled the conditions in the DOA Regulations, 2016.

k. In fact, MSEDCL had accorded approval to Cosmo’s Application for STOA permission under the Group Captive source of power purchase during July, 2017 under the DOA Regulations, 2016. Cosmo had been benefited and got the alternative power source from the Group Captive mechanism. Hence, MSEDCL is not liable for the claimed cost of Petition of Rs. 5,000 and the compensation of Rs. 1 lakh.

8.11 MSEDCL has acted in accordance with the provisions of the DOA Regulations, 2016 for STOA permission for Power Exchange transactions. Vide e-mail dated 24 June, 2016, MSEDCL has responded to the STOA application. In fact, as per Cosmo’s application for STOA permission under the Group Captive option, MSEDCL had provided the approval under the DOA Regulations, 2016. Hence,
MSEDCL has complied with the provisions of the Regulations. Thus, the claim of non-compliance of the Regulations is false.

8.12 In view of the above, the Commission may disregard the claims made by Cosmo under Sections 142 and 146 of the EA, 2003 as well as the reliefs sought as no claim lies against any MSEDCL official of willful or deliberate inaction.

9. At the hearing held on 27 July, 2017, Cosmo circulated its additional written submission. Cosmo stated that, as per the Daily Order of 13 June, 2017, MSEDCL was required to submit its Reply within two weeks, but has done so only on 24 July, 2017. In its additional submission, the calculations of the financial loss on account of non-approval of STOA for July, 2016 have been revised to Rs. 40.46 lakh, and the details provided. To a query of the Commission, Cosmo stated that it has availed STOA for July, 2016 from its Group CPP only because of denial of Open Access through the Power Exchange. Compensation has been sought for its Shendra Industrial Unit. It would submit its revised calculations and clarification accordingly. MSEDCL stated that Cosmo had submitted an Application for Day-Ahead Open Access to source power from the Power Exchange on 7 June, 2016. MSEDCL replied on 24 June, 2016 denying the Open Access. However, Cosmo also applied for Open Access to source power from its Group CPP on 10 June, 2016. Cosmo was availing the alternative option to source power from its Group CPP, and hence the compensation may not be allowed. To a query of the Commission regarding MSEDCL’s stand on compensation, MSEDCL stated that it would file its submission after consultation. However, it would require data from Cosmo regarding the calculations of the compensation. Cosmo was directed to file its submission clarifying the calculations of compensation within a week. MSEDCL was given time to file its response and Cosmo to rejoin.

10. In its subsequent written submission dated 27 July, 2017, Cosmo stated that:

10.1 Average RTC rate of Exchange power had been considered instead of the 15 min. block-wise Exchange rates, for simplicity of computation.

10.2 It is true that MSEDCL had issued NOC for Group CPP power instead of from Power Exchange. The financial loss has been calculated based on the energy rate difference between Group CPP and Power Exchange. The basic RTC power rate was considered as Rs. 2.10 per unit for which the rate chart of the Indian Energy Exchange (IEX) for July, 2017 has been provided. With this basic rate, the landed power cost of the Exchange was Rs. 4.86 per unit and for Group CPP, the landed power cost was Rs. 5.77 per unit. Hence, there was a loss of Rs. 0.91 per unit on account of denial of STOA by MSEDCL through Power Exchange.

10.3 MSEDCL has stated that it started issuing STOA permissions through Power Exchanges after the issue of Practice Directions by the Commission on 19
October, 2016. In its Practice Directions, the Commission has not issued any new direction but only clarified the DOA Regulations, 2016. MSEDCL should have applied its own logic in a positive manner instead of rejecting the Application. MSEDCL has been very harsh in denying Open Access through Power Exchange and on one or the other reason finding new ways to deny it.

10.4 MSEDCL has submitted Annexure C for computing unit-wise consumption for Open Access power and MSEDCL’s power. Cosmo had claimed compensation for 50,22,000 units and MSEDCL has worked out 44,46,642 Open Access units. The units calculated by MSEDCL are agreed to by Cosmos and, accordingly, the revised compensation at Rs. 0.91 per unit is Rs. 40,46,444, which may be considered by the Commission.

10.5 It is incorrect to say that the compensation was claimed on misleading facts. The STOA was applied for sourcing power through Power Exchange as per DOA Regulations, 2016 which specifically recognizes the concepts of Advance STOA and Day-Ahead Open Access in terms of Regulation 11. Regulation 11.2 deals with STOA and Regulation 11.3 deals with Day-Ahead Open Access. Both these Regulations are procedural in nature and only speak about the manner in which it would be treated and processed by the Nodal Agency. The consumer opting for Advance STOA can procure power either through the Day-Ahead market on the Power Exchange or though the bilateral route.

10.6 All transactions on the Power Exchanges are governed by the CERC Open Access Regulations, 2008 and are thus are fundamentally Inter-State transactions.

10.7 Regulation 8.3 of the DOA Regulations, 2016 provides that, for Inter-State and Power Exchange transactions, the CERC procedures for Inter-State Open Access will be applicable.

10.8 Regulation 8 of the CERC Inter-State Open Access Transmission Regulations, 2008 for participation in Day-Ahead market of Power Exchanges is reproduced below:

"Concurrence of State Load Despatch Centre for bilateral and collective transactions

8. ...(2) When a State utility or an intra-State entity proposes to participate in trading through power Exchange(s), it shall obtain "No Objection" or "Prior Standing Clearance" from the concerned State Load Despatch Centre in such form as may be prescribed in the Detailed Procedure, specifying the aggregate MW up to which the State utility or intra-State entity may submit buy or sell bid(s) in the power Exchange(s) taken together. The "No Objection" or "Prior Standing Clearance" issued by the State Load Despatch Centre shall not be Exchange specific."
“(2A) No Objection or Prior Standing Clearance obtained by the State utility or intra-State entity from the State Load Despatch Centre can be used for collective transaction for day ahead on any Power Exchange(s) and/or for bilateral intra-day transaction/contingency transaction in OTC market or on the Power Exchange market:...”

10.9 The Application fee of Rs. 30,000 paid online for this STOA through Power Exchange should also be refunded along with the compensation as NOC was not issued because of lapses on MSEDCL’s part by not following the DOA Regulations, 2016.

10.10 The claim towards financial loss of Rs. 40.46 lakh should be allowed. Open Access application processing fees of Rs. 30,000 and Petition fees of Rs. 5,000 should be reimbursed. Compensation towards mental agony and other miscellaneous expenses to the tune of Rs. 1 lakh should be allowed. Penal action under Section 142 and 146 of EA, 2003 for non-compliance of the DOA Regulations 2016 should be initiated against MSEDCL.

11. On 17 August, 2017, Cosmo submitted the following revised loss calculations:

11.1 STOA Application was made on 7 June, 2016. However, when it was learnt that Power Exchange Application for Open Access will not be considered, Application was made for Group CPP power as an alternate option though OPGS Gujarat Pvt. Ltd. (‘OPGS’) on 10 June, 2106 (being the last date for submission of applications for Open Access).

11.2 The financial benefits have been lost in terms of saving of power cost for 31 days. The estimated loss is worked out as follows:

Shendra Plant: As per the bill of July, 2016, Open Access through Power Exchange was sought for 4 MW out of total contract demand of 5 MVA.

   a. Total units 29,14,896 kWh
   b. MSEDCL units: 3,91,532 kWh
   c. OA units: 22,86,858 kWh
   d. Temporary units charged: 3,06,628 kWh
   e. Over injected units: 70,122 kWh

11.3 Temporary units arose due to failure of OPGS power and it could have been avoided if power had been was availed though Power Exchange.

Exchange rate in July, 2016: Average RTC energy rate: Rs. 2.10 per unit
Landed energy rate of Exchange including transmission / wheeling loss, CSS and all other charges= Rs. 4.86 per unit.
Group captive landed rate: Rs. 5.77 per unit
Tariff difference between IEX and OPGS Power: 5.77- 4.86= Rs. 0.91 per unit
Total injected units=22,86,858 kWh
Total financial loss suffered= 0.91 x 22,86,858= Rs. 20,81,040/-

11.4 In addition, additional payment has been made for Temporary units (3,06,628 kWh) billed by MSEDCL over and above MSEDCL’s normal Tariff.

11.5 The Commission may direct MSEDCL to compensate for the above financial loss along with the STOA Application processing fee of Rs. 15,000 and cost of this Petition of Rs. 5,000/-. Compensation towards mental agony and other miscellaneous expenses to the tune of Rs. 1 lakh should be allowed. Penal action under Section 142 and 146 of EA, 2003 for non-compliance of DOA Regulations 2016 should be initiated against MSEDCL.

Commission’s Analysis and Ruling

12. The chronology of the correspondence and events is as follows:


12.2 On 10 June, 2016, anticipating that permission would not be forthcoming on its Application to source power from a Power Exchange, Cosmo applied for Open Access for Group Captive power through OPGS Gujarat Pvt. Ltd. as an alternative, which MSEDCL approved on 23 June, 2016.

12.3 On 24 June, 2016, MSEDCL sought clarifications on the Application dated 7 June, 2016 (for STOA through Power Exchange) as to how the proposed Day-Ahead transaction could be treated as STOA.

12.4 On 27 June, 2016, Cosmo replied stating that purchase of power through Power Exchange amounts to Inter-State Open Access and has to be processed as per the CERC Open Access Regulations.

12.5 On 18 July, 2016, Cosmo requested the Commission to issue Practice Directions to clarify that Open Access can be availed for purchasing power through Power Exchanges.

12.6 On 27 September, 2016, Cosmo filed this Petition to direct MSEDCL to grant Open Access through Power Exchange, issue Practice Directions on the issue and seeking compensation for denial of Open Access.

12.7 On 19 October, 2016, the Commission issued Practice Directions regarding Day-Ahead Open Access for power sourced from Power Exchanges. Thereafter, MSEDCL started issuing such STOA permissions to eligible consumers whose Applications were complete
and who had fulfilled the conditions under the DOA Regulations, 2016.

12.8 On 30 December, 2016, MSEDCL informed Cosmo that STOA through Power Exchanges is being given to eligible applicants and that Cosmo may contact it for any query regarding such permissions.

13. Regulation 12.4 of the DOA Regulations, 2016 provides that, if an Application is incomplete or otherwise deficient, the Nodal Agency (MSEDCL in this case) should communicate it to the Applicant within 5 working days of its receipt. However, MSEDCL raised queries only 17 days later. Moreover, even after Cosmo replied, MSEDCL remained silent: it neither approved the Application, nor did it reject it giving the reasons.

14. Considering the representations received from Cosmo and several others, the Commission issued the following Practice Directions on 19 October, 2016:

“The Commission has received several representations regarding difficulties faced by Open Access Applicants with regard to the following issues raised by a Distribution Licensee:

i) Day-ahead Open Access for sourcing power through Power Exchanges;...

1.1 Day-ahead Open Access for sourcing power from Power Exchanges

In case of sourcing of power through Power Exchanges, ‘Day-ahead Open Access’ appears to have been misinterpreted as meaning the specific Day-ahead products of the Power Exchanges. However, the MERC (Distribution Open Access), Regulations, 2016 (‘DOA Regulations’) and MERC (Transmission Open Access), Regulations, 2016 (‘TOA Regulations’) relating to Day-ahead Open Access do not refer to any specific product of Power Exchanges. Under the DOA Regulations, Day-ahead Open Access refers only to an Application made a day prior to the date of commencement of Short-Term Open Access. The Regulations specify the procedure for such Day-ahead Open Access irrespective of the type or source of supply, whether from Power Exchanges or otherwise. The procedure for Short-Term Open Access (other than Day-ahead) from any source, including Power Exchanges, is also specified in the Regulations.

…These issues have been raised notwithstanding the clear provisions of the TOA and DOA Regulations in this regard. Therefore, in exercise of the powers conferred under Regulation 34 of TOA Regulations and 35 of the DOA Regulations, the Commission is constrained to give the following Practice Directions in the background and facts set out above:

Practice Directions
1. Where an Application is made for Short-Term Open Access (other than one day prior) for availing power from any source, including through Power Exchanges, the Nodal Agency has to follow the procedure specified in Regulation 11.2 of the DOA Regulations and Regulation 11.1 of the TOA Regulations, as the case may be; and the procedure specified in Regulations 11.3 to 11.6 of the DOA Regulations and Regulation 11.2 of the TOA Regulations for Day-ahead Open Access. Day-ahead Open Access refers only to Short-term Open Access applied for a day in advance, and not to any particular type of source or a specific product of a Power Exchange.

2. Where an Application is made for Transmission or Distribution Open Access for sourcing power through Power Exchanges, MSLDC shall provide clearance to the Nodal Agency as per the formats prescribed by the Central Electricity Regulatory Commission, with a copy to the Open Access Applicant…"

15. Thus, although the DOA Regulations, 2016 were clear and unambiguous in this regard, the Commission was constrained to issue these Practices Directions because of the unwarranted mis-interpretation by MSEDCL of ‘Day-Ahead Open Access’ as meaning the specific Day-Ahead products of the Power Exchanges. Moreover, MSEDCL could not explain the delay in communicating to Cosmo the ‘deficiency’ in its Application.

16. In anticipation of a difficulty in obtaining STOA permission for sourcing power from the Power Exchange in time, Cosmo made an alternative Application for sourcing Group Captive power, which was granted by MSEDCL.

17. MSEDCL has stated that, following the issue of the Practice Directions, it is now issuing Open Access permissions for availing power through Power Exchanges. However, since STOA for collective transactions through the Exchange was not given for July, 2016, Cosmo is seeking compensation for the financial loss of the difference between the Group Captive and Power Exchange energy rates. The difference between these rates being Rs. 0.91/unit, the compensation claimed is Rs. 20.81 lakh which Cosmo could otherwise have saved, along with certain other costs and expenses.

18. The Commission observes that the quantum of compensation has been computed by Cosmo on a presumptive basis. For instance, Cosmo has assumed that RTC power would be available at all times from the Power Exchange. Moreover, the sanctity of the assumptions made and the various rates applied in the calculation of compensation cannot be verified, being based on bilateral agreements between Group companies. The Commission also notes that, albeit as a matter of abundant caution, Cosmo also made an alternative Application which was approved.
19. Thus, while MSEDCL’s acts of omission and commission cannot be justified, the Commission is not inclined to direct compensation as claimed by Cosmo. However, MSEDCL shall refund within one month the Fees paid by Cosmo for its Application dated 7 June, 2016 considering the circumstances set out above.

The Petition of M/s Cosmo Films Limited in Case No. 131 of 2016 stands disposed of accordingly.

Sd/-
(Deepak Lad)
Member

Sd/-
(Azeez M. Khan)
Member

(Ashwani Kumar Sinha)
Secretary