

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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Case No. 27 of 2011

In the matter of
Petition of Indo Rama Synthetics (India) Ltd for penalizing MSEDCL for
contravening the provisions of MERC (Standards of Performance of Distribution
Licenses, Period for Giving Supply and Determination of Compensation) Regulations
2005 for not sanctioning standby demand and for violating the Commission's Order in
Case No. 83 of 2010 by not sanctioning Open Access for purchase of power through
Power Exchange.

Shri V.P. Raja, Chairman
Shri Vijay L. Sonavane, Member

M/s Indo Rama Synthetics (India) Ltd.,
A-31, MIDC Industrial Area,
Butibori, Nagpur 441 122

..... Petitioner

Vs.

1. The Superintending Engineer,
Nagpur Rural Circle,
Maharashtra State Electricity Distribution Co Ltd.
Vidyut Bhavan, Ground Floor,
Katoal Road, Nagpur – 441 013

The Chief Engineer (Commercial)
Maharashtra State Electricity Distribution Co Ltd.
Prakashgad, Bandra (East)
Mumbai 400 051.

..... Respondents

ORDER

Dated: 8th December 2011

Indo Rama Synthetics (India) Ltd ('IRSL') filed a Petition under affidavit before the Commission on 11th March, 2011, for penalizing Maharashtra State Electricity Distribution Company Limited ('MSEDCL') under Sections 142, 146, 151 & 151(a) of the Electricity

Act 2003 ('EA 2003') for contravening the provisions of MERC (Standards of Performance of Distribution Licensees, Period for Giving Supply and Determination of Compensation) Regulations, 2005 for not sanctioning standby demand to the Petitioner and violating the Commission's Order dated 1st March 2011 issued in Case No. 83 of 2010 by not sanctioning Open Access to the Petitioner for purchase of power through Power Exchange.

2. IRSL, in its Petition has prayed as follows:

“

- i) *Penalized the Respondent under section 142 of the Act and in addition to this direct the Respondent to pay Rs. 1 lac as penalty for contravening the directions issued in the orders of the Commission.*
- ii) *File a complaint with the appropriate court under the section 151 of the Act for penalizing the Respondent under section 146 of the Act.*
- iii) *Direct the respondent to comply with the order of the Commission and sanction additional contract demand and open access to the applicant as per applicants request.*
- iv) *Issue any other direction as Commission deems fit as per facts & circumstances of the case.”*

3. IRSL in its Petition, submitted as follows:

- i. IRSL is a consumer of MSEDCL, having contract demand of 7000 kVA and connected on 220 kV voltage. Also, IRSL is having captive generating plant of 82.5 MW.
- ii. The Commission in its Order in Case No. 55 and 56 of 2003, while deciding issue No. 4 i.e. additional demand charges in respect of CPP holders clearly ruled that CPP may demand for additional sanctioned standby demand to be utilized during his maintenance shutdowns or during any breakdown of the generating plant. The Commission has decided synchronization with the grid as eligibility criteria for such CPP holders to avail this facility.
- iii. On 15th April 2009, IRSL applied to the Superintending Engineer, MSEDCL, Nagpur Rural Circle for a standby demand of 15000 kVA over and above existing 7 MVA contract demand. As directed by the MSEDCL, on 18th October 2010, IRSL has resubmitted the application for standby demand in 'A1 application format' and paid application processing charges of Rs. 2000/- on 21st October 2010.

- iv. IRSL has entered into a connection agreement on 20th December 2010 with Maharashtra State Electricity Transmission Company Limited ('MSETCL') for connecting its 82.5 MW generation with injection of 55 MW power to the 220 kV grid.
- v. IRSL sent reminder letter to the Superintending Engineer, Nagpur Rural Circle and Chief Engineer, (Commercial) MSEDCL for sanction of 15000 kVA stand by demand on 14th January 2011 and 10th February 2011 respectively. However no reply from MSEDCL in this regards was received. Therefore, it submitted that non-sanctioning of stand by demand for CPP amounts to violation of the Commission's various Orders regarding CPP policy.
- vi. MSEDCL has also violated the Standards of Performance Regulations by not sanctioning demand as per application of the Petitioner within the time stipulated in MERC (Standard of Performance of Distribution Licensees, Period of giving supply and determination of Compensation) Regulations, 2005. The Regulation 4.1 of the above referred Regulations provides for one month period for giving supply (in present case, sanction of additional demand) from date of application. As application for standby demand was submitted on 18th October 2010 along with requisite application processing fees. Non-sanctioning of standby demand till date leads to violation of Regulation 4.1 of above referred Regulations.
- vii. IRSL applied for Open Access for purchase of power to the tune of 10 MW through Power Exchange. Since it was not granted by MSEDCL, IRSL approached the Hon'ble Commission in the matter of Case No. 83 of 2010 to issue directions in this regards. The Commission vide Order dated 1st March 2011 in Case No. 83 of 2010 directed MSEDCL to grant Open Access to IRSL for purchase 10 MW of power from Indian Energy Exchange (IEX). However, said Order of the Commission is not complied with.
- viii. By not complying with different Orders and provisions of Regulations issued by the Commission under the EA 2003, the Superintending Engineer, MSEDCL committed an offence punishable under Section 142 of the EA 2003 and a criminal offence which is punishable under Sections 146, 151 and 151 (A) of the EA 2003.

4. The Commission, vide Notice dated 22nd March 2011, fixed a hearing in the matter on 11th April 2011 and directed the Petitioner to serve a copy of the Petition on the Respondent and Authorized Consumer Representatives.

5. The hearing in the matter was held on 11th April 2011. Shri. R. B. Goenka and Shri. Alok Banerjee, appeared on behalf of the Petitioner. Shri. Ravi Prakash, Advocate along with Shri. D. H. Kulkarni, Executive Engineer appeared on behalf of MSEDCL. During the hearing, Petitioner submitted that, there are two main issues involved in the Petition (i)

Non-sanctioning of 15 MVA additional standby demand and hence violation of the Commission's Order dated 8th September 2004 in Case No 55 & 56 of 2003 related to Captive Power Plants and MERC (SOP) Regulations 2005, (ii) Not granting of Open Access and hence non-compliance of the Commission's Order dated 1st March 2011 in Case No. 83 of 2010.

Counsel for MSEDCL submitted that MSEDCL filed an appeal against the above said Order of the Commission in Case No. 83 of 2010 before the Hon. Appellate Tribunal for Electricity ("APTEL / ATE") bearing Appeal No. 36 of 2011 wherein the issue of jurisdiction of the Commission is to be decided and final hearing in the matter is scheduled by Hon'ble ATE on 13th April 2011, therefore he requested the Commission, not to proceed further in the matter. Hence, the hearing stood over to 4th May 2011.

6. The matter further stood adjourned to various dates as MSEDCL's appeal was pending before the Hon'ble APTEL in Appeal No 36 of 2011.

7. By its Judgment dated 28th July 2011 in Appeal No. 36 of 2011 the Hon'ble APTEL dismissed MSEDCL's appeal and *inter alia* held as follows:

"46. The dispute relating to the Open Access would be dealt only by the Commission as the Act clearly provides that the Commission must ensure fulfillment of the mandate to provide such Open Access which would include issuing directions to grant Open Access which has rightly been given in the impugned order. This, jurisdiction vested with the Commission can not be usurped or taken away by the Consumer Grievance Redressal Forum. In other words, the Consumer Grievance Redressal Forum established by the Distribution Licensee will have no jurisdiction to entertain or decide a dispute where the statutory mandate to provide Open Access has been violated by the Distribution Licensee. Therefore, the dispute in question can be resolved by the State Commission alone and not by the Consumer Grievance Forum. As such, there is no infirmity in the impugned order."

8. During the next hearing held on 17th August 2011, the Petitioner submitted that due to delay in grant of Open Access, IRSL has to bear a loss of Rs. 7.6 Cr. It further submitted that, MSEDCL has also not sanctioned additional standby demand as per the CPP policy decided by the Commission in its Order dated 8th September 2004 in Case No 55 & 56 of 2003.

9. Advocate of the MSEDCL informed the Commission that the procedure for granting Open Access to IRSL is in progress and the Open Access will be granted within seven working days. As regards additional standby demand, it was submitted that, even though CPP policy allows for grant of additional demand to Captive Power Plants, it will be in contradiction to the provision of reducing sanctioned demand of Open Access consumers under MERC (Distribution Open Access) Regulations, 2005.

10. During the hearing the Commission directed MSEDCL to submit compliance of its assurance of granting Open Access to IRSL within seven working days and also to submit its written submission regarding sanctioning of additional standby demand. IRSL was directed to submit detailed computation of net loss incurred to them due to non-sanction of Open Access. With these directives, the Commission scheduled next hearing in the matter on 15th September 2011.

11. Accordingly, next hearing in the matter was held on 15th September 2011. During the hearing MSEDCL submitted that Open Access permission to IRSL has been issued on 25th August 2011. However, during the hearing the Petitioner pointed out that a number of conditions were imposed by MSEDCL for granting open access and objected to the various clauses of Open Access Permission such as reduction / termination of contract demand, levy of four times demand charges for using MSEDCL's power etc. It was submitted that all these clauses are applicable for Distribution Open Access whereas the Petitioner has applied for Transmission Open Access and hence Open Access should be allowed as per MERC (Transmission Open Access) Regulations, 2005. The Petitioner further submitted that MSEDCL has wrongly linked the issue of additional standby for Captive Power Plant (CPP) to Open Access standby. It was clarified that the Petitioner does not require any standby for Open Access, but requested for additional standby for its CPP unit as per CPP Order of the Commission.

During the hearing, MSEDCL sought additional time for submitting its say in writing regarding grant of additional standby demand for CPP. Accordingly, the Commission directed MSEDCL to submit the same along with para wise reply to the additional submission made by the Petitioner within 10 days and also directed MSEDCL to review all the Open Access Permissions issued by them and to take corrective actions to rectify the clauses which are not in line with the Electricity Act. The matter stood over to 29th September 2011.

12. IRSL vide its letter dated 26th September 2011 informed the Commission that MSEDCL was yet to reply regarding sanction of standby contract demand as well as alteration in the conditions of Open Access permission to purchase power from Power Exchanges which are not in the framework of Regulations.

13. During the final hearing held in the matter on 29th September 2011, MSEDCL submitted its written submissions regarding granting of additional stand by demand for Captive Power Plant and para wise reply to the additional submission made by the Petitioner. The Petitioner has submitted that it has received letter from MSEDCL withdrawing clauses 14 and 15 (related to stand by support by distribution licensee to Open Access Consumers and levy of four times demand charges for the same) of the Open Access permission letter. However, IRSL requested the Commission to direct MSEDCL to sanction additional standby demand for its Captive Power Plant and not to terminate its contract demand on approval of Open Access. Both the parties have submitted their views on the

possibilities of providing compensation for the loss incurred by IRSL under the Electricity Act 2003.

During the hearing, the Commission directed both the parties to submit their additional written submission if any in the matter within a week, with copies to each other and to the Authorized Consumer Representatives.

14. Accordingly, MSEDCL on 11th October, 2011 submitted its consolidated submission in the present matter wherein it submitted as follows:

- a. It is necessary to ascertain the genuineness of the CPP status of the IRSL. MSEDCL enclosed the information received from Maharashtra State Load Dispatch Center (MSLDC) regarding the capacity booked by IRSL for transmission open access for the period of April 2010 to March 2011.
- b. During the Financial Year 2010-11 IRSL has sought transmission Open Access for 49 MW on RTC (Round The Clock) basis for the whole year and has actually sold its power (round about 48 MUs) to various entities such as IEX, R-Infra, KRSL, NDMC, BESEYM (DTL), etc. Thus more than 60% of total installed capacity was used for sale. As per the Electricity Rules, 2005, CPP holder cannot sell more than 49% of total generated power, otherwise it will lose its captive status and will be treated as a generating company only.
- c. IRSL has entered into a connection agreement with MSETCL on 20th December 2010 for connecting its 82.5 MW generation with injection of 55 MW power to the 220 kV Grid. Therefore, MSEDCL requested that the Commission may ascertain the genuineness of the CPP status of the IRSL before consideration of their claims on that basis.
- d. Regarding standby demand it submitted that the following events will make it abundantly clear that the standby demand request of the IRSL is not at all distinct from the issue of contract demand:
 - i. On 15th April 2009, IRSL made an application for standby demand for its CPP Units.
 - ii. On 14th May 2009, MSEDCL sought certain clarification on the said application from IRSL.
 - iii. On 8th September 2009, IRSL sought Open Access from MSEDCL.
 - iv. On 24th September 2009, MSEDCL granted Open Access to the IRSL till 31st August 2010.
 - v. On 4th October 2010, the IRSL provided the clarification sought by MSEDCL on 14th May 2009.

IRSL is raising this issue of Standby demand only to defeat the provisions of the MERC (Distribution Open Access) Regulations, 2005, which mandates the reduction of contract demand to the extent of the grant of Open Access. This is evident from the fact that IRSL had never pursued their demand for standby power, which they demanded from MSEDCL on 15.04.2009, till the filing of this Petition i.e. after almost 1 ½ years. It may be pertinent to note that when MSEDCL had sanctioned Open Access on 24.09.2009, the contract demand had not been reduced due to which IRSL never pursued the standby support application.

It is also important to note that the manner in which the Petitioner is treating the CPP and the main industry as distinct entities is not permissible. The generation facility is an integral part of the main industry and has no separate existence. Therefore, once Open Access is granted under the Distribution Open Access Regulations 2005 (which came after the 2004 CPP order being relied on by the petitioner), the licensee has every right to reduce the contract demand of the entity.

- e. IRSL, in its Petition, immediate subsequent para 11 has clearly stated that the IRSL has the option of getting the required power (standby support) for maintenance shutdown through power exchange. Therefore, it is abundantly clear from the bare perusal of the clear and unambiguous admissions made by IRSL that it is the standby support requirement which is being sought through Open Access. Therefore, to contend that IRSL has the right to seek standby supply from MSEDCL as well as Open Access for sourcing power through power exchange, and that these two are distinct issues, is incorrect.

- f. In cases such as the present, the petitioner has no vested right to seek Open Access for sourcing power for standby support from an outside entity and at the same time require the distribution licensee to provide standby support for the same transaction. The Distribution Open Access Regulations require the reduction of contract demand specifically so that the distribution licensee is not burdened with the obligation to supply power to those entities which have left the system through Open Access. Therefore, if the clear provisions of the Regulations are permitted to be defeated through such ingenious methods as employed by IRSL, it will only result in overburdening of the licensee and in disadvantage to the ordinary consumer. In any event, not only the Distribution Open Access Regulations subsequent in time to the CPP Order of 2004, but also, the Regulations have statutory force and will override the inconsistent provisions of any other Order or direction. This is a position of law affirmed by the Hon'ble Supreme Court in a catena of judgments. Further, it is pertinent to note here that in the present case IRSL has got the Open Access approval and therefore, their demand for standby in the present case is completely illegal and not permissible in law.

g. Regarding compensation for losses incurred by IRSL, it submitted that the IRSL's submissions of alleged losses suffered are as a result of delay in Open Access sanction when the matter was pending adjudication by the Hon'ble Appellate Tribunal. It also submitted that the reliance placed by IRSL on Section 147 under the Electricity Act 2003 to seek compensation from MSEDCL is misplaced since the said compensation is in the nature of a civil liability (if any) which will have to be adjudicated by the Civil Court. There is no enabling provision under which the State Electricity Regulatory Commission is empowered to direct payment of compensation by the distribution licensee. In the event compensation is at all payable, the same will have to be adjudicated by a Civil Court.

15. On 18th October 2011, IRSL submitted its written submission wherein it is submitted as follows:

- a. On CPP status it submitted that IRSL is having generating capacity of 82.5 MW out of which 52.5 MW generation is from furnace oil based generating set. Due to heavy rise in the furnace oil prices running of such sets is very costly. Therefore, IRSL is running only 30 MW coal based generation for its captive consumption and utilizing about 90% of power generated from it. Therefore, IRSL satisfies both the conditions of CPP i.e. 100% ownership of CPP and consuming about 90% aggregate electricity generated on annual basis.
- b. Regarding standby sanction of demand of 15 MW it submitted that IRSL has applied for sanction of standby demand being a CPP and with respect to the Commission's Order in Case No. 55, 56 of 2003 which has been mentioned in each and every subsequent Tariff Order of the Commission. It submitted that the Commission has provided in its Open Access order to provide standby support at temporary connection charges but it is not sanction of standby contract demand. MSEDCL cannot sanction standby contract demand through Open Access.
- c. Because of not sanctioning long pending standby demand application, it requested to MSEDCL to give at least Open Access so that the high cost diesel consumption could have been saved but it did not materialize and IRSL incurred huge losses.
- d. IRSL's load has increased and to cater to its requirement of 45 MW, IRSL needed to take 30 MW from own Coal based generating unit, 6 MW from MSEDCL (already agreed contract demand of 7 MVA) and balance 10 MW from Power Exchange through Open Access. IRSL needed sanction of standby contract demand during shutdown period of CPP.
- e. Regarding termination of contract demand it submitted that in draft Open Access Regulations the Commission specified that reduction of contract demand is not necessary when power is to be purchased through Power Exchanges. In case MSEDCL is very keen in reducing contract demand, IRSL may request MSEDCL to

increase his contract demand from 7 to 17 MVA and then reduce the same by 10 MVA which shall be purchased through Open Access. But such exercise will unnecessarily increase paper work and will be time consuming. Therefore, it is requested to direct MSEDCL to not to reduce contract demand of the IRSL on sanction of Open Access.

f. On issue of jurisdiction of providing compensation, IRSL submitted that in case of consumer disputes, the power for providing compensation of direct losses to the applicant has been provided to CGRF. The Commission may adjudicate dispute between licensee and generating company as per Section 86 (1)(f) of the Electricity Act, 2003.

16. Having heard the parties and after considering all the documents available on record, the Commission is of the view that the reliefs sought by the Petitioner, IRSL can be broadly classified in to following two issues :

- a. Sanctioning of additional standby demand of 15 MVA for its CPP units.
- b. Sanction of 10 MW Open Access as per Commission's Order dated 1st March 2011 in Case No 83 of 2010.

The Commission's rulings on above issues are given below:

a. Sanctioning of additional standby demand of 15 MVA for its CPP units.

17. MSEDCL in its written submission dated 10th October 2011 requested that the Commission may ascertain the genuineness of the CPP status of the IRSL before consideration of its claims on that basis. MSEDCL submitted that IRSL has sought transmission Open Access for 49 MW on RTC basis for the whole year, and has actually sold its power round about 48 MUs to various entities during the Financial Year 2010-11. Thus more than 60% of total installed capacity (82.5 MW) was used for sale. As per the Electricity Rules, 2005, CPP holder cannot sell more than 49% of total generated power, otherwise it will lose its captive status and will be treated as a generating company only.

18. In view of the contentions raised by the MSEDCL as above, it becomes relevant to quote the provisions of the Indian Electricity Rules, 2005 which stipulates eligibility criteria for availing CPP status:

"3. Requirements of Captive Generating Plant.

(1) No power plant shall qualify as a 'captive generating plant' under section 9 read with clause (8) of section 2 of the Act unless

(a) in case of power plant

*(i) not less than twenty six percent of the ownership is held by the captive user(s),
and*

*(ii) not less than fifty one percent of the aggregate electricity generated in such plant, determined on an annual basis, is consumed for the captive use:
.....”*

Above Rules make it clear that to avail CPP status above two conditions need to be satisfied by a generating plant.

19. In response to the contentions raised by MSEDCL regarding CPP status, IRSL on affidavit dated 19th September 2011 clarified that out of total generation capacity of 82.5 MW, 52.2 MW is from furnace oil based generation sets. As running of such sets becomes costly due to heavy rise in furnace oil prices, IRSL is running only 30 MW coal based generation for its captive consumptions. In the said affidavit it has been clearly mentioned that IRSL has 100% ownership of CPP and also consuming about 90% of aggregate electricity generated on annual basis and hence IRSL qualifies both the conditions to avail the status of CPP.

20. In case one relies upon the above submission made by the IRSL, on affidavit, IRSL qualifies for CPP status. Further, as per MSEDCL’s own submission, during FY 2010-11 out of its total generating capacity of 82.5 MW, IRSL scheduled 49 MW on RTC basis for sale to third party which results into sales of 48 MU in that year. As per Rules reproduced in Para 18 above, 51% of aggregate electricity generated on annual basis i.e. 51% of aggregate energy generated in terms of MUs needs to be self consumed for availing CPP Status. If on the basis of MSEDCL submission, energy generation in a year on normative basis is calculated (49 MW x 0.8 x 365 x 24 / 1000) it came around 343 MU whereas sale to third party as claimed by MSEDCL is 48 MU which accounts for only 14% total normative generation on annual basis. Thus, on the basis of submission of IRSL on affidavit and the information provided by MSEDCL in its submission, it is clear that IRSL satisfies both the conditions to avail status of Captive Power Plant.

21. Having stated that IRSL is having CPP status, the Orders of this Commission on CPPs will be squarely applicable to CPP units of IRSL. The Commission through its Order dated 8th September 2004 in Case No 55 and 56 of 2003 on the issue of standby supply to CPP, ruled as follows:

“1.36 Applicability of Additional Demand Charges shall be as follows:

- The Additional Demand Charges should be charged to only those CPP Holders whose Captive Power Plants are synchronised with the grid.*
- In line with the MERC Tariff Orders, HT consumers having captive generation facilities synchronised with the grid will pay Additional Demand Charges of Rs.20 per kVA per month only on the Standby component, and only on the quantum, if any, in excess of the consumer’s Contract Demand.*
-*

The above provision of standby supply to CPP units has been made applicable in all the subsequent Tariff Orders issued by the Commission. The relevant part of the MSEDCL's Tariff Schedule approved by the Commission vide Order dated 12th September 2010 is reproduced below:

"1. HT I : HT- Industry

.....
Note:

- i. High Tension Industrial consumers having captive generation facility synchronised with the grid, will pay additional demand charges of Rs. 20/kVA/Month only on the extent of standby contract demand component and not on the entire Contract Demand (Standby Contract demand component).*
- ii. Standby Charges will be levied on such consumers on the standby component, only if the consumer's demand exceeds the Contract Demand.*
- iii. This additional Demand Charge will not be applicable, if there is no standby demand & the Captive Unit is synchronised with the Grid only for the export of power."*

22. As IRSL has already synchronised its captive generating facility with the grid at 220 kV level after signing a connection agreement with MSETCL on 20th December 2010, IRSL has become eligible for additional standby demand for its CPP unit and therefore, the Commission directs MSEDCL to sanction the same to IRSL without any further delay.

b. Sanction of 10 MW Open Access as per Commission's Order dated 1st March 2011 in Case No 83 of 2010

23. The Commission through its Order dated 1st March 2011 in the matter of Case No 83 of 2010 directed MSEDCL to grant Open Access to IRSL so that it can purchase 10 MW of power from Indian Energy Exchange (IEX).

24. MSEDCL had filed an appeal against the said Order of the Commission on the issue of jurisdiction of the Commission. Hon. Appellate Tribunal in its Judgment dated 28th July 2011 while dismissing the appeal, upheld the jurisdiction of the MERC as follows:

"46. The dispute relating to the Open Access would be dealt only by the Commission as the Act clearly provides that the Commission must ensure fulfillment of the mandate to provide such Open Access which would include issuing directions to grant Open Access which has rightly been given in the impugned order. This, jurisdiction vested with the Commission can not be usurped or taken away by the Consumer Grievance Redressal Forum. In other words, the Consumer Grievance Redressal Forum established by the Distribution Licensee will have no jurisdiction to entertain or decide a dispute where the statutory mandate to provide Open Access has been violated by the Distribution Licensee. Therefore, the dispute in question can be resolved by the State Commission

alone and not by the Consumer Grievance Forum. As such, there is no infirmity in the impugned order.”

25. Subsequent to the above Judgment of Hon. Appellate Tribunal, during the hearing held in the present matter on 17th August 2011, it was informed by MSEDCL that the process of granting of Open Access to IRSL was going on. Thereafter, as directed by the Commission during that hearing, on 25th August 2011 MSEDCL has granted Open Access to IRSL for purchase of 10 MW of power from IEX.

26. However, IRSL has objected to some of the conditions imposed by MSEDCL while granting Open Access. During the hearing held on 15th September 2011 in the present matter, the Commission directed MSEDCL to review all Open Access permissions issued by it to rectify the clauses which are not permissible under the Electricity Act, 2003. Accordingly, MSEDCL has withdrawn the conditions related to standby support to Open Access consumers and the levy of four times demand charges for the same (clause no. 14 and 15 of the Open Access permission granted to IRSL) which was not in consonance with the Commission’s directives on standby support to open Access consumers.

27. After withdrawal of above said clause no.s 14 and 15, IRSL still objected to the condition of termination of contract demand on approval of Open Access. For supporting its claim, IRSL has submitted that it has applied for Transmission Open Access and hence the Regulation pertaining to termination of contract demand which is a part of MERC (Distribution Open Access) Regulations, 2005 is not applicable to it. Further it has been submitted that, due to the peculiar nature of day ahead transactions involved in purchasing of power from Power Exchanges, MERC in its draft MERC (Distribution Open Access) Regulations, 2011 has exempted the reduction of contract demand for the consumers availing Open Access from Power Exchanges.

28. As regards the issue of applicability of Open Access Regulations, the relevant provision of MERC (Transmission Open Access) Regulations, 2005 is reproduced below:

“4.2 A consumer shall be eligible to apply for open access to an intra-state transmission system up on such open access being introduced and specified by the Commission in accordance with the provisions of sub-section (2) of section 42 of the Act:

Provided that such consumer shall be also subject to such conditions as may be specified in the regulations made by the Commission in that behalf, in addition to the conditions specified in these Regulations.”(emphasis added)

The above proviso makes it clear that a consumer availing Transmission Open Access will be subject to the conditions of the Transmission Open Access Regulations and the

Regulations framed by the Commission under Section 42 of the Electricity Act 2003, in present case MERC (Distribution Open Access) Regulations, 2005. Therefore, the Commission rules that even though IRSL has applied for Transmission Open Access, in addition to MERC (Transmission Open Access) Regulations 2005, all the conditions of MERC (Distribution Open Access) Regulations, 2005 will be applicable to it.

29. Regarding termination of contract demand on grant of Open Access for purchase of power from Power Exchanges is concerned, the Commission has already proposed modification in existing Regulations for taking care of peculiar nature of day ahead transactions involved in procuring power from Power Exchanges. However, the said MERC (Distribution Open Access) Regulations, 2010 is still at draft stage. The Commission will finalize this issue at the time of final Notification of the above said draft Regulations

30. In view of the above the Commission is of the opinion that by granting Open Access permission on 25th August 2011 to IRSL for 10 MW of power purchase from IEX and subsequent withdrawal of the clauses of the said permission which was not in accordance with the Electricity Act 2003, MSEDCL has complied with the Commission's directives issued in Order dated 1st March 2011 in the matter of Case No 83 of 2010.

31. As regards MSEDCL's claim that once Open Access is granted to IRSL, it does not have right to avail additional standby demand for its CPP unit is concerned, the Commission is of the opinion that availing standby for CPP units as per Orders of the Commission and availing Open Access as a statutory right provided by the Electricity Act 2003 are two distinct issues and cannot be interrelated with each other. IRSL being eligible for availing Captive Power Plant status and its CPP units are synchronized with the grid, IRSL is eligible to avail standby demand for its CPP units at the rate mentioned in Tariff Order applicable for MSEDCL area. Also, IRSL is a consumer of MSEDCL having contract demand of 7MVA which makes it eligible (contract demand is more than 1 MVA) for availing Open Access under Section 42 (2) of the Electricity Act 2003. Therefore, the Commission directs MSEDCL not to interrelate these two distinct issues and sanction standby demand for CPP units of IRSL.

32. In view of the above findings, as regards the first prayer to penalize the Respondent under section 142 of the Act, no such action is required to be taken. Consequently, the second prayer to file complaint with civil court under section 151 is infructuous. Directions have already been issued in this Order in terms of the third prayer.

33. The parties were at loggerhead over the issues raised in the present Petition for some time. An appeal was even pending before the Hon'ble Appellate Tribunal. Certain provisions need clarity and finalization through notification of Open Access Regulations as indicated above. In view of the foregoing, the Commission is not inclined to entertain any plea for grant of indirect losses; compensation etc.

With above, Case No. 27 of 2011 stands disposed of.

Sd/-
(Vijay L. Sonavane)
Member

Sd/-
(V. P. Raja)
Chairman