



Delhi Electricity Regulatory Commission
Viniyamak Bhawan, 'C' Block, Shivalik, Malviya Nagar, New Delhi – 17.

No. F.11(1770)/DERC/2019-20

Case Ref. No. 12/2020

In Re: Dispute referred for resolution u/S 16(2) of DERC (Terms and Conditions for Open Access) Regulations, 2005 regarding open access to MES as a deemed licensee in TPDDL area of supply

Military Engineer Services

...Aggrieved Party

Vs.

Tata Power Delhi Distribution Ltd.

State Load Despatch Centre

...Respondents

Coram:

Hon'ble Sh. Justice S S Chauhan, Chairperson

Hon'ble Sh. A.K. Singhal, Member

Hon'ble Dr. A. K.Ambasht, Member

ORDER

(Date of Order: 06.01.2021)

1. The matter has been referred to DERC by SLDC under Regulation 16(2) of DERC Open Access Regulations, 2005 for resolution of the dispute between MES and TPDDL about supply of electricity by MES in TPDDL licensed area through open access. The background of the case is that MES, which is a deemed licensee under the Electricity Act, 2003, has sought NOC for intra- state short term open access to serve its installation (DRDO in Timarpur) in TPDDL area of supply, which has not been granted by TPDDL on the ground that MES cannot act as distribution licensee in TPDDL licensed area of supply. On the other hand, MES has insisted that as a deemed licensee, no specific area of operation is assigned to it and therefore, it may operate in TPDDL area. MES has equated itself with Railways, which has been allowed open access as a deemed licensee.
2. It is to be noted that during the course of hearing MES had made an application for Open Access in respect of entire area of Delhi however, subsequently MES

WEAR MASK

WASH HANDS REGULARLY

MAINTAIN SOCIAL DISTANCING

rescinded from its claim and made the submission that now it wants to restrict its relief for open access in the area of supply TPDDL only.

PETITIONER'S SUBMISSION

3. MES is a deemed licensee under the third proviso to the Section 14 of the Electricity Act, 2003 and is permitted to act as deemed licensee in any of the establishment. Further, it is stated that TPDDL is discriminating between two departments of Govt. of India i.e. MES and Northern Railways, having same status of deemed licensee under third proviso to Section 14 of the Electricity Act, 2003. TPDDL issued NOC to Northern Railways for open access as deemed licensee but is not providing NOC to MES for open access as deemed licensee for DRDO Timarpur establishment.
4. Section 2(5)(a)(ii) of the Electricity Act, 2003 defines the term 'appropriate Government' as under:

"In relation to any inter State generation, transmission, trading or supply of electricity and with respect to any mines, oil-fields railways national highways, airports telegraphs broadcasting stations and any works of defence, dockyard, nuclear power installations."

From the above, it is evident that MES being a Central Government Department under Ministry of Defence qualifies as 'appropriate government.'
5. Further, note may be taken of the fact that the Respondent No. 1 TPDDL is supplying electricity to the multiple consumers at Delhi Cantonment area i.e. Gopinath Baazar Market area, Sadar Baazar Market area, and 13 BRD Air Force Station Technical areas which are not covered under designated 'area of supply', whereas opposing MES to act in the same way. Also TPDDL highlighted Delhi SLDC website, which states that "MES is a Distribution licensee in Delhi catering the load of Military Cantonment Area, Delhi". In this connection, it is submitted that the above description does not bind MES to act as Deemed licensee in R&D Timarpur Defence area as there are multiple Military Cantonment area, Delhi". In this connection, it is submitted that the above description does not bind MES to act as Deemed licensee in R&D Timarpur Defence area as there are multiple Military Cantonment/Defence area in Delhi.
6. It is relevant to mention that the comparison of judgement dated 25th April 2014 in Civil Appeal No.5479 of 2013 M/s Sesa Sterlite Ltd. Vs. Orissa Electricity Regulatory Commission & Others with the present case is not appropriate as MES is having its own 11KV distribution network at R&D Timarpur Defence area with installed transformers of capacity 30.64 MVA and 13.25 KM electrical distribution

HT System for distribution of electric supply to its DRDO establishment which includes DRDO office complex, guest rooms and residential complexes. Further, from the above judgement may be taken of:

"43. We are in agreement with the aforesaid rationale in the impugned order of Appellate Tribunal as that is the only manner in which the two Acts can be harmoniously construed. To recapitulate briefly, in the present case no doubt by virtue of the status of a developer in the SEZ area, the Appellant is also treated as deemed Distribution Licensee. However, with this, it only gets exemption from specifically applying for licence under Section 14 of the Act. In order to avail further benefits under the Act, the Appellant is also required to show that it is in fact having distribution system and has number of consumers to whom it is supplying the electricity. That is not the case here. For its own plant only, it is getting the electricity from Sterlite Ltd. For which it has entered into PPA. We have to keep in mind the object and scheme of SEZ area. This is evident from a collective reading of the various provisions of the SEZ Act viz Section 2(g)(j)(za)(zc), Section 3,4,11,12,13, and 15. There can be a Section Specific SEZ with Several Units i.e for IT, Mineral Based industries etc. but instances of single unit SEZ like in the present case of the Appellant may be rare. The notification dated 03.03.2010 providing for the "Developer" of SEZ being deemed as a 'Distribution Licensee" was issued keeping in view the concept of Multi Unit SEZs and will apply only to such cases in which the Developer is supplying the power to multiple Units in the SEZ. The said Notification will not apply to a Developer like the Appellant who has established the SEZ only for itself."

7. It would be appropriate to compare MES & Indian Railways having 'Deemed Licensee' status under Section 14 of the Electricity Act, 2003 being Central Government Departments as the Appellant (M/s Seas Sterlite Ltd.) in above case is a developer in SEZ area who intend to utilize the status of 'Deemed Licensee' for its SEZ only and do not have multiple SEZ units whereas MES is a Central Govt. Department under Ministry of Defence and having its own distribution network at R&D Timarpur Defence area with installed transformers of capacity 30.64MVA and 13.25KM of electrical distribution HT system for distribution of electric supply to its DRDO establishment which includes DRDO office complexes CCE R&D offices, MES Offices, guest rooms and residential complexes.

8. It is relevant to mention that the Hon'ble CERC Order dated 05.11.2015 in the matter of 'The Indian Railway vs. others' in Petition No. 197/MP/2015 clarified under para 52(b) that;

"The Petitioner (Indian Railway) is deemed licensee under third proviso to Section 14 of the Electricity Act and no separate declaration to that effect is required from the Appropriate Commission".

9. The Order is relevant in the present case as MES at R&D Timarpur is also a Deemed Licensee under third proviso to Section 14 of the Electricity Act, 2003. Hon'ble DERC letter dated 19.03.2018 is also of relevance in present case as the Hon'ble DERC allowed Northern Railways to operate as Deemed Licensee and draw power through open access for the purpose of transaction load and also cleared that "In future, Northern Railways, if so desire, may switch and operate as deemed licensee for residential and commercial load also". It is submitted that MES is similarly footed as Indian Railways in the eyes of law with reference to Section 14 of Electricity Act, 2003.

10. The order dated 31.03.2007 passed by the Commission for allocation of 50 MW power was for MES Delhi Cantt only and is not relevant in the present case. MES contracted with PTC India Limited for purchase of power to meet the variation in demand at Delhi Cantt to avoid over drawl or under drawl to meet strict DSM guidelines. The average load of MES at Delhi Cantt is 26MW whereas the availability from PPAs is 45MW and hence, MES is having average surplus of 19 MW. Considering the average surplus power, allocation from PPCL-I and PPCL-III will be utilized for meeting additional load demand of R&D Timarpur Defence area after grant of STOA as Deemed Licensee and any variation shall be met through IEX.

11. That Rs. 74.95 crores paid by MES for the past three years till Feb2020 as submitted by the Respondent No. 1 is a part of public money and it is in the public interest to save public money to the extent possible and MES is trying to save public/tax payer's money.

12. That reassignment of PPAs was done by the Commission vide its Order dated 31.03.2007 based on load profile of the DISCOMs at that time. Further note may be taken on the fact that many consumers including Northern Railways has been allowed Open Access by Respondent No. 1 (TPDDL) as per DERC (Terms and Conditions for Open Access) Regulations, 2005 and no such claim or reservation

has been sought by TPDDL of surplus power from these consumers. Hence., the law of land should prevail and any discrimination should not be allowed between consumers of equal status i.e. Northern Railways and MES being Central Government Department.

13. Further, with reference to Section 22 (1) of the Delhi Electricity Reform Act, 2000, the electrical distribution network including enormous HT network, individual consumer billing and realization is being done by MES at R&D Timarpur Defence are and is complying all the provisions of Delhi Electricity Reform Act, 2000 for being a Deemed Licensee.
14. It is relevant to highlight Delhi SLDC's view in the present case that TPDDL may allow MES to avail Open Access and Deemed Licensee in the area of TPDDL, which is in the line with earlier decision taken by DERC in the matter of Northern Railways. Further, during the hearing before the Commission on 26.10.2020, Delhi SLDC confirmed that MES is with surplus power and meeting its peak demand proficiently.
15. That DERC Order dated 3.03.2007 is irrelevant and does not pertain to the present case and BTPS history and allocation of power to MES does not derived any conclusion or relevance to the present case, as the Basic dispute between the Petitioner and the Respondent No. 1 is only whether MES should be allowed STOA as Deemed Licensee or STOA as normal consumer.
16. Further, Badarpur TPS plant has been decommissioned by the Hon'ble NGT based on the recommendation of DPCC. Hence discussion on allocation of power from BTPS is irrelevant and out of contention from the present case.
17. It is brought out that as per Section 8.4.2 of the National Tariff Policy. The state Governments may make such assignments taking care of different load profile of the distribution companies so that retail tariff are uniform in the State for different categories of consumers." Further note may be taken of the provision of Section 11(d) of Delhi Reforms Act, 2000 that the reforms aims "to promote competition, efficiency and economy in the activities of the electricity industry". This can only be achieved when the levelized ex-bus rate of all DISCOMs operating in Delhi as almost same.

18. In this connection it is submitted that the gross power purchase cost of electricity received by TPDDL is Rs. 4.04/kWh (as per TPDDL tariff order 2019-20) and gross power purchase cost of electricity received by MES is Rs. 6.06/kWh.
19. That TPDDL allows Northern Railways to avail Open Access but denied MES for open access as Deemed Licensee even though the load of MES at DRDO Timarpur Defence area is more than Northern Railways MES should be allowed STOA as Deemed Licensee based on the following:
20. MES at R&D Timarpur Defence area is a deemed Licensee under section 14 OF THE Electricity Act, 2003 like Northern Railways. MES being Central Government Department under Ministry of Defence granted 'Deemed Licensee' status by Ministry of Power, Govt. of India in consultation with Ministry of Law under third proviso to Section 14 of Electricity Act, 2003.
21. As per DERC (Terms and Conditions for Open Access) Regulations, 2005, consumers for Open Access) Regulations, 2005, consumers having a load of 1 MW and above are eligible to opt open access and as per para 2(1)(f) of the above Regulation, open access consumer may be a 'Distribution Licensee' also. Northern Railways allowed to avail open access by TPDDL based on the 'Deemed Licensee' status issued by Hon'ble CERC Order dated 05.11.2015 under Section 14 of the Electricity Act, 2003 being Central Govt. Department.
22. MES is responsible for erection, operation, and maintenance of all Defence Services installations for the supply of electricity under Section 52 of Regulations for MES< 1968 and fulfilling the duty of a distribution licensee to develop and maintain an efficient, co-ordinated and economical distribution system in his area of supply under Section 42 of Electricity Act, 2003 including billing of individual Defence consumers.
23. MES is having its own 11KV distribution network at R&D Timarpur Defence area for distribution of electricity to its DRDO establishment including DRDO office complex, guest rooms and residential complex.
24. The Section 52 of the Regulations for Military Engineer Services (RMES), 1968 and amendments issued by Govt. of India subsequently states that "the MES is responsible for the erection, operation, and maintenance of all Defence Services installations for the supply of electricity and water".

25. MES has been granted a 'Deemed Licensee' status under third proviso to Section 14 of Electricity Act, 2003 and clarified by Ministry of Power, Govt. of India in consultation with Ministry of Law vide letter No. 25/19/2004-R&R dated 26th July, 2004. The letter was issued by the Ministry of Power to MES being Central Government Department under Ministry of Defence, considering MES as an Appropriate Government as per Electricity Act, 2003 engaging in distribution of electricity and not only to MES Delhi cant but MES PAN India without any embargo and irrespective of geographical area as the India without any embargo and irrespective of geographical area as the Indian Armed Forces under Ministry of Defence are scattered PAN India. Accordingly, MES at R&D Timarpur Defence area is a Deemed Licensee under third proviso to Section 14 of Electricity Act, 2003, which is applicable to appropriate Government only and not to any Distribution Licensee of any State.

26. It is relevant to highlight that Open Access was introduced in Electricity Act, 2003 with the objective to introduce competition in electricity industry and ensuring choice to buyers and suppliers of electricity. Hence, allowing MES to avail Short Term Open Access as Deemed Licensee would surely not lead to cherry-picking of consumers as consumers having a load of 1 MW and above are eligible and are free to avail Open Access as per DERC (Terms and Conditions for Open Access) Regulations, 2005 and **MES at R&D Timarpur Defence area is Deemed Licensee under Section 14 of Electricity Act, 2003, and is eligible to avail Open Access as Deemed Licensee as per Para 2(1)(f) of DERC (Terms and Conditions for Open Access) Regulations, 2005 which states that open access consumer may be a 'Distribution Licensee' also.**

27. Section 2(47) of the Electricity Act, 2003 defines the term 'open Access' reproduced as under:

"Open Access" means the non-discriminatory provision for the use of transmission lines or distribution system or associated facilities with such lines or system by any licensee. Or consumer or a person engaged in generation in accordance with regulations specified by the Appropriate Commission"

28. From the above, it is evident that any 'licensee' may use transmission lines or distribution system or associated facilities under 'open access' by paying all charges as applicable to any 'Deemed Licensee' for STOA as per DERC (Terms

and Conditions for Open Access) Regulations, 2005 and National Tariff Policy and the same must be provided without any discrimination.

29. MES at R&D Timarpur Defence area is having its own 11 KV distribution network and seeking open access to use 33 KV line up to STU and 33/11 KV substation at Kingsway Camp Timarpur which was set up TUPDDL in MES area under deposit work and is used for supply to MES, being maintained by TPDDL. **The cost of 33/11 KV substation and 33 KV cable was paid to TPDDL by MES for setting up the substation at Kingsway Camp, Timarpur.** Hence, MES is seeking 'Open Access' of the system which is even funded by MES as deposit work.

Hence, claim of Respondent No. 1 (TPDDL) that "MES is not having any distribution network in TPDDL area" is incorrect. The entire electrical distribution system including enormous HT & LT network is own by MES, billing and realization is being done by MES at DRDO Timarpur Defence area and there is no role of TPDDL (Licensee in that area. Further, claim of MES is reinforced by Sixth proviso to Section 14 of the Electricity Act, 2003 which allows MES to operate as Deemed Licensee in R&D Timarpur Defence area within the license area of TPDDL.

30. TPDDL accepted that it is no dispute that MES is a 'Deemed Licensee' under third proviso to Section 14 of the Electricity Act, 2003, however, objected that MES cannot supply electricity outside its designated 'area of supply' and refers the definition of term 'area of supply' under Section 2(3) of Electricity Act, 2003. The definition includes the word "**license**" and applicable to a 'license' holder distribution licensee. Whereas, MES has been granted a 'Deemed Licensee' status under third proviso to Section 14 of Electricity Act, 2003 and not required to obtain a 'license' under Electricity Act, 2003. The same has been clarified by Ministry of Power, Govt. of India in consultation with Ministry of Law vide letter No. 25/19/2004-R&R dated 26th July, 2004 considering MES as an Appropriate Government as per Electricity Act, 2003 without any embargo, engaging in distribution of electricity PAN India and irrespective of geographical area as the India Armed Forces under Ministry of Defence are scattered PAN India.

RESPONDENTS' SUBMISSION

A. TPDDL

31. It is not disputed that MES is a 'Deemed Licensee' under the third proviso to Section 14 of the Electricity Act, 2003, however, MES can supply power to its

consumers only in its designated 'area of supply'. Section 2(3) of the Electricity Act, 2003 defines the term 'area of supply' as under:

"area of supply" means the area within which a distribution licensee is authorised by his licence to supply electricity;"

32. Further, Section 2(17) of the Electricity Act, 2003 defines 'distribution licensee' as under:

"distribution licensee" means a licensee authorised to operate and maintain a distribution system for supplying electricity to the consumers in his area of supply;"

33. The term 'Area of Supply' is also defined under Regulation 2(8) of the DERC Supply Code and Performance Standards Regulations, 2017, as "..the geographic area within which Licensee is, for the time being, authorized by his license to supply electrical energy;".

34. From the above, it is evident that a Distribution Licensee cannot supply electricity outside its designated geographical area of supply. The Deemed Licensee status of the Petitioner MES is restricted to a particular geographical area, and his area of supply is limited to the geographic area defined in its license. Therefore, the Petitioner is not a Deemed Licensee in the designated area of supply of the Respondent No. 1.

35. That the Petitioner cannot avail Open Access within the area of supply of Respondent No. 1, only on the basis of paying wheeling charges. Since the Petitioner is not a Deemed Licensee in the area of supply of Respondent No. 1, and in order to supply power to its consumer units located in Timarpur, Delhi, it seeks to utilize the distribution system of the Respondent No. 1, the Petitioner must obtain Open Access as a regular customer and is liable to pay the Open Access charges and CSS to the Respondent No. 1.

36. The area of Timarpur, Delhi is within North, North-west area of Delhi which falls under the designated 'Area of Supply' of Respondent No. 1 TPDDL. The Petitioner and the Respondent No. 1 are not parallel distribution licensees as they have different areas of supply as per their individual licenses. The website of Respondent No. 2 SLDC {<https://www.delhisldc.org/Redirect.aspx?Loc=0209>}, clearly states that, "MES (Military Engineering Services), is also a Distribution licensee in Delhi catering the load of Military Cantonment Area, Delhi."

37. It is relevant to note that the DRDO is not a Deemed Licensee under the Electricity Act, 2003. The two DRDO establishments that are located in the area of supply of Respondent No. 1 TPDDL are the 'consumers' of electricity who are intending to avail power through open access from MES using the network of TPDDL. In such a case, the consumers of electricity availing open access using the Discom's network are liable to pay the open access charges as well as CSS. Even assuming that the DRDO is a Deemed Licensee, yet the Deemed Licensee cannot escape the clutches of open access charges as well as CSS. In the present case, no doubt by virtue of the Letter dated 26.07.2004 of the Ministry of Power, Government of India, status of the Petitioner is also treated as deemed Distribution Licensee. However, with this, it only gets exemption from specifically applying for licence under Section 14 of the Act. In order to avail further benefits under the Act, the Petitioner MES is also required to show that it is in fact having distribution system and has number of consumers to whom it is supplying the electricity, in the area of supply of Respondent No. 1 TPDDL. In the above context, the Judgement dated April 25,2014 in Civil Appeal No. 5479 of 2013: Sesa Sterlite Ltd. Vs. Orissa Electricity Regulatory Comm. & Ors., may be taken note of.

38. It is submitted that every licensee has to lay down its own distribution network to meet the Universal Service Obligations under Section 42(1) of the Electricity Act, 2003. Even when there are two or more distribution licensees, having same area of supply, every Distribution Licensee will have to supply electricity to its consumers through its own distribution system. The Petitioner MES has not established its distribution network in the area of supply of Respondent No. 1 which is evident from the fact that it is seeking open access i.e. the use of the distribution system of Respondent No. 1 TPDDL, to supply power to only two consumers/ establishments located in the area of supply of Respondent No. 1. MES cannot adopt a pick and choose policy for supply to only certain establishments and not to all consumers in a particular licensed geographical area.

39. Since the Petitioner does not have any distribution network within the area of Timarpur, Delhi, he is not a Deemed Licensee within this area. Hence, in order to use the Distribution Network of the Respondent No. 1, the Petitioner and/ or its consumers must apply for Open Access as a customer and must pay all the open access charges and CSS and not just the wheeling charges.

40. The Petitioner without even establishing its own distribution network is seeking to supply power to consumers located in the area of supply of Respondent No. 1 TPDDL, and that too, only on payment of wheeling charges, which certainly cannot be accepted and sixth proviso to Section 14 of the Electricity Act, 2003 gets in the way of the relief sought by the Petitioner. The Petitioners' argument of saving the Defence tariff exchequer cannot be the basis for violating the mandate of sixth proviso to Section 14 of the Electricity Act, 2003.

41. If the Petitioner is allowed 'Deemed Licensee' status in the Respondent No. 1's area of supply, the Answering Respondent will be left with surplus power with burden of fixed charges of plants and also variable costs as must run stations would continue to Operate and schedule power. It is pertinent to mention that the annual billing for the past three years till February'2020 for CA Nos. 60000003479 and 60000005045 is Rs. 74.95 Crores. Consequently, the same would have to be borne by the Answering Respondent's other consumers. Thus, it is in public interest that the Petitioner should not be granted Open Access as a 'Deemed Licensee' status in the TPDDL area of supply.

42. Further, note may be taken of the provisions of Section 22 (1) of the Delhi Electricity Reform Act, 2000 which provides that-

"22. (1) It shall be the duty of the holder of a supply licence or a transmission licence in respect of a particular area to develop and maintain an efficient, coordinated and economical system of electricity supply or transmission in the area of transmission or area of supply as the case may be."

43. Therefore, as per the above provisions, MES as a Deemed Licensee is under obligation to develop and maintain an efficient, coordinated and economical system of electricity supply in its area of supply. In the present case, no such network or system has been established by MES in the licensed area of supply of TPDDL.

44. That the argument of the Petitioner that it is entitled to supply power to any Military Establishment anywhere in Delhi and has a status of a 'Deemed Licensee', without having any specified area of supply and without even establishing its own network is accepted, then that would lead to absurdity and utter chaos since any Distribution Licensee from any other State may apply for Open Access only on payment of Wheeling Charges and start supplying power to the consumers of

other DISCOMs directly. This surely would lead to cherry-picking of consumers which cannot be the intent and object of the Electricity Act, 2003.

45. That the reliance place by the Petitioner on the Order dated 05.11.2015 passed by the Hon'ble CERC in the matter of 'The Indian Railways v. Others' in Petition No. 197/MP/2015, is misplaced. The mentioned case is not applicable to the present scenario. In the above stated matter, the factual matrix as well as the relief sought by Indian Railways were different from the Petitioner. The Hon'ble DERC's Letter dated 19.03.2018 is also of no relevance or beneficial to the present Petitioner. In fact, it is clear from the Hon'ble DERC's Letter dated 19.03.2018 that Northern Railways is allowed to operate as 'Deemed Licensee' and draw power through Open Access only for the purposes of traction load at 66 kV Narela Grid of TPDDL & at 66 kV Ridge Valley of BRPL. However, Northern Railways may continue to be the consumer of DISCOM for residential/commercial connection.
46. In the present case, MES is not undertaking any transaction for traction purposes and hence the factual scenario is quite different and MES is not similarly footed as the Indian Railways.
47. That MES was allocated total capacity of 50 MW from Badarpur TPS alone and no other power station. Even though the Hon'ble Commission visualised the pitfalls in allocating capacity only from a single power station, it had gone ahead on the basis of the submissions made by the Petitioner MES when consultations took place on 30.03.2007.
48. That the total allocation of power made to MES in Delhi as per its own submissions and as per orders of the Hon'ble Commission (supra) is only to the extent of 50 MW, which is already being availed by the Petitioner from Pragati 1 and Bawana (as Badarpur TPS has been closed) and being supplied to its establishments in the Cantonment Area of Delhi outside the area of supply of TPDDL.
49. That the Letter dated 26.07.2004 of Ministry of Power, Government of India has to be read harmoniously with the Order dated 31.03.2007 passed by this Hon'ble Commission, wherein MES has been permitted to distribute only 50 MW total power allocated to its establishments in the Cantonment Area of Delhi outside the area of supply of TPDDL. From the Short Term Open Access applications submitted by

MES to TPDDL which are annexed as Annexure-V of the petition, it is evident that MES has contracted with PTC India Limited (Seller) for purchase of power, which it intends to supply to consumers located in TPDDL area of supply and hence such quantum is beyond the allocation of 50 MW as per Order dated 31.03.2007 passed by this Hon'ble Commission which was the total power requirement of MES as per its own submissions.

B. SLDC

50. To resolve the issue related to Intra state open access, SLDC Delhi called a joint meeting with MES and TPDDL on 27 Dec. 2019 under clause 16(1) of the DERC (Terms and conditions for Open Access) Regulations, 2005 which is reproduced as under:

“Dispute Resolution”

The Complaint regarding all grievances and disputes relating to open access shall be made to the State Transmission utility or State Load Dispatch Centre as the case may be which may investigate and endeavour to resolve the grievance amicably.”

51. In the meeting TPDDL was of the view that MES cannot act as a distribution licensee in TPDDL's licensed area. However, SLDC Delhi was of the view that TPDDL may allow MES to avail open access as deemed licensee in the area of TPDDL in line with the earlier decision taken by DERC in the matter of Northern Railway. It is worth deemed here that DERC vide their letter dated 19.03.2018, allowed Northern Railway to operate as deemed licensee for its all types of loads.

52. The view of SLDC as not acceded to by TPDL and further it was stressed by TPDDL for intervention of DERC in the above matter.

COMMISSION'S ANALYSIS.

53. Distribution License to TPDDL have been granted to serve a specific area, whereas MES is also deemed licensee to serve its establishments and units under the area of its control. Section 2(17) defines distribution licensee means a licensee authorized to operate and maintain the distribution system of supply of electricity to the consumer in “its area of supply”. Whereas, Proviso to Regulation 14 provides that the appropriate Commission may grant license to two or more persons for distribution of electricity through their own distribution system within the same area, subject to certain conditions.

54. MES has argument that being deemed licensee under proviso of Section 14 of the Electricity Act, 2003. It is authorized to operate i.e. to distribute/supply/transmit electricity in the area under its control.

55. The area in which MES is seeking open access is the area of supply of TPDDL and it cannot be inferred that whether MES as a deemed licensee has the same area of supply. The area of supply, in question, belongs to TPDDL and not to MES. MES has contended that there is no specific area defined in DERC order for distribution of electricity by MES and hence observation of M/s TPDDL that "distribution and retail supply of electricity under the license conditions is permitted by Hon'ble DERC within a specific area of supply and not outside" is not binding in this case. The proviso to Section 14 under which MES attains the status of a deemed licensee, clearly states that provided also that in case an Appropriate Government transmits electricity or distributes electricity or undertakes trading in electricity, whether before or after the commencement of this Act, such Government shall be deemed to be a licensee under this Act, but shall not be required to obtain a licensee under this Act. Till date MES has been distributing electricity even after notification of Act, confined to area under its control.

56. Section 42 (3) of the Electricity Act, 2003, provides that where any person, whose premises are situated within the area of supply of a distribution licensee, (not being a local authority engaged in the business of distribution of electricity before the appointed date) requires a supply of electricity from a generating company or any licensee other than such distribution licensee, such person may, by notice, require the distribution licensee for wheeling such electricity in accordance with regulations made by the State Commission and the duties of the distribution licensee with respect to such supply shall be of a common carrier providing non-discriminatory open access.

57. From the submissions made by the parties there is only one question to be answered is whether MES, a deemed licensee in its area of operations can be allowed Open Access procurement as a licensee (deemed) in the area of supply of any other Licensee viz. TPDDL in the present case. To answer the question following issues have to be addressed:

1. Does MES, being a part of Government enjoys the status of deemed licensee under third proviso to section 14 of the Electricity Act, 2003, in any part of the country even in the area of supply of other licensees.
2. Can MES be equated to Railways for the purpose of deemed licensee status.

58. To analyse the above issues, a reference is made to the Third proviso to Section 14 of the Electricity Act, 2003, which is reproduced below:

Provided also that in case an Appropriate Government transmits electricity or distributes electricity or undertakes trading in electricity whether before or after the commencement of this Act, such Government shall be deemed to be a licensee under this Act, but shall not be required to obtain a license under this Act."

59. Whereas section 2 (3) of the Act defines the area of supply as under:

"area of supply means the area within which a distribution licensee is authorised by his licence to supply electricity."

60. From the provisions of the third proviso, the applicant is indeed a deemed licensee but as it is a case of deemed licensee, there is no document to prescribe the actual area of supply. From the precedent and practices, the area of supply for MES is the cantonment area or similar areas in different cities throughout the country, where it has its own infrastructure for supply, but it has not been allowed to supply in the area of other licensee.

61. The argument of MES is that it has its own infrastructure for distribution of electricity in the purported area at Timarpur, Delhi, which has been disputed by the Respondent NO.1 TPDDL. Even if the argument of MES is accepted that it has the entire electrical distribution system including enormous HT & LT network is own by MES, billing and realization is being done by MES at DRDO Timarpur Defence area and there is no role of TPDDL (Licensee in that area), it being a small area or pocket cannot be termed as a proper distribution network.

62. The case of Railways may also be distinguished on the similar lines, because of its own infrastructure of supply and due to status provided by the Railways Act, it is different from MES. Further Northern Railways has been allowed open access for its traction and not for residential or commercial complex, which make the case different from MES.

63. As much it is related to judgement dated 25th April 2014 in Civil Appeal No.5479 of 2013 M/s Sesa Sterlite Ltd. Vs. Orissa Electricity Regulatory Commission & Others, the same may be applicable in the instant case on the distribution system/network.

64. The reference to the sixth proviso to Section 14 of the Act that the Appropriate Commission may grant a license to two or more persons for distribution electricity, also fails firstly because it is grant of license by the Commission and not the deemed licensee status and secondly the other licensee has to supply electricity through its own distribution system.

65. During the course of hearing and from the submissions made by SLDC, it is also observed that MES in normal course does not have surplus power throughout the year to supply its intended complex of DRDO at Timarpur, Delhi. Further it also observed that the Petitioner has power purchase arrangements with PTC India Ltd. to meet the exigencies of over drawl/ under drawl. This clearly indicates that at times it may be in deficit of power and therefore, would not be able to supply to its DRDO Complex at Timarpur, Delhi.

66. From the aforesaid discussions, it is held that MES is a deemed licensee under third proviso of the Act and its area of supply is where it has its own distribution system for supply of electricity. However, it does not enjoy status of deemed licensee in Pockets of area of supply of other licensee.

67. With the above observation the Petition is dismissed.

Sd/-
(A.K. Ambasht)
Member

Sd/-
(A.K. Singhal)
Member

Sd/-
(Justice S S Chauhan)
Chairperson