

**Appellate Tribunal for Electricity at New Delhi  
(Appellate Jurisdiction)**

**Appeal No.218 of 2015**

**Dated : 16<sup>th</sup> January, 2017**

**Present: Hon'ble Mrs. Justice Ranjana P. Desai, Chairperson  
Hon'ble Mr. T Munikrishnaiah, Technical Member**

**In the Matter of:**

**Byrnihat Industries Association**

13<sup>th</sup> Mile, Tamulikuchi,  
Byrnihat,  
Ri-Bhoi District, Nongpho,  
Meghalaya – 793 101.

**... Appellant(s)**

**Versus**

**1. Meghalaya State Electricity Regulatory Commission**

New Administrative Building,  
1<sup>st</sup> Floor, Left Wing,  
Lower Lachumiere,  
Shillong – 793 001,  
Meghalaya.

**2. Meghalaya Power Transmission Corporation Ltd.**

Lumjingshai,  
Short Round Road,  
Shillong – 793 001.

**...Respondent(s)**

Counsel for the Appellant(s) : Mr. Anand K. Ganesan  
Mrs. Swapna Seshadri  
Mr. Sandeep Rajpurohit  
Ms. Neha Garg  
Mr. Ishaan Mukherjee  
Ms Akshi Seem

Counsel for the Respondent(s) : Mr. Buddy A. Ranganadhan  
Mr. D. V. Raghu Vamsy  
Mr. Raunak Jain for R.1

Mr. Sakie Jakharia for R.2

## **J U D G M E N T**

### **PER HON'BLE MR. T MUNIKRISHNAIAH, TECHNICAL MEMBER,**

The present appeal has been filed by Byrnihat Industries Association (hereinafter referred to as the '**Appellant**') under Section 111 of the Indian Electricity Act, 2003, challenging the order dated 30.03.2015 (Impugned Order) passed by the Meghalaya Electricity Regulatory Commission (hereinafter referred to as the "**State Commission**") against the petition filed on 22.12.2014 by the Meghalaya Power Transmission Corporation Ltd. under Section 62 of the Indian Electricity Act, 2003, read with Meghalaya State Electricity Regulatory Commission (MYT) Regulations 2014, for determination of Multi-year Aggregate Revenue Requirement for FY 2015-16 to FY 2017-18 and determination of Transmission Tariff for FY 2015-16, wherein the State Commission has fixed the transmission charges at 73 paise per unit as compared to 46 paise per unit for the previous year 2014-15 and also the Commission erred in estimating the income from open access consumers for the FY 2014-15.

2) The appellant is a society registered under the Meghalaya Societies Registration Act, 1983 having its registered Office at Byrnihat, Ri-Bhoi District, Meghalaya. The appellant was

formed by the different industrial units for the welfare, better functioning of its units. The appellant regularly participates in the proceedings related to determination of ARR and tariff by the State Commission and also takes up the other issues concerning its Members.

- 3) The Respondent No.1 is Meghalaya State Electricity Regulatory Commission for the State of Meghalaya exercising jurisdiction and discharging function in terms of the Electricity Act, 2003.
- 4) The Respondent No.2 is the Meghalaya Power Transmission Corporation Ltd. (hereinafter referred to as '**MePTCL**') is a deemed licensee in terms of Section 14 of the Electricity Act, 2003, engaged in the business of Transmission of Electricity in the State of Meghalaya.
- 5) Aggrieved by the impugned order dated 30.03.2015 passed by the State Commission, the appellant has preferred the present appeal on the following grounds:
  - (i) There is a steep increase in the transmission charges being fixed at 73 paise per unit as compared to 46 paise per unit for the previous year 2014-15.
  - (ii) Completely erroneous calculation of transmission charges payable by open access consumers (on per unit basis) i.e. it should be 52 paise instead of 73 paise;
  - (iii) Wrong estimation of income from open access consumers of Rs.5.23 Crores for FY 2014-15 which is much lower than the actual income;
  - (iv) Burdening the open access consumers with heavy transmission charges of 73 paise per unit making the open access prohibitively high and illusory;

6) **Brief facts of the present case:**

- 6.1) The Transmission Company in the State of Meghalaya filed a petition under Section 62(1) read with Section 62(3) and Section 64(3)(a) of the Electricity Act 2003 and MSERC MYT Regulations, 2014 for determination of ARR for MYT period 2015-16 to 2017-18 and seeking transmission tariff for the FY 2015-16 for Transmission of Electricity in the State of Meghalaya.
- 6.2) The State Commission after scrutiny admitted the petition on 02.01.2015 and directed the Transmission Company to issue public notice and the public notice was issued on 07.01.2015.
- 6.3) The public hearing in the above matter was fixed on 09.03.2015 and the appellant appeared and made detailed submissions, both in respect of ARR and the open access charges.
- 6.4) The State Commission, having taken into consideration the facts presented by the MePTCL in its petition and subsequent various filings, the suggestions/objections received from various stake holders, consumer organizations, general public and State Advisory Committee, passed the Impugned Order on 30.03.2015 determining the ARR for the MYT period FY 2015-16 to 2017-18 and also the Transmission Tariff and Open Access charges for FY 2015-16.
- 6.5) The appellant submitted that there has been a steep increase in the Transmission charges being fixed at 73 paise per unit as

compared to 46 paise per unit for the previous year 2014-15 and pointed out other errors in the Impugned order, the gist of which is as under:

- (i) Completely erroneous calculation of the transmission charges payable by open access consumers (on per unit basis) i.e. it should be 52 paise instead of 73 paise;
- (ii) Wrong estimation of income from open access consumers of Rs.5.23 crores for FY 2014-15 which is much lower than the actual income;
- (iii) Burdening the open access consumers with heavy transmission charges of 73 paise per unit making the open access prohibitively high and illusory;

6.6) Aggrieved by the Impugned Order the appellant filed the present appeal and prayed for the following reliefs:

- (i) Allow the appeal and set aside the order dated 30.03.2015 passed by the State Commission to the extent challenged in the present appeal.*
- (ii) Direct the State Commission to apply its mind in truing up petitions and allow variations only on account of uncontrollable factors and not on account of controllable factors;*
- (iii) Pass such other order(s) and this Hon'ble Tribunal may deem just and proper.*

7) We have heard at length Mr. Anand K. Ganesan, the learned counsel for the appellant, Mr. Buddy A. Ranganadhan and Mr.D.V. Raghu Vamsy learned counsel for Respondent No.1

and Mr. Sakie Jakharia for Respondent No.2 and considered the arguments put forth by the rival parties and the written submissions submitted by the appellant and Respondent No.1 and after going through the Impugned Order passed by the State Commission, the following issues arise for our consideration:

**Issue No.1:** Whether the State Commission erred in estimating the income from open access consumers for the FY 2015-16 as Rs.5.23 crores against the actual income received from the open access consumers?

**Issue No.2:** Whether the State Commission erred in computing the transmission charges of open access consumers at 73 paise instead of 52 paise on per MW per day basis?

8) **The following submissions were made before us by the appellant for consideration:**

8.1) That the State Commission has erred in computation of transmission charges payable by the open access consumers at 73 paise/unit. Firstly, there is no computation provided in the impugned order and the impugned order is liable to be set aside for this very reason of being not a speaking order. It is not open to the Respondents to try and improve upon the impugned order in the present appeal.

8.2) That the computation is ex-facie erroneous. The State Commission has approved the total of ARR of Rs.78.12 crores

and the average load as 170.40 MW. The open access charges on per MW per day basis works out to Rs.12560/Day/MW. This load is of the transmission licensee as a whole and not only of the distribution licensee.

- 8.3) If the said amount of Rs.12560/Day/MW is converted into per unit basis, the calculation of transmission charges comes out to 52 paise and not 73 paise.
- 8.4) The perversity of the computation is evident by the fact that it is now sought to be justified by seeking to use the energy sales of the distribution licensee as the denominator to arrive at the figure of 73 paise. This is clearly an attempt to retro-fit the computation to arrive at the said figure of 73 paise.
- 8.5) Firstly, the total load transacted by the transmission licensee is not only that of the distribution licensee, but of all persons including open access consumers. It cannot be considered purely for the transmission licensee. Further, the approved sales figures of the distribution licensee include the total distribution losses in the State. The above would imply that the sales figure including the distribution losses is used to arrive at the transmission charges, which amounts to passing on the distribution losses also in the transmission charges.
- 8.6) The State Commission while computing transmission charges ignored the fact that appellant is drawing electricity from open access which will lead to increase in energy drawn (MW) per day which will eventually reduce the average load on

transmission system. Therefore, calculation of transmission charges comes to much lower than 73 paise.

- 8.7) Further, the load factor of a consumer has no relevance to the transmission charges to be determined. The transmission charges are determined on capacity basis and not based on the load of any consumers. It cannot be the distribution licensee pays the transmission licensee only based on the load factor or its schedule against the declared availability.
- 8.8) The methodology as stated by the appellant is the methodology followed by the other Regulatory Commission. The appellant crave leave to refer to the tariff orders of the other State Commissions at the time of hearing before the Hon'ble Tribunal.
- 8.9) It is wrong and denied that Transmission charges are computed in accordance with the MSERC (Terms and Conditions for Open Access) Regulations, 2012. The said regulations only provide for the payment of the charges and not for the manner of computation of the charges.
- 8.10) In given circumstances, a computation error on part of State Commission in the impugned order has led to an increase of 20 paise of per unit in transmission charges which is being borne by an open access consumer on a daily basis and transmission company is billing open access consumers as per wrong figure of 73 paise per unit and unjustly enriching itself.



Wrong estimation of Income from Open Access Consumers for FY 2015-16.

8.11) It is wrong and denied that State Commission has not erred in estimating the income from Open Access for FY 2015-16 at Rs.5.24 crores. It is respectfully submitted that State Commission has erred in giving Rs.5.24 crores which is much lesser than the actual collection of Rs.8.90 Cr from the Open Access consumers and leads to an inflation of the ARR. The State Commission has not given any basis for limiting the non-tariff income for 2015-16 and that such estimation are subject to prudence check and therefore the truing up based on actual are no basis to decide much lesser income from Open Access Consumers for FY 2015-16.

8.12) The appellant craves leave to add to the grounds mentioned above and states that the contentions are in the alternative and without prejudice to one another.

9) **Per contra**, the following are the submissions made by the respondent No.2, Meghalaya Power Transmission Corporation:

9.1) It is submitted that the method of computation sought to be adopted by the appellant in computing per unit Transmission Charge is grossly erroneous. The appellant has proceeded to convert the transmission charges to unit terms on the assumption that load factor is 100% which is not permissible. The per unit charge cannot be derived by simply dividing the transmission charges in Rs./MW/day by 24 hours to get the

per unit amount. It is evident that the average load factor for any consumer cannot be 100% and hence to compute the transmission charges in Rs./unit, assuming load factor to be 100%, is wrong and incorrect.

9.2) It is further submitted that there is no dispute to the extent that the transmission charges work out to 12560 Rs./MW day as computed in the impugned order. This Transmission Charges have been computed by the State Commission in accordance with the provisions of the MSERC (Terms and Conditions for Open Access) Regulations, 2012 (hereinafter “Open Access Regulation”).

9.3) Further the 1<sup>st</sup> proviso to Clause 21 of the said Open Access Regulation also provides as follows:

*“21. Transmission Charges Open Access customer using transmission system shall pay the charges as stated hereunder:*

*(1) ...*

*(2)*

*Provided that transmission charges shall be payable on the basis of contracted capacity/scheduled load or actual power flow whichever is higher.”*

In view of the above proviso Ld. MSERC was required to compute the transmission charges in Rs./unit basis, in order to enable to effectuate the proviso. In doing so Ld. MSERC has adopted the principle that the transmission charges payable by the open access consumers and the other consumers should be the same and hence finding “*the*

*transmission charges for all consumers including open access consumers shall be rs.0.73 per unit...” in the impugned order.*

- 9.4) Therefore to ensure that the transmission charges payable by all consumers including the open access consumers are the same, the approved transmission ARR has been divided by the energy sales approved in the order of MePDCL/the Distribution Company being 1068 MU, in order to give equal treatment to open access consumers with the other consumers who are also paying transmission charges, through ARR, which works out to Rs.0.73 per unit as indicated herein below:

Rs. 78.12 Crore/1068 MU = Rs.0.73/kWh.

- 9.5) Therefore, it is denied that Ld. MSERC failed to appreciate any computational error. It is denied that the additional burden of 20 paise is making open access unviable. It is categorically denied that the Transmission Company is unjustly enriching itself by billing the open access consumers at 73 paise. It is submitted that the same is justified and legitimate being on the basis of the determination of transmission charges by the Ld. MSERC in terms of the Regulations.
- 9.6) It is denied that Ld. MSERC erred in limiting income from open access consumer at Rs.5.23 Crore or that the same has led to underestimation of ARR for 2015-16. It is denied that

there has been any underestimation of non tariff income as sought to be alleged.

9.7) It is submitted that the estimation is on projection basis based on the data available at the time of determination of tariff. The estimations are subject to prudence check and truing up based on actual.

9.8) Therefore, it is denied that the charges paid by Open Access consumers in FY 2014-15 is Rs.8.9 Cr as sought to be alleged. The appellant is raising false and frivolous issues before this Hon'ble Tribunal seeking this Hon'ble Tribunal's indulgence on matters which have no merit at all.

9.9) In view of the aforesaid there is no error in the computations of the Respondent Company and therefore the issue raised by the appellant ought to be rejected.

10) **Gist of the written submission made by the State Commission, Respondent No.1, is as under:**

10.1) It is completely denied that the Respondent Commission has erred in the computation of the transmission charges payable by the open access consumers at 73 paise/unit. The Respondent Commission respectfully submits that the mere fact that the computation of transmission charges on per kWh basis is not detailed in the impugned order, does not mean

that there is no computation or that the computation is incorrect. In the impugned order, the Respondent Commission has stated as under:

*“...the transmission charges for all consumers including open access consumers shall be Rs.0.73 per unit...”*

10.2) The transmission charges work out to 12560 Rs/MW/day, as computed in the impugned order. This transmission charge has been computed in accordance with the MSERC (Terms and Conditions for Open Access) Regulations, 2012, and is payable by the Open Access consumers. The appellant has also agreed that the transmission charges of 12560 Rs./MW/day are correct.

10.3) However, the MSERC (Terms and Conditions for Open Access) Regulations, 2012 further specifies that :

*“Provided that transmission charges shall be payable on the basis of Contractual Capacity/Scheduled Load or actual power flow whichever is higher”*

10.4) Hence, the Respondent Commission is also required to compute the transmission charges in Rs/unit terms, in order to enable the above stated proviso to be acted upon. Accordingly, the Respondent Commission has computed the transmission charges in Rs/unit terms in the impugned order.

10.5) In the impugned Order, the Respondent Commission has adopted the principle that the transmission charges payable by the open access consumers and the other consumers should be same. This has been stated in the impugned order as “... *the transmission charges for all consumers including open access consumers shall be Rs.0.73 per unit..*”

10.6) Hence, in order to ensure that the transmission charges payable by all consumers including the open access consumers is the same, the approved transmission ARR has been divided by the energy sales approved in the order of MePDCL, in order to give equal treatment to open access consumers at par with other consumers who are also paying transmission charges, through the ARR, which works out to Rs.0.73 per unit, as detailed below:

$$\text{Rs } 78.12 \text{ Crore} / 1068 \text{ MU} = \text{Rs.}0.73 / \text{kWh.}$$

10.7) Thus, there is no error in the computations of the Respondent Commission. On the contrary, the computation done by the appellant assumes that the load factor is 100%, as the transmission charges in Rs./MW/day is simply divided by 24 (hours) to get Rs per unit amount. It is apparent that the average load factor for any consumer cannot be 100%, and hence, to compute the transmission charges in Rs/unit assuming load factor of 100% is incorrect.

10.8) Thus, there is no merit in this issue raised by appellant, and the same deserves to be rejected outright.

10.9) It is completely denied that the respondent Commission has erred in estimating the income from Open Access for FY 2015-16 at Rs.5.24 crore.

10.10) The respondent Commission has considered the income for FY 2015-16 as Rs.5.24 crore based on available data at that time. As per information made available to the Commission by MePTCL on 20.1.2015, the income from open access to STU in FY 2011-12 was 0.97 Cr., in FY 2012-13, Rs.1.50 Cr. and in FY 2013-14 it was Rs.3.86 Cr. Further, the appellant has itself submitted in the appeal that the higher transmission charges of Rs.0.73 per unit are making the open access transactions unviable. Under such circumstances, it is likely that the income from open access charges in FY 2015-16 may be lower than that earned in FY 2014-15. In any case, this is only estimation and is subject to truing up based on actual and prudence check.

10.11) Thus, it is strongly denied that the respondent Commission has done any computational error in the impugned order, and that the Transmission Company is unjustly enriched as a result.

11) **In the background of the above facts, now we shall proceed to deliberate on the issues under consideration.**

11.1) The contention of the appellant is that the State Commission has erred in computation of Transmission charges payable by open access consumers at 73 paise per unit as against 52 paise per unit. Further the State Commission has erred in estimating the income from open access consumers at Rs.5.24 crores as against the actual collection of Rs.8.90 crore from open access consumers.

11.2) Before proceeding further, let us examine the relevant Regulations that deals with computation of ARR of a transmission licensee.

Regulation 65 of the MYT Regulations, 2014 of Meghalaya State Electricity Regulatory Commission (MSERC), the ARR shall comprise of the following:

- (a) Return on Equity as may be allowed
- (b) Interest on Loan capital
- (c) Operation and Maintenance expenses
- (d) Interest on working capital
- (e) Depreciation as may be allowed
- (f) Taxes on Income
- (g) Annual License Fee

The net annual revenue requirement of a transmission licensee shall be worked out by adjusting the following in the annual revenue requirement computed under the regulations:



- (a) Income from surcharge and additional surcharge from open access consumers if any,
- (b) Transmission and/or wheeling charges recovered from open access customers, if any
- (c) Authorized portion of income/Revenue from other business engaged in by the Licensee for optimum utilization of assets, if any.

**Norms of Operation:**

Regulation 70 prescribes that the norms of operation for the transmission licensee, subject to modifications thereof from time to time shall be as under:

- (a) Auxiliary Energy Consumption in the Sub-Station.

The cost of auxiliary consumption in the sub-station for the purpose of air-conditioning, lighting, and consumption in other equipment shall be borne by the transmission licensee and considered as part of Operation and Maintenance expenses under the head General and Administration Overhead.

- (b) Target Availability of the Transmission System for recovery of full transmission charges. The Normative Annual Transmission Availability Factor (NATAF) of the Transmission System shall be 98%. The Commission has allowed 98% as availability of transmission line.

**Payment of transmission charges by customers**

Regulation prescribes that a transmission licensee shall be allowed to recover his net annual revenue requirement for

financial year through transmission charges as one or combination of the following charges:

- a. Transmission charges which may consist of a fixed charge, demand charge and an energy charge or a combination of these;
  - b. Connectivity charge, which shall be levied to meet the cost of connecting the customer to the licensee's transmission system;
  - c. Parallel operation charge shall be levied for Captive Power Plant if the plant is connected with the grid.
- (2) Transmission charges shall be calculated on a monthly basis.
- (3) Transmission charges shall be recovered from distribution licensees and open access customers.

The Commission has allowed recovery of annual transmission charges from single distribution licensee in the State in 2015-16. The charges to be paid for use of transmission system by open access consumers shall be determined for 2015-16.

11.3)The State Commission on the basis of actual records, provision of regulations, practices followed by the Commission in previous year, had determined the annual fixed charges for transmission licensee for FY 2015-16.

11.4)Further, the State Commission computed the ARR based on the Financials of FY 2014-15 and projected the expenditure for the MYT control period i.e. for FY 2015-16, FY 2016-17 and FY

2017-18. The relevant part of the Impugned Order is quoted below:

*“... It is reported to the Commission that the balance sheet for the MeECL for FY 2012-13 is under audit and therefore the statement of account for transmission business has not been ready. Validation of expenses could not be done in the absence of audited records of transmission utility. However, Commission has carefully examined the actual expenses and revenue of the transmission utility. Accordingly, the Commission has validated the ARR on the basis of actual expenditure for current year 2014-15 for the nine months. The Commission shall validate all expenses and revenue records at the time of next tariff revision and truing up exercise. ...”*

11.5) Further, the State Commission computed the other income from the open access consumers as follows:

The following are the details of other income submitted by the appellant, MePTCL and analysis of State Commission:

i) The detail pertains to other income submitted by the appellant in the Appeal:

S.No.	Consumer	Total Open access availed in 2014-15	Open access charges paid in 2014-15
1.	M/s Shyam Century Ferrous Ltd.	66426 MWH	Rs.3.04 Crores
2.	M/s Mithan Alloy Ltd.	50133 MWH	Rs.2.30 Crores
3.	M/s Meghalaya Power Ltd.	6320 MWH	Rs.0.29 Crores
4.	M/s Green Valley Cement Ltd.	54822 MWH	Rs.2.48 crores
5.	M/s RNB Cement Ltd.	19693 MWH	Rs.0.79 Crores
		<b>TOTAL</b>	<b>Rs.8.9 crores</b>

- ii) The open access charges filed in the petition by the Transmission Licensee MePTCL is given below:

Table 5.28 : Other Income Summary Project5ed by MePTCL

Particulars	FY 2014-15 (Estimated)	FY 2015-16 (Projected)	FY 2016-17 (Projected)	FY 2017-18 (Projected)
Charges Recoverable from OA Consumer	6.22	6.22	6.22	6.22
Any other income	0.01	0.01	0.01	0.01
Total Other income	6.24	6.24	6.24	6.24

- iii) Commission Analysis:

The income received from open access consumers, considered by the Commission, after checking the records of FY 2014-15 at Rs.5.23 crores and 0.01 crore from other sources. Accordingly, the Commission approves other income at Rs.5.24 crores for the FY 2014-15 and the same income projected for the MYT period of FY 2015-16, FY 2016-17 and FY 2017-18.

Based on the records of FY 2014-15, the State Commission computed various components of ARR and approved the Annual Revenue Requirement of Transmission licensee for the MYT control period, which is as under:

Table 5.31: Aggregate Revenue Requirement approved by the Commission for FY 16 to FY 18

		(Rs. Cr.)		
Sl. No.	Particulars	2015-16	2016-17	2017-18
1	O&M Expenses			
A	Employee cost	17.8	18.8	19.9
B	R&M expenses	6.7	4.3	4.6
C	A&G Expenses*	22.5	23.9	25.14
2	Depreciation	18.59	21.44	22.29
3	Interest on Capital Loan	6.16	8.09	8.80

4	<i>Interest on Working Capital</i>	3.20	3.54	3.76
5	<i>Return on Equity</i>	9.43	9.43	9.43
6	<i>Charges of SLDC</i>	1.05	1.0	1.15
7	<i>Annual licensee fees</i>	0.03	0.03	0.03
	<i>Total</i>	85.46	90.53	95.10
8	<b>Less: Other income</b>	<b>5.24</b>	<b>5.24</b>	<b>5.24</b>
9	<i>Less: SLDC ARR</i>	2.10	2.00	2.30
	<i>Net ARR</i>	78.12	83.29	87.56

*\*including the charges of MeECL the holding company.*

Further, the State Commission also approved the open access charges for FY 2015-16 as quoted below:

**Table 6.1 Open Access charges approved by the Commission for FY 2015-16**

<i>Sl. No.</i>	<i>Particulars</i>	<i>Projected by MePTCL</i>	<i>Approved by the Commission</i>
1	<i>MePTCL ARR (Rs.Cr)</i>	183.23	78.12
2	<i>Average Load (MW)</i>	169.11	170.40
3	<i>Open Access charges Rs. MW/per day (Rs.)</i>	29684.25	12560

11.6) During the arguments we have noted that the appellant has also agreed and did not raise any objection regarding the open access charges of Rs.12560 per MW per day. The State Commission arrived at the open access charges after considering the other income from open access consumers at Rs.5.24 crores. Further, there is no dispute raised regarding ARR of McPTCL at Rs. 78.12 Crores. Accordingly, the transmission charges collected from various open access customers were deducted from the total ARR and the transmission charges were computed on the net ARR by the State Commission. The open access transmission charges collected in excess, if any, will get adjusted in the calculation of future transmission charges by the State Commission by truing up estimated actual transmission charges at the end of each control period.

11.7)The appellant has considered the revenue received from open access consumers for the whole year whereas the Commission has considered as per the records submitted at the time of tariff petition. Thus, we do not find any infirmity in the computation of open access charges of Rs.12560 per MW per day and accordingly, there is no dispute regarding open access revenue at Rs.5.24 crore considered by the State Commission based on the nine months actuals pertaining to FY 2014-15 and thus, we reject the plea of the appellant regarding open access charges. Accordingly the issue No.1 is decided against the appellant.

12) **The next issue is regarding computation of transmission charges/Open Access Charges:**

12.1)Let us examine the relevant Regulation which deals with computation of transmission charges:

Regulation 21 of the Meghalaya State Electricity Regulatory Commission (Terms and Conditions for Open Access) Regulations, 2012 provide as under:

***“21. Transmission Charges Open Access customer using transmission system shall pay the charges as stated hereunder:***

*(1) For use of inter-State transmission system - As specified by the Central Commission from time to time.*

- (2) *For use of intra-State transmission system and associated facilities - Transmission charges payable to State Transmission Utility/transmission licensees by an open access customer for usage of their system shall be determined as under:*

*Transmission Charges = ATC/(ALST X365) (in Rs./MW-day) Where,*

*ATC = Annual Transmission Charges determined by the Commission for the State transmission system & associated facilities for the concerned year.*

*ALST = Average Load projected to be served by the State transmission system in concerned year.*

*Provided that transmission charges shall be payable on the basis of contracted Capacity/Scheduled Load or actual power flow whichever is higher.*

*Provided further that where a dedicated transmission system used for open access has been constructed for exclusive use of an open access customer, the transmission charges for such dedicated system shall be worked out by transmission licensee for their respective systems and got approved by the Commission and shall be borne entirely by such open access customer till such time the surplus capacity is allotted and used for by other persons or purposes.”*

The above Regulation further specifies that “the transmission charges shall be payable on the basis of contractual capacity/scheduled load or actual power flow whichever is higher.

Thus, according to the Regulation, the State Commission is bound to compute the transmission charges in Rs./unit.

12.2)The appellant contented that the State Commission, after arriving at the charge of Rs.12560 per MW, per day, had purported to calculate the per unit charges at 73 paise per unit and the State Commission failed to give details of calculation or reasoning the Impugned Order.

The relevant part of the Impugned order is as under:

*The Commission approved open access charges of Rs.12560 per MW per day for FY 2015-16 effective from 01.04.2015. This rate shall be applicable for all open access consumers.*

*In order to meet the requirement of the regulations, the transmission charges for all consumers including open access consumers shall be Rs.0.73 per unit. However, the recovery of charges from the open access consumers shall be done strictly as per the regulations 21 of MSERC (Terms and Conditions of Open Access) Regulations 2012 and its amendments. All other charges shall be as per regulations & its amendments and Commission's orders issued from time to time.*

12.3)We have gone through the Impugned Order and noticed that in the State of Meghalaya, the intra State line carries the power flow of State Distribution Licensee and the power consumed by open access consumers. There is no dedicated lines for any of the open access consumers.



12.4)The appellant computed the transmission charges by dividing Rs.12560 per MW per day, considering 100% load factor and arrived at 52 paise/unit.

$$12560/24 \times 1000 = 52 \text{ paise/unit.}$$

The State Commission computed the transmission charges as per Regulation 21 of MSERC Regulations, 2012 considering the actual power flow in the intra State Transmission i.e. by considering energy sales of MePDCL, which includes power drawn by open access consumers as shown below:

$$\text{Tr. Charges/open access charges : } \frac{78.12 \text{ Crore}}{1068 \text{ MU}} = 73 \text{ paise/unit}$$

Thus the State Commission computed the transmission/open access charges as per the 1st proviso of the Regulation 21 of MSERC (Terms and Conditions for Open Access) Regulations, 2012.

12.5)The counsel of the appellant submitted on 02.01.2017, the judgment of this Tribunal in Appeal No. 91 of 2012 dated 23.11.2012 in the matter of M/s Regency Power Corporation Pvt. Ltd. Vs. Tamil Nadu Electricity Regulatory Commission & Ors., which is not placed before the bench at the time of arguments.

However, we have gone through the judgment and we feel that the judgment merely deals with the utilization of transmission network by various generators of Tamil Nadu State and other open access consumers. The relevant part of the judgment is as under:

*“The Tariff Regulation provide for the determination of transmission charges for open access customers by apportioning the total transmission charges to the ratio of capacity allotted to long term open access customer and sum of open access capacity allotted to all long term open access customers of intra-state transmission system. Therefore, computing the transmission charges on PLF adjusted capacity will be contrary to the Regulations.”*

The Tariff Regulations of Tamil Nadu Commission are entirely different from the MSERC Tariff Regulations 2012. While arriving at the transmission/open access charges, the relevant State Commission Regulations will be applicable. Further, the Meghalaya State Electricity Regulatory Commission (Terms and Conditions for Open Access), Regulations, 2012 have attained finality and hence the said Regulations are applicable for arriving at transmission charges/open access charges of the open access consumers in the State of Meghalaya. Further, we have come to the conclusion that the State Commission has undisputedly followed and applied its Regulations. Hence, we do not agree with the contention of the counsel of the appellant on computation of open access charges. Accordingly, this issue is decided against the appellant.

12.6) The intra State lines are utilized by the State distribution licensee and open access customers and hence the State Commission passed a common order for all the consumers by

way of the impugned order dated 30.03.2015 which is as under:

*“In order to meet the requirement of the regulations, the transmission charges for all consumers including open access consumers shall be Rs.0.73 per unit. However the recovery of charges from the open access consumers shall be done strictly as per the regulation 21 of MSERC (Terms and Conditions of Open Access) Regulations 2012 and its amendments. All other charges shall be as per regulations & its amendments and Commission’s orders issued from time to time”.*

Accordingly, we do not find any infirmity in the Impugned Order dated 30.03.2015.

### **ORDER**

We are of the considered opinion that there is no merit in the present Appeal No. 218 of 2015 and the appeal is hereby dismissed as devoid of merit.

The impugned order dated 30.03.2015 passed by State Commission is hereby upheld.

No order as to costs.

Pronounced in the open court on this **16<sup>th</sup> day of January, 2017.**

**( T. Munikrishnaiah )**  
**Technical Member**

**( Justice Ranjana P. Desai )**  
**Chairperson**



**REPORTABLE / ~~NON-REPORTABLE~~**