

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 197/MP/2015**

**Coram:**

**Shri Gireesh B. Pradhan, Chairperson**

**Shri A.K Singhal, Member**

**Shri A.S Bakshi, Member**

**Dr. M.K. Iyer, Member**

**Date of Hearing: 12.10.2015**

**Date of Order : 05.11.2015**

**In the matter of:**

Petition under Regulation 7 read with Regulation 12 of the Central Electricity Regulatory Commission (Grant of Connectivity, long Term Open Access and Medium Term Open Access in the inter-State Transmission and related matters) Regulations, 2009.

**And in the matter of:**

The Indian Railways  
Government of India  
Through Deputy Chief Electrical Engineer (TRD)  
Central Railway  
CST, Mumbai- 400001

**....Petitioner**

Vs

1. Power Grid Corporation of India Limited  
Saudamini, Plot No. 2,  
Sector 29, Nead IFCO Chowk,  
Gurgaon- 122001
2. Power System Operation Corporation Limited  
B- 9, Qutab Institutional Area,  
Katwaria Sarai, New Delhi- 110015
3. The Central Electricity Authority  
R.K. Puram, New Delhi- 110066
4. Gujarat Electricity Transmission Company Limited  
Sardar Patel Vidyut Bhavan  
Race Course Circle  
Vadodara- 390007
5. Maharashtra State Electricity Transmission Company Limited  
Prakash Gad,  
Bandra East,  
Mumbai- 400051

6. West Bengal State Electricity Transmission Company Limited  
P.O. Danesh Seikh Lane, Andul Road,  
Howrah- 711109

7Jharkhand Urja Sancharan Nigam Limited  
Engineering Building  
H.E.C. Dhurwa, Ranchi- 834004

8. Gujarat Urja Vikas Nigam limited  
Sardar Patel Vidyut Bhawan,  
Race Course Circle,  
Vadodara- 390007

9. Ratnagiri Gas and Power Private Limited  
5<sup>th</sup> Floor, GAIL Jubilee Tower, B- 35-36  
Sector- 1, Noida- 201301

....Respondents

**Following were present:**

Shri M.G. Ramachandran, Advocate, Indian Railways  
Ms. Ranjitha Ramachandran, Advocate, Indian Railways  
Shri Manish Tiwari, Indian Railways  
Shri S.K. Saxena, Indian Railways  
Shri M.Y. Deshmukh, Advocate, MSETCL  
Shri Sakya Chaudhuri, Advocate, WBSETCL  
Shri Avijeet Lala, Advocate, WBSETCL  
Ms. Molshree, Advocate, WBSETCL  
Ms. Jayantika Singh, POSOCO, NLDC  
Shri Ashok Rajan, POSOCO, NLDC  
Shri S.S. Barpanda, POSOCO, NLDC  
Ms. Jyoti Prasad, PGCIL  
Shri Rajesh Jain, NTPC  
Shri Siddharth Vimal Kirti, Advocate, RGPPL  
Shri Vipin Kumar, RGPPL  
Shri J.S. Chordia, RGPPL

**ORDER**

The petitioner, the Indian Railways, has filed the present petition under Regulation 7 read with Regulation 12 of the Central Electricity Regulatory Commission (Grant of Connectivity, Long Term Open Access and Medium Term Open Access in the inter-State Transmission and related matters) Regulations, 2009 (hereinafter “Connectivity Regulations”) seeking following directions:

(a) Direct that Indian Railways are entitled to the grant of open access for the power to be procured from the Respondents No. 8 and 9 and other generating stations or sources through the Inter-State Transmission Network of the Central Transmission Utility and the Transmission Network of the Respondent States including the Respondent Nos. 4 to 7 till the facilities and network of the Indian Railways;

(b) Direct that Indian Railways in their capacity as an authorized entity to distribute and supply electricity in connection with its working as railways and across a number of States shall be a separate participating entity, like any other State entity in the Deviation and Settlement Mechanism notified by the Hon'ble Commission for the purposes of Scheduling and Dispatch of electricity;

(c) Direct that all the State Transmission Utilities and the State Load Despatch Centers (they are part of the State Transmission Companies such as Respondents No. 4 to 7) to give connectivity and to process the application for Open Access - long term or medium term or short term, as the case may be - treating the Indian Railways as an entity akin to a person who has been granted a distribution licence in their State and allow the use of the intra-State transmission facilities of such Respondents as incidental to inter--State transmission of electricity from the place of generation; and

(d) Pass such further order or orders as this Commission may deem just and proper in the circumstances of the case.

2. The Petitioner has submitted that the Indian Railways is a Department of the Ministry of Railways, Government of India which operates the rail systems in India as per the provisions of the Railways Act, 1989 (hereinafter "Railways Act"). Section 2(31) of the Railways Act defines the term 'Railways' as "a railway, or any portion of a railway, for the public carriage of passengers or goods," and includes among others "all electric traction equipments, power supply and distribution installation used for the purposes of, or in connection with, a railway". Section 2(32) of the Railways Act defines the term "Railway Administration" in relation to Government Railways as "the General Manager of a Zonal Railway". The petitioner has submitted that under Section 11(a) of the Railways Act, the powers of Railway Administration include construction of electric supply lines or telegraph lines and Section 11(g) empowers the Railway Administration to erect, operate, maintain or repair any electric traction equipment, power supply and distribution installation in connection with the working of the railway. Besides, clause (h) of Section 11 empowers the Indian Railways to do all other acts necessary for making, maintaining, altering or repairing and using the railway. Section 12 of the Railways Act empowers the Railways to alter electric supply lines. The petitioner has also submitted that the Hon'ble Supreme Court in judgement dated 9.2.2012 in Transferred Case of 37 and 38 of 2001 in Union of India Vs. Chairman, UP State Electricity Board after considering the scope of Section 11(a) and (g) of the Railways Act has held that the said sub-sections clearly authorize the Railways to construct the transmission lines as the railways have been authorized to erect any electric traction equipment and power supply and distribution installation in connection with the works of the railways.

3. The petitioner has submitted that under Section 11 of the Railways Act, the empowerment of Railway Administration to undertake erection, operation and maintenance of the electric traction equipment as well as power supply and distribution installation in connection with the working of the railways has been specifically recognized under Section 11(g) of the Railways Act and the said statutory recognition is valid and effective and is not in any manner affected by the provisions of the Electricity Act, 2003 (Electricity Act). The Railways Act is one of the three Acts which has been specifically saved under Section 173 of the Electricity Act and in case of inconsistency between the provisions of the Electricity Act and Railways Act, the provisions of Railways Act shall prevail. The petitioner has submitted that in view of the aforesaid statutory provisions, Indian Railways have full authority to undertake electricity supply and distribution by virtue of the provisions of the Railways Act, notwithstanding anything contrary contained under the Electricity Act.

4. The petitioner has further submitted that under third proviso to Section 14 of the Electricity Act, if the Central Government and State Governments transmit electricity or distribute electricity or undertake trading in electricity, such Government shall be deemed to be a licensee under the Electricity Act and shall not be required to obtain licence under the Electricity Act. Therefore, Indian Railways being a Department of the Central Government has the deemed licensee status to undertake transmission of electricity and distribution of electricity as well as trading in electricity, without the need to obtain any licence.

5. The petitioner has submitted that in terms of Section 11 of the Railways Act, the Indian Railways are also entitled to use the electricity for traction purposes and

for purposes which are incidental and ancillary to discharge of the functions of the Indian Railways. Accordingly, the area of operation of the Indian Railways to undertake distribution and supply of electricity gets identified in terms of the Railways Act, namely, i.e. the Indian Railways is entitled to distribute electricity through the Railway System, networks, works and facilities as envisaged in the definition of the term 'Railway' under Section 2(31), Section 11 and other applicable provisions of the Railways Act. In the case of Indian Railways, it is also not necessary to identify a District or Revenue area, etc., as in the case of a normal distribution licensee. The area is identified with reference to the operation of the Railways. It is, therefore, permissible for the Indian Railways to lay down the distribution network (even a transmission line essentially for the purpose of distribution of electricity with the distribution network as provided in Section 2 (72) of the Electricity Act, 2003). The Indian Railways can, therefore, lay down the High Voltage as well as other Voltage transmission/distribution lines along the railway traction and in places where there are functions of the Railways. For this purpose, it is not necessary for the Indian Railways to approach the concerned State Commission.

6. The petitioner has submitted that the Ministry of Power, Government of India, in its letter dated 6.5.2014 has clarified the position/status of Indian Railways as a "deemed licensee" under the Electricity Act. As a deemed licensee, the petitioner is entitled to procure electricity from any source of its choice including a Generating Company, a Captive Generating Plant, a Trader or through Power Exchange to meet the electricity requirements, as the petitioner may consider appropriate. In terms of the authority vested under Section 11 of the Railways Act, the petitioner can also lay down transmission lines from the place of generation or the place of interconnection of any Network to the facilities where the electricity procured is to be injected. The

Generating Companies and/or the Captive Generating Plants supplying electricity to the Indian Railways can also lay down dedicated transmission lines as per the scheme envisaged under Sections 9 and 10 of the Electricity Act.

7. The petitioner has submitted that the power under Section 11 of the Railways Act is wide enough to empower the Indian Railways to undertake anything in connection with operating and maintaining railways. The operation and maintenance of Railways includes the need to procure electricity, get the electricity conveyed from the place of generation to the place where the Railway system, network, works and facilities exist to run railways and for meeting other requirements of Railways. The petitioner has submitted that Section 11 of the Railways Act would apply notwithstanding anything contained under the Electricity Act, namely, the requirement of the licence for transmission, distribution or supply of electricity. The petitioner has submitted that in terms of the specific provisions of the Railways Act, the Railways are authorized to transmit electricity for the purpose of operation and maintenance of Railways and for all other purposes in connection with the working of the Railways.

8. The petitioner has submitted that the Indian Railways are also entitled to seek Open Access on the existing transmission and/or distribution line of the licensee for getting the electricity from the place of generation to the interconnection Point of the Railways Network. Since, the Indian Railways will be using the electricity amongst others in the traction and such electricity will be consumed in more than one State and further as such the electricity will be procured mostly through the use of ISTS, the incidental use of any State Transmission System or the State Distribution System

will also be considered as inter-State use of the transmission system in terms of Section 2(36) of the Electricity Act.

9. The petitioner has submitted that on 5.3.2015, a PPA was entered between the Central Railways and Gujarat Urja Vikas Nigam Ltd. (GUVNL) for supply of 100 MW of electricity at the periphery of Gujarat Electricity Transmission Company Limited (GETCO) i.e. interconnection point between GETCO, STU and CTU System of Western Region. The transmission system of CTU would be available from such point to the periphery of the STU of the State where the electricity purchased is to be conveyed to the petitioner's network. Thereafter, the transmission lines of MSETCL would be available for conveyance of electricity to the facilities of the petitioner. Further, the petitioner has also been allocated 500 MW of power from Ratnagiri Gas and Power Private Limited (RGPPL). In view of the above allocation, the petitioner is to be considered priority long term open access applicant.

10. The petitioner has submitted that the Indian Railways is desirous of availing electricity from RGPPL in the States of Maharashtra, Gujarat, Jharkhand and West Bengal. The Generating Station of RGPPL at Ratnagiri is connected to ISTS which will be used for transmission of electricity generated from RGPPL to MSETCL, GETCO, JUSNL, WBSETCL. The petitioner is desirous of availing ISTS as well as transmission system of MSETCL and intended to apply for MTOA for using the power of GUVNL under the provisions of Connectivity Regulations. As per the procedure for applying for open access for using the power of GUVNL in Maharashtra, the petitioner applied on 19.1.2015 to MSETCL for grant of NOC for connectivity and for transfer of power through open access till the facilities and the network of the Indian Railways. In response, MSETCL vide its letter dated 4.2.2015

directed the petitioner to apply for connectivity at the traction substations proposed for availing open access. Accordingly, on 17.3.2015, the petitioner made an application for grant of connectivity to MSETCL. However, MSETCL has not granted connectivity despite repeated reminders and has insisted on a notification by an Appropriate Commission on the 'deemed distribution licensee' status of the Indian Railways. On 24.7.2015, the petitioner further made an application to MSETCL for grant of NOC for open access. However, no reply has been received from MSETCL in this regard. The petitioner has submitted that there is no requirement of any notification by the Appropriate Commission in this regard as such a requirement would render Section 173 and third proviso to Section 14 of the Electricity Act nugatory.

11. The petitioner has submitted that in terms of Regulation 7 of the Connectivity Regulations, MSETCL is required to process the applications for connectivity, long term access and medium term access within specified time mentioned in the said regulation. Regulation 13 of the Connectivity Regulation further provides that the Nodal Agency has to carry out the system studies in consultation with other agencies involved in the inter-State transmission network to be used, including the State Transmission Utility, if the State network is likely to be used, for processing the application within the specified timeline. The petitioner has relied upon Petition No. 158/MP/2012 and has submitted that the Commission has directed for grant of open access to the distribution licensee which was having similar facts as that of the petitioner. The petitioner has submitted that under Regulation 32 of the Connectivity Regulations, any dispute arising out of under the said regulation shall be decided by the Commission and accordingly the petitioner has filed the present petition seeking directions to the respondents for grant of long term access to the petitioner.

12. The petitioner has submitted that the Indian Railways as an entity authorized to distribute and supply electricity will be scheduling electricity from various sources and will be taking delivery of electricity at multiple points. Accordingly, for the scheduling and dispatch mechanism under the DSM Regulations notified by the Commission, Indian Railways be considered as a separate participating entity. In the peculiar circumstances of the Indian Railways, it cannot be treated as an entity within a State to be governed as an embedded entity.

13. The petition was admitted on 15.9.2015 and the respondents were directed to file their replies to the petition. Replies to the petition have been filed by Maharashtra State Electricity Transmission Company Limited (MSETCL), Gujarat Energy Transmission Corporation Limited (GETCO), West Bengal Electricity Transmission Company Limited (WBSETCL), West Bengal Electricity Distribution Company Limited (WBSEDCL), Power Grid Corporation of India Limited (PGCIL), Power System Operation Company Limited (POSOCO) and Central Electricity Authority (CEA).

14. MSETCL in its affidavit dated 30.9.2015 has submitted as under:

(a) That the petitioner, till this moment is a consumer of Maharashtra State Electricity Distribution Company Limited (MSEDCL) and Tata Power Company-Distribution (TPC-D). For the first time, the petitioner is coming as a deemed distribution licensee as per the Electricity Act relying on the Ministry of Power, Government of India letter dated 6.5.2014 which is clarificatory in nature. As a deemed distribution licensee, the petitioner has to comply with the legal provisions of Section 14, 15 and 16 of the Electricity Act. A combined reading of Section 14 (power of appropriate Commission to grant licence),

Section 15 (application by any person for grant of licence) and Section 16 (power of the appropriate Commission to specify terms and conditions for deemed licensees covered under first to fifth proviso under Section 14 of the Act) makes it clear that the petitioner as a deemed licensee was required to apply to the appropriate Commission who is authorized to stipulate the conditions of licence under the Act.

(b) As per Regulation 3.2 of the Maharashtra Electricity Regulatory Commission (Transmission Open Access Regulations), 2014, connectivity with the grid is a pre-condition for grant of open access. Presently, the petitioner is connected to the grid as a consumer of MSEDCL and is seeking connectivity as a distribution licensee and is therefore, required to be notified by the appropriate Regulatory Commission under Section 17 (1) and (2) of the Electricity Act, 2003. Further, As per Section 42 of the Electricity Act, the State Commission is empowered to introduce open access in phases to the distribution licensees. The petitioner was required to apply and had rightly applied to Maharashtra Electricity Regulatory Commission (MERC) in Case No.194 of 2014 to take on record the deemed distribution licensee status of the Indian Railways for issuing specific conditions of the licence. The ruling given by MERC in order dated 11.4.2012 in Case No. 157 of 2011 (M/s Serene Properties Private Ltd) has been relied upon regarding the requirement of issue of specific conditions of distribution licensees.

(c) In view of the claim of the petitioner as a deemed licensee, the petitioner would be one of the licensees among the existing distribution licensees for sharing of inter-State and intra-State transmission charges,

scheduling, energy accounting, deviation settlement mechanism, etc. as per the Regulations and data visibility and ABT metering etc. necessary for operational convenience of MSLDC in accordance with the State Grid Code. MERC has also passed an order dated 12.5.2014 in Case No. 15 of 2014 giving directions to distribution licensees about the requirement to establish certain mechanism to serve the consumers.

(d) The petitioner being a consumer of MSEDCL and TPD-C in Maharashtra is required to comply with the Regulations 13.2, 15.1 and 9.7 of MERC (TOA) Regulations, 2014 for connectivity and open access and Regulation 64 of MERC (Multi Year Tariff) Regulations, 2011 pertaining to sharing of transmission charges.

(e) The petitioner as a deemed distribution licensee intends to have grid connectivity from the State Transmission Utility and applied to MSETCL vide its application dated 17.3.2015 for grid connectivity for 100 MW power from Gujarat Urja Vikas Nigam Limited (GUVNL) for its 16 Traction Sub-Stations of Central and Western Railways through inter-State Open Access Mechanism. MSETCL after ascertaining the technical feasibility found that all Traction Sub-Stations are connected with MSETCL network as EHV consumers of MSEDCL on 220 kV at Akola, Wardha, Butibori, Warora, Chandrapur and 132 kV at Palghar, Nashik, Mammad, Nandurbar, Dharangaon, Chalsgaon, Bhadli, Bhusawal, Malapur, Badnera and Katol. The petitioner proposed to have grid connectivity at these already connected points but collectively as a distribution licensee. The petitioner filed Case No.194 of 2014 on 23.9.2014 before MERC on 23.9.2014 for treating the Railways as deemed Licensee and non-

applicability of Cross Subsidy Charges. MSETCL vide letter dated 20.5.2015 communicated to the petitioner that since the matter regarding status of Indian Railways as a deemed Distribution Licensee is sub-judice before MERC, the application for grid connectivity would be considered post outcome of the Case. MERC vide their daily order dated 16.12.2014 directed the petitioner to submit revised petition. However, the application was subsequently requested to be withdrawn vide letter dated 3.7.2015.

(f) The petitioner through the Chief Electrical Distribution Engineer, Central Railways vide letter dated 3.7.2015 informed MSETCL that it is a deemed distribution licensee as per the third proviso to Section 14 of the Electricity Act read with Railways Act which has been clarified by Ministry of Power vide its letter dated 6.5.2014 and the said letter has been circulated to Secretaries of the State Commission and JERCs and Secretaries in charge of Energy/Power Departments of States/Union Territories. The petitioner requested MSETCL to issue connectivity certificate, ABT meter availability certificate and approved SLD to Railways keeping in view the fact that all Transmission Sub-Stations of Railways are connected with MSETCL network and already drawing power. MSETCL after examining the request has advised the petitioner vide letter dated 6.7.2015 to seek notification/regulations from the appropriate Regulatory Commission for defining the (a) area of supply under the definition of distribution licensee under Section 2(17) read with Section 2(3) of the Electricity Act; (b) conditions of licence under Section 16 read with proviso 3 of Section 14 of the Electricity Act; and (c) other matters like tariff determination, power purchase, ABT metering and other conditions

as per Section 62, Standard of Performance etc. under Section 57/58 of the Electricity Act.

(g) MSETCL has held various meetings with the officials of the petitioner on 10.3.2015 and 13.3.2015 and Principal Secretary (Energy), Government of Maharashtra held a meeting on 17.7.2015 to facilitate open access supply to the petitioner. A joint visit of the officials of the petitioner, MSETCL and TPC-D was made at Panvel Traction Sub-Station to address the ABT metering issue.

(h) The petitioner has not disclosed about the filing of the petition before MERC regarding deemed distribution licensee status in the present petition. In case the intra-State transmission is considered as incidental to inter-State transmission system for the purpose of open access, then the charges of intra-State transmission will have to be considered by the Commission. Further, the generating station of RGPPL is connected to the Maharashtra State Grid and not to ISTS as submitted by the petitioner. Since the present power supply to the Railways in Maharashtra is from the existing distribution companies namely, MSEDCL and TPC-D, they are required to be made necessary parties to the proceedings. MSETCL is not denying connectivity and open access to the petitioner but the petitioner has to fulfill the regulatory mandates as per the provisions of laws and regulations.

15. GETCO in its reply filed vide affidavit dated 16.10.2015 has submitted as under:

(a) The petitioner seems to have a grievance against a specific incident related to MSETCL but has made several other States as respondents and is

seeking mandatory and advance declaration against several transmission companies, STUs, SLDCs etc. Though connectivity has been sought at the end of distribution companies and the distribution companies of the respective States are directly involved, the said distribution companies have not been made parties to the petition. As the connectivity is being sought at the end of distribution companies, this Commission does not get jurisdiction to decide the issues even though the connectivity may be incidental to the petitioner seeking inter-State open access. The petition must be dismissed on the aspects of jurisdiction and non-joinder of necessary parties.

(b) The petitioner is a consumer of three distribution companies in the State of Gujarat and is connected at several places and locations in the geographical areas of the distribution licensees having consumer number, premises specific connections and contract demand. The relationship between the petitioner and the distribution companies is that of a consumer and licensee and is subject to the orders and regulations of the SERCs. As per Annexure E of the Petition titled “Tentative List of Delivery Points at Railways Network”, the points are on the lines of the distribution companies or the STU network and therefore, connectivity cannot be in terms of the Connectivity Regulations of this Commission but has to be in terms of the respective State Commission’s regulations. There cannot be any order sought from or passed by this Commission qua GETCO in the present proceedings.

(c) Even if it is assumed that the petitioner is a deemed licensee, it will help the petitioner to lay its own transmission/distribution lines to take power. However, the petitioner cannot use its deemed licence status, not lay down

lines/network, use distribution licensees network to convey the power purchase by it and take the position that this Commission must give a declaration that automatic connectivity at all points will be given to the petitioner bypassing all procedures, laws, and orders of the State Commission in force in respective States. The judgement of the Supreme Court in Union of India Vs. Chairman UPSEB in Transferred Case No.37 and 38 of 2001, particularly the observation in para 13(i) and (ii) on the aspect of the petitioner's authority to lay down its own dedicated transmission/distribution lines, cannot be read out of context to support the claim of the petitioner to seek mandatory open access as a deemed licensee without laying down its own network. As regards the interpretation of Railways Act qua Electricity Act, an exact question has been decided by the Appellate Tribunal for Electricity in Appeal No.114 of 2007 and the Appellate Tribunal in its judgement dated 8.5.2008 has held that DMRC is not entitled to a distribution licence in the area of its operation. In view of the said judgement, the petitioner cannot be accepted as a licensee.

(d) As regards the claim of the petitioner to be treated as a deemed licensee in terms of third proviso to Section 14 of the Electricity Act, GETCO has submitted that if a Government Department qualifies as being the Appropriate Government under Section 2(5) of the Electricity Act, then all Government Departments will become deemed licensees. Therefore, the third proviso does not apply to the petitioner. Further, whenever, the Parliament wanted to confer status of a deemed licensee, it has clearly done so as in the case of Damodar Valley Corporation.

(e) The petitioner is desirous of availing the power purchased by it through GUVNL and RGPPL at various locations in the States of Maharashtra, Gujarat, Jharkhand and West Bengal. As the petitioner wants to get connectivity at any point in the State of Gujarat, the connectivity application has to be made to Gujarat STU and should be as per the Gujarat Electricity Regulatory Commission (Distribution of Open Access) Regulations, 2011. Regulation 7 (nodal agency being CTU) and 13 (system studies to be carried out for grant of open access in consultation with other agencies) are not applicable in the case of the petitioner. The order of the Commission in Petition No.158/MP/2012 has no relevance as in the said case, the State network was not being used at all and the connectivity was to the STU network directly.

(f) As regards the common settlement of energy accounting, it has been submitted that there are 5 RLDCs settling energy accounting at the regional level and several SLDCs and distribution companies in their respective States and therefore, a common settlement to the petitioner for all different energy transactions at different locations cannot be permitted. Moreover, different SLDC/RLDCs are the settlement agency for the purpose of energy accounting and deviation settlement and accordingly, each connection of the Railways seeking open access will have to be separately considered for the purpose of energy accounting and deviation settlement in line with respective distribution licensee where it is located.

16. WBSETCL has filed its preliminary objections vide affidavit dated 9.10.2015 as under:

(a) The petition is not maintainable for several reasons. Firstly, no application for open access has been filed in relation to the State of West Bengal as on date and therefore, the provisions of the Connectivity Regulations cannot be invoked in relation to the State of West Bengal. Secondly, there being no application for open access, the question of dispute in relation to open access does not arise for adjudication by the Commission. Thirdly, the process provided under Connectivity Regulations have to be necessarily complied with without which present petition cannot be filed. Fourthly, the petitioner held some meetings with WBSETCL alongwith WBSEDCL before the West Bengal Electricity Regulatory Commission (WBERC) thereby accepting the jurisdiction of the said Commission which fact has not been disclosed in the present petition. Finally, the petitioner has not made the STUs and SLDCs as parties to the present petition though the petitioner seeks reliefs against these utilities. The petition suffers from non-joinder of necessary parties and is liable to be dismissed.

(b) The petitioner has not disclosed that the petitioner has already approached WBERC in this regard. A meeting was held in the office of WBERC on 25.8.2015 with regard to the ABT meters at Dankuni and Barasat Railway Traction Sub-Stations and Connectivity certificate and the matter is pending for disposal. The petitioner is wrong in anticipating dispute in this regard where final findings have not yet been concluded by WBERC.

(c) The petition has been made under Regulations 7 and 12 of the Connectivity Regulations though the petitioner as on date has not applied for grant of LTOA or MTOA to the Central Transmission Utility. The petitioner

neither filed the petition for grant of open access nor even indicated the point of injection, point of withdrawal in West Bengal, quantum of power to be availed through open access, nature of power etc. In a bid to avoid the entire process, the petitioner has now raised a frivolous claim of being a deemed licensee under the Act.

(d) The provisions of Section 11(g) of the Railways Act relate to setting up and maintenance of infrastructure in connection with working of the railways and do not in any way authorize transmission or distribution of electricity by the petitioner. Further, the petitioner has not been engaged in transmission or distribution of electricity as per the first proviso to Section 14 and is therefore not a deemed licensee within the scope of Electricity Act.

(e) As regards the status of the petitioner as a deemed licensee, WBSETCL has submitted that the term appropriate Government referred to in Section 2(5) of the Act refers to Central Government or State Governments and not to departments thereof. Merely being a department of the Central Government does not qualify the petitioner to be deemed as Appropriate Government for the purpose of Section 14 of the Act.

(f) It is the case of the petitioner that it has been engaged in the business of distribution and transmission of electricity prior to the commencement of Electricity Act by virtue of Section 11 of the Railways Act. At the time of enactment of the Railways Act in 1989 repealing the Railways Act, 1890, the Indian Electricity Act, 1910 (1910 Act) was in force. According to the 1910 Act, a sanction is required in the form of licence from the State Government in order to supply electricity in a specified area. Part III of the 1910 Act

categorized Railways as in Non-Licensee category. Neither 1910 Act nor Railways Act provided that they are exception to each other. Hence Indian Railways even after being empowered under Section 11 of the Railways Act would have needed either sanction by the State/Central Government or a licence under Section 3 of the 1910 Act to execute necessary works as provided under Section 11(g) of the Railways Act. Hence the averments of the petitioner that the Indian Railways is a Department of the Central Government and hence it is a deemed licensee for transmission and distribution of electricity is based on misconstrued provisions of the Electricity Act.

(g) Another proviso to Section 14 of the Electricity Act provides that in case of a Government Company as defined under Section 617 of the Companies Act, 1956 or under Section 131(2) of the Electricity Act shall be deemed to be a distribution licensee under the Act. The petitioner is neither a Government company within the meaning of Section 617 of the Companies Act, 1956 nor a company under Section 131(2) of the Electricity Act. Further, the Parliament in its wisdom has clearly indicated the organizations that would be treated as deemed licensee under the Electricity Act e.g. DVC. In the absence of similar provisions being made in favour of the petitioner, it cannot be treated as a deemed licensee.

(h) Ministry of Power is not the appropriate authority to provide clarifications regarding the status of the Indian Railways as deemed licensee under the Electricity Act. The said clarification can neither be treated as a policy direction to this Commission under Section 107 of the Electricity Act nor a notification under the Act nor an amendment to the Act. Therefore, such

clarification does not create any substantive right in favour of the petitioner to be treated as a deemed licensee. The petitioner in order to be considered as a deemed licensee under the Electricity Act must first comply with all the requisites as enshrined under Section 12 read with Sections 14 and 15 of the Electricity Act.

(i) The Appellate Tribunal for Electricity has already in case of Delhi Metro Rail Corporation Vs. Delhi Transco Limited and others in Appeal No.114 of 2007 declined the status of deemed licensee to DMRC while interpreting the provisions similar to Section 11 of the Railways Act. Further, the Supreme Court judgment in Union of India Vs. Chairman, UPSEB relied upon by the petitioner clarifies that the Railways have power to erect, maintain or repair any electric traction equipment, power supply and distribution installations in connection with working of Railways and does not empower Railways to supply electricity or transmit power as a deemed licensee under Section 14 of the Electricity Act.

17. WBSEDCL filed an Interlocutory Application No.32 of 2015 seeking impleadment and permission to participate in the proceedings in the present petition. The IA was allowed and WBSEDCL was permitted to file a written submission. Accordingly, WBSEDCL vide its affidavit dated 19.10.2015 has filed a written submission. The broad points raised by WBSEDCL are as under:

(a) In accordance with the principle laid down in the judgement of the Hon'ble Supreme Court in Kusum Ingots and Alloys Ltd. V Union of India, [(2004) 6 SCC 254], "for every action, there has to be a cause of action, if not, the plaint or the writ petition, as the case may be, shall be rejected summarily". Since no

cause of action has been disclosed with respect to State of West Bengal or WBSEDCL, the petition is liable to be dismissed to the extent relief has been sought against the State of West Bengal.

(b) Though the petition has been filed under Regulation 7 and 12 of the Connectivity Regulations, no application has been made for long term access in the State of West Bengal. Therefore, the jurisdiction of the Commission cannot be invoked under the provisions of the Connectivity Regulations for West Bengal since there is no occasion to invoke the dispute resolution provisions of the Connectivity Regulations against WBSETCL.

(c) The petitioner has failed to include necessary parties in the petition, namely, WBSEDCL. Indian Railways is connected to the distribution networks of WBSEDCL at the points specified in Annexure E to the petition. However the petitioner's claim as prayed at para 37(a) and (c) cannot be adjudicated unless WBSEDCL is made a party.

(d) The petitioner has not filed the application with the nodal agency as required under the Connectivity Regulations. The petition also fails to provide details with regard to the State of West Bengal as required by Regulation 12 of Connectivity Regulations and the Detailed Procedure.

(e) The petitioner has not disclosed the facts that have a relevant bearing on the maintainability as well as merit of the petition. The petitioner has already approached WBERC to discuss the issue of grant of open access in the State of West Bengal alongwith WBSEDCL and WBSETCL. WBERC has sought

certain clarification from Railways. These facts have not been disclosed and the petitioner is resorting to forum shopping.

(f) The petitioner is a consumer under the definition of 'consumer' under Section 2 (15) of the Electricity Act since it is supplied with electricity for its own use and is connected to the distribution network of WBSEDCL to receive electricity for its use. The petitioner by this petition is seeking dual status of being a consumer and a deemed licensee under the provisions of the Electricity Act. The petitioner has been staking its claim as a separate consumer category for preferential tariff in various proceedings before State Commission and also the Appellate Tribunal for electricity.

(g) The petitioner is not carrying on any transmission or distribution functions, it is merely using transmission and distribution infrastructure set-up to facilitate consumption of electricity at various points for electrical traction. Perusal of the definitions of consumer, distribution licensee, area of supply, supply, licence, licensee, trading, transmission licensee and transmit shows that the petitioner is neither a distribution licensee nor an entity engaged in the supply of electricity in terms of Electricity Act.

(h) The petitioner may be an Appropriate Government under the Electricity Act, but has never been involved in transmission or distribution or trading in electricity. The petitioner is consuming electricity for its own use and is not selling such electricity to become a deemed distribution licensee. Therefore, the petitioner cannot seek the benefit of third proviso to Section 14 of the Electricity Act.

(i) Section 11 of the Railways Act merely allows the petitioner to erect or construct such infrastructure as needed for working and maintenance of its railway network. The Supreme court's judgement dated 9.2.2012 in Union of India Vs UP State Electricity Board, relied upon by the petitioner only reaffirms this position. The said judgement in no way suggests that the petitioner has the right to transmit or distribute electricity.

(g) Ministry of Power's clarification dated 6.5.2014 is not a judicial pronouncement and is not conclusive of the status of the petitioner. In fact, the clarification is inconsistent with the provisions of the Act, since it does not address how the petitioner can be treated as a deemed licensee without carrying out any of the licensed functions and being merely a consumer of electricity.

18. The Central Electricity Authority vide its letter dated 6.10.2015 has submitted as under:

(a) Ministry of Power vide letter dated 6.5.2014 has clarified that the Indian Railways is a deemed licensee under 3<sup>rd</sup> proviso to Section 14 of the Electricity Act. The clarification also specifies that the deemed licensee status may be read with other applicable provisions of the Electricity Act and the policies made thereunder.

(b) As a deemed distribution licensee, Railways can seek Open Access for inter-State Transmission network under Regulations framed by the Commission and intra-State Open Access for intra-State Transmission network under Regulations framed by the respective SERCs.

(c) Distribution being a State subject, all the provisions applicable for the distribution licensee are to be attracted for Indian Railways acting as a distribution licensee within its area of jurisdiction and as such, the State Commissions shall be having the jurisdiction under the Electricity Act.

(d) The State Transmission Utilities and the State Load Despatch Centers are governed by the regulations framed by the State Commissions under the provisions of the Electricity Act and therefore, issues pertaining to the State Discoms are to be dealt in accordance with the Regulations framed by the State Commissions under their regulatory framework.

(e) In case, Railway is a deemed distribution licensee, it has to follow the procedure as laid down under the Electricity Act and the tariff policy notified by government of India for the procurement of power from the generators, traders, any other legal entity as may be permissible under the Act. Consequently, clause 5.1 of the tariff policy regarding procurement through Competitive bidding would be applicable in the case of Railways.

(f) The commissioning of dedicated transmission lines can only be laid down by the developer of a generating station or a captive generating station connecting the electric lines or the substation or a load centre as the case may be. However, for drawing dedicated power from ISTS points, Railways can lay down electric lines for such drawl of power under the provisions of Section 68 and 164 of the Act.

19. Power Grid Corporation of India Limited in its reply vide affidavit dated 1.10.2015 has submitted as under:

(a) PGCIL is in agreement with the constant and continuous requirement of power by the Indian Railways for efficient running of the commercial and passenger trains all over India. By virtue of the clarification issued by Ministry of Power vide letter dated 6.5.2014, the petitioner has been deemed to be a licensee under third proviso to Section 14 of the Electricity Act. Pursuant to the directions of Ministry of railways, CEA has submitted a report on February 2015 wherein the following has been observed:

“For connecting its existing or future TSS with the ISTS, Railways as deemed licensee is not required to formally apply to CTU. However, they would have to communicate their connectivity requirement to CEA and CTU, in accordance with Regulation 5 of CERC Regulations, for consideration of integrated planning for ISTS in a coordinated manner.”

In the light of the report of CEA, the transmission lines would be planned in an integrated manner and railways being a deemed licensee would be able to construct transmission lines in connection with the works of the railways and the transmission lines would be exclusively used for the purpose of railways and may not form part of the POC under the Central Electricity Regulatory Commission (Sharing of Inter-State Transmission Charges and Losses) Regulations, 2010.

(b) According to the petitioner the transmission system of CTU would be available from the periphery of the State Transmission Utility of that State where the electricity purchased is to be conveyed to the Indian Railways. Thereafter, the intra state transmission system of that particular State would be able for conveyance of electricity to the facilities of the Indian Railways. Within a State, Indian Railways is

connected at various locations through STU/ DISCOM Network. For the purposes of Open Access to be granted to the Railways in a State, these drawl points on intra-state transmission system located within a State may be treated as a single entity as suggested by CEA in Clause 4.3.2 of the Report. The Commission may pass appropriate direction in this regard.

(c) With respect to the grant of MTOA for 100 MW from GUVNL to Indian Railways in Maharashtra for the period from 1.2.2016 to 31.7.2016, the petitioner submitted the online application on 17.8.2015 and physical copy of the application along with documents were received in the office of CTU on 20.8.2015. After scrutiny, certain deficiencies like non-production of NOC at drawal point from Maharashtra SLDC, defective NOC at injection end etc. were found in the application and accordingly, the application was closed and the petitioner was informed vide letter dated 28.9.2015. CTU would process the MTOA application of the petitioner by following the due process once the required NOCs are provided and all the other deficiencies and defects are removed and cured.

(e) The order of the Commission in petition no. 158/MP/2012 has no bearing on the facts and circumstances of the present petition because the directions in that petition dealt with connectivity to ISTS directly without using the networks of the STU whereas in the present petition, the Petitioner requires connectivity with the intra-State transmission systems of the STUs.

20. Power System Operation Corporation Limited in its reply vide affidavit dated 22.9.2015 has submitted as under:

(a) Since the Petitioner is a deemed licensee by virtue of the clarification issued by the Ministry of Power letter No. 25/19/2004-R&R dated 06.05.2014 in this regard and is intending to use the transmission facility of Maharashtra, it may consider applying to the Appropriate Commission for the use as an Intervening Facility.

(b) As regards the request of the petitioner to be treated as a separate entity for the purpose of scheduling and dispatch mechanism under DSM Regulations, POSOCO has submitted that the petitioner after getting connected to ISTS at other points may be treated as regional entity at those points. In this connection, POSOCO has relied upon the CEA Report of the Committee for preparation of 'Energy Plan for Indian Railways', in which it has been recommended that Drawl points from ISTS located within a state could be treated as a single regional entity at par with the State which may lead to fragmented control area. Therefore, for the purpose of open access, scheduling, metering, balancing, applicability of ISTS charges, losses etc. the group of electric Traction Sub-Sections (TSS) situated in a State and connected directly with ISTS may be treated as one 'fragmented control area'. Till such time, they are only connected with the state transmission system, they shall continue to be treated as an intra-state entity. Moreover, Indian Railways can procure power directly from any generator after obtaining open access for wheeling of power through the state transmission network and Distribution Company's network. Under the provisions of CERC Regulations,

at present Indian Railways (Northern Region) has been mandated as Regional Entity in respect of drawl of power from Dadri and Auraiya.

21. We have heard the learned counsel for the petitioner, MSETCL, GUVNL, WBSETCL, WBSEDCL, PGCIL and the representatives of CEA and POSOCO.

22. During the hearing, learned counsel for the petitioner submitted that the petition has been filed by the petitioner as an authorized entity for distribution and supply of electricity seeking directions for grant of open access through inter-State transmission network and incidental to the same through the network of the State Transmission Utilities as well as for treatment as Regional Entity for the purposes of Deviation Settlement Mechanism. Learned counsel further submitted as under:

(a) On consideration of various relevant provisions of the Railways Act, particularly, Section 2(31), Section 2(32), Section 11 (g) and (h), and Section 12, the powers of the railway administration includes construction and establishment of electric supply lines as well as erect, operate, maintain or repair any electric traction equipment, power supply and distribution installation in connection with the working of the railways. Such powers necessarily involve comprehensively all activities in connection with working of railways including the distribution and supply of electricity. Otherwise the power to erect, operate and maintain these equipment and installations would serve no purpose if the railways administration is not allowed to use such equipment in connection with the working of the railways and for the said purpose distribute and supply electricity.

(b) Hon'ble Supreme Court in Union of India Vs. Chairman, UPSEB has duly analyzed Section 11(a) and (g) of the Railways Act and has held that the said provisions cannot be read in a restricted manner and sub-section (g) thereof clearly empowers the Railways to erect any electric traction equipment and power supply and distribution installation which is in connection with the work of the railways. Section 11 of the Railways Act is in no manner affected by provisions of the Electricity Act by virtue of Section 173 thereof under which Railways Act has been saved in case of inconsistency with the Electricity Act. Therefore, Indian Railways have full authority to undertake electricity distribution and supply by virtue of the provisions of the Railways Act notwithstanding anything contrary contained in the Electricity Act. Indian Railways is a department and part of the Central Government under Ministry of Railways and is therefore, a deemed licensee under third proviso to Section 14 of the Electricity Act. The clarification dated 6.5.2014 issued by Ministry of Power in consultation with Ministry of Law and Justice regarding the status of Indian Railways cannot be ignored, though the said clarification is in addition to the status of the Indian Railways under the Railways Act.

(c) The area of operation of the Indian Railways to undertake distribution and supply of electricity is identified in terms of the Railways Act, namely the Indian Railways shall be entitled to distribution of electricity through the railway system, network, works and facilities as envisaged in the definition of the term railways and other provisions of the Railways Act. It is not necessary to identify a district or revenue area etc. as in case of a normal distribution licensee. The area is defined with reference to the operation of the railways. The identification of such area is only for issue of parallel or second licence

and not the first licence. Further area of supply defined under Section 2 (3) of the Electricity Act is not restricted to geographical area. Indian Railways can undertake laying down of the High Voltage as well as other Voltage transmission/distributions lines along the railway traction and in places where there are functions of the railways.

(d) The Indian railways cannot be compared to Delhi Metro Rail Corporation (DMRC). DMRC is a government company and not Government within the meaning of third proviso to Section 14 of the Electricity Act. Further in Appeal No. 114 of 2007, DMRC had specifically applied for a distribution licence to the State Electricity Regulatory Commission and was not claiming deemed status. In any event, the provisions of DMRC Act, 2000 did not provide for erection of power supply and distribution installation which is specifically provided in the Railways Act and hence the two Acts cannot be compared and the judgement of the Appellate Tribunal in DMRC case dated 8.5.2008 does not apply in the present case.

(e) The judgements of the Appellate Tribunal are in relation to Railways as a consumer of distribution licensee. However, this does not mean that Railways is precluded from exercising its powers under the Railways Act or third proviso to Section 14 of the Electricity Act as an authorized entity/distribution licensee. Merely because Railways was a consumer would not mean that it has waived its powers to undertake distribution.

(f) Railways are entitled to seek open access on existing transmission and/or distribution lines of the licensees for getting the electricity from the place of generation to the inter-connection point of the railways network.

Since electricity would be consumed in more than one State and procured through the use of inter-State transmission system, incidental use of any state transmission or distribution system should also be considered as inter-State use of the system.

(g) The petitioner is entitled to procure electricity from any source including a generating company, a captive generating plant, a trader or through power exchange to meet its electricity requirements. For this purpose, Railways is entitled to seek open access on existing transmission and/or distribution lines of the licensees for getting the electricity from the place of generation to the interconnection point of the railways network. Since electricity would be consumed in more than one State and electricity would be procured through the use of inter-State Transmission system, the incidental use of any transmission or distribution system will also be considered as inter-State use of the system in accordance with the definition of inter-State Transmission System.

(h) The petitioner is seeking to purchase power from GUVNL and Ratnagiri Gas and Power Private Limited for the State of Maharashtra, Gujarat, Jharkhand and West Bengal. The tentative list of delivery points of railways network have been annexed as Annexure E to the petition. The petitioner is desirous of availing the transmission services of PGCIL as well as MSETCL for sale of power from GUVNL in Maharashtra and had applied for no objection as a deemed distribution licensee to MSETCL. However, the same has not been received and MSETCL has insisted on a notification from the Appropriate Commission. It was anticipated that the utilities in other States

would create similar issue as may be seen from the reply of WBSEDCL. The decision of the Commission in the context of MSETCL would equally apply to other States also and therefore, the petitioner has sought directions of the Commission for grant of no objection and connectivity as a distribution licensee as well as long term access/medium term open access.

(i) The issue before WBERC is in relation to installation of ABT meters and connectivity certificate in relation to intra-State transmission for supply from its captive power plant. Further, at such time, the petitioner had applied as a consumer and not as a distribution licensee. The same has no relation to the present petition wherein connectivity is being sought as a deemed licensee on inter-State transmission system.

(j) The plea raised on the application of Section 16 of the Electricity Act enabling the State Electricity Regulatory Commission imposing special conditions has no relevance to the issue involved in the present case. Railways being authorized under the Railways Act which has been given superseding effect, therefore no condition can be imposed under Section 16 of the Electricity Act. In any event, these are the matters for the State Commissions to decide at the appropriate stage.

23. Learned counsel for MSETCL submitted that the Commission may take a view after taking into consideration the pleadings of MSETCL in the petition. Learned counsel for WBSETCL and WBSEDL submitted that the present petition is not maintainable since the petitioner has not disclosed any cause of action against WBSETCL and WBSEDL; no application has been made under the Connectivity Regulation qua Open Access in the State of West Bengal; and there is no occasion

to invoke the dispute regulation provisions of the Connectivity Regulations against the State of West Bengal. Learned Counsel further submitted that petitioner has not disclosed its approaching the WBERC to discuss the issue of grant of Open Access in the State of West Bengal along with WBSETCL and WBSEDL. The learned counsel further submitted that the petitioner is not carrying out any transmission or distribution in terms of the Electricity Act. The petitioner is consuming electricity from various sources for its own use and has not been selling electricity as required under the Electricity Act to become a deemed distribution licensee. Learned Counsel submitted that the contentions and averments of the petitioner vested with the power of a licensee under Section 11 (g) of the Railways Act is based on a misconstrued understanding of relevant provisions. Moreover, the Ministry of Power clarification is neither a judicial pronouncement nor in the nature of policy direction under Section 107 of the Electricity Act and is therefore not binding upon the Commission. On other points, learned counsel relied upon the replies filed by WBSETCL and WBSEDCL which have already been recorded in this order.

### **Analysis and Decision**

24. After consideration of the submission of the parties, the following issues arise for our consideration:

- (a) Whether the petition is maintainable before the Commission?
  
- (b) Whether the petitioner's claim as an authorized entity under the provisions of the Railways Act to undertake distribution of electricity in connection with the working of the railways can be sustained in law. If so, whether the petitioner is entitled for grant of connectivity and open access as a distribution licensee in connection with the working of the railways?

(c) Whether the petitioner can be treated as a deemed licensee under the Electricity Act?

(d) Whether the petitioner should be treated as a separate regional entity for the purpose of scheduling and energy accounting in terms of deviation settlement?

**Issue No. 1: Whether the petition is maintainable before the Commission?**

25. The petitioner has submitted that the Indian Railways have been allocated 500 MW power from the 1967 MW Ratnagiri Gas and Power Private Limited by Ministry of Power. The petitioner in para 24 of the petition and in its affidavit dated 30.9.2015 has submitted that RGPPL station is connected to the State transmission network of MSETCL which in turn is connected with the network of PGCIL. The petitioner is seeking open access for inter-State transmission, after availing power from RGPPL, to the States of Gujarat, Jharkhand, West Bengal and Maharashtra, through the network of PGCIL/CTU and the network of State Transmission Utilities. The petitioner has further submitted that it has entered into a PPA dated 5.3.2015 with GUVNL for supply of 100 MW of electricity at GETCO's periphery i.e. interconnection points between GETCO and PGCIL and thereafter, the transmission systems of PGCIL would be used to the periphery of the State Transmission Utility of the State where the electricity is to be conveyed to Indian Railways network.

26. From the above, it is apparent that the petitioner intends to buy electricity from the generating companies or distribution licensees or electricity traders for use in its area of operation i.e. at various Traction Sub-station or TSS of the Indian Railways. For carrying the electricity from the points of injection to the points of drawal, the distribution systems of distribution licensees, the transmission systems of

STUs and intra-State transmission licensees and the transmission systems of CTU and other inter-State transmission licenses are likely to be used. PGCIL is on record that only at Dadri and Auraiya, Indian Railways is directly connected to ISTS and consequently, at other points, Indian Railways is connected through the respective State transmission networks. This being so, inter-State open access in any form - whether long term, medium term or short term - will require the concurrence or 'no objection' from the concerned State Transmission Utility or intra-State transmission licensee or the distribution licensees.

27. The petitioner applied on 19.1.2015 to MSETCL for no objection certificate for connectivity and transfer of power through Open Access till the facilities and network of Indian Railways. MSETCL vide its letter dated 4.2.2015 directed the petitioner to apply for connectivity at the Traction Sub-Stations (TSS) proposed for availing open access. The petitioner made an application for grant of connectivity to MSETCL on 17.3.2015. MSETCL vide its letter dated 20.5.2015 advised the petitioner as under:-

“You have applied to seek grid connectivity to InSTS as a distribution licensee, therefore, you have to be notified by MERC to that effect in accordance with Clause 14 and 15 of the Electricity Act, 2003. As the connectivity of these 16 different locations individually as EHV consumer of MSETCL will no longer be valid when permanently disconnected from MSETCL and established as distribution licensee in the State.”

The petitioner had also filed Case No. 194 of 2014 before MERC for treating railways as deemed distribution licensee under Section 14 of the Electricity Act. The petitioner withdrew the petition before MERC vide its application dated 3.7.2015 and acceptance of the request was conveyed by MERC vide letter dated 14.7.2015. The petitioner informed MSETCL vide its letter dated 3.7.2015 that in terms of the Ministry of Power letter dated 6.5.2014, Indian Railways is a deemed licensee under third proviso to Section 14 of the Electricity Act read with Railways Act and no more

notification by MERC in this regard is required. The petitioner further informed that the said clarification has been circulated to the Secretaries of all State Commissions/JERCs and Secretaries in the charge of Energy/Power Department of the States/Union Territories. The petitioner further informed MSETCL that since railways is a deemed distribution licensee, MSETCL should provide non-discriminatory open access in terms of Section 39 (2) (d) (i) of the Electricity Act to its transmission system to railways where the TSS of railways are physically connected and requested MSETCL to issue connectivity certificate, ABT meter available certificate and approved SLD to the petitioner. In response, MSETCL vide its letter dated 6.7.2015 replied as under:-

“The contents of your letter have been examined and it is requested that Railways should seek a notification/regulations from the appropriate Regulatory Commission for:-

- 1) Defining area of supply under the definition of “Distribution Licensee” under Section 2 (17) read with Section 2 (3) of Electricity Act, 2003.
- 2) Conditions of licensee under Section 16 of EA 2003.
- 3) Other matters like Tariff determination, power purchase and other conditions as per Section 62, Standard of Performance (SOP) etc. under Section 57/58 of EA, 2003.

As per MERC (Transmission Open Access Regulations), 2014, Section 3.2, connectivity with the grid is a pre-condition of grant of open access.”

28. The petitioner has submitted that in terms of Regulation 7 of the Connectivity Regulations, the applications for connectivity and long term access has to be processed within specified time and in terms of Regulation 13 of the said Regulations the nodal agency shall carry out the system studies in consultation with and through coordination with other agencies involved in inter-State transmission network to be used, including the State Transmission Utility, so that the application can be processed within the time frame prescribed in Regulation 7 of the

Connectivity Regulations. WSEDCL and WSETCL have submitted that as per Regulation 5 of the Connectivity Regulations, the application for grant of Connectivity or long term access or medium term open access shall be made to the nodal agency i.e. PGCIL. However, the petitioner has not filed any application to the nodal agency as required under the Connectivity Regulations. PGCIL in its affidavit has submitted that GUVNL made an application to PGCIL for grant of MTOA for 100MW from GUVNL to Indian Railways in Maharashtra for the period from 1.2.2016 to 31.7.2016 and submitted the online application on 17.8.2015 and physical application on 20.8.2015. Since, NOC at drawal point at Maharashtra SLDC was not found attached along with application, PGCIL closed the application and advised the petitioner to submit the required NOC from SLDC Maharashtra for further processing of the application.

29. This Commission has been entrusted with the functions to regulate inter-State transmission of electricity under Section 79(1)(c) of the Electricity Act. Further, in terms of sub-Section 47 of section 2 of the Electricity Act, this Commission has been mandated to specify the regulations to facilitate inter-State open access to the inter-State transmission system for use by any licensee or consumer or a person engaged in generation of electricity. In exercise of its power under Section 178 read with Section 2(47) of the Electricity Act, the Commission has specified the Connectivity Regulations to facilitate non-discriminatory medium term open access and long term access to inter-State transmission system. It is pertinent to mention that under Section 2(36)(ii) of the Electricity Act, inter-State transmission system includes “the conveyance of electricity across the territory of an intervening State as well as conveyance of electricity within the State which is incidental to such inter-State transmission of electricity.” Therefore, in cases involving open access to inter-State

transmission systems, the transmission systems of the State Transmission Utilities and intra-State transmission licensees and the distribution licensees shall be incidental to the inter-State transmission of electricity.

30. The petitioner made an application to MSLDC for grant of grid connectivity as a distribution licensee to the Intra-State Transmission System (InSTS) for 100 MW with contracted power from GUVNL for 16 TSS of Central and Western Railways through medium term open access. The petitioner also made an application to CTU for grant of medium term open access. Connectivity Regulations clearly provide that a distribution licensee can apply for long term access and medium term open access to ISTS. Regulation 10 of the Connectivity Regulations provides as under:

“(1) Applications for long term access or medium term open access shall be processed on first-come-first-served basis separately for each of the aforesaid types of access:

Provided that.....

Provided further that.....

Provided also that.....

Provided also that if an intra-State entity is applying for long term access or medium term open access, concurrence of the State Load Despatch Centre shall be obtained in advance and submitted alongwith the application to the nodal agency. The concurrence of the State Load Despatch Centre shall be in such form as may be provided in the detailed procedure.

(2) Where necessary infrastructure required for energy metering and time-block-wise accounting already exists and required transmission capacity in the State network is available, the State Load Despatch Centre shall convey its concurrence to the applicant within 10 working days of receipt of the application.

(3) In case SLDC decides not to give concurrence, the same shall be communicated to the applicant in writing, giving the reasons for refusal within the above stipulated period.”

Further, Para 12.1 and 23.3 of the Detailed Procedure issued with the approval of the Commission under Regulation 27 of the Connectivity Regulations requires an intra-State entity to apply for medium term open access or long term

access alongwith the concurrence of the SLDCs of both injection and drawal points.

The said paras are extracted as under:

“12.1 If a State Utility or an intra-State entity is applying for MTOA, concurrence of the concerned State Load Dispatch Centres, both from injection and drawl point SLDCs is to be submitted along with the application in the enclosed format (FORMAT-MTOA-3).

23.3 In case an intra-State entity is applying for LTA, concurrence of concerned State Transmission Utilities of states having injection and drawl points shall be obtained in advance in the prescribed format [FORMAT-LTA-3] and attached with the application.”

Thus as per the above provisions, concurrence of the concerned SLDC is a prior necessity for applying for medium term open access and long term access.

31. The petitioner seeks to avail power from GUVNL and RGPPL under inter-State medium term open access for which the petitioner has applied for grid connectivity to MSETCL and for medium term open access to CTU in its capacity as a deemed distribution licensee. MSETCL advised the petitioner to seek notification/regulations from the Appropriate Commission defining the area of supply of the distribution licensee, conditions of licence and other conditions like tariff determination, power purchase and other conditions as per Section 62 and Standard of Performance under Section 57/58 of the Electricity Act. The petitioner has submitted that there is no requirement for such a notification by the Appropriate Commission and has approached this Commission for necessary directions to the effect that the petitioner is entitled to the grant of inter-State open access for procurement of power from GUVNL and RGPPL through the ISTS and the transmission networks of the States.

32. The Commission is of the view that the issue raised in the petition is required to be adjudicated under Section 79 (1) (c) and (f) of the Electricity Act read with Regulation 32 of the Connectivity Regulations. The petitioner applied to MSETCL for connectivity for procurement of power through inter-State open access. MSETCL, GETCO, WBSETCL and WBSEDCL have raised preliminary objection on the ground of non-joinder of necessary parties as the distribution companies of the affected States have not been impleaded. Learned counsel for the petitioner submitted during the hearing that the petitioner is not seeking any relief against the distribution companies of the concerned States. Learned counsel further submitted that for grant of connectivity and inter-State open access, the nodal agency is the SLDC which is part of the State Transmission Utility and the petitioner has impleaded them. Learned counsel also submitted that as and when connectivity to distribution licensees is required, the petitioner will take appropriate action at that time. We find that the petitioner has impleaded MSETCL, WBSETCL and GETCO which are the State Transmission Utilities in Maharashtra, West Bengal and Gujarat respectively. The petitioner has not made the distribution companies of these States as parties on the ground that no relief has been sought against them. However, based on the application of WBSEDCL, the Commission allowed WBSEDCL to be impleaded as a party and participate in the proceedings. In our view, since the petitioner is seeking connectivity to the network of MSETCL and other STUs for the purpose of availing inter-State long term access and medium term open access, we are of the view that non-joinder of the distribution companies of Maharashtra and Gujarat is not fatal to the consideration of the issue raised in the petition. WBSETCL and GETCO have further submitted that the petitioner has not made applications for connectivity to WBSETCL and GETCO and therefore, no direction should be issued qua these

entities in the present petition. It is noticed that the petitioner claiming to be a distribution company has made application to MSETCL for grant of connectivity to State network for the purpose of availing open access. The petitioner has impleaded WBSETCL and GETCO on the ground that similar issues may arise in their cases. These respondents have participated in the proceedings and have made their submissions. Therefore, any decision taken on the issue raised in the petition will also be applicable in case of these STUs. The objections of the respondents are decided accordingly.

33. In view of the above discussions, we hold that since the issue has arisen in the context of grant of connectivity to Indian Railways for the purpose of availing inter-State Open Access, the petition is maintainable before the Commission.

**Issue No.2: Whether the petitioner's claim as an authorized entity under the provisions of the Railways Act to distribute and supply electricity can be sustained in law and if so, whether the petitioner is exempted from complying with the requirements put forth by MSETCL for the purpose of granting connectivity?**

34. In connection with the application of the petitioner for connectivity in order to avail open access to inter-State transmission system, MSETCL has sought a notification/regulation from the appropriate Regulatory Commission for the following:-

(a) Defining area of supply under the definition of "Distribution Licensee" under Section 2 (17) read with Section 2 (3) of Electricity Act, 2003.

(b) Conditions of licensee under Section 16 of EA 2003.

(c) Other matters like Tariff determination, power purchase and other conditions as per Section 62, Standard of Performance (SOP) etc. under Section 57/58 of EA, 2003.

35. The petitioner has submitted that the empowerment of the Railways Administration to undertake erection, operation and maintenance of electric traction equipment as well as power supply and distribution installation in connection with the working of the railways under Section 11 of the Railways Act is not in any manner affected by the provisions of the Electricity Act since the Railways Act is one of the three Acts saved under Section 173 of the Electricity Act in case of inconsistency. According to the petitioner, Indian Railways have full authority to undertake electricity distribution and supply by virtue of the provisions contained in the Railways Act, notwithstanding anything to the contrary contained in the Electricity Act. The petitioner has submitted that the clarification given by Ministry of Power in its letter dated 6.5.2014 to the effect that Railways is a deemed licensee under the third proviso to Section 14 of Electricity Act cannot be ignored and the clarification is in addition to the status of Railways under the Railways Act. The petitioner has submitted that the area of operation of the Indian Railways to undertake distribution and supply of electricity gets identified in terms of the Railways Act, namely, the Indian Railways shall be entitled to distribute electricity through the railway system, networks and facilities envisaged in the definition of the term railway and other provisions of the Railways Act. In other words, the petitioner's position is that the petitioner's function to distribute and supply electricity through the railway system and network is governed by Railways Act and not by Electricity Act and therefore, the petitioner is not required to fulfill the conditions as directed by MSETCL for grant of grid connectivity. In this connection, the petitioner has relied upon the judgement of the Hon'ble Supreme Court in the matter Union of India V. Chairman, UP State Electricity Board in which case it was held that in case of the Railways, the transmission of electricity is governed by a special enactment i.e. the Railways Act

and not by the enactments governing electricity and on the same principle, the petitioner has argued that distribution is governed by Section 11(g) of the Railways Act, and not by the Electricity Act.

36. WBSETCL and WBSEDCL have submitted that the terms used to empower the railways under Section 11(g) of the Railways Act are “erect, operate, maintain, and repair” and the right to build and operate infrastructure by Indian Railways under the Railways Act does not vest any right on the petitioner to be a licensee to distribute, transmit or trade electricity as per provisions of the Electricity Act. It has been further submitted that the Supreme Court judgment in Union of India V Chairman, UPSEB relied upon by the petitioner clarifies that the Railways have power to erect, maintain or repair any electric traction equipment, power supply and distribution installations in connection with working of Railways and does not empower Railways to supply electricity or transmit power as a deemed licensee under Section 14 of the Electricity Act. It has also been submitted that the Appellate Tribunal for Electricity in case of Delhi Metro Rail Corporation V Delhi Transco Limited and others in Appeal No.114 of 2007 has declined the status of deemed licensee to DMRC while interpreting the provisions similar to Section 11 of the Railways Act.

37. The main plank of argument of learned counsel for the petitioner is that on account of the saving of the Railways Act under Section 173 of the Electricity Act, the Indian Railways have the full authority to undertake the electricity supply and distribution by virtue of the provisions contained in the Railways Act, notwithstanding anything to the contrary contained under the Electricity Act. Section 173 of the Electricity Act reads as under:

"173.Inconsistency in laws

Nothing contained in this Act or any rule or regulation made thereunder or any instrument having effect by virtue of this Act, rule or regulation shall have effect in so far as it is inconsistent with any other provisions of the Consumer Protection Act, 1986 or the Atomic Energy Act, 1962 or the Railways Act, 1989."

Therefore, it has to be seen whether the provisions of the Electricity Act are inconsistent with the provisions of the Railways Act in so far as distribution business is concerned. To the extent of inconsistency, Railways Act will prevail and in case of consistency, provisions of both Acts will prevail.

38. Section 2(20) of the Railways Act defines Government Railway to mean "railways owned by the Central Government." Section 2(31) of the Railways Act defines railways as under:

(31) "railway" means a railway, or any portion of a railway, for the public carriage of passengers or goods, and includes—

(a) all lands within the fences or other boundary marks indicating the limits of the land appurtenant to a railway;

(b) all lines of rails, sidings, or yards, or branches used for the purposes of, or in connection with, a railway;

(c) all electric traction equipments, power supply and distribution installations used for the purposes of, or in connection with, a railway;

(d) all rolling stock, stations, offices, warehouses, wharves, workshops, manufactories, fixed plant and machinery, roads and streets, running rooms, rest houses, institutes, hospitals, waterworks and water supply installations, staff dwellings and any other works constructed for the purpose of, or in connection with railway;

(e) all vehicles which are used on any road for the purposes of traffic of a railway and owned, hired or worked by a railway; and

(f) all ferries, ships, boats and rafts which are used on any canal, river, lake or other navigable inland -waters for the purposes of the traffic of a railway and owned, hired or worked by a railway administration,

but does not include-

(i) a tramway wholly within a municipal area; and

(ii) lines of rails built in any exhibition ground, fair, park, or any other place solely for the purpose of recreation;"

From the definition of the term railway, it is apparent that railway is not confined to traction alone but encompasses a range of consumption points such as tractions, warehouses, offices, stations, manufactories, fixed part and machineries, institutes, hospitals, staff dwelling etc. Chapter IV of the Railways Act deals with construction and maintenance of works. Section 11 which appears under Chapter IV provides as under:

“11. Notwithstanding anything contained in any other law for the time being in force, but subject to the provisions of this Act and the provisions of any law for the acquisition of land for a public purpose or for companies, and subject also, in the case of a non-Government railway, to the provisions of any contract between the non-Government railway and the Central Government, a railway administration may, for the purposes of constructing or maintaining a railway— , .

(a) make or construct in or upon, across, under or , over any lands, or any streets, hills, valleys, road's, railway, tramways, or any rivers, canals, brooks, streams or other waters, or any drains, water pipes, gas-pipes, oil-pipes, sewers, electric supply lines, or .telegraph lines, such temporary or permanent inclined-planes, bridges, tunnels, culverts, embankments, aqueducts, roads, lines of railways, passages, conduits, drains, piers, cuttings and fences, in-take wells, tube wells, dams, river training and protection works as it thinks proper;

(b) alter the course of any rivers, brooks, streams or other watercourses, for -the purpose of constructing and maintaining tunnels, bridges, passages or other works over or under them and divert or alter either temporarily or permanently, the course of any rivers, brooks, streams or other water courses or any roads, streets or ways, or raise or sink the level thereof, in order to carry them more conveniently over or under or by the side of the railway;

(c) make drains or conduits into, through or under any lands adjoining the railway for the purpose of conveying water from or to the railway;

(d) erect and construct such houses, warehouses, offices and other buildings, and such yards, stations, wharves, engines, machinery apparatus and other works and conveniences as the railway administration thinks proper;

(e) alter, repair or discontinue such buildings, works and conveniences as aforesaid or any of them and substitute others in their stead;

(f) erect, operate, maintain or repair any telegraph and telephone Lines in connection with the working of the railway;

(g) erect, operate, maintain or repair any electric traction equipment, power supply and distribution installation in connection with the working of the railway; and

(h) do all other acts necessary for making, maintaining, altering or repairing and using the railway.”

Section 11(g) as quoted above authorizes the Railway Administration “to erect, operate, maintain or repair any electric traction equipment, power supply and distribution installation in connection with the working of the railway”. The words “power supply and distribution installations” have not been defined in the Railways Act. However, these words need to be understood in the light of the purpose which they seek to serve i.e. in connection with the working of the railways. Considering these words in the context of the definition of railways, it appears that the Railway Administration is entrusted with the works to lay down the distribution network for supply of power to the various railway installations.

39. The petitioner has relied upon the judgement dated 9.2.2012 in Transfer Case No. 37 of 2001 and 38 of 2001(Union of India through General Manager Northern Railway Vs Chairman UPSEB & Others) in support of its claim that the petitioner is governed by the provisions of the Railways Act and is not required to take licence for distribution of electricity. In that case, Indian Railways instead of buying power from UPSEB entered into a PPA with NTPC for supply of 100 MW power from Dadri Auraiya Gas Power Plants of NTPC and constructed a transmission line from these stations upto the sub-station of Railways at Dadri and drew power through the said transmission line. The issue before the Hon’ble Supreme Court was whether the Railways were required to take a licence under Section 27D of the Indian Electricity Act,1910 to construct the transmission line and engaging in transmission of electricity. The Hon’ble Supreme Court after examining Section 27D of the Indian Electricity Act, 1910 and Section 12 and 14 of the Electricity Act as well as Section 11(a) and (g) of the Railways Act came to the conclusion that the action on the part of Railways of constructing the transmission line and drawing power from the plants of NTPC is perfectly legal. Hon’ble Supreme Court held as under:

“15 (i).....it is true that in terms of Section 27D of the Electricity Supply Act, 1910 and Sections 12 and 14 of the Electricity Act, 2003, no person other than those authorized or otherwise exempted by an Appropriate Government or the Appropriate Commission shall be entitled to engage in the activities of transmission or distribution of electricity. However, in the case of Railways, the transmission of electricity is governed by the provisions of a special enactment, i.e. the Railways Act, 1989, and not by the enactment governing electricity.

(ii) That apart, Section 11(a) and (g) of the Railways Act, 1989 clearly authorize the Railways to construct necessary transmission lines, dedicated for their own purpose. It is not possible to read this Section in a restricted manner in which it was sought to be conveyed. This is because the principal part of Section 11 authorises the Railway Administration to execute all works for the purpose of constructing or maintain railways. Sub-Section (a) of the Section authorizes Railways to make or construct in or upon, across, under or over any lands electric supply lines. Under sub-Section (g) thereof, the Railways are authorized to erect traction equipment, power supply and distribution installation which is in connection with the work of the Railways. This will certainly include construction of transmission lines. That being so, there is no substance in this submission made by UPSEB as well.

(iv) The generating company does have the necessary authority to enter into a power purchasing agreement under Section 43A of the Electricity Supply Act, 1948. NTPC has been permitted by the Central Government to enter into an agreement. Railways and NTPC both have obtained the permission from the concerned ministries prior to entering into agreement. In the instant case, Railways found the tariff of UPSEB excessive and therefore, they decided to construct their own transmission lines. This being so, the action on the part of the Railways of constructing transmission lines, and drawing power from the thermal power plants of NTPC, was perfectly legal. Even under the Electricity Act, 2003, a direct sale of power by a generating company to a consumer is specifically permitted under Section 10(2) thereof.”

40. From the above judgement, it is clear that in so far as Indian Railways are concerned, they will be governed by the provisions of the Railways Act for constructing transmission lines and distribution installations for the purpose of supply of power to the railways without having to take any licence from the appropriate Commission for transmission or distribution of electricity. In other words, the Indian Railways can be treated as authorized entity under the Railways Act for carrying out transmission and distribution activities for ensuring supply of power in connection with working of the railways. That being the case, the requirements of MSETCL for declaration regarding the area of operation, other terms and conditions of licence and Standard of Performance as required in case of a distribution licensee under the Electricity Act will not be applicable in case of Railways. Since the TSS of Railways

are already connected with MSETCL network for drawing power, the petitioner is entitled for grant of inter-State Open Access through MSETCL network for the purpose of supply of power in connection with the working of the railways.

41. MSETCL has submitted that presently, the petitioner is connected to the grid as a consumer of MSEDCL and is seeking connectivity as a distribution licensee. As per Regulation 3.2 of the Maharashtra Electricity Regulatory Commission (Transmission Open Access Regulations), 2014, connectivity with the grid is a pre-condition for grant of open access. Therefore, the petitioner was required to apply and had rightly applied to MERC in Case No. 194 of 2014 to take on record the deemed distribution licensee status of the Indian Railways for issuing specific conditions of the licence. The ruling given by MERC in order dated 11.4.2012 in Case No. 157 of 2011 (M/s Serene Properties Private Ltd) has been relied upon regarding the requirement of issue of specific conditions of distribution licensees. In the light of our discussion regarding special status of Indian Railways under the Railways Act as interpreted by the Hon'ble Supreme Court in the case of UOI through General Manager Indian Railways Vs UPSEB supra, the ruling of MERC in the case of M/s Serene Properties Private Limited will not be applicable in case of the Indian Railways.

42. In view of the above discussion, we hold that since the Indian Railways is an authorized entity to distribute and supply electricity in connection with the working of the Railways under the Railways Act, the petitioner shall be entitled for grant of Open Access in connection with the working of the Railways as per the provisions applicable to a distribution licensee.

**Issue No.3: Whether the Indian Railways can be considered as a deemed distribution licensee under the Electricity Act?**

43. The petitioner has submitted that in addition to its deemed status under the Railways Act, the petitioner is also a deemed licensee in terms of third proviso under Section 14 of the Electricity Act. WBSETCL and WBSEDCL have submitted that the petitioner may be an Appropriate Government under the Electricity Act, but has never been involved in transmission or distribution or trading in electricity. The petitioner is consuming electricity for its own use and is not selling such electricity to become a deemed distribution licensee. Therefore, the petitioner cannot seek the benefit of third proviso to Section 14 of the Electricity Act. As regards Section 11 of the Railways Act, it merely allows the petitioner to erect or construct such infrastructure as needed for working and maintenance of its railway network. WBSETCL and WBSEDCL have submitted that if the petitioner is considered as deemed licensee, it cannot be considered as a consumer on the basis of the doctrine of election. GETCO has submitted that if a Government Department qualifies as being the Appropriate Government under Section 2(5) of the Electricity Act, then all Government Departments will become deemed licensees. Therefore, the third proviso does not apply to the petitioner. Further, whenever, the Parliament wanted to confer status of a deemed licensee, it has clearly done so as in the case of Damodar Valley Corporation.

44. Third proviso to Section 14 of the Electricity Act, 2003 read as under:

"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 licence under this Act"

Thus this proviso permits the Central Government or State Governments to undertake any of the licensed activities of transmission, distribution and trading

whether before or after the commencement of the Act without having to take a licence. Ministry of Power vide letter dated 6.5.2014 has issued the following clarification regarding the status of a deemed licensee:

"I am directed to refer to the Ministry of Railways (Railway Board) letter No. 220/Elec(G)/161/21 Vol-II dated 13th March, 2014 and No.2004/Elec(G)/152/3 Pt-1 dated 27th March, 2014 seeking clarification for deemed licensee status to Indian Railways.

2. The issue of granting deemed licence status to Railways under the Electricity act, 2003 has been examined by this Ministry in consultation with the Deptt. of Legal Affairs, Ministry of Law and Justice. It is clarified that Railways is a deemed licensee under the third proviso to Section 14 of the Electricity Act, 2003.

3. The clarification may be read with other applicable provisions of the Electricity Act, 2003 and policies made thereunder.

4. This issues with the approval of Hon'ble Minister of Power (Independent Charge)"

WBSEDCL and MSETCL have objected that this clarification is not a judicial pronouncement and therefore cannot be accepted as a conclusive proof of the deemed status of Indian Railways. MSETCL has advised the petitioner to get an order from the appropriate Commission in this regard. We have considered the objections. A plain reading of the third proviso to Section 14 does not reveal that a judicial pronouncement is required for determining the status of appropriate Government as a licensee under the said provision. In exercise of the powers under clause (3) of Article 77 of the Constitution of India, Hon'ble President of India has made the Government of India (Allocation of Business) Rules, 1961. Rule 2 of the AoB Rules provides as under:

"2. Allocation of Business - The business of the Government of India shall be transacted in the Ministries, Departments, Secretariats and Offices specified in the First Schedule to these rules (all of which are hereinafter referred to as "departments")."

Therefore, the business of the Government of India is transacted through the departments. Ministry of Power has been vested with the following function:

“4. Administration of the Electricity Act, 2003 (36 of 2003), the Energy Conservation Act, 2001 (52 of 2001), the Damodar Valley Corporation Act, 1948 (14 of 1948) and Bhakra Beas Management Board as provided in the Punjab Re-organization Act, 1966 (31 of 1966).”

Therefore, administration of the Electricity Act, 2003 is the responsibility of Ministry of Power. Being the nodal Ministry, Ministry of Power has examined the proposal of the Ministry of Railways with regard to its deemed status as a licensee under the Electricity Act in consultation with Ministry of Law and Justice which has been vested with the power to render “advice to Ministries on legal matters including interpretation of the Constitution and the laws”. Moreover, the clarification has been issued with the approval of the Hon’ble Minister of Power (Independent Charge). Therefore, we are of the view that the clarification issued by Ministry of Power with regard to the deemed licensee status of the Indian Railways meets the requirement of Law. There is no requirement for a declaration to that effect to be issued by an Appropriate Commission.

45. WBSETCL has submitted that Indian Railways in order to be considered as a deemed licensee under the Electricity Act must first comply with the requirements of Section 14 read with Section 15 of the Electricity Act. As already noted, the Appropriate Government is not required to take a licence in terms of third proviso to Section 14 of the Act in order to transmit or distribute or undertake trading in electricity. In other words, the provisions of Section 15, Sections 17 to 24 will not be applicable in case of deemed licensees under third proviso to Section 14 of the Act. However, proviso to Section 16 requires the Appropriate Commission to specify the general or specific conditions to be applicable to the deemed licensees covered under first, second, third, fourth and fifth provisos to Section 14 of the Electricity Act. The said sub-Section is extracted as under:

“Provided that the Appropriate Commission shall, within one year from the appointed date, specify any general or specific conditions of licence applicable to the licensees referred to in the first, second, third, fourth and fifth provisos to Section 14 after expiry of one year from commencement of this Act.”

Therefore, the Central Commission and State Commissions are required to specify the general or specific conditions of licence applicable to the deemed licensees. As and when Indian Railways decides to undertake transmission, distribution or trading in electricity as deemed licensee under third proviso under Section 14 of the Electricity Act, they will be required to approach the respective State Commission for specifying the general or specific conditions of licence, if the concerned State Commission has not already specified the terms and conditions of licence under proviso to Section 16 of the Act.

46. WBSETCL has submitted that the Appellate Tribunal for Electricity in Judgment dated 8.5.2008 in Appeal No. 114 of 2007 (Delhi Metro Rail Corporation Vs. Delhi Transco Limited & Ors.) declined the status of DMRC as deemed licensee while interpreting the provisions similar to Section 11 of the Railways Act. The petitioner has submitted that the provisions of DMRC Act did not provide for erection of power supply and distribution installation which is specially provided in the Railways Act and hence, these two Acts cannot be compared. The petitioner has further submitted that DMRC is a Government Company and is not Government and therefore, is not covered within the meaning of third proviso to Section 14 of the Electricity Act. Moreover, DMRC had specifically applied for distribution licence to the DERC and was not claiming the deemed status. Moreover, we have gone through the judgment of the Appellate Tribunal in Appeal No.114 of 2007. It is noticed that in that case DMRC had sought licence under sixth proviso to Section 14 of the Act which vest power in the Appropriate Commission to grant licence to two or

more persons for distribution of electricity through their own distribution system within the same area subject to fulfillment of certain conditions. The request of DMRC was rejected by the Delhi Electricity Regulatory Commission as it did not fulfill the conditions of sixth proviso to Section 14 of the Electricity Act. Appellate Tribunal dismissed the Appeal with the following observations:-

“If DMRC is seeking a second license in the area of supply of a distribution licensee, it has to fulfill the conditions of the Rules. Admittedly, it is unable to fulfill the condition of minimum area of supply and hence not entitled to a license.”

In our view, the judgment of the Appellate Tribunal in DMRC case is distinguishable from the present case.

47. In view of the above discussion, the petitioner is a deemed licensee under third proviso to Section 14 of the Electricity Act and there is no requirement for declaration to that effect by the Appropriate Commission.

**Issue No.4: Whether the petitioner should be treated as a separate regional entity for the purpose of scheduling and energy accounting in terms of deviation settlement?**

48. The petitioner has submitted that Indian Railways as an entity authorized to distribute and supply electricity will be scheduling electricity from various sources and will be taking delivery of electricity at multiple points. Accordingly for the scheduling and dispatch mechanism under the DSM Regulations notified by the Commission, Indian Railway is to be considered as a separate participating entity. In the peculiar circumstances of the Indian Railways, it cannot be treated as an entity within a State to be governed as an embedded entity. GETCO has submitted that a common settlement for all the different energy transaction at different location cannot be permitted. GETCO has further submitted that different SLDC/RLDC is the

settlement agency for the purpose of energy accounting and deviation settlement. Accordingly, each connection of Railways seeking Open Access has to be separately considered for the purpose of energy accounting and deviation settlement in line with the respective distribution licensee where it is located.

49. POSOCO vide affidavit dated 22.9.2015 has submitted that after getting connected to ISTS at other points, Indian Railways may be treated as regional entity at those points. Therefore, for the purpose of open access, scheduling, metering, balancing, applicability of ISTS charges, losses etc., the group of electric Traction Sub-Sections (TSS) situated in a State and connected directly with ISTS may be treated as one 'fragmented control area'. Till such time as they are only connected with the state transmission system, they shall continue to be treated as an intra-state entity. At present Indian Railways (Northern Region) has been mandated as Regional Entity in respect of drawl of power from Dadri and Auraiya. During hearing on 23.09.2015, learned counsel for the petitioner submitted that the Indian Railways is connected to ISTS at two places i.e. Dadri and Auraiya and has been treated as separate regional entity. In other places, Indian Railways is connected through the State system and therefore, should be treated as part of the States for the purpose of deviation settlement.

50. We have considered the submissions of the parties. CEA in its report dated February 2015 titled "Report of the Committee for preparation of 'Energy Plan for Indian Railways' has recommended as under:

"4.3.2 After getting connected to ISTS at other points, Railways may be treated as regional entity at those points. Various possible treatments in this connection are discussed below:

a. All drawl points from ISTS, in a region, could be treated individually as regional entities.

-this arrangement would make the entire process cumbersome because of large number of individual drawl schedules, need for more coordination etc.

b. All drawl points from ISTS in a region taken together could be treated as a single regional entity this arrangement may not be feasible in view of state-wise applicability of transmission charges, losses and congestion within the region, at present.

c. Drawl points from ISTS located within a State could be treated as a single regional entity at par with the State.

-this arrangement may lead to fragmented control area. Therefore, for the purpose of open access, scheduling, metering, balancing, applicability of ISTS charges, losses etc, the group of TSS situated in a State and connected directly with ISTS may be treated as one 'fragmented control area.'

51. The Indian Railways can be connected with ISTS directly or through state network. The Commission is inclined to consider option "c" as provided in CEA Report with slight modification. The drawl points from ISTS located within a State shall be treated as a single entity for the purpose of scheduling. This arrangement according to CEA and POSOCO may lead to fragmented control area. Therefore, the group of TSSs situated in a State and connected directly with ISTS shall be treated as one 'fragmented control area' and the responsibility for the purpose of scheduling, metering, balancing, applicability of ISTS charges and losses etc, shall vest in the concerned RLDC. In so far as the TSSs of Indian Railways connected to State network are concerned, the responsibility for these functions shall vest in the concerned SLDC.

### **Reliefs to be granted to the petitioner**

52. In view of the above discussion, the prayers of the petitioner are decided as under:

(a) In the light of the judgement of the Supreme Court in UOI Vs UPSEB supra, it is held that the petitioner is an authorized entity under the Railways

Act to undertake transmission and distribution activities in connection with the working of the railways, independent of its status under the Electricity Act. Therefore, the information sought by MSETCL vide its letter dated 6.7.2015 are not relevant for grant of connectivity and concurrence to the petitioner for scheduling of power from RGPPL and GUVNL through the ISTS and State networks by availing long term access or medium term open access in terms of Connectivity Regulations.

(b) The petitioner is a 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. The petitioner as a deemed licensee shall be bound by the terms and conditions of licence specified or to be specified by the Appropriate Commission under proviso to Section 16 of the Electricity Act.

(c) The drawl points from ISTS located within a State shall be treated as a single entity for the purpose of scheduling. The group of TSSs situated in a State and connected directly with ISTS may be treated as one 'fragmented control area' and the responsibility for scheduling, metering, balancing, applicability of ISTS charges and losses etc, shall vest in the concerned RLDC. For the TSSs situated in a State and connected to State network, these functions shall vest in the concerned SLDC.

(d) All concerned RLDCs, State Transmission Utilities and SLDCs are directed to facilitate long term access and medium term access in terms of Connectivity Regulations from the generating stations or other sources to the facilities and network of Indian Railways.

53. The petition is disposed of in terms of the above.

sd/-  
**(M.K. Iyer)**  
Member

sd/-  
**(A.S. Bakshi)**  
Member

sd/-  
**(A. K. Singhal)**  
Member

sd/-  
**(Gireesh B. Pradhan)**  
Chairperson