

**Comments and Suggestions on draft Maharashtra Electricity Regulatory Commission  
(Distribution Open Access) (Second Amendment) Regulations, 2023.**

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4th September 2023

The Maharashtra Electricity Regulatory Commission (MERC) has proposed amendments to the Distribution Open Access Regulations, 2016 and the Grid Interactive Rooftop Renewable Energy Systems Regulation, 2019 to implement Central Government Rules to promote green energy, particularly, the Green Energy Open Access (GEOA) Rules, 2022 and the Electricity (Rights of Consumers) Rules.

The GEOA Rules lower the eligibility limit for open access from 1 MW to 100 kW and provides the option of captive consumption to all electricity consumers. With the lowering of the eligibility limit, access to competitive, alternate sources of power can be available for a large number of consumers in Maharashtra. These eligible consumers are responsible for 40% of sales and 50% of MS&DCL's revenue. Consumers can reduce their dependence on the DISCOMs via open access, captive or even grid interactive rooftop RE. It is crucial and metering, billing, energy accounting and scheduling, application procedures and harmonized and clearly stipulated.

DISCOMs play a pivotal role in the roll-out of green open access. It is vital that the new framework for open access and captive does not weaken the ability of the DISCOMs to provide uninterrupted, reliable supply to its consumers. At the same time, it is crucial that the procedures are streamlined, fair, equitable and transparent such that small and medium-scale enterprises also have access to competitive choice.

Implementing GEOA Rules 2022 in spirit would require a well thought out and coordinated approach as GEOA is going to fundamentally change the sector. Effective implementation of these rules will greatly benefit Maharashtra's power sector and economy as they would allow consumers to access power at competitive rates by opening up competitive power procurement, and increase green energy uptake.

Our comments and suggestions are related to proposed approach for adoption of GEOA rules and a balanced, phase-wise approach for harmonious roll-out of multiple options for non-DISCOM green energy procurement.

**1 Adoption of Rules to focus on synergy and alignment based on state realities for effective implementation.**

In Case No. 165 of 2023, MERC stated that: *"All concerned authorities to comply with provisions for Green Energy Open Access Rules notified on 6 June 2022 as amended from time to time. If*

*there is inconsistency in MERC's Regulations and Rules, then provisions of GEOA Rules will prevail.*" This ruling has three implications that could be adverse and are areas for concern:

- **Precedent for Central Government Rules being implemented without any adaptation for state context:** While implementing the rules in letter and spirit, it is necessary that the rules have to be adapted to suit state realities rather than just reproducing the same. Many central government rules require ground-work and actions before complete implementation. For example, the ToD tariff regime in Maharashtra penalises day-time consumption instead of providing a 20% incentive / rebate as specified in the Right of Consumer Amendment Rules 2023<sup>1</sup>. Implementation of rules without any adaptation and without any consideration of existing regulations and orders, would require immediate changes in ToD tariff. This will have significant financial implications for DISCOMs and would also imply revision of tariffs more than once in a year.
- **Applicability of existing, progressive, innovative regulations uncertain:** Wholly adopting the framework as per the rules could also dilute existing consumer friendly processes which have evolved over decades in Maharashtra. For example, the existing open access regulations have provisions to disincentivise short-term open access by levying additional transmission charges in case of repeat applications. It is unclear if such balanced and progressive provisions could be retained while implementing the rules or would be treated as inconsistent with rules.
- **Potential litigation on aspects of rules which are not implemented in regulations:** Even though specified in the GEOR Rules, MERC has not proposed amendments towards:
  - Exempting partial open access consumers from paying additional surcharge. (Proviso 2 of Rule 9 (2))
  - Exempting standby charge for planned standby. For unplanned requirements, capping standby charge at 10% of the energy charges. (Rule 9 (4))
  - Limiting quantum of banked energy to 30% of monthly consumption from DISCOM (Rule 8 (2) and Para 9 of Procedure for Grant of Open Access by the Central Nodal Agency)
  - MERC Transmission Open Access Regulations to give effect to GEOA for transmission open access consumers.

Without clarity on the applicability of these provisions, these could be interpreted as inconsistencies leading to litigation on various charges and procedures.

It is suggested that MERC evolve a framework for implementation of GEOA rules to suit state realities. This would require a harmonious framework which clear, aligned with GEOA rules but

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<sup>1</sup> [https://merc.gov.in/wp-content/uploads/2023/07/Electricity\\_Rights\\_of\\_Consumers\\_Amendment\\_Rules\\_2023..pdf](https://merc.gov.in/wp-content/uploads/2023/07/Electricity_Rights_of_Consumers_Amendment_Rules_2023..pdf)

also with deviations to ensure smooth implementation in the state. Such clarity, based on a coordinated approach can herald a new wave of investments and sector developments over the next three to five years which can set the course for Maharashtra power sector's future.

## **2 Need for a calibrated approach with extensive deliberations**

The regulatory framework to operationalize GEOA should be finetuned based on a comprehensive approach and deliberations with all stakeholders. Such a process can take forward the intent and spirit of the Green Open Access Rules by building on state specific developments, infrastructure status and by addressing implementation challenges. Several states have deviated from implementing provisions in the GEOA Rules to suit state realities and this flexibility should be built into the Maharashtra regulations. Over time, alignment and synergy of regulations with the rules can be ensured based on sector progress.

Without such a framework, there could be significant uncertainty, confusion and resultant litigation which will either stall developments in this aspect for years or will have severe adverse financial impact on DISCOMs.

In this context, to ease implementation some suggestions related to energy accounting, metering, procedures as well as charges are noted below:

## **3 Green Open Access should be restricted to HT consumers**

Open Access consumers with load greater than 100 kW and Captive consumers with contract demand below 100 kW are eligible for open access as per the rules. However, there are serious concerns regarding safety, metering, scheduling for those connected to the LT network, which are not addressed in the regulations. Separate provisions, procedures and formats are required to streamline these processes which need to evolve over time. To start with:

- Green Open Access can be provided only to consumers connected to the HT network.
- As captive consumers even in the LT network are eligible for open access, there should be clear frameworks for energy accounting, scheduling, banking, captive status verification, ensuring safety etc.
- Captive consumers, especially those not availing standby services from the DISCOM, should pay service obligation charges (say, Rs. 250/kW of RE capacity procured) to compensate DISCOMs for grid support, loss of revenue and provider of last resort services.

## **4 HT consumers with contract demand less than 1 MW to be subject to 30 minute energy accounting**

The draft regulations propose to have metering energy accounting on ToD slot-wise basis. HT consumers have AMI meters capable of 30 minute energy accounting. 30 minute energy accounting would help implement other GEOA provisions. For example, as per the rules and draft regulations, GEOA consumers shall not change the quantum of power consumed through

open access for at least 12 time blocks (Proviso 4 of Draft Regulation 3.3 and Proviso 2 of Rule 5 (2)). This is not possible with ToD slot-wise data.

The regulations 17.3, 17.4 and 17.6 following these regulations relate to inspection of SEMs should be modified to include 30 minute AMI data.

## 5 Procedure in case of multiple connections

The rules and proposed open access regulation amendments (Proviso 3 of Regulation 3.3) allow for a consumer having multiple connections aggregating to 100 kW or more in the same electricity division to avail open access. For such an arrangement, the processes around registration, metering and energy accounting, treatment of banking, standby, scheduling will certainly need to be specified separately. However, these are not clear in the amendments. The current draft is also subject to interpretation. For example, the amendments specify that before the start of GEOA, the consumers should intimate in advance regarding the arrangement to share RE power between connections. However, it is not clear which part of the application process qualifies as the “start” and whether “in advance” implies when the schedules are provided on a day ahead basis or when the open access is awarded. There is also no format to provide this information.

## 6 Submission of documents in application process

As per the Rules, all applications are to be processed via the centralised portal managed by the Central Nodal Agency (CNA). As per CNA procedures, there are clear processes, formats for registration and open access applications. Existing MERC regulations and DISCOM open access procedures require the applicant to provide details regarding:

- Power Purchase Agreement with details of procurement duration, rate etc
- Last 3 months energy bill, RPO compliance information
- No dues certificate, techno-commercial report from O&M circle office
- OA permission or consent from DISCOM if generator is in another licensee area

All of this is currently processed via the portal managed by the DISCOM. **As these details are not required by the CNA, it is not clear whether such crucial information needs to be submitted and implications of non-availability of such information for DISCOMs energy accounting, schedules and other related matters.**

## 7 Model Agreements

The proposed amendments to the Grid Interactive Rooftop Renewable Energy Generating Systems Regulations have model agreements for gross metering which address these concerns but only for systems using gross metering. This clearly indicates a need for holistic and comprehensive framework for grid-interactive RE through net/gross metering, captive and open

access. Similar model agreements between DISCOM and consumers should be provided for net billing, banking, captive and open access.

## 8 Framework for charges for non-DISCOM sales

To ensure a balanced framework, the framework in Maharashtra should:

- Levy 20% in kind charge for energy banking. Energy accounting to be on 15 minute/30 minute basis for HT consumers and ToD slot-wise basis for LT consumers. 20% in kind banking charge on energy wheeled would translate to about Rs.0.30/kWh of non-DISCOM consumption.
- Levy Time of Day tariffs that are reflective of daily as well as seasonal variations in system costs for all consumers with contract demand/sanctioned load above 10 kW in phased manner in 2-3 years. ToD tariffs should be applicable on all consumers, irrespective of the contract demand or sanctioned load, who opt for rooftop systems with net metering, net billing, open access or captive etc.
- Cross subsidy surcharge (CSS) under Rule 9(2) of the Green Open Access Rules, 2022, is to be capped at 50% of the CSS in the year in which open access was granted for the first twelve years of the RE generating plant from where the power is being contracted. This will be extremely challenging and complex to monitor and implement. For example, what will happen in case OA consumer changes source? There will be many such challenges. Hence a simpler-to-operate CSS mechanism is desirable. For example, CSS could be fixed at a rate adequate to compensate DISCOMs in the year in which OA is availed, however, it should not increase by more than 50% for 12 years from the beginning of OA. Thus, as short-term open access consumers will apply for open access each year, they will have to pay CSS which is in force at the time of the application, but long-term consumers can benefit from the ceiling and certainly about CSS. This will be an effective way of operationalizing the ceiling proposed on CSS in the Rules without the added operational challenge of linking it to the commissioning date of the generator.
- Over time, with reduction in back-down thermal capacity, additional surcharge should also be phased out.
- The standby charge as specified for captive and open access consumers in prevailing regulations and orders should be retained as providing this service would result in significant costs to DISCOMs.
- Evolve separate frameworks of charges, application procedures, metering for consumers based on their contract demand (> 10 kW, 10 kW to 100 kW, 0.1 to 0.5 MW etc.) as well as for consumers opting for open access, captive, net billing etc. The applicable charges, procedures, metering requirements, eligibility criteria should be clearly specified in the regulations for each type of consumer based on load, mode of power contracted (open access, captive, net metering/billing behind the meter), duration of contract etc. This is detailed in our submission on the draft amendments to the Grid Interactive Renewable Energy Regulations, 2023.