

BEFORE THE UTTAR PRADESH ELECTRICITY REGULATORY COMMISSION

IN THE MATTER OF:

Comments/suggestions on

*“Draft Uttar Pradesh Electricity Regulatory Commission
(Terms and Conditions for Open Access) Regulations, 2019”.*

Submissions of Prayas (Energy Group), Pune

With the rising cost of supply of electricity distribution companies (DISCOMs) and the falling price of renewable energy options, there has been a steady increase in open access and captive consumption across the country. This trend is expected to continue and will result in significant migration of cross-subsidising sales even for Uttar Pradesh DISCOMs.

Sales migration on account of open access and captive consumption has significant impact on the operations, planning and finances of DISCOMs. At the same time, broadening and deepening of markets which could lead to efficiency in price discovery and operations is being restrained as consumers who avail open access face many challenges. Some of these include procedural issues, delays in obtaining approvals and uncertainty regarding the nature and extent of various open access charges being levied.

Given the flux in the sector and the realities of the state, it is extremely important to formulate a clear set of rules and regulations that will guide and channelize this process while protecting the interests of both, the distribution companies (and hence that of its regulated consumers) and the open access consumers.

In this context, the proposed amendment to the open access regulations is a welcome initiative and an opportunity to provide a way forward to address the issues being faced by licensees,

generators and consumers. There are several progressive changes proposed by UPERC in the draft regulations which take into account the constraints faced by the DISCOMs, the operational issues faced by open access consumers as well as the power supply position and network infrastructure within the state. Some of these include:

- Regular status reporting of open access (Draft Regulation 24)
- Provision of banking in case of unscheduled cuts or network failure (Draft Regulation 21)
- Provision for cancellation in case of non-utilisation (Draft Regulation 15)

Considering this, Prayas (Energy Group)'s or PEG's comments and suggestions in this matter highlight areas where more clarity is needed to ensure smooth implementation and also suggest some additional changes that can be made to safeguard the interests of the DISCOM while broadening and deepening electricity markets.

1 Need to address opportunistic switching by open access consumers

Many DISCOMs have been facing issues with respect to scheduling and power procurement planning due to opportunistic switching of open access consumers between the market and DISCOMs based on the price differential. While consumers gain from opportunistic switching, DISCOMs bear the risk of uncertainty in scheduling and planning power procurement. Much of the opportunistic switching takes place on a day-ahead or seasonal basis and thus discouraging short-term open access (STOA) would reduce such uncertainty and risk significantly.

As per draft regulation 6.2, short-term open access shall only be allowed if there are adequate design margins, margins available due to power flows and spare capacity within the T&D network. Such a provision provides for flexibility within the system to allow for STOA considering uncertain demand conditions and system realities at the time. Given the realities in Uttar Pradesh, such a provision is necessary for short-term open access and must be exercised by the nodal agencies actively. In addition, two provisions can also be introduced to disincentivise short-term open access as detailed in this section.

Draft Regulation 2.4 (k), 2.4 (l), 2.4 (q) and Draft regulation 4 specifies the duration of long-term, medium-term and short-term open access. Medium-term open access is proposed to be

for three months to five years and long term open access is for periods exceeding five years. The duration for short-term open access is at three months or less.

To prevent opportunistic switching especially due to seasonal and daily price variations, the open access regulations should incentivise long term open access and restrict short term open access. To this end:

1.1 Short-term open access to be restricted to 1 month with higher charges for repeat applications

It is suggested that short-term open access be permitted only to meet intermittent power requirements due to contingent circumstances. Thus, open access should not be permitted for a period of more than 1 month. Thus, the duration for short-term open access can be specified ***for a period up to 1 month.***

Consumers should be allowed to reapply for short-term open access for an additional one month periods if required. However, in case of repeat short-term open access transactions during a financial year, the applicable transmission and wheeling charges can be increased progressively till the fourth such transaction. For the 4th transaction and all subsequent transactions, the applicable charges could be two times the regulated transmission and wheeling charges. Such a measure would help address the issue of repeated short-term open access applications in the same year by consumers who want to avoid any medium term commitment towards open access.

This mechanism has already been proposed by the Maharashtra Electricity Regulatory Commission in its recently released draft open access regulations¹. The relevant draft regulation (first proviso of draft regulation 14.1 (v)) which mentions levy of additional transmission charges for repeat short-term open access transactions has been reproduced below:

Provided that in order to discourage repeated roll over of STOA transactions, the applicable STOA charges in case of such repeated STOA transactions of Open Access Consumer(s) shall be increased by a multiplication factor of 1.25, 1.5 and 2.0 respectively for every 2nd, 3rd and 4th

¹Vide public notice dated 11th March 2019.

STOA transaction during financial year beyond which the charges for STOA shall be fixed at two times of the approved STOA charges;

It is urged that a similar provision be adopted by UPERC as well.

1.2 Change in duration of medium-term open access

In order to ensure open access applications are at least for one year, the duration for medium-term open access should be for a ***period exceeding one year but not exceeding five years***. If provisions are in place such that repeated short-term open access applications incur higher charges as suggested earlier, these provisions will encourage consumers to move towards open access contracts for the duration of at least 1 year providing more certainty to the DISCOMs for planning.

2 Specification of nodal agency

Draft Regulation 2.4 (n) defines separate nodal agencies for short-term, medium-term and long-term open access. This could lead to significant issues when it comes to granting permissions, tracking payment of charges and tracking utilisation, especially because open access for all these durations will be on two distinct physical networks- the transmission system and the distribution system. For ease of operation, it is suggested that UPERC follow the practice in many other states of specifying the nodal agency based on connectivity and then duration of open access.

Thus, the nodal agency for intra-state open access and connectivity to the Distribution System should be the Distribution Licensee in whose area of supply the applicant (consumer or generator availing open access is located). This can be for short-term, long-term and medium-term open access.

Similarly, the nodal agency for inter-state open access and connectivity to the Intra-state Transmission system should be the STU for long-term and medium-term open access and the SLDC for short-term open access.

3 Eligibility for open access

Draft Regulation 6.1 states that long term and medium-term open access shall be allowed in accordance with planning criteria stipulated in the Uttar Pradesh Electricity Grid Code (UPEGC). Section 3.5 of the Grid Code specifies overall planning criterion for transmission network. It does not specify relevant criteria which can be utilised to determine the technical feasibility for allowing transmission open access and it does not mention any planning criteria relevant to open access users of the distribution network.

As this condition in the draft regulation is non-specific, it could lead to various interpretations, disputes and legal issues. The Commission should specify clear and objective criteria based on the principles of grid security which are relevant and specific to long-term and medium-term open access consumers to establish technical feasibility. Thus, we suggest that Draft Regulation 6.1 be modified accordingly.

4 Operationalisation of Information System

Draft Regulation 24 states that the SLDC for STOA consumers and the STU for other open access consumers shall post specified information on their website in a separate web-page titled “Open Access Information”. The agencies also have to issue a monthly and annual report with the specified information.

This is a very good provision to increase transparency but could be met with avoidable implementation challenges. With respect to information on open access, a centralized portal or web-page would be easier to manage and track for the commission, open access consumers and licensees. To simplify tracking and automate monitoring the final regulation, it would appropriate to have a single agency to manage this such that:

- The State Load Dispatch Central maintains a webpage or portal tracking key developments in open access as specified in the regulations.
- The relevant nodal agencies as specified in the open access regulations update information on this webpage or portal on a fortnightly basis and this information should be verified by the SLDC.

- In addition to status of open access as specified in the draft open access regulations, nodal agencies can also document:
 - pending applications with the date of receipt of application, date of admittance of application and status of approval which can be tracked by applicants
 - details of rejected applications with reasons
 - type of open access (renewable or non-renewable)
 - number of repeat applications in the year by the consumer (in case of short-term)
 - Instances of over-drawal, under-drawal and no supply of open access consumers and generators
 - Revenue recovered from open access charges
- The SLDC can also prepare monthly and annual reports based on the reporting by the nodal agency which documents the following crucial statistics to track trends and ensure accountability:
 - Total MW and MU of open access by duration and type of generator (RE/non-RE)
 - Total revenue recovered from various open access charges (transmission, wheeling, CSS, standby charges etc.) and concessions provided, if any
 - Summary of instances of over-drawal and under-drawal and settlements for the same.
 - These reports should be available in a downloadable excel-based format on the Commissions website.
- The Commission should publish an annual report on major trends related to open access and captive consumption, based on the information from these reports which can inform determination of charges, DISCOM demand projections, tariff design and the need for practice directions or amendments to the open access regulations.
- It is suggested that the formats for data reporting and compilation are also specified with the final open access regulations.

5 Standby power for embedded open access consumers

Draft Regulation 20 states that embedded open access consumers are exempt from payment of standby charges. Standby charges are levied as they are to compensate Distribution Companies for its services as provider of last resort. In a supply constrained state, the provision of these services will come at a cost for the DISCOM. Therefore, a framework for the applicability for standby services needs to be specified for all open access consumers, even embedded open access consumers. In this context, it is suggested that the final regulations specify that embedded open access consumers are charged standby charges at 1.5 times the applicable tariff for the consumer category of the embedded open access consumer.

6 Mechanism for grievance redressal

Draft Regulation 32.1 states that all disputes and complaints relating to open access shall be made to the State Power Committee detailed in the UPEGC, which may investigate and endeavour to resolve the grievance within 30 days.

There is a need for a framework to resolve complaints relating to open access which involves the licensees. Complaints related to the transmission licensee can be resolved as specified in Draft Regulation 32.1. However, complaints related to the DISCOMs should be resolved via the Consumer Grievance Redressal Mechanism as per the UPERC CGRF regulations. This should be specified in the final regulations.

7 Lack of clarity with respect to eligibility of captive consumers availing open access

Draft Regulation 7 allows for captive consumers with contracted demand less than 1 MW to also avail open access to the T&D network. This gives rise to several operational issues which need to be addressed or clarified:

- Given that DSM is not implemented at the individual level in the state, it is not clear if it would be possible to ensure draft Regulation 29.6 (i) is implemented for levy of imbalance charges on captive consumers.

- The levy of imbalance charges, scheduling of power from such captive users especially when the user and the generator are both embedded within the distribution network (and there is not any visibility as the SLDC level) needs to be clarified.
- With the increasing viability of renewable energy, it not clear if kW based PV systems could avail open access to supply to captive users in the state.

It is essential to provide a framework for captive systems which can avail open access and specification of eligibility criteria based on techno-economic feasibility should also be present in the regulations.

8 Need for clarity on connectivity

Draft Regulation 7.1 states that consumers with sanctioned load of 1 MW and above , connected at 11 kV and above are eligible for open access. However, proviso 7 of draft regulation 7.3 states that prior to grant of open access, the consumer has to enter into a connectivity agreement in accordance with the UPERC (Grant of Connectivity) Regulations, 2010. These regulations are specific to the intra-state transmission system and thus it is not clear what the modalities will be for embedded open access consumers to enter into a connectivity agreement. It is suggested that the final open access regulations also specify sample connectivity agreements for both the transmission and distribution networks.

9 Specification of late payment charges

Regulation 30 specifies the late payment charges at the rate of 1.25% per month. This is close to the delayed payment charge or late payment charge as specified in the DISCOMs' tariff schedule by the ERC. However, the latter is different as they are:

- subject to revision on a regular basis
- higher for delay exceeding three months
- specified to be applicable on a pro-rata basis

Thus, it is suggested that the late payment charges in these regulations are specified as the delayed payment charge as approved in the DISCOMs' tariff schedule for the year by the Commission.

10 Definitions

10.1 Need to define crucial terms

- The term 'contracted capacity' has been used in the draft regulations without any definition and has also been used interchangeably with contracted demand.
- In the same vein, 'open access charges' and 'operating charges' have been used in the draft regulations without a definition.
- The 'Special energy meters' are specified in the draft regulations but they should be defined to ensure clarity.

To avoid ambiguity and implementation issues these crucial terms should be defined.

10.2 Definition for clarity in crucial definitions

- Draft regulation 2.4 (c) defines bilateral transactions as a transaction conducted through anonymous bidding. However transactions via trading licensees may not strictly be anonymous and this definition should be modified to account for existing practices.
- Draft regulation 2.4 (a) for allotted capacity is only defined for the transmission network. This should also be defined for the distribution network as distribution wires will also be used for wheeling power via open access.