

Comments and Suggestions on the Draft Amendments to the Maharashtra Electricity Regulatory Commission (Distribution Open Access) Regulations, 2016

Prayas (Energy Group), Pune
8th April 2019

The last few years have witnessed a steady rise in sales migration on account of open access and captive consumption. With increasing cost of supply and falling prices of renewable energy based generation sources, this trend is expected to continue and even increase. Sales migration has significant impact on the operations, planning and finances of the distribution company. At the same time, consumers who avail open access also face several challenges such as procedural delays and uncertainty regarding the nature and extent of various charges being levied. Given the flux in the sector, it is extremely important to formulate a clear set of rules and regulations that will guide and channelise 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 Maharashtra Electricity Regulatory Commission (Distribution Open Access) Regulations, 2016, is a welcome initiative and an opportunity to provide a way forward to address the issues being faced by licensees, generators and consumers. Major changes proposed in the draft amendment include: change in duration of open access, change in design of short-term open access (STOA) charges, energy banking provisions and the proposal for an online application processes. Many of these changes are important and necessary. Considering this, Prayas (Energy Group)'s or PEG's comments and suggestions in this matter highlights areas where more clarity is needed to ensure smooth implementation and also suggests 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

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. Thus, steps need to be taken to discourage short-term open access (STOA) and encourage consumers to avail open access for durations greater than one year. This would reduce the uncertainty for the DISCOMs and ensure that they don't bear the risks of opportunistic switching by consumers. Some suggestions to address this issue are discussed below:

1.1 Progressive increase in STOA charges for wheeling

It is proposed to amend Regulation 14 such that in case of repeat short-term open access transactions during a financial year, the applicable charges will increase progressively till the fourth such transaction. For and after the 4th transaction, the applicable charges will be two times the actual charges. This is a welcome step to address the issue of repeated short-term open access applications in the same year

and should be a part of the final amendment. As Regulation 14 pertains to transmission charges, it is not clear if the STOA charges referred to in the amendment includes wheeling charges. In order to nudge consumers away from short-term open access, it is suggested that the provisions under Regulation 14 should be applicable for wheeling charges as well.

1.2 Change in proposed duration of medium term open access

The proposed amendment to Regulation 2 and Regulation 7 suggests changes in the duration of medium-term and long-term open access. Medium-term open access is proposed to be for three months to seven years and long term open access is for periods exceeding seven years. The duration for short-term open access is retained at one month as in the original regulations.

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**. As repeated short-term open access applications incur higher charges, these provisions should encourage consumers to move towards open access contracts for the duration of at least 1 year. At the same time, due to contingent circumstances there could be a need to meet intermittent power requirements. In such a case, short-term open access could be allowed for duration of 1 month as specified in the regulations to ensure flexibility.

2 Standard agreement for Open Access

The proposed amendments affect duration of open access, design of short-term open access (STOA) charges, energy banking provisions and the application process. Considering this, it is important to review the format of the existing open access agreement and to modify it accordingly.

Also, under Regulation 6 of the existing 2016 regulations, only medium and long-term open access consumers are required to enter into such an agreement. However, considering the fact that most of the open access transactions are of short-term nature, it is important to amend the Regulation 6 to include short-term open access transactions under it.

The draft of the modified model open access agreement, especially for short-term open access, should be made public and it should be finalised based on public comments.

3 Eligibility of Open Access

While formulating the 2016 regulations, the Commission had envisaged reducing the eligible contract demand for open access to 500 kW to widen the choice available to consumers and to expand the open access market. Subsequently, to address the concerns of the distribution licensees, the Commission decided to retain the long-standing eligibility requirement of 1 MW. However, given that more than a decade has passed since open access has been formalised and enabled, it is perhaps appropriate to reevaluate whether such a high eligibility barrier for open access is necessary and whether it is impeding market development. We feel that the Commission should consider lowering the eligibility barrier in a step wise manner and allow more consumers to choose their supplier. As a first step towards this, the

Commission can consider lowering the eligible contract demand for open access to 500 kW for the next two years and thereafter reduce it further in a gradual but predictable manner.

4 Duration and schedule for Day-Ahead Open Access

With the proposed amendment to Regulation 11.3, a provision is to be added such that day-ahead open access shall be made for a continuous period of minimum duration of 8 hours.

If open access consumers can schedule power for 8 hour time blocks, it would aid frequent switching and make scheduling and procurement planning more challenging for DISCOMs. Not just MSEDCL but PSPCL and the Rajasthan DISCOMs have highlighted scheduling issues in the past¹. Taking cognizance of this, the Ministry of Power in its consultation paper on issues related to open access² suggested that open access consumers be required to schedule power for at least 24 hours. It is suggested that the minimum duration for day-ahead open access be changed from the proposed continuous period of 8 hours to a 24 hour period.

The draft amendment to Regulation 11.3 also specifies that for a schedule given for day ahead open access should be more or less uniform such that the minimum schedule during the day at any time should not be less than 75% of the maximum schedule of the day.

Open access consumer schedules depend on the load curves of the consumer and given the nature of the load, there could be significant variations during the day. If the consumer, especially a partial open access consumer is able to offer a continuous and uniform schedule for the day, it means that the variation in load is being borne by the DISCOM. Thus, having a restriction on uniform load for open access will anyway not address the issue of uncertainty and variability for the DISCOM. Thus the suggested provision should be removed in the final amendments such that day ahead open access can be obtained for a continuous period of 24 hours without any restrictions on load variability in this period.

5 Rationale for additional surcharge for long-term open access consumers

Regulation 14.8 of the principal regulations specifies the principle, applicability and mode of determination of additional surcharge. Additional surcharge is charged to compensate the DISCOM for the fixed cost incurred due to capacity backed down/unutilised due to open access. This is necessary if power procurement and capacity addition was planned taking into account the obligation to supply to the consumer who has chosen open access. Additional surcharge is not applicable on captive consumers.

¹ Please refer to Page 51-52 of PSPCL petition available here: http://www.pspcl.in/docs/pdf/arr_vol1_1112.pdf. Also refer to page 2 of RERC order available here: <http://www.erc.rajasthan.gov.in/TariffOrders/Order237.pdf>

² For more details, please see: https://powermin.nic.in/sites/default/files/webform/notices/Seeking_Comments_on_Consultation_paper_on_issues_pertainin_g_to_Open_Access.pdf

Long term open access consumers would opt of open access for durations greater than 7 years as per the amendments. Thus, DISCOMs should be able to plan procurement after accounting for the demand of such consumers as opposed to short-term or medium-term open access consumers.

It is suggested that the regulations be amended to ensure additional surcharges are not levied on long-term open access consumers. Such a dispensation will also incentivise more consumers to opt for long term open access, reduce opportunistic switching as well as demand uncertainty for DISCOMs.

Regulation 14.8 also specifies that the additional surcharge will be determined category-wise. It is not clear which category (type of open access consumer, duration of open access consumer, tariff category) is being referred to in the regulations as the additional surcharge determined by the Commission has been for uniform for all tariff categories of consumers. Clarity on this aspect is required to ensure there is no room for misinterpretation.

6 Providing certainty in charges

Regulation 14.7 deals with cross-subsidy surcharge (CSS). It states that the CSS will be determined by *the Commission in the Tariff Order in respect of the Distribution Licensee or any other applicable Order*. Similarly, Regulation 14.8 deals with additional surcharge (ASC) also leaves it open for the Commission to determine the same through tariff orders.

To facilitate open access which is long term and healthy for the sector, there is a need for a robust and responsive market. For such market to develop, it is essential to provide a reasonable amount of certainty and predictability regarding the surcharges applicable for open access. To enable this, gradual reduction of cross-subsidy surcharge over the next four to five years and encouraging long term open access, are both important for less risk and uncertainty in the DISCOM's power procurement plans. This is especially important considering the issues outlined by DISCOMs with respect to short-term open access. However, such reduction in CSS should take place in a phase-wise manner. Therefore it is suggested that:

- a. Certainty is provided in cross-subsidy surcharge and additional surcharge over the next four to five years. This can encourage consumers to shift to long-term open access rather than apply for short-term open access opportunistically.
- b. The applicable CSS for the year should be fixed for the open access consumers for the entire duration of open access. Thus, if the CSS determined is Rs. 3/kWh in 2019, a consumer availing long term open access for 10 years will pay the same nominal CSS in 2029, which will effectively translate to CSS of Rs. 1.82/kWh in real terms³.
- c. Alternatively, consumers availing open access for duration longer than three years can be provided with a progressively reducing CSS.

Such provision can provide certainty in CSS and it can also encourage open access for durations greater than 1 year.

³ Assuming long term inflation rate of 5%.

Presently, renewable energy based open access gets preferential treatment with regard to application fees, bank guarantees, cross-subsidy surcharge, wheeling charges, transmission charges and additional surcharge. Such concessions have indeed helped in promoting renewable energy based open access. However, given the falling prices of renewable energy, especially for wind and solar, such concessions are increasingly becoming unnecessary. The costs not recovered through CSS, additional surcharge, wheeling charges, etc. are incurred by the DISCOM and are either passed on to the rest of the regulated consumers or become part of the DISCOM's losses. Therefore, considering the changed economics of renewable energy, it is our submission that there is no need to continue with such preferential measures aimed at encouraging renewable energy based open access.

7 Consumer should have choice on level of contract demand

Regulation 4.2 of the principal regulations is proposed to be amended such that DISCOM '*shall reduce the contract demand of the consumer to the extent of quantum of electricity sought to be transferred through Open Access.*'

Similar proposal was suggested earlier⁴ as well but we feel that a mandatory requirement on open access consumers to reduce their contract demand is neither fair nor necessary. If the open access consumer is willing to pay the full demand charges, which should cover the fixed costs of the DISCOM, the consumer should be allowed to retain contract demand with the DISCOM. If the objective is to prevent creation of stranded capacity on account of open access, then there is already the mechanism of Additional Surcharge, which is meant for that purpose. Considering this, we suggest that the option of reducing contract demand should lie solely with the consumer and not with the DISCOM.

8 Availability of power factor Incentive/ Penalty

As the Explanatory Memorandum notes, 'for the energy consumed from open access source, the Distribution Licensee is neither responsible nor liable for any power factor deviation.' However, any such deviation will have implications for local power quality (voltage) for other consumers nearby. Since it is the responsibility of the DISCOM to ensure power quality for all regulated consumers the Commission may consider power factor incentive/penalty on all energy consumed and not just on the energy supplied by the DISCOM.

⁴ MSEDCL through its circular 155 (January, 2012) had proposed a similar automatic reduction in contract demand. In response to a petition against this circular by IWPA, the Commission had directed MSEDCL to modify the circular so that reduction in contract demand be done only in accordance with the existing regulations, and consumers be given the option of terminating/reducing contract demand. (MERC Order dated 3rd Jan, 2013, case 8, 18, 20 and 33 of 2012). This order was challenged before the APTEL (Appeal 59 of 2013, 116 of 2013) and the APTEL ruled that: "...the law has provided a remedy for recovery of stranded cost of the distribution licensee out of its obligation to supply to an open access consumer. Therefore, if the Appellant Distribution Licensee finds that it has to bear same fixed cost (stranded cost) due to its obligation to supply to the open access consumer, it can approach the State Commission with supporting data and claim additional surcharge in its ARR/tariff."

9 Simultaneous rooftop solar and Open Access

Regulation 3.2 proposed a new proviso which allows for consumers to have rooftop solar systems simultaneously with open access. We agree with this approach in principle as we had earlier noted in our comments in MERC Order 163 of 2017. However, we feel that it is restrictive to mandate that such rooftop systems will only be allowed under gross metering based energy accounting. If the consumer has significant day-time load and can instantaneously consume the generated solar power, then this should be allowed, as per existing (or modified in the future) net-metering regulations or as per energy accounting for a captive plant.

10 Energy Banking

Section 20.3 proposes to allow banking only on a monthly basis rather than the erstwhile annual basis. While this may not pose too many challenges for solar PV given its higher diurnal variation rather than seasonal changes, this is likely to hamper RE open access based on wind energy. However, such monthly banking may be appropriate going forward given the broader approach of reducing concessions for renewable energy.

In terms of the 2% energy banking charge in kind, it is quite ad-hoc and should be revised in line with more realistic principles which will account for the value of the banked and unbanked energy on the system in terms of its marginal price.

11 Functionalities of the proposed web-portal

The proposal to amend Regulation 8 to ensure the nodal agency only processes applications online and that the nodal agency is to create a web-portal to facilitate online application and payment is a welcome initiative to ensure transparency, reduce procedural hassles and streamline the application process. Given the major investment in building and maintaining a web portal the amendment should specify that the web-portal should:

- Have functionalities to ensure timelines and tracked and delays from prescribed timelines are flagged in the system.
- Ensure unique IDs for all open access consumers, generators, DISCOMs and SLDC and provide access to MERC for the portal.
- Provide information of type of open access, duration of contract, generators supplying power and contracted demand for each open access consumer to be uploaded by the nodal agency.
- Report sale to open access consumers, payable charges, applicable penalties and revision in contracted demand if any for each consumer on a monthly basis as uploaded by the nodal agency.
- Ensure that each open access consumer has access to all uploaded information based on their unique IDs and can request for verification in case of discrepancy.

The amendment to Regulation 8 should also specify that based on the information on the web-portal, the nodal agency should upload weekly and monthly status reports on the portal which can be publicly

accessible. These reports should also be submitted to the Commission for analysis. Some of the major parameters that should be captured in the report are mentioned in Table 1.

Table 1: Parameters to be reported in portal

Consumer related parameters	Energy related parameters	Licensee revenue related parameters
<p>The portal should report:</p> <ul style="list-style-type: none"> • Number of open access connections : <ul style="list-style-type: none"> ○ based on duration of contract, ○ full or partial open access ○ which have reduced contracted demand • Number of applications processes during the period • Number of pending applications • Average delay (in days) from prescribed timelines for various milestones 	<p>The portal should report open access sales:</p> <ul style="list-style-type: none"> • From generators within and outside the state • From RE and non-RE sources • To day-ahead, short-term (other than day-ahead), medium-term and long-term open access consumers • For captive consumption due to loss of captive status 	<p>The portal should report revenue collected for:</p> <ul style="list-style-type: none"> • Wheeling charges • Additional surcharge • Cross-subsidy surcharge • Standby charges • Concessions provided, if any • Transmission charges • SLDC charges, if any
Total number of open access consumers	Total open access sales	Total revenue from open access

12 Monitoring trends in open access

The nature and extent of open access has significant impacts on cash-strapped DISCOMs and the consumers of the licensee. However, not much information is publicly available to ascertain major trends and evolve policy responses. Given the impacts on demand estimation, power procurement planning and revenue recovery of DISCOMs, major trends in open access should be considered during planning processes and reported to ensure informed participation by consumers. Based on the periodic reports submitted by the DISCOMs, MERC should publish an annual report tracing the major trends in open access during the year. The inputs from the open access monitoring committee can also captured in the report. The report should be available on the Commissions website. This information should also be factored in the MYT tariff processes and power procurement planning by the DISCOM and the ERC. The principal regulations should be amended to ensure this reporting.

In addition, the regulations can also be amended to mandate SLDCs to report information on open access on their websites. SLDCs can publish information on crucial parameters such as energy injected in the state transmission network and sold to open access consumers on an hourly basis. Disaggregated information can be provided on an hourly basis to capture:

- Open access sale from inter-state and intra-state generators
- Sale from renewable and non-renewable generators to open access consumers in the state
- DISCOM-wise open access sales
- Sales to day-ahead, short-term (other than day-ahead), medium-term and long-term open access consumers.
- Open access sale for captive consumption due to loss of captive status

13 Open Access monitoring committee

The existing Regulation 31.1 is proposed to be amended to change the constitution of Open Access Monitoring and Review Committee. In the proposed amendment, the committee is comprised of representatives from only the licensees, STU, LDC and the Commission. There is no representation of interests of the open access consumers, the generators and the regulated consumers, who are among the key stakeholders.

Since the objective of the committee is to monitor open access related developments and raise early warnings for any upcoming issues and challenges, it is imperative that it should represent all the concerned stakeholders. This is also essential for the committee to be seen as a credible entity as only then can it lead to meaningful deliberations and consensus building.

Therefore, in order to ensure that the issues of open access users as well as those concerning larger public interest are represented, the committee constitution should be expanded to include independent members, such as sector experts, consumer organisations, and industry representatives.

Further, to strengthen the committee process the regulations should explicitly require the committee to publish the minutes of its meetings along with detailed reports regarding the issues deliberated and remedial measures being proposed or considered. All the information regarding the committee, including its composition, minutes of the meetings, study reports and any other relevant documents should be available on the Commission's website.

The suggestions made above are aimed at fostering a regulatory framework that enables and facilitates long-term open access and robust markets. Reiterating the role of predictability and certainty in regulatory regime is crucial here as it affects investors and consumers decisions. While it is important for the Commission to remain vigilant and to adapt to the changing sector developments in a nimble and agile manner, it should be balanced by providing certain level of clarity and predictability, especially for consumers and investors who have taken long-term commercial decisions based on prevailing regulatory norms.

--X--