

● PRAYAS

Initiatives in Health, Energy,
Learning and Parenthood



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June 30, 2012

To,
The Secretary
MERC
Mumbai

Subject: Prayas comments and submissions regarding Suo Motu proceeding No. 50 of 2012, issues in open access

Ref: Public notice issued by MERC in this regard on 18th May 2012

Dear Sir,

With respect to the matter mentioned above, please see below our submission in this regard. This submission is in continuation to our earlier submission made in the matter of case 43 of 2010 which was concerned with issue of cross-subsidy surcharge for open access consumers. We request the commission to take the same on record.

1. **Role of Open Access:** The Electricity Act 2003 has been a move in the direction of increasing role of competition and markets in power sector. The provision of open access is inherently linked with furthering this objective. Hence the interpretation of the Act as provided by the Ministry of Power and the Law ministry can be seen as step towards furthering this long term objective of the Act. The conventional wisdom in support of this argument relies on role of open access and such other market mechanisms which in turn can exert pressure on incumbent utilities to improve performance and facilitate competitive supply options for consumers. In the present power shortage scenario, small consumers can benefit from increased supply availability on account of larger consumers opting for open access. However, as far as role of competition is concerned there is yet no conclusive evidence of benefits for small consumers either from India's own experience with electricity reforms or from reform experiences of other countries. Hence it is important to bear in mind that while the act envisages open access mechanism as the direction for going ahead, there is need for caution and careful vetting of the approach being adopted for such transition, especially from the point of view of interests of small consumers.
2. **Factors to be considered for facilitating open access:** Following factors need to be considered before implementing any open access mechanism:
 - a. **Economic rationale:** The mechanism should make economic sense for both open access as well as the rest of the discom consumers.
 - b. **Well rounded/holistic interpretation of legal and policy mandate:** While the act allows for and encourages open access and competition, it also stresses upon gradual and progressive reduction of cross-subsidies as well as ensuring good quality of supply. This implies that any change should not lead to abrupt shift causing tariff shock for small consumers as well as ensuring good quality of service for **all** consumers.

- c. **Principles of market mechanism:** Open access consumers should be willing to accept risks and not just rewards of the market mechanism.
 - d. **Operational transparency and accountability:** Need to adopt advance metering and billing mechanisms to ensure complete transparency and accountability of discom in its transactions with deemed open access consumers. Intra-state power trading should be made more transparent, need for proper regulations and monitoring mechanisms.
3. **Implications:** Through our submission in case no 43 of 2010, we had discussed various possible scenarios depending on demand-supply situation. Based on this analysis, following conclusions can be drawn:
- a. Key factor that influences the cross-subsidy surcharge is demand supply situation of the licensee and quantum of additional sales becoming available on account of open access.
 - b. The most interesting conclusion is that even if the licensee is able to absorb all additional energy sales; certain amount of revenue loss is inevitable. This clearly implies that cross subsidy surcharge should be adequate to bridge this gap in the short run at least.
 - c. Further as most licensees are expected to have contracted most part of their power purchase requirement through long term agreements, the only avoidable cost would be variable cost of units on margin. This fact clearly points out the shortcomings of using marginal cost of power purchase for calculating cross-subsidy surcharge. More rational and equitable methodology is therefore necessary for estimating this surcharge.
 - d. It can also be seen that in case significant number of large consumers are deemed to be open access consumers, then *in the long run* small consumers can benefit by avoiding (future) marginal cost of power purchase. In the short and medium term, the licensee can make some profits by selling its surplus power in market.
 - e. Further there could some consumers who qualify for open access based on connected load criteria but are not willing to source their demand from market and would instead prefer to take supply from the discom. Any proposed mechanism should take into account needs of such consumers as well.
 - f. With large variation in market cost of power, depending up on time of the day and season, opportunistic switching between licensee and market should be strictly prevented.
4. **Possible approach:** The issues discussed above highlight the need for gradual and calibrated move towards open access. While it may not be fair to suddenly force all open access eligible consumers to deal with the market, there can be time-bound action plan for this. One possible approach could be segregation of all open access eligible consumers, let us call them 'deemed open access consumers' from the rest of the consumers in the licensee's annual revenue requirement process. Such approach gives clarity in terms of power purchase planning and costs as well as cross-subsidy loss and helps to take appropriate corrective measures. Some of the critical issues which need to be considered for implementing this approach are discussed below:

- i. **Separation in ARR and business plans:** Once a consumer is identified as eligible for open access (demand/connected load greater than 1MW), she should be always classified as 'deemed open access' consumer. While considering the annual revenue requirement (ARR) process or business plans of any distribution licensee, all such consumers should be separated from the rest of the consumers. This will result in a realistic estimation of power purchase requirement, sales and revenue from deemed open access consumers. This distinction at ARR level should be independent of whether the consumer chooses to opt for open access or not. ARR and business plan formats should be modified accordingly for this purpose.
- ii. **Obligation to serve non-open access consumers on priority:** The licensee shall be obligated to meet the demand of its regular consumers on priority. Only after meeting this obligatory demand, if it has any surplus it can sell the same to deemed open access consumers. This will ensure that demand of deemed open access is not met at the cost of load shedding for rest of the consumers.
- iii. **Separate tariff category for deemed open access consumers:** Once ARR is segregated, a separate tariff category should be created for all the Deemed open access consumers. The tariff for this category should include a premium in addition to cross-subsidy surcharge and wheeling charge. This premium, exact quantum of which needs to be worked out based on details of deemed open access consumers, is on account of the stand-by support and the significantly better supply and service quality enjoyed by these consumers. The commission may define trajectory for this premium such that it is tapering in nature.
- iv. **Contracts with deemed open access consumer:** Any deemed open access consumer willing to remain with the licensee and not opt for open access will have to sign at least a 1 year contract with the discom for this purpose. This will give the discom clarity regarding its power purchase planning. If any open access consumer who has not signed contract but wants to avail supply from licensee should be charged higher tariff comparable to temporary charges. Further details regarding issues such terms and conditions of the contract, including early termination, grievance redressal for open access consumers, etc. should be dealt with in the distribution open access regulations.
- v. **Metering and billing of all Open Access consumers:** All open access consumers (deemed or otherwise) should be mandated to install Special Energy Meter (SEM). This will ensure transparency and accountability in the metering and billing data and will ease out operational issues. Further the commission should undertake periodic independent metering and billing audits as well as energy audit of all open access transactions to ensure that interests of non-OA consumers have not be adversely affected.
- vi. **Regulations for monitoring intra-state power trade:** Following CERC's example, MERC should issue regulations for monitoring intra-state power trading. This is extremely important as with increase in open access, volume of intra-state trade is bound to increase and hence it becomes necessary to ensure transparency in such transactions which are currently not tracked by any agency.
- vii. **Intra-state transmission pricing framework:** The transmission Tariff applicable in the State is governed by the intra-state transmission pricing framework specified by the Commission's Order dated June 27, 2006 in Case No. 58 of 2005. Need to expedite implementation of Final Balancing and Settlement Mechanism (FBSM) for energy accounting and settlement on 15-minute basis under intra-State ABT regime.

viii. Finalize transmission and distribution open access regulations: In light of these developments, the commission should accordingly modify the proposed draft regulations for transmission and distribution open access 2011 and undertake fresh round of public consultation regarding the same. Further, the commission should particularly publish a statement of reasons along with all these regulations to make its rationale clear and transparent. Such practice can greatly help in correct interpretation of commission's perspective regarding these matters and avoid un-necessary litigation.

We once again request the commission to take our submission on record. We will be glad to clarify any particular issue or assist in any manner as the commission may so desire in this regard. We would also request the commission to allow us to making additional submissions if any, during the subsequent hearings or process in this regard.

Thanking you

Yours sincerely
Ashwini Chitnis and Shantanu Dixit

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