

ISSUES ON OPEN ACCESS

PUBLIC NOTICE

CASE NO. 50 OF 2012

The Maharashtra Electricity Regulatory Commission (“**the MERC**”) was established as the Commission for the State of Maharashtra under Section 17 of the Electricity Regulatory Commissions Act, 1998 and continued as such under the first proviso to Section 82 of the Electricity Act, 2003 (“**the 2003 Act**”) as the State Commission for the purposes of the 2003 Act. The MERC exercises various functions for the implementation of the 2003 Act. One of the functions is to introduce open access in distribution under Section 42 and to consider all other attendant provisions including that of determination of wheeling charges and surcharge thereon for open access consumers.

By a letter dated 30th November 2011, the Ministry of Power, Government of India, has requested that necessary steps for immediately implementing the provisions relating to open access under the 2003 Act may be taken in the light of an opinion from M/o Law & Justice who have opined as below –

- (a) as per the provisions of the 2003 Act, bulk consumers (above 1 MW) shall be deemed to be open access consumers with effect from January 2009, in terms of the proviso to Section 42(2);
- (b) once a consumer becomes an open access consumer, the State Commission can no longer fix the energy charges to be paid by such a consumer, but will continue to fix the wheeling charges and surcharges in accordance with the provisions of the 2003 Act;
- (c) an analysis of the various provisions of the 2003 Act (particularly Section 49) shows that if certain consumers want to have the benefit of the option to buy power from competing sources, then it is logical that DISCOMS/Distribution Licensees do not have an obligation to compulsorily supply power to such consumers. If such consumers want power from the DISCOM, then the terms and conditions of the supply would be determined in terms of section 49;
- (d) A notice under Section 42(3) is not a precondition for the implementation of open access as such a notice is not for seeking permission to use the distribution licensee’s network, but only to communicate the open access consumers intention of using such a network.

The Commission sought written comments vide Public Notice dated May 18, 2012 published in various newspapers dated **May 21, 2012** and on the website of the Commission as well on the above mentioned issues of Open Access and other relevant issues. The last date of receiving suggestions/ objections was **June 30, 2012**. The

Commission further vide its Notice dated July 5, 2012 extended the last date of receiving suggestions/ objections till **July 20, 2012**. The Commission has received 25 written comments from various stakeholders.

The Commission will hear the stakeholders in the Public Hearing to be held on Friday, 12th October, 2012 at 11.00 hours at Centrum Hall, 1st Floor, World Trade Centre, Cuffe Parade, Mumbai 400 005 on for which no separate notice will be given.

A copy of the letter of the Ministry of Power, Government of India dated 30th November 2011 bearing ref. No.23/1/2008-R&R (Vol-IV) alongwith Forum of Regulators (FOR) Position Paper (May 2012) on Open Access is available on the website of the MERC www.mercindia.org.in.

**Sd/-
(Kuldip N. Khawarey)
Secretary, MERC**

Dated: 18th August, 2012

Place: Mumbai