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Maharashtra Electricity Regulatory Commission (Distribution Open Access) (First Amendment) Regulations, 2019

And

Maharashtra Electricity Regulatory Commission (Transmission Open Access) (First Amendment) Regulations, 2019

STATEMENT OF REASONS

Dated: 3 June, 2019

Introduction

In pursuance of the Electricity Act, 2003, which envisaged Open Access, the Maharashtra Electricity Regulatory Commission ('MERC' or 'the Commission') published its Distribution and Transmission Open Access Regulations in 2004, which were followed by new Regulations in 2005. Subsequently MERC (Distribution Open Access (DOA)) Regulations, 2014 and MERC (Transmission Open Access (TOA)) Regulations, 2014 were issued in June 2014 and later MERC (Distribution Open Access (DOA)) Regulations, 2016 and the MERC (Transmission Open Access (TOA)) Regulations, 2016 were notified in March 2016 repealing the earlier Regulations in the matter.

Following the notification of the DOA and TOA Regulations, 2016, various regulatory and market developments have taken place at national level as well as state level, which have necessitated review of certain provisions of extant DOA/TOA Regulations for suitable amendment to these Regulations. At central level, CERC has finalised the CERC (Grant of Connectivity, Long-term access, Medium term open access and related matters) Regulations 2017, which has stipulated a different tenure for medium term and long term open access than the one operating presently at state level. In order to align the state level provisions to that of the central level provisions of CERC, certain amendments have been proposed in the prevailing DOA & TOA Regulations, 2016. Similarly, in order to address various issues highlighted under the Consultation paper related to Open Access published by Ministry of Power (MoP) certain changes are required in the present open access Regulations.

In addition to the above, the Commission received several representations regarding some of the provisions, and the Commission also considered a review to be necessary in view of the unintended situations that were seen in numerous cases that kept coming up for adjudication. Accordingly, the Commission published the draft DOA (amendment) Regulations, 2019 and draft TOA (amendment) Regulations, 2019 on its websites and sought suggestions and objections through a Public Notice (in Marathi and English) in daily newspapers on 11 March, 2019, by 1 April, 2019, which was further extended to 8 April, 2019 as per request of few stakeholders. 113 objectors/stakeholders have responded to the Notice.

The main issues raised during the public consultation process, and the Commission's analysis and decisions on them as covered in the finally notified amended Regulations are set out below.

The MERC (Distribution Open Access) Regulations, 2016 (DOA 2016) and the MERC (Transmission Open Access) Regulations, 2016 (TOA 2016) shall hereinafter be referred as the Principal DOA Regulations, 2016 and the Principal TOA Regulations, 2016 respectively.

1. Regulation 2: Revision in the Definitions

1.1 Proposed in draft DOA (First Amendment) Regulations, 2019

Definition of Contract Demand, Long-term Open Access, Medium-term Open Access, Time Block and others*;*

"(17) "Contract Demand" means the demand in kilovolt ampere ('kVA') or Megavolt ampere ('MVA') as mutually agreed between the Distribution Licensee and the Consumer

(i) in the agreement for supply of electricity; or

(ii) through other written communication."

"(22) "Long-term Open Access" or "LTOA" means the right to use the Distribution System for a period exceeding seven years;"

"(24) "Medium-term Open Access" or 'MTOA' means the right to use the Distribution System for a period exceeding three months but not exceeding five years;"

"(39) "Time Block" means a period of fifteen minutes or any such shorter duration as may be notified by Central Commission and State Commission, for which Special Energy Meters record specified electrical parameters and quantities, with the first such period starting at 00:00 hours;"

1.2 Comments received

With reference to definition of LTOA and MTOA, MSETCL submitted that, Transmission infrastructure required to be created by STU for LTOA consumers and the loan repayment period is 10 years. Thus, if the LTOA period is terminating after 7 years, the cost incurred for the assets won't be recovered and the assets may remain unutilised. Also, increase of MTOA term up to 5 years may tend to repeat MTOA transactions instead of opting for LTOA.

IWPA submitted that, with regard to definition of Time Block, the word "or any such shorter duration as may be notified..." creates regulatory uncertainty. Hence, the Commission is

requested to either define the amount of the duration in this regulation or not to put this uncertainty at present. Also, Reduction of time block from 15 min to 5 min as indicated in Explanatory Memorandum will not be feasible for RE projects such as Wind due to its variability. In view of the above, it is suggested that, a clause may be added excluding Wind and Solar.

TS Wind Power Developers and others with regards to definition of Time Block submitted that, definition of time block should not be amended considering practical constraints as well as financial burdens. Since, the said change to 5 minutes blocks in future would be costly to RE Generators as well as OA consumer as the meter cost, reprogramming of meter would be on a higher side and time consuming.

Tata Motors submitted that, under the current Forecasting & Scheduling Regulations, the deviation is calculated on 15-minute time block. If this time block is further reduced to 5 minutes, then it will create more ambiguities and ultimately will not serve its desired purpose.

Manikaran Power Ltd. submitted that only one nomenclature should be there in definition of CD i.e. either kVA or MVA for smooth approvals and permissions thereof.

MSETCL submitted that, clarification is required regarding PF for unit conversion.

1.3 Analysis and Commission's Decision

As regards comments by MSETCL that loan repayment period is generally 10 years and thus, if LTOA period is terminated after 7 years, the cost incurred for acquisition of the assets won't be fully recovered, following clarification may be noted. The recovery of transmission charges for InSTS assets after being put to use is governed by the MERC (Multi Year Tariff) Regulations, 2015, whereunder the transmission charges are paid by users as per the usage of InSTS based on principles laid out in the said Regulations. Thus, there would not be any case of non-Recovery of cost of transmission assets. Further, the draft amendment with proposed modification in the tenure of LTOA and MTOA is necessary so as to be align it with the CERC (Grant of Connectivity, Long-term OA, Medium-term OA and related matters) Regulations, 2017, as already stated in the explanatory memorandum. In view of the same, it is decided to retain the provisions of the Draft DOA (First Amendment) Regulations, 2019.

As regards definition of Time Block, the Commission in its Explanatory Memorandum published with Draft Regulations has noted the ongoing development at National level regarding revision of time block to 5 minutes. Related discussions are mentioned in the SAMAST (Scheduling, Metering, Accounting and Settlement of Transactions in Electricity) report by Forum of Regulators (FoR) as well as in a recently published report prepared by sub-group of FoR. It is clarified that the amendment proposed in the definition of the 'Time Block' ensure the freedom/flexibility for revision in timeblock duration and to that extent is only an enabling provision. Thus, the definition of 'Time-block' has been retained as proposed under Draft Regulation. Besides, the Time Block with similar clause is also defined in the recently notified MERC (DSM) Regulations, 2019.

As regards Unit of measurement for contract demand, either MVA or kVA could be used depending on the capacity of Open Access transactions and both units are valid. The

Commission observes that 1 MVA is equal to 1000 kVA. Hence, Commission has decided to retain definition as in the principal Regulations.

As regards the clarification sought by MSETCL regarding PF for unit conversion, it may be noted that PF is required to be specified when the unit of contract demand is in terms of kW or MW and since now unit itself is proposed in MVA or kVA, there is no requirement of unit conversion. Further, as clarified in the Explanatory Memorandum to the Draft Regulations, Distribution Licensees in their MYT Order have been directed to take necessary steps to enable kVAh based consumer billing from next MYT Control Period starting from 1st April, 2020. Accordingly, the Commission has decided to retain the proposed amendment.

1.4 Provision in MERC DOA Regulations, 2019

The Commission has decided to retain the definitions as proposed in the Draft DOA (First Amendment) Regulations, 2019.

2. Regulation 3.2: Eligibility to seek Open Access (Eligible Contract Demand Capacity)

2.1 Proposed in draft DOA (First Amendment) Regulations, 2019

"3.2 Subject to the provisions of these Regulations, a Consumer having Contract Demand of 1 ***MVA*** *and above with a Distribution Licensee shall be eligible for Open Access for obtaining supply of electricity from one or more*
a) Generating Plants or Stations, including Captive Generating Plants;

b) Trading Licensees

c) Power Exchanges

d) Other Distribution Licensees

e) any other sources,

or a combination thereof, and all collectively called 'Sources':

2.2 Comments received

Prayas Energy Group submitted that, Commission should consider lowering the eligibility barrier in a step wise manner and allow more consumers to choose their supplier. Hence, the Regulations may specify lower eligible contract demand for open access to 500 kW for the next two years and thereafter reduce it further.

2.3 Analysis and Commission's Decision

With reference to submission of Prayas Energy Group about lowering the eligibility criteria below 1 MVA, Commission is of the view that, reducing the eligibility limit for OA will have significant impact on the revenue/power purchase planning of the distribution licensee and would also have impact on the rest of the consumers who are not eligible. Besides, such

proposal was not considered under draft published for public consultation. Hence, the same can be taken up at a later stage without undertaking detailed assessment of impact analysis for utility and consumers and without further public consultation. Therefore, the same is not proposed for incorporation as of now.

2.4 Provision in MERC DOA (First Amendment) Regulations. 2019

The Commission has decided to retain the provisions of the Draft DOA Regulations.

3. Regulation 3.2: Eligibility to seek Open Access (Linking eligible Open Access capacity to Contract Demand)

3.1 Proposed in draft DOA (First Amendment) Regulations, 2019

"3.2…

Provided further that Partial Open Access Consumer shall be permitted to avail Open Access for the capacity not exceeding its existing Contract Demand with the Distribution Licensee on the date of application, whereas, Full Open Access Consumer shall be permitted to avail Open Access for capacity not exceeding its sanctioned load;"

"8.10. The Nodal Agency shall grant Medium-term or Short-term Open Access if the resultant power flow can be accommodated in the existing Distribution System or the Distribution System under execution."

3.2 Comments received

OA capacity for RE

MSEDCL has submitted that, if a consumer is sourcing power from RE generator, maximum quantum of OA source should not be more than 50% of its Contract Demand.

AEML has submitted that, the proposed Regulations are limiting the open access permission to any consumer up to its Contract Demand. This will make Open access from renewable energy plants a non-starter, considering low CUF of RE sources. It supported the provision of MERC OA Regulations, 2014 which had consideration for RE CUF and adjustment for transmission and wheeling loss.

Tata Power has submitted that, Partial Open Access Consumer should be permitted to avail Open Access for the capacity not exceeding its existing Contract Demand, adjusted for transmission and wheeling losses. For non-firm power RE generating stations, Partial Open Access Consumer should be permitted to avail Open Access for the capacity not exceeding three hundred percent (300%) of its existing Contract Demand, adjusted for transmission and wheeling losses.

Vibrant Energy has submitted that, the Commission either needs to devise a mechanism of converting the injected capacity into grid by using the CUF factor to arrive at the total OA capacity at the OA consumer end or remove the ceiling of OA capacity to that of contract demand. The same is being implemented in Andhra Pradesh where in the CUF is capped at 25% for solar and a 10MW capacity of solar is treated as a 2.5MW OA capacity in the OA Consumer end.

Cleantech Solar and others submitted that, RE plants have lower CUF. Hence, OA is required by a RE generator for a capacity much higher than the stated drawal requirement of the OA consumer.

Roha Dyechem and others submitted that, as OA consumers need to comply with RPO target, it is suggested that at least 6 times of contract demand should be allowed for open access especially for procurement of RE power.

Resultant Power flow related

MSEDCL submitted that, the proposed deletion of existing regulation 8.10 is ok in case the newly introduced Regulation 3.2 is approved by the Hon'ble Commission.

Fourth Partner Energy submitted that, Commission should retain the provision of resultant power flow for optimum scheduling and planning of Power Procurement by the consumer.

Captive Power Producers Association and others submitted that, the Commission should not consider the deletion of resultant power flow clause because as per the definition of open access, there should be non-discriminatory provision for the use of transmission lines or distribution system or associated facilities with such lines or system by any licensee or consumer or a person engaged in generation.

Also, Captive Power Producers Association have said that the Forum of Regulators have recommended the following clause in model open access regulation:

"Medium-term open access or short-term open access shall be granted if the resultant power flow can be accommodated in the existing transmission system or the transmission system under execution"

Mohite Industries submitted that, as per Section 42 (2) of the Electricity Act, 2003, a Distribution Licensee is under obligation to provide non-discriminatory OA. Hence, it is suggested that the deletion of Regulation 8.10 will lead to denial of OA on unjustified grounds. As the Distribution Licensee is required to process OA applications if there is no technical constraint, the deletion of the said clause will leave more room for denial without justification.

Other comments

Mr. Nitin Ghorpade submitted that, as per Section 42 (2) of Electricity Act 2003, consumer having demand of more than 1 MW cannot be denied open access claiming that its recorded demand is less than eligibility requirement.

ITC Limited submitted that, in all other states, there is no limiting factor for deciding the maximum capacity for availing open access.

Captive Power Producers Association submitted that, contract demand limit should not be applicable to open access under captive mode, unless there is any technical limitation / constraint in the distribution network. Particularly in case of planned shutdown of Captive plants, captive users have to avail OA more than contracted demand.

Vibrant Energy submitted that, the basis of discrimination between Partial open access and full open access is not justifiable, as technically the same CT and PT would be used in both

the cases. Hence, even in the case of Partial open access, the limit should be allowed till the sanctioned load.

3.3 Analysis and Commission's Decision

In the draft Regulations, it was proposed to limit the eligible OA capacity to the contracted demand to address the issues arising due to technical considerations, several cases of operationalising resultant power flow aspects and associated technical issues, implications on power purchase and load-generation planning for utility while enabling consumer choice for open access. Capacity of OA will have to be guided by the available transmission/distribution network capacity from injection point to drawl point. Commission is of the view that for conventional OA consumers, there is no case made out for banking and the capacity of the injection source could very well be limited to the capacity requirement at the drawl end without adversely affecting the economics of the transactions. Further, since the PLF/CUF for such sources are relatively higher as against that of non-firm RE generating sources, energy requirement of the consumer can fairly be met even though the OA capacity is limited to the contracted capacity in case of conventional open access transactions.

The Commission has received many objections to the proposal for limiting OA capacity to contracted capacity in case of renewable energy based open access transactions. Almost every objector, except a few has suggested not to put any restriction on RE OA transactions highlighting the inherent variable nature of non-firm RE and lower CUF associated with such transactions. Upon perusal of submission by various parties in this regard, Commission is of the considered view that no such restrictions would be applied for renewable OA transactions. Accordingly the provisions of the Regulation 3.2 have been modified.

As regards comments for retaining the provision of resultant power flow under Regulation 8.10, the Commission has decided to retain the provision of the Principal Regulation. This would be necessary for addressing technical issues particularly when there is no restriction put on RE OA transactions with respect to capacity limit.

With reference to the comment that there should not be any discrimination w.r.t full and partial open access, it is highlighted that full OA consumers have no supply agreement or contracted capacity with Distribution licensee as against the case with partial OA. Hence, reference to sanctioned load has been made as the limit for full OA. Hence, to that extent distinction has been made which does not amount to discrimination.

With reference to the comment regarding separate treatment to captive OA transactions considering planned shut-down instances and required over-drwal from Distribution Licensee more than contracted demand, the Commission is of the view that, captive users have choice to revise CD during planned shutdown so as to reduce commercial impact during such instances. Thus, need for separate treatment is not warranted.

3.4 Provision in MERC DOA (First Amendment) Regulations, 2019

The Commission has decided to modify the provisions of the Draft DOA (First Amendment) Regulations, 2019 as under:

"3.2 Subject to the provisions of these Regulations, a Consumer having Contract Demand of 1 MVA and above with a Distribution Licensee shall be eligible for Open Access for obtaining supply of electricity from one or more

a) Generating Plants or Stations, including Captive Generating Plants;
b) Trading Licensees
c) Power Exchanges
d) Other Distribution Licensees
e) any other sources,
or a combination thereof, and all collectively called 'Sources':

Provided that Partial Open Access Consumer shall be permitted to avail Open Access for the capacity not exceeding its existing Contract Demand with the Distribution Licensee on the date of application, whereas, Full Open Access Consumer shall be permitted to avail Open Access for capacity not exceeding its sanctioned load;

Provided further that for Open Access Consumer seeking to source power using Open Access from renewable energy based generators, the above specified capacity limit upto contract demand or sanctioned load shall not be applicable, subject to conditions of resultant power flow specified under Regulation 8.10;

…

4. Regulation 3.2: Eligibility to seek Open Access (Ensuring Minimum Threshold Demand)

4.1 Proposed in draft DOA (First Amendment) Regulations, 2019

*"Provided also that, if the Consumer fails to achieve the Maximum Demand in **any** month, the Distribution Licensee shall be entitled to a penalty equal to two times the wheeling charges for the financial year or part thereof for which he the Consumer failed to achieve such Maximum Demand;"*

4.2 Comments received

AEML submitted that, condition to maintain threshold demand every month, puts an artificial barrier to adopt open access for consumers such as malls, hotels, offices whose demand goes down in winter although they qualify as per the criteria, in other seasons.

Vibrant Energy submitted that, as the Distribution Licensees is anyhow levying 50 % of the Contract Demand and charging Additional Surcharge in order to compensate for the idle demand capacity, this restriction of 70% does not stand good and should be waived off. Further it is submitted that, Commission should provide clarifications on the 'eligible consumer'. Also, as a consumer, it is his/her right to avail open access if it has a 1 MVA Contract demand irrespective of the threshold limit because Distribution Licensees are anyhow charging for the 50% of the Contract demand irrespective of the threshold level or actual demand recorded.

Vibrant Energy further submitted that, the restriction of minimum threshold demand of 70% should be removed as there are not many instances as cited in the explanatory memorandum.

Tata Motors submitted that, depending on the market requirement and changes in production pattern there would be fluctuation in the power requirement by the OA consumer which may make it difficult to achieve maximum demand in some months. Thus, the proposed amendment to impose penalty in case of failure to achieve maximum demand in any month is unjust. Considering the above rationale, it is strongly recommended that OA should be permitted without any restrictions on contract demand especially for partial OA consumers availing power from renewable energy source and no penalty should be imposed in case maximum demand is not achieved in a particular month.

Manikaran Power submitted that, the Consumer might have some financial/technical issues, which is beyond his control and for which he might not be able to achieve the threshold value for the particular month. Considering the same, some reasonable time should be given to the Consumer to rectify the issues at their end.

4.3 Analysis and Commission's Decision

Some of the objectors have pointed out that consumption of commercial consumers (e.g. Consumption of Malls, Hotels, Offices reduces in winter) has seasonal variations. Due to such seasonal variations, MD of such consumers may not be maintained with respect to minimum threshold limit in one particular month. The Commission has noted the objections and points raised by stakeholder with respect to genuine difficulties for maintaining minimum threshold limit in any particular month. The Commission observes that it has to strike balance between addressing genuine cases or difficulties and at the same time provision should not be prone to gaming. Hence, in view of suggestions received as well as to avoid the instances of gaming, Commission has decided to modify the condition for minimum threshold limit and increase the period from any Month to 2 Months.

4.4 Provision in MERC DOA (First Amendment) Regulations, 2019

The Commission has decided to revise the provisions of the Draft DOA (First Amendment) Regulations, 2019 with few modifications.

5. Regulation 3.2: Conditions to avail Open Access and develop RTPV simultaneously

5.1 Proposed in draft DOA (First Amendment) Regulations, 2019

Provided further that Consumers intending to have Roof-Top Solar Photo Voltaic Systems can simultaneously avail open access under these Regulations; subject to a condition that in such cases, the credit for solar generation shall be adjusted on gross metering basis for such period for which open access is availed by the Consumer.

5.2 Comments received

MSEDCL submitted that, the rate of purchase of Gross metering shall be the lowest bidding rate of solar energy.

Tata Power submitted that, clarification is required with respect to billing mechanism for net metered OA consumers.

Nidar Utilities submitted that, draft regulation is silent on the rate at which adjusted energy will be credited.

Prayas Energy Group agrees with the approach of allowing gross metering for OA.

Mr. Ashok Pendse submitted that, rate for gross metering may not be attractive. Hence, it is likely that consumer would stop consumption from Distribution Licensees and will prefer stand-alone solar with storage to take advantage of lower Cost of Generation.

Bharat Forge submitted that, provision proposed to be incorporated to regularize the use of Rooftop Solar PV Systems under Open Access, arrangement of gross metering made is very complicated and not really promotional for use of Renewable Energy**.**

Prestress Wire Industries and others submitted that removing net metering provisions may lead to making rooftop solar a less attractive investment for consumers.

5.3 Analysis and Commission's Decision

The Commission notes that many comments have been received supporting or objecting to the proposed arrangement of gross metering for eligible OA consumers. The Commission observes that the clause would enable eligible open access (above 1 MW) consumers who intend to set up rooftop solar PV systems to undertake the same simultaneously. Further, stakeholders who supported the proposal have however requested to clarify the rate applicable for the Gross metering arrangement. It is therefore highlighted that rate notified for Solar roof-top PV projects under the Generic Tariff Order for determination of renewable energy tariff or adopted based on the principles specified for tariff of Solar roof-top PV projects in the said Orders, shall be the applicable rate for Solar roof-top PV projects under Gross metering arrangement.

As regards other objections received on the proposal, the Commission would like to reiterate the rationale given by it in the explanatory memorandum, which is reproduced as under.

> *" Eligibility of consumers to avail simultaneously solar rooftop facility and open access was an issue brought to the attention of the Commission through various Petitions. While the roof top facility of the consumer may be under net metering or any other arrangement permitted, the Commission does not intend to restrict such consumers from availing Open Access. However, it is also required that while allowing so, there should be fair play between the consumers availing such benefits and rest of the consumers of the Distribution Licensee. This is particularly in the context that cost of generation from solar plant is way too cheaper compared to earlier days, when it could be equated to consumer tariffs and would have had lesser impact on the distribution licensee and its rest of the consumers. However, the scenario is changed as of now. In this context, it is proposed to give solar generation credit on a gross metering basis to such consumers who want to simultaneously avail Open Access."*

In view of the above, the Commission has decided to retain the amendment with necessary additional provision clarifying the applicable rate for such gross metering arrangement.

5.4 Provision in MERC DOA Regulations. 2019

"Provided further that Consumers intending to have Roof-Top Solar Photo Voltaic Systems can simultaneously avail open access under these Regulations; subject to a condition that in such cases, the credit for solar generation shall be adjusted on gross metering basis for such period for which open access is availed by the Consumer. The applicable rate for sale under such gross metering arrangement shall be equivalent to the rate stipulated under the yearly Generic tariff Order for Renewable Energy Technologies based on the principles stipulated therein."

6. Regulation 4.2: Revision of Contract Demand

6.1 Proposed in draft (First Amendment) DOA Regulations, 2019

"The Contract Demand of a Consumer availing LTOA or MTOA shall be governed by the provisions of the Electricity Supply Code and the Regulations of the Commission governing Standards of Performance subject to condition that where a consumer eligible under Regulation 3.1, applies for Long-term or Medium-term or Short-term Open Access to the distribution system of a Distribution Licensee so as to obtain supply from a Generating Company or a Licensee or through Power Exchange, the Distribution Licensee (on whose Distribution System the access is being sought) shall reduce the contract demand of the consumer to the extent of quantum of electricity sought to be transferred through Open Access.:

Provided that a Contract Demand in case of Consumer availing STOA shall be restored to its original Contract Demand as prevalent at the time of applying for Open Access upon completion of the tenure of the STOA unless the consumer applies within the specified timelines for extension."

6.2 Comments received

MSEDCL submitted that, reduction of CD shall be applicable for availing OA, in case of OA consumers sourcing from RE generators maximum CUF that can be achieved at any time to be considered and not on the basis of annual CUF in case of Day Ahead OA.

AEML submitted that, reduction in CD should be proposed considering CUF of the RE Generators and the intervening T&D Losses.

Tata Power Renewable Energy Ltd submitted that, RE plants have negligible generation during peak hours i.e., from 1800 hrs to 2200 hrs, thus it necessitates a consumer to draw from Distribution Licensee. DSM Regulations necessitate generator to provide day ahead schedule which can mitigate variability of RE for a licensee allowing it to source power to meet demand efficiently. Thus, revision in Contract Demand in proportion to OA quantum should only be made on consumer's request.

Nidar Utilities submitted that, Commission should exclude RE generators from the proposed amendment.

Prayas Energy Group and others submitted that, reduction in Contract Demand should be as per Supply Code Regulations i.e., as per consumer's choice.

Shree Cement submitted that, reduction of Contract Demand in case of Open Access is discriminatory with respect to non-OA Consumers. Also, it is prejudicial to the concept of Open Access and would discourage Open Access. Hence, reduction in Contract Demand would make it impossible for Open Access consumers to absorb RE Power.

Emerson submitted that, in case of Wind and Solar based OA transaction, Open Access consumers are paying all the applicable charges related to Open Access, and thus reduction of Contract Demand of RE Open Access will tend to bring financial losses. Such amendments would tend to increase power purchase expenses of industries. Reduction in Contract Demand should be as per Supply Code Regulations i.e., Consumer's Choice.

Mohite industries submitted that, hydro Power is an infirm power. The capacity of the plant is fully utilized only in the rainy season i.e., June to September when there is ample rain fall. The quantity of water discharge is controlled by Irrigation Department and hence capacity of the plant remains underutilized. If the generation during a year is considered, CUF remains below 30%. Hence, Mohite Industries has suggested that the proposed amendment to reduce Contract Demand to the extent of power sought through OA should not be enacted. Also, special consideration for renewable energy sources including hydro may be provided.

Indian Wind Power Association submitted that, Open Access consumers pay for the demand charges. Further, giving the right to curtail Contract Demand will be harmful for the infirm RE generation and is in conflict with the intent of Section 86 (e) of EA, 2003. F&S regulations provide more options to plan their procurement without any stranded capacity. Retaining proposed provisions would benefit licensee as the revenue realised from revised Contract Demand is more than the revenue realised from payment of Stranded capacity. Seasonal variability of RE would affect the consumers' demand met during Off generation resulting in higher penal charges, this would lead to OA consumers shifting away from OA power from wind.

Inox Air Products and others submitted that, CUF of RE remains below 30%. Hence special consideration for RE must be provided.

Arvind Cotsyn submitted that, automatic reduction in Contract Demand will result in Demand Penalty for RE consumers, as RE Generation and availability could not be equivalent in every month. Hence, Commission is requested to retain the existing regulation.

6.3 Analysis and Commission's Decision

With regard to several objections received on the issue of automatic reduction in Contract Demand, Commission has decided that, consumers will continue to have the choice for reducing or retaining the contract demand subject to provisions as per Supply Code and Standard of Performance Regulations. The Commission observes that while retaining the choice for revision in contract demand with eligible open access consumers, it has the implications for the other non-eiligible open consumers of the Utility, as it affects the power

purchase and load-generation planning of the distribution licensee. Further, as stated under the Explanatory Memorandum, Commission would like to encourage planned revision in contract demand and sourcing of power which would be in the interest of the open access consumer as well as distribution licensee, rather than only opportunistic frequent switching between different sources.
In view of the same certain conditions have been specified for non-RE based STOA, MTOA and LTOA.

For Non-RE based STOA, MTOA and LTOA

The Commission notes that the open access consumers availing MTOA or LTOA from non-RE sources, would plan for power purchase requirement and have a clear sourcing strategy considering the overall economics of open access transactions. Further, retaining the choice to revise the Contract Demand at any time during the tenure of MTOA/LTOA affects the power purchase and load-generation planning of the Distribution Licensee. Appropriate planning by eligible OA consumers will help utility optimise its power sourcing/planning activities. As such the revenue recovery through Demand Charges is only around 16%-18% of total revenue of distribution utility whereas fixed cost constitute around 55%-60% of the ARR of the Utility. From this perspective, if consumer chooses to maintain CD with Distribution Licensee, it will have to bear some part of power purchase cost which cannot be passed onto non-eligible or other consumers not availing Open Access.

While STOA transactions being of shorter duration may not be amenable to reduction in CD, but if STOA is excluded from this dispensation, it will be difficult to operationalize cases with combination of STOA, MTOA, LTOA. Besides, it is expected that with proposed under amended regulations, it is envisaged that MTOA/LTOA would be preferred over repeat STOAs.

Accordingly, for non-RE based STOA, MTOA and LTOA, who do not opt for reduction in contract demand, the demand charges to the extent of OA capacity availed shall be applicable at differential rate (i.e. incremental) of 1.25 times the normal demand charges on Notional CD. Penal demand charge rate for exceeding contract demand shall continue at 1.5 times the normal demand charges and shall be governed as stipulated under Tariff Order from time to time.

The condition of automatic restoration of the CD has not been incorporated, as it is expected that OA User availing STOA/MTOA/LTOA would exercise choice as per SOP Regulations in timely manner and the same was not covered under draft amendment published for consultation.

The choice for retaining or revising CD by Open Access consumer as per Supply Code is still maintained.

Illustration:
CD with Discom: 10 MVA
OA capacity applied: 2 MVA
Notional CD: 8 MVA
Recorded MD: 9.5 MVA

For recorded MD of 9.5 MVA, demand charges shall be applicable as under:

- *Normal Demand Charges for Demand upto Notional CD of 8 MVA*
- *1.25 x Normal Demand Charges for Demand beyond Notional CD of 8 MVA.*

For RE based STOA, MTOA and LTOA:

RE based OA transactions, which are subject to seasonal and diurnal variation, will not be amenable to reduction/revision in Contract Demand. Several objections were received on this count which have been duly noted by the Commission. Hence, no such condition of Notional CD and levy of incremental Demand Charges thereof, shall be applicable in case of RE based OA transactions. In case, open access consumer simultaneously avails the open access using RE and Non-RE sources, then the condition of notional CD and incremental Demand Charges thereof, shall be applicable only considering open access using Non-RE sources.

6.4 Provision in MERC DOA (First Amendment) Regulations. 2019

The Commission has decided to revise the provisions of the Draft DOA (First Amendment) Regulations, 2019 as under:

4.2. Revision of Contract Demand
The Contract Demand of a Consumer availing LTOA or MTOA shall be governed by the provisions of the Electricity Supply Code and the Regulations of the Commission governing Standards of Performance:

Provided that a Consumer availing STOA shall not be eligible to revise his Contract Demand with the Distribution Licensee during the tenure of the STOA, but may do so at the time of applying for Open Access.

Provided further that for non-RE based STOA, MTOA and LTOA consumers, who do not opt for reduction in contract demand upto open access capacity, the Demand Charges at approved Demand Charge Rate shall be applicable for recorded demand upto Notional Contract Demand and Incremental Demand Charges at the rate of 1.25 times the approved Demand Charge Rate shall be applicable for demand beyond Notional Contract Demand upto open access capacity availed shall be applicable;

[where Notional Contract Demand shall mean Existing Contract Demand at the time of application of STOA/MTOA/LTOA application less open access capacity applied for].

Illustration:
CD with Discom: 10 MVA
Open access capacity applied: 2 MVA
Notional CD: 8 MVA
Recorded MD: 9.5 MVA

For recorded MD of 9.5 MVA, demand charges shall be applicable as under:

- *Normal Demand Charges for Demand upto Notional CD of 8 MVA*

1.25 x Normal Demand Charges for Demand beyond Notional CD of 8 MVA.

Provided further that no such condition of Notional CD and levy of incremental Demand Charges thereof, shall be applicable in case of RE based open access transactions.

7. Regulation 5.10.4, 16.3 and 19: Reference to DSM and F&S Regulations

7.1 Proposed in draft DOA (First Amendment) Regulations, 2019

"5.10.4. The commercial treatment of such infirm power from a Generating Station or Unit, other than one based on Renewable Energy sources, shall be as specified in the Regulations of the Commission governing Deviation Settlement Mechanism and the same shall be applicable from the Effective Date to be notified as per MERC (Deviation Settlement Mechanism and related matters) Regulations, 2019:
Provided that until such notification of Effective Date as per MERC (Deviation Settlement Mechanism and related matters) Regulations, 2019 such charge for testing and tariff for infirm power from a Generating Station, other than one based on Renewable Energy, shall be as specified in the Regulations of the Commission governing Multi-Year Tariff:"

……

"16.3. Scheduling of renewable Energy generating plants identified as 'non-firm power' under the Commission's Regulations governing Renewable Energy Tariff shall be governed as per provisions of Maharashtra Electricity Regulatory Commission (Forecasting, Scheduling and Deviation Settlement for Solar and Wind Generation) Regulations, 2018."

"19.1 Provided that, until the notification of the Effective Date as per MERC (Deviation Settlement Mechanism and related matters) Regulations, 2019, the provisions regarding energy balancing and settlement contained in the Final Balancing and Settlement Mechanism or other such mechanism as may be stipulated by the Commission shall be applicable in the case of Open Access Consumers, Generating Stations and Licensees who are participants of the State Pool."

"Provided further that, post the Effective Date as per MERC (Deviation Settlement Mechanism and related matters) Regulations, 2019, the conditions for Deviation Accounting and settlement of deviations thereof shall be governed as per Regulations governing Deviation Settlement Mechanism for Maharashtra."

"19.2. Settlement of Energy at Drawal Point in respect of Partial Open Access Consumer, or Trading Licensee on behalf of Partial Open Access Consumer:"

"19.2.1. Over-drawal:
Over-drawal by a Partial Open Access Consumer shall be settled at the higher of the following:
(i) the System Marginal Price ('SMP') plus other incidental charges (Net Unscheduled Interchange ('UI') charges, additional UI charges) or any other Charges for Deviation as per Deviation settlement mechanism as identified under the mechanism operating in Maharashtra from time to time or,

"19.2.2. Under-drawal:
In the event of under-drawal, the Partial Open Access Consumer shall not be paid any charges by the Distribution Licensee:"

"19.3.1. Over-injection:
a) In case injection exceeding that scheduled by the Generating Company results in benefit to the grid, such over injection shall be settled either at the Charge for Deviation applicable under the Deviation Settlement Mechanism or the SMP plus other incidental charges (Net UI charges, additional UI charges) or any other intra-State ABT settlement charges under the mechanism operating in Maharashtra, or at the weighted average cost of long-term power purchase sources including meeting Renewable Purchase Obligation, excluding liquid fuel-based generation, of the Distribution Licensee, whichever is lower.
b) If such over-injection is detrimental to the grid, the Open Access Generating Company shall pay to the State Pool either the Charges for Deviation applicable under Deviation Settlement Mechanism or the SMP plus other Incidental charges (Net UI charges, additional UI charges), or any other intra-State ABT settlement charges under the mechanism operating in Maharashtra, whichever is higher:"

"19.3.2. Under-injection:
Any injection below that schedule by the Open Access Generating Company shall be met from the grid and will be paid for by that entity to the Distribution Licensee at the Charges for Deviation applicable under Deviation Settlement Mechanism or the SMP plus other Incidental charges (Net UI charges, additional UI charges) or any other intra-State ABT settlement charges stipulated under the mechanism operating in Maharashtra, whichever is higher; and also any congestion charge stipulated by RLDC and/or MSLDC as payable to the Distribution Licensee to fulfil the obligations of the Open Access Generating Station:
Provided that the distribution loss shall not be loaded on any Generating Station if it is connected directly to the intra-State Transmission System;
Provided further that, if the under-injection persists for a continuous period of two days, the MSLDC shall give notice to the Generating Station to revise its schedule;
Provided also that, if the Generating Station fails to inject according to the Open Access schedule and does not immediately revise its schedule, it shall be liable to a penalty equivalent to two times the SMP plus other incidental charges (Net UI charges, additional UI

charges) or any other intra-State Deviation settlement charges stipulated under the intra-State Deviation Settlement Mechanism operating in Maharashtra; notwithstanding which it shall be liable to pay the Open Access charges for the full reserved capacity for the entire period."

"19.3.3. In the event that a Generating Station in Maharashtra is declared as a State Pool Participant as per the Deviation Settlement Mechanism, the following would be applicable:
a) Any generation up to 105% of the declared capacity in any time block of 15 minutes and averaging up to 101% of the declared capacity over a day shall not be construed as gaming, and the Generating Station shall be entitled to UI charges identified as the SMP plus other incidental charges (Net UI charges, additional UI charges) or any other Charges for Deviation stipulated under the Deviation Settlement Mechanism operating in Maharashtra or the lowest variable cost of generation, whichever is lower, for such excess generation above the declared capacity of Scheduled Generation;"

7.2 Comments received

MSEDCL submitted that, as per MERC Deviation Settlement Regulation 4(B) proviso, Deviation Settlement of partial open access consumers shall be in accordance with the provisions of MERC (Transmission Open Access) Regulations, 2016 and MERC (Distribution Open Access) Regulations, 2016 and its amendment thereof, while in the proposed amendment of DOA Regulations, Deviation Settlement of partial open access consumers shall be in accordance with MERC deviation settlement Regulation. The said regulations are in contradiction with each other.

Further, MSEDCL submitted that, the existing Regulation 19.2.1 (ii) is suggested to be retained as under:

> *"the Energy Charge or Variable Charge of Temporary Tariff Category, whichever is applicable, as determined by the Commission in respect of the Distribution Licensee.*
>
> *Provided that the consumer shall also be liable to payment of penalty for exceeding Contract Demand as provided in the Commission's Orders determining the retail tariff applicable to such consumer."*

Further, it was submitted that under-injection period shall be 24 hours instead of two days as the scheduling is on day-ahead basis.

Manikaran Power Ltd. submitted that, if due to some technical issues Open Access consumer is not able to draw the power, then it should be duly compensated as it is done in case of over-drawal and should be compensated as per DSM as identified under the mechanism operating in Maharashtra from time to time.

Retailers Association of India submitted that, Partial Open Access consumers are not SPP (State Pool Participant) and thus not covered under SPP or UI Mechanism. Further, the over-drawl of any Distribution Licensees is not limited to the over-drawal of Open Access consumers. Rather the number of over-drawal (if any) by Open Access consumers is reportedly miniscule compared to overall over-drawal of the state or Distribution Licensees.

Therefore, rates discovered through the mechanism may not be appropriate to levy on Open Access Consumers. Further, clarity has to be provided as partial open access consumers draw minimum base power and in case some units are lapsed then such units are absorbed by Distribution Licensees without any compensation.

7.3 Analysis and Commission's Decision

Clear distinct provisions have been specified under MERC DOA Regulations, 2016 and the recently notified MERC DSM Regulations, 2019 w.r.t scheduling, over-drawl and under drawl, over-injection and under injection. As regards partial open access transactions, Regulation 19.1 of MERC DOA Regulations, specifies scheduling requirement, Regulation 19.2 specifies settlement of energy at drawl point in respect of over-drawl/under-drawl by open access consumers and Regulations 19.3 specifies settlement of deviations from schedule at injection point (over-injection or under-injection). Amendments were proposed in the Principal DOA Regulations only to the extent of bringing appropriate reference to the new DSM Regulations, which has been notified in the State. In view of the same there is no contradiction between the MERC DOA Regulations and the DSM Regulations.

The Commission has noted the comment to retain the Regulation 19.2.1 (ii).

As regards other comments, the Commission is of the view that necessary clarity is already provided under the proposed Regulations with rationale given under the Explanatory Memorandum published along with the draft Regulations.

7.4 Provision in MERC DOA (First Amendment) Regulations, 2019

The amendments proposed in the draft DOA Regulations is decided to be retained. However with the DSM Regulations, 2019 which was at draft stage during the time of publication of draft OA Regulations, having been finally notified and to this extent certain modification have been made in the provisions of MERC DOA (First Amendment) Regulations, 2019.

8. Regulation 5.10.5: Charge for Infirm Power Injection in Specific Case

8.1 Proposed in draft DOA (First Amendment) Regulations, 2019

"5.10.5. Until the notification of the Effective Date as per MERC (Deviation Settlement Mechanism and related matters) Regulations, 2019, before injecting infirm power, the Generating Station shall enter into an Agreement with the Distribution Licensee to supply such power:

Provided that, in case the Generating Station does not have an Agreement for sale of power with any Licensee, there shall be no charge for such infirm power injected into the grid, it shall be settled by the Licensee at a rate equivalent to the lowest variable cost of thermal generating station as per Merit Order stack of the concerned distribution licensee for relevant monthly period , and the injected power shall be credited to the Distribution Licensee to whom the Generating Station is connected."

"Provided further that, post the Effective Date as per MERC (Deviation Settlement Mechanism and related matters) Regulations, 2019, the conditions for Infirm Power injection and treatment thereof shall be governed as per Regulations governing Deviation Settlement Mechanism for Maharashtra."

8.2 Comments received

MSEDCL submitted the following comments,

- The first proviso should be applicable for generators with Energy Purchase Agreement; where the settlement is to be done "…..by the Licensee at a rate equivalent to the lowest variable cost of thermal generating station as per Merit Order stack of the concerned distribution licensee for relevant monthly period , and the injected power shall be credited to the Distribution Licensee to whom the Generating Station is connected"
- The second proviso as applicable to generators without EPA should be read as "…in case the Generating Station does not have an Agreement for sale of power with any Licensee, there shall be no charge for such infirm power injected into the grid".
- It was further submitted that, there should be a penal mechanism for such generators feeding infirm power when the grid is overloaded /saturated. No generator shall be allowed to inject power without the prior consent of the SLDC.

M/S Sheela Shivraj and others submitted that, the proposed provision is appreciated and suggests that, the infirm power injected should be considered towards the RPO of the Licensee and the generator be compensated at the APPC determined by the commission for Distribution Licensees.

Indian Wind Power Association submitted that, some charges may be specified for such infirm injection into the grid of the Distribution Licensees so as to compensate for such infirm generation.

Mr. V. B. Ghare submitted that, minimum rate should be Rs. 2 which is equivalent to O&M cost and administrative expenses of the Generator.

Arvind Cotsyn submitted that, it is unfair to compare Conventional generation to RE generation and providing lowest tariff of conventional energy to infirm power injected into the grid. Further, it is against RE Policy.

8.3 Analysis and Commission's Decision

Under the MERC DSM Regulations, 2019, the treatment for infirm generation prior to commercial operation date has been specified. However, effective date for said DSM Regulations shall be separately notified. Until such notification, the treatment for infirm generation shall be as per provisions stipulated under Principle DOA Regulations. Accordingly, for injection of infirm power into the grid, an agreement has to be in place between the Generator and the Distribution Licensee. In order to discourage injection of infirm power without any agreement, the same is proposed to be credited to respective Distribution Licensee without any compensation to the generator. However, in case any such agreement is in place, the Distribution licensees is duly informed which can accordingly plan its power procurement. The rate for such infirm generation is linked to lowest variable cost of thermal generating station as per Merit Order stack of the concerned distribution licensee for relevant monthly period.

As regards comments for considering such injection of infirm power towards RPO, the Commission would like to clarify that RPO benefit is not admissible as this clause pertains to treatment of infirm generation by conventional thermal generating stations prior to commercial operation and is not related to 'infirm' or variable generation by renewable energy.

8.4 Provision in MERC DOA (First Amendment) Regulations. 2019

The Commission has decided to retain the provisions of the Draft DOA Regulations with few modifications.

"5.10.5. Prior to the Effective Date of MERC (Deviation Settlement Mechanism and related matters) Regulations, 2019, the Generating Station before injecting infirm power, shall enter into an Agreement with the Distribution Licensee to supply such power:

Provided that, in case the Generating Station does not have an Agreement for sale of power with any Licensee, there shall be no charge for such infirm power injected into the grid. Upon execution of such an agreement, the infirm power injected into the grid shall be settled by the Licensee at a rate equivalent to the lowest variable cost of thermal generating station as per Merit Order stack of the concerned distribution licensee for relevant monthly period , and the injected infirm power shall be credited to the Distribution Licensee to whom the Generating Station is connected."

9. Regulation 7.2: Duration of LTOA, MTOA and STOA

9.1 Proposed in draft DOA Regulations, 2019

"7.2. The Open Access shall be categorised on the basis of its duration as follows:

Open Access Category	***Duration***
Long-term Open Access	*Exceeding **seven** years*
Medium-term Open Access	*Exceeding three months but not exceeding **five** years*
Short-term Open Access	*Not exceeding one month*

Provided that, for the period between five years and seven years, the Applicant may seek MTOA for a maximum period of one year at a time."

9.2 Comments received

Tata Power submitted that, appropriate amendment to the regulations may be made to limit the STOA to maximum of three consecutive months. Any consumer availing STOA for a period of more than 3 consecutive months may be treated as deemed MTOA consumer.

Bharat Forge submitted that, proviso for MTOA may be removed or should be defined as exceeding 7 years, as this would tend to make consumers apply for two unnecessary MTOA's of one year each.

Inox Air Products submitted that, duration of MTOA may create an anomalous situation as the person who may have availed MTOA, may not be able to avail any kind of Open access

for a period of nine months after expiration of further MTOA for one year and then STOA for three months. Therefore, placing of such restriction may be avoided.

9.3 Analysis and Commission's Decision

Commission is aware that some eligible consumers are resorting to repetitive STOA transactions because of anomalous transmission charge structure and would like to discourage the same. Accordingly, suitable mechanism has been provided while levying transmission charges on such transactions and necessary provisions have been incorporated under Regulations 14.1 of the amended DOA Regulations. Since the amendment is expected to take care of the concerns of the Distribution Licensees, it may not be necessary to change the duration of STOA.

Amendment to the proviso regarding MTOA under Regulation 7.2 was proposed so as to specify a mechanism for the period after initial MTOA period is over. However, such a provision was more relevant when the gap between maximum MTOA period and minimum LTOA period was significant (between 3 years and 12 years as was the case earlier). The consumer always has a choice to renew its current MTOA for another period or go for LTOA depending on its requirement. Based on the amended tenure of MTOA and LTOA, it is felt that the said provision appears to be redundant could be removed as highlighted by few stakeholders.

9.4 Provision in MERC DOA (First Amendment) Regulations. 2019

The Commission has decided to retain the provisions of the Draft DOA (First Amendment) Regulations, 2019. However, the proviso under Regulations 7.2 is removed.

10. Regulation 8.1: Open Access Online Application and fee to be made online

10.1 Proposed in draft DOA (First Amendment) Regulations, 2019

"Provided that nodal agency shall process the application for STOA and MTOA including application fee only through online mode. Necessary web-portal functionalities for online processing with secured payment gateways shall be established by the Nodal Agency with suitable amendment to the procedures within three months. The software shall necessarily include day or time punching of the complete process and the trails of this process or processing shall also be available in the system."

10.2 Comments received

AEML submitted that, application process takes longer time as there is no online facility available to get consent of STU/MSLDC, thus the process is required to be IT driven. The Commission should propose the implementation of State Open Access Registry in line with CERC's proposal. Also, the Supply Agreement should be furnished along with OA application which should be standardised.

Prayas Energy Group submitted a sample describing parameters and functionalities to be reported in web portal.

Nidar Utilities submitted that, a detailed framework for Online accepting and processing of the application for STOA and MTOA should be delineated in the Amended Regulations.

Vibrant energy submitted that, provision for LTOA should also be included in online application procedure regulation.

Tata Motors submitted that, Commission should ensure that the Licensees upload the correct online OA application formats on their website in line with prevailing OA Regulations. Since, in absence of such updated online formats, an OA consumer has to submit the hard copies of corrected Open Access applications to the concerned Licensee to avoid possible disputes, which may even lead to litigations. Further, the Commission should direct the Licensees to accept the online payment of OA Fees & Charges through RTGS/NEFT.

Captive Power Producers Association submitted that, Commission should add a proviso for online issuance of tax (GST) instantly for the application fees paid to the Nodal Agency.

Mr. Nitin Ghorpade submitted that, the application fees including GST @ 18 % is being recovered online after submitting the online application. The commission should consider this proviso as the Nodal Agency is not providing the GST invoice required for compliance purpose.

10.3 Analysis and Commission's Decision

The Commission through various past Orders has highlighted the need for making the OA application process online and the same was reiterated in the Explanatory Memorandum published along with the draft OA Regulations. In this context, it is decided to retain the proposed amendment with respect to mandating online application process along with fee payment for filing of OA applications and processing of OA.

The Commission also notes that several stakeholders have provided constructive comments as regards online processing of OA application, which is welcome. There were specific comments in terms of detailed information that open access web portal should host with added functionalities, online facility to seek/get consent of STU/MSLDC, implementation of State Open Access Registry in line with CERC's proposal, standardisation of online application format etc. While the Commission appreciates that such additional functionalities and State Open Access Registry apart from online processing of OA applications are desirable, detailed contours, implementation plan for the same needs to be deliberated in detail. The Commission is of the opinion that OA monitoring review committee should deliberate on these aspects and appraise the Commission with feasibility and action plan for implementable facilities so as to ensure maximum digital transformation of the OA application process. The monitoring Committee should submit its recommendations on this aspect within 3 months from notification of this Regulations. Upon approval, Nodal Agency shall undertake implementation of additional functionalities along with webportal for State Open Access Registry.

With reference to the comments for making available online GST invoice against the payment of online application fee paid, Nodal Agencies are directed to make necessary provision/upgradation of their online application process facilities so as to enable applicants to comply with necessary statutory requirements. Nodal Agency should ensure that such facilities are made available w.e.f from 1st April 2020 or earlier.

Further the Nodal Agencies are directed to modify the OA procedure including application formats in line with the provisions under amended Regulations and shall upload the same on its website within 30 days from notification of the these amended Regulations.

10.4Provision in MERC DOA (First Amendment) Regulations. 2019

The Commission has decided to retain the provisions of the Draft DOA (First Amendment) Regulations, 2019.

11. Regulation 11.3: Treatment of underutilization of STOA and Mandate Minimum Scheduling

11.1 Proposed in draft DOA Regulations, 2019

"Provided that the application for grant of Day-Ahead Open Access shall be made for continuous period of minimum duration of 8 hours or such other duration of number of time-blocks to be stipulated through separate Order from time to time either on Suo-motu basis or on the basis of application moved by affected party.
Provided further that the schedule given against the above day ahead open access sought shall be uniform at least for a period of eight hours and the minimum schedule during the day shall at any time not be less than 75% of the maximum schedule of the day."

11.2 Comments received

MSEDCL submitted that, Day ahead Open Access should not be allowed as this impacts the power purchase planning of Distribution Licensees due to frequent switching over of Open Access consumers. If at all, Commission opts to allow day ahead Open Access, the same should be allowed for a minimum continuous period of at least 24 hours.

Tata Power submitted that, the demand of STOA consumers will fluctuate significantly even after the amendment of the regulation and will still affect the power purchase planning of the Distribution Licensee. So, it has proposed to make the application for grant of Day-Ahead Open Access shall be made for round the clock period of 24 hours.

IEX and Captive Power Producers Association submitted that, the issue of switching would be resolved by the proposed amendment regarding automatic reduction of Contract Demand. Therefore, there is no reason to introduce the condition of uniform 8 hours schedule and minimum schedule being limited to 75% of maximum schedule for the day. Hence, Commission is requested to drop the proposed amendment.

Shree Cement and Bakaert submitted that, the said regulation will make it practically difficult to manage schedule in exchange-based power trading in the state and suggests that the regulation be made flexible to source power through exchanges.

Indian Wind Power Association submitted that, this clause is not suitable for wind generators as variability of wind speeds is beyond the control of generator.

Skeiron Projects submitted that, the continuous time period of minimum duration shall be reduced from 8 hours to 2 hours and suggests that the minimum threshold of schedule be

removed on the basis of the reason that deviation cannot be predicted as there is no real time data available.

Retailer Association of India submitted that, the move to restrict Day ahead Open access is a surprising move considering the amendments proposed by the Hon'ble CERC to shift to scheduling on 5 minutes basis and reducing the processing time for Intra-Day transactions from 3 hours to 1 hour. Commission is requested to allow such flexibility and relax the proposed amendment for the Open Access consumers below 5 MVA considering their limited requirement and load fluctuations.

11.3 Analysis and Commission's Decision

Commission has incorporated this provision to avoid frequent switching between Open Access source and Distribution Licensees leading to difficulties in power procurement planning and deviation management by distribution licensees. Commission is of the view that, such conditions will help Distribution Licensees to better plan power purchase though day ahead quantum and manage its load-generation balance /deviation in proper manner.

Further, 24 hours minimum duration for Day ahead Open Access as suggested by Distribution Licensees during public process would be too onerous for OA consumers. OA consumers sourcing from generators with lower CUF may not be able to schedule on a 24 hour/round the clock basis.

As regards reference made to amendments proposed by the CERC to shift to scheduling on 5 minutes basis, etc., it is clarified that an enabling clause is already proposed under Amendment Regulations that provides flexibility for Commission to revise time-blocks based on operational experience and challenges either on Suo-Motu or based on application filed by affected party.

11.4 Provision in MERC DOA (First Amendment) Regulations, 2019

The Commission has decided to retain the provisions of the Draft DOA (First Amendment) Regulations, 2019.

12. Regulation 14.1 (v): Continued Roll Over of STOA Transactions

12.1 Proposed in draft DOA Regulations, 2019

"14.1 (v) Transmission Charges:

Provided that a Partial Open Access Consumer, Generating Station or Licensee, as the case may be, shall pay the Transmission Charges to the Distribution Licensee instead of the Transmission Licensee for using a transmission network which shall be passed on to the STU within the stipulated time period as specified under Regulations 14.5;
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 STOA transaction during financial year beyond which the charges for STOA shall be fixed at two times of the approved STOA charges;

12.2 Comments received

Sahyadri Renewables Ltd. and others submitted that, the term STOA charges is not mentioned in the previous Regulations and hence has to be defined and transmission charges should be retained the same for at least three STOA transactions.

AEML and others submitted that, MTOA Application process has 3 months lead time, hence during this lead time such higher STOA charges should not be levied to such consumers, who wish to have interim arrangement of STOA.

Mr. Ashok Pendse submitted that, frequent STOA Transactions were due to lower STOA charges than the MTOA transactions, which were as per the Regulations. Hence, it cannot be termed as misuse of the said provisions as claimed by Distribution Licensees. To counter such practices, restrictions on STOA transactions can be implemented in a FY, where a STOA may be allowed for 3 months, but with a gap of at least three months.

Cleantech Solar and others submitted that, Transmission charges should be retained at the same rate for at least three STOA transactions.

Retailers Association of India submitted that, short term transaction helps maximum utilisation of transmission Capacity. Hence, a deliberate attempt to portray STOA transactions as a disturbance to the system is incorrect. While Commission has envisaged applying multiplication factor for short term transactions, Commission has not provided any motivation to opt for Medium Term transaction and the proposed 'double the STOA charges' even for Mid-Term transactions.

M/s Sheela Shivraj and others submitted that, consumers whose need for additional power may be only in months when the RE power is not generated, will have to apply for STOA only for few months which is not continuous and therefore the levy of increased transmission charges when there is no gaming is unjustified.

Nidar Utilities and others submitted that; the proposed regulation is against the principle of non-discriminatory open access as it seeks to impose undue impediments on a consumer’s choice to avail open access for a period of its preference. Consumers of RE generators prefer to avail supply of power on short term contracts as it affords greater flexibility to such consumers to assess their requirements periodically and renew such contracts, if required.

Continuum energy submitted that, amendments should be applicable for the RE Projects commissioned after the date of notification of DOA Regulation, 2019 and not for the projects commissioned before the said notifications.

Manikaran Power Ltd. submitted that, RE OA consumers prefer to obtain supply of power on short term contracts as it affords greater flexibility to assess their requirements periodically and renew such contracts, if required.

Manikaran Power Ltd. submitted that, various industries like steel industries, textile industries do not have visibility to procure power beyond 1 month, putting such restriction will kill the

competition and procuring power under open access will become an unviable proposition for Open Access Consumer. So, it is suggested to delete this provision in Proposed amendment.

Further, Manikaran Power Ltd submitted that, renewable energy already has lower capacity utilization factor, keeping charges double of STOA will adversely impact the financials of Open Access Consumer. Hence, "except that the same shall be equivalent to two times the approved STOA charges" this term in transmission charges clause in proposed amendment should be deleted.

IEX submitted that, the proposal to discourage STOA transactions by increasing transmission charges on the grounds argued by the Distribution Licensees (On perusal of the orders of MERC in Case No. 8 of 2017 and Case No. 98 of 2017) are not only irrational but also do not hold any merit

Prayas Energy Group submitted that, this is a welcome step of progressive increase in STOA Charges. This may also be considered for Wheeling Charges as well, as proposed for transmission charges.

Serum Institute of India submitted that, MSEDCL's observation towards continued roll over of STOA transaction may not be true in case of RE wheeling under STOA. Transmission charges are based on Rs/MW/Month, whereas STOA wheeling is based on Rs/kWh, which has already been clarified by the Commission. Hence, the existing convention and Rate shall be applicable to RE, where the infrastructure is utilised on hourly basis per day per month. The Commission may amend STOA Charges and reduce application period to one month prior to commencement of MTOA/LTOA for already connected RE Generator/consumer with the same Distribution Licensees and no change in the consumer's CD.

Arvind Cotsyn submitted that¸ to resolve the issue of frequent shifting of OA consumers and repeated roll over of STOA transactions, duration of STOA should be 3 Months to 1 Year.

AmpSolar submitted that, proposed STOA charges on repeated transactions shall be exempted till completion of one year from CoD.

JSW Energy submitted that, in case the charges under repeated STOA are to be increased for a consumer, then such charges also need to be applied for distribution licensee availing power under STOA. Also, at least 6 months should be provided after the notification for implementing the same. Higher multiples of STOA charges be applied only if consumer avails STOA for consecutive months and not as proposed in the draft.

12.3 Analysis and Commission's Decision

With Regard to comment submitted by Sahyadri Renewables Ltd and others, Commission agrees with the suggestion and decides to replace the term 'applicable STOA charges' with 'transmission charges applicable for STOA'. Accordingly the draft Regulations have been modified to that extent.

The context and rationale for the proposed amendment was elaborated in the Explanatory Memorandum which is reproduced as under.

"Certain Open Access (OA) consumers, despite having a Medium Term/Long term requirement, do repeated Short Term Open Access (STOA) transactions for availing the benefit of lower STOA charges denominated in per unit energy terms. Presently there is no provision to check and discourage such consumers taking undue advantage of the provision of the Regulations. Upon perusal of data obtained from various Distribution Utilities in the State on this issue, it is noticed that there are many such transactions, and most STOA transactions were getting extended for a period of more than one year.

…

The prevailing provisions for the Open Access consumers availing the Short Term transactions should not be used for taking any undue advantage, particularly when avenues for medium term/long term open access are available. Hence, to allay the purposeful use of repetitive STOA by the open access consumers, who are intending to avoid MTOA/LTOA charges, the Commission has proposed to amend Regulation 14.1 of the Principal DOA & TOA Regulations, 2016"

As highlighted, the Commission has noted types of repeated STOA transactions in the past when the avenue for availing MTOA/LTOA was available. Thus, the Commission has recognised the need for addressing the concerns raised by licensees on account of such repeated STOA transactions through appropriate provisions in the regulations. In this context, the Commission retains the provision proposed in the draft Regulations so as to discourage such repetitive STOA transactions, subject to certain conditions.

As regards suggestion on restricting such repetitive STOA to certain tenure, the Commission has evaluated the same. Considering the implementation complexities for tracking transactions with varying OA capacity, transactions with change of OA source whether it is consecutive or not, whether there is a gap of 3 months or not, etc., Commission has decided to retain the proposed amendment of applying Multiplying factor for repetitive STOA transactions beyond 1 month.

In response to comments/suggestions made by AEML and others, the Commission has decided to allow transition time (equivalent to Processing time for MTOA) without any penalty for initial period of 3 months from the date of notification of amended regulations, which shall be extended for all existing STOA transaction who wish to shift to MTOA. Accordingly, modifications have been made to the Regulations

With reference to the objection that Distribution Licensee should also be subjected to the higher transmission charges, it is clarified that such Multiplication factor shall not be applicable in case of STOA transactions of Distribution Licensees, being deemed long term TSUs. The applicable transmission charges for STOA of distribution licensees shall be guided by principles already outlined under the Maharashtra Electricity Regulatory Commission (Multi Year Tariff) Regulations, 2015. The relevant provision of the MERC (MYT) Regulations, 2015 which are reproduced hereunder:

"63. Usage of Intra-State Transmission System— The charges for intra-State transmission usage shall be shared among various TSUs in the following manner:—
(a) Long-term TSU with recorded demand up to Base TCR shall not be subjected to payment of short-term transmission charges;
(b) Long-term TSU with recorded demand greater than Base TCR but lower than Contracted Capacity shall make payment of short-term Transmission charges for the recorded demand in excess of Base TCR;
(c) Where the recorded demand of long-term TSU is greater than Contracted Capacity, the TSU shall bear additional transmission charges as specified in the Regulations of the Commission Governing Transmission Open Access:
Provided that short-term transmission charges and additional transmission charges, if payable or paid by long-term TSUs in accordance with the clauses (a), (b) and (c) above, shall be adjusted during subsequent billing period upon availability of information regarding actual recorded demand by such long-term TSUs."

Necessary proviso for clarifying the above has been added under Regulations 14.1

12.4 Provision in MERC DOA (First Amendment) Regulations, 2019

The Commission has decided to retain the provisions of the Draft DOA (First Amendment) Regulations, 2019 with few modifications as under:

14.1. (v) Transmission Charges:
Provided that the applicable transmission 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 STOA transaction during financial year beyond which the transmission charges for STOA shall be payable at two times of the approved transmission charges for STOA;
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Provided further that existing STOA consumer that applies for MTOA subsequent to notification of these Regulations and in the interim avails STOA, shall be exempted from application of the aforesaid provision for an initial period of three months from the date of notification of these amended Regulations but shall be subjected to applicability of multiplication factor as above thereafter.

Provided further that transmission charges for STOA transactions by Distribution Licensee shall be governed by the provisions in the Maharashtra Electricity Regulatory Commission (Multi Year Tariff) Regulations, 2015 and amendments thereof.

13. Regulation 14.1 (v): Transmission Charges for Renewable Open Access

13.1Proposed in draft DOA Regulations, 2019

"14.1. (v) Transmission charges

…

Provided further that for renewable energy based MTOA and LTOA transactions, the applicable transmission charges shall continue to be on per unit basis, except that the same shall be equivalent to two times the approved transimission charges for STOA."

13.2 Comments received

AEML submitted that, the transmission charges applicable to RE STOA transactions may be grossed up by the System Load Factor, as available with MSLDC for the immediately previous financial year.

Tata Motors submitted that, increasing the transmission charges will affect the viability of the new as well as existing commissioned RE projects in terms of revenue as well as sustainability.

Enrich Energy submitted that, Competitive Bidders quoting lowest PPA are large scale investors having cheaper cost of funds and higher capacity of projects i.e., in multiples of 50 MW, due to which lower tariff is determined and bidding takes place accordingly. OA Generators/Consumers have small capacities in multiples of 1 MW only, cost of funds is higher side and such OA generators cannot compete and enjoy economies of scale which large generators enjoy. Hence increasing STOA charges 2 time is not justifiable and demotivates Solar Sector.

Fourth Partner Energy submitted that, the transmission charges for MTOA/LTOA should be lesser than STOA since the consumers are giving a clear long-term plan of procurement of power to the Distribution Licensees well in advance and shall be encouraged accordingly and not vice versa.

TS Wind Power Developers submitted that, penalization of RE generators over and above current OA charges for RE is injustice. Current OA charges for wind is above the average power purchase cost of the distribution licensee.

AmpSolar has requested the Commission to avoid applying double transmission charges in solar OA transactions, as it will kill the economics of setting up open access projects in the state.

Captive Power Producers Association submitted that, STOA bears very high risks and improves transmission capacity utilisation, hence STOA should be not be discouraged by levying higher transmission charges.

Further, RE Open Access quantum varies throughout the year and shall not be economical for MTOA transactions.

Nidar Utilities submitted that, the present proposal is against the principle of non-discriminatory OA and causes undue impediments on a consumer choice to obtain OA for a period of its preference. Promotion of RE Section 61 (h) is violated.

Bajaj Finserv and others submitted that, the rate of transmission charge is a tariff related issue, which ought not to be determined by way of an amendment to the respective OA Regulations. Accordingly, such transmission charges ought to be modified, if at all, through a tariff determination process duly carried out in terms of the applicable Multi Year Tariff Regulations of Hon'ble Commission.

Mr. V. B. Ghare and others submitted that, transmission charges for RE are determined as Rs. / kWh irrespective of STOA/MTOA/LTOA; hence, there is no question of misusing this clause. Besides, conventional energy being firm energy, applying for STOA would entail transmission charge based on Rs. / kWh and to avoid heavy Transmission Charge based on Rs. /kW /Month. As Commission has already imposed various charges on RE open access and additionally penalizing by higher transmission charge is injustice on them. It is suggested that, transmission charges should not made applicable to RE generator and if Commission wants to address misuse of STOA then double transmission charges may be applicable as per proposed draft.

Net Magic IT solution and others submitted that, Commission should reconsider the amendments as the generation of RE is dependent on geographical location, site conditions and have lower CUF. Also, the said proposal does not consider the low level of network usage by consumers buying power from RE. Hence, this will also discourage purchase of RE energy by OA consumers and further hamper the development of clean RE sources in the State.

M/s Sheela Shivraj and others submitted that, increased transmission should not be applicable for the Older RE Projects and should only be applicable for the projects commissioned after the notification of amendments.

Hero Future Energies submitted that, consumers awaiting MTOA/LTOA application in process, have only choice to go for STOA as an interim option. In case of premature termination of PPA, generator would also have to avail STOA as an interim option. Thus, Regulations can have negative implications on both parties.

Indian Wind Power Association submitted that, transmission charges for using existing network shall not be linked to the cost of generation of Wind Power and cannot be applied to Group 1, 2 & 3 projects, where cost of generation is higher owing to lesser sophisticated technologies. Further, most of the wind generators opt for MTOA and increasing transmission charges would mean that the profit margins of the generators will be completely eroded. Therefore, existing MTOA charges should be retained for RE projects.

Vidyut Urja Equipments Pvt Ltd. submitted that, though the cost of RE has come down, the cost of transaction for open access has also increased accordingly. So, if the transmission charges are increased as proposed in the draft then the cost of open access will be more than the existing tariff of utility, which would lead to hampering the existing Renewable Investment. Hence, Vidyut Urja has proposed not to increase Transmission charges as proposed in the draft regulation.

13.3 Analysis and Commission's Decision

The context and rationale for the proposed amendment was elaborated in the Explanatory Memorandum. Commission would like to reiterate the fact that with the changed market scenario RE penetration in the market has increased and considering the significant reduction achieved in RE generation cost. When cost of generation of RE itself has gone down significantly from the earlier pricing regime of above 5 Rs per unit, to present sub Rs 3 per unit, the concessional OA charges for use of network needs to be reassessed. The Commission notes the lower CUF and consequent lower utilisation of transmission system by RE sources. Hence, the Commission finds it appropriate to continue applicable transmission charges for

RE OA transaction to be denominated in terms of 'energy units' as Rs/kWh irrespective of the tenure of the RE OA transactions viz. STOA/ MTOA/ LTOA, in line with transmission pricing principles stipulated under MYT Regulations. Transmission charges for RE MTOA/ LTOA transactions, if denominated in Rs/kW/month similar to conventional (non-RE) OA would be onerous considering lower capacity utilization factors of RE. Thus, if full Transmission charges of Rs.213.46 /kW/month (as applicable for FY 2019-20) is applied on RE, considering lower CUF of RE (say 20%), the same would amount to per unit transmission cost for RE OA transactions to be around Rs 1.46 per unit.

However, considering the changed scenario and significant reduction in RE generation cost the proposed increase in charges for RE MTOA/ LTOA (i.e. two times STOA) would result in revision in applicable transmission charges for RE MTOA/LTOA from 0.29 Rs/Unit to 0.54 Rs/Unit, which is far less that full transmission charges if applied in Rs/kW/month for MTOA/LTOA of RE transactions. Accordingly, it is decided to retain the proposed provision of the Draft DOA (First Amendment) Regulations, 2019.

With reference to the objection that "Transmission tariff cannot be revised through OA Regulations", it is clarified that amendments are not seeking to re-determine or revise Transmission Tariff. Instead, amendment seeks to stipulate principle and applicable conditions for levy of Transmission charges similar to principles for levy of CSS, AS etc. as provided under DOA Regulations. Accordingly, the proposed amendment for applicability of transmission tariff for RE MTOA/LTOA transactions is tenable.

13.4 Provision in MERC DOA (First Amendment) Regulations. 2019

The Commission has decided to retain the provisions of the Draft DOA (First Amendment) Regulations, 2019.

14. Regulation 14.1. (v): Passing on Short Term Transmission charges collected by Distribution Licensee and Applicability of Transmission Charges irrespective of BPTA by Source Generator.

14.1 Proposed in draft DOA Regulations, 2019

14.1.(v) Transmission Charges:

Provided that a Partial Open Access Consumer, Generating Station or Licensee, as the case may be, shall pay the Transmission Charges to the Distribution Licensee instead of the Transmission Licensee for using a transmission network which shall be passed on to the STU within the stipulated time period as specified under Regulations 14.5;

…

Provided further that a Partial Open Access Consumer availing STOA are liable to pay the Transmission Charges irrespective of whether or not the Generator from whom they source power has a BPTA with the STU."

14.2 Comments received

MSEDCL submitted that, the transmission charges collected for partial Open access consumers should be retained by the Distribution Licensees.

AEML submitted that, since the demand of partial OA consumers is embedded within the demand of the Licensee, the Transmission Charges payable by the Distribution Licensee also includes the share of Transmission Charges attributable to Partial Open Access consumers. Therefore, the Distribution Licensees must necessarily recover these charges from such open access consumers to shield their native consumers from the impact of these charges, which do not pertain to their portion of demand.

Alternatively, AEML suggested that the CPD/NCPD of Distribution Licensees, for the purpose of working out their transmission charge liability, should exclude the open access capacity of partial open access consumers. This way the Transmission Charge liability of the Distribution Licensees will correctly reflect only the charges corresponding to their own consumers.

Tata Power submitted that, the transmission charges collected from OA consumer is being directed to be remitted to STU. Thus, Non-OA consumers are additionally burdened by paying transmission charges for OA consumer demand also. There is also double payment to STU for the same demand. Hence it is suggested to either allow Distribution Licensees to retain the transmission charges & other MSLDC charges collected from OA consumer or if it is to be remitted to STU then OA consumer demand be excluded from TPC-D demand for calculation of InSTS charges.

Further, it is submitted that, the above impact can be nullified if the Commission does not consider the demand of OA consumers while computing the Transmission Charges payable by distribution licensee in its InSTS Order. Thus, Commission is requested to review and revise the regulations accordingly.

MSEDCL proposed that the consumers availing MTOA and LTOA should also be liable to pay transmission charges to the distribution licensee irrespective of the source generator having or not having BPTA with STU.

MSETCL suggested to modify the said proviso as below:

"(e) Partial Open Access Consumers availing STOA are liable to pay the Transmission Charges irrespective of whether or not the Generator from whom they source power has a BPTA with the STU along with the generator paying charges as per BPTA."

14.3Analysis and Commission's Decision

Commission is of the view that Distribution Licensees are not entitled to charge and retain Transmission Charges from the Open Access consumers as transmission charge is applicable for use of transmission network provided by transmission licensee. Distribution Licensees in their role as nodal agency for open access should only collect the same, for and on behalf of transmission licensees.

Further, with reference to comment on additional burden on non-OA consumers, it is highlighted that Revenue from transmission charges collected from short term/partial OA is

anyway deducted from overall TTSC while determining transmission tariff, which in turn benefits DISCOMs/Long Term TSUs including full TOAUs. Further, no transmission charges are applicable for distribution licensees for their short term OA transactions upto its Base TCR, as per provisions under MYT Regulations. Thus, non-eligible OA users of DISCOMs are benefitted and there is no additional burden on them.

In view of the above, Commission has decided that, Distribution Licensees cannot retain Transmission Charges collected on behalf of STU/ Transmission Licensees.

The rationale for applicability of Transmission Charges irrespective of BPTA by Source Generator, is already elaborated under Explanatory Memorandum.

14.4 Provision in MERC DOA (First Amendment) Regulations. 2019

The Commission has decided to retain the provisions of the Draft DOA (First Amendment) Regulations, 2019 with minor modifications.

15. Regulation 14.6: Applicability of Wheeling Charges

15.1 Proposed in draft DOA Regulations, 2019

*"**14.6 Wheeling Charge:***

…

b. "Wheeling Charges shall not be applicable in case a Consumer or Generating Station is connected to the Transmission System directly or using dedicated lines owned by the Consumer or Generating Station only if such dedicated lines are used for point to point transmission or wheeling of power from Generating station to Load Centre without any interconnection with distribution system."

"14.6 (A) Applicability of Transmission Charges and Wheeling Charges and Transmission Loss and Wheeling Losses for various combination of Open Access Transactions shall be as shown in the following table.

…

15.2 Comments received

MSEDCL submitted that, instead of accounting wheeling charges at consumption end, it should be levied on the actual energy injected at the Distribution Licensees's periphery for OA consumption.

Tata Power requested Commission to make the wheeling charges applicable to all the consumers of the distribution system irrespective of voltage level of connectivity.

Indian Wind Power Association submitted that, there is an ambiguity in the definition of interconnection with the distribution system for point to point transmission or wheeling of power from generating station to load centre. Further, reasoning for inclusion of this clause is also not available in the explanatory memorandum. SEP Energy added that, Distribution Licensees could convert all the transmission line to distribution line by making an interconnection.

Vibrant Energy submitted that, clarification is required on the applicability of transmission charges if the Generator is connected at MSETCL's substation and the OA Consumer is

connected at 33 kV MSEDCL's level. Similar clarity is required in case of applicability of Transmission Losses.

15.3 Analysis and Commission's Decision

With reference to comment by MSEDCL to apply wheeling charges at injection end, it is clarified that transmission/wheeling loss is already accounted for from the injection point to the drawal point while determining the applicable wheeling charges at respective voltage level. Applying wheeling charges on the energy quantum at injection point amounts to charging for loss quantum twice, which would not be proper.

Regarding ambiguity of applicability of wheeling charges, it is clarified that exemption in wheeling charge is only in case of use of point to point Dedicated transmission lines or in case where generator and consumer in the OA transaction are both directly connected to the transmission system.

Dedicated transmission lines or transmission system are not part of distribution network. As wheeling charges are paid for using distribution network, consumers or generators who are directly connected to transmission system which is not maintained by Distribution Licensee or point to point dedicated transmission lines are not required to pay wheeling charges.
Above relaxation of non-applicability of wheeling charges is not available for the cases where such high voltage network (of transmission stature) of Distribution Licensees is involved. In this context, reference to APTEL Judgement 84 of 2018 is made where the said EHV line is being maintained by the distribution licensee itself and whose tariff is being determined by the Commission under the Retail Tariff Order. As per APTEL ruling, (Judgement 84 of 2018) consumer connected to such EHV line is mandated to pay Wheeling Charges determined for EHV lines. The relevant extract of the Order is as following:

> *"In view of the findings and analysis brought out in the above mentioned paras, we are of the considered view that the reference 110 kV HPCL Feeders are part of the distribution network of the TPC-D. Further, to arrive at a balanced decision and evolving judicious principles for safeguarding interests of all stakeholders, the wheeling charges are required to be determined at EHT (110 kV) level also along with determination of other wheeling charges at LT/HT levels in accordance with law. Accordingly, we hold that the instant Appeal deserves to be allowed to the extent mentioned as above. For the foregoing reasons, we are of the considered opinion that the issues raised in the present appeal being Appeal No.84 of 2018 have merit. Hence, the Appeal is allowed and the impugned order dated 12.03.2018 passed by the Maharashtra Electricity Regulatory Commission in the Case No. 58 of 2017 is set aside to the extent, as stated in Para 11 above. The State Commission is directed to pass consequential orders as per the above findings, as expeditiously as possible within a period of three months from the receipt of a copy of the judgment. In view of the above, IA No.419 of 2018 stands disposed of, as having become infructuous."*

15.4 Provision in MERC DOA (First Amendment) Regulations. 2019

The Commission has decided to retain the provisions of the Draft DOA (First Amendment) Regulations, 2019.

16. Regulation 14.10: Open Access from Multiple Generators

16.1 Proposed in draft DOA Regulations, 2019

"14.10. Priority for adjustment of energy credit:

The priority for adjustment of energy drawl by an open access consumer from different sources shall be as per the following sequence of reducing priority and shall be implemented for each time block, upon adjustment of applicable losses.

a) *Renewable Energy Generators*
b) *Captive Generating Plant*
c) *Banked Energy*
d) *Long term Bilateral purchase*
e) *Medium term open access*
f) *Short term inter-State open access including power exchange transactions*
g) *Short term intra – State Open access*
h) *Distribution Licensee*

Provided that in case of energy credit from more than one source from the similar category shall be adjusted on pro-rata basis of the contracted generation capacity from such source."

16.2 Comments received

AEML submitted that, it is required to minimise the billing complications, without compromising the Consumer interest. Hence, priority is suggested as below:

1. Captive RE (including banked)
2. Captive firm
3. Third party RE (Including banked)
4. Conventional (Long term + Medium term + Short term)
5. Distribution Licensee

Shree Cement has proposed for change in the priority adjustment as under:

1. Short term inter-State open access including power exchange transactions
2. Captive Generating Plant
3. Short term Intra – State Open access
4. Long term Bilateral purchase
5. Medium term open access
6. Renewable Energy Generators
7. Banked Energy
8. Distribution Licensee"

Shree Cement submitted that the above proposed priority would result into efficient utilisation of energy procured from different sources and will minimise wastage.

Serum Institute of India submitted that, the proposed amendment should be reversed i.e., energy to be adjusted in consumers bill as follows to avoid lapse of conventional units and promote open access successfully:

1. Conventional Energy (STOA / MTOA and LTOA) (3rd party / captive)
2. Renewable Energy (STOA / MTOA and LTOA) (3rd party / captive)
3. Banked Energy

Vibrant Energy submitted that, for energy credit from more than one source from similar category shall have to be adjusted on First come first serve basis.

Tata Motors and others submitted that, Banking is permissible for renewable energy and therefore, if the captive generation is from firm generation then the adjustment of such firm source should be prior to renewable energy as otherwise the purpose of banking will be defeated. Therefore, the priority should be conventional/firm sources at first and then renewable energy and at the end banked energy.

Prestress Wire Industries and others submitted that, the priority of power adjustment should be given to consumer in that preference on how the load is to be met is of the consumer and would also be constrained by contractual agreements to give priority for one power source over the other. It is suggested that the consumer should be asked to provide priority list during OA application to licensee.

16.3 Analysis and Commission's Decision

Objectors have suggested different options for setting priority for adjustment of energy credit for sourcing of power from multiple generators ranging from pro-rata adjustment, to first-cum-first-served adjustment to choice to consumer etc.
Considering billing disputes and several other issues in cases dealt by Commission, proposed Regulation outlined priority for adjustment of energy credits for sourcing from multiple generators. Accordingly, first priority is given to adjustment from RE generation.
As per the present amendment, banking is allowed upto 1 Month. If banking is allowed for 1 month, then priority from multiple generators should be given to RE generators due to its variable nature.
Suggestion of First come first serve and choice to be given to consumer to decide on the priority cannot be accepted due to complexities in billing and it would be prone to litigation due to discretion entailed in such energy credit adjustment mechanisms.
In view of the above, the Commission has decided to retain the priority proposed under the Draft DOA Regulations.

16.4 Provision in MERC DOA (First Amendment) Regulations, 2019

The Commission has decided to retain the provisions of the Draft DOA (First Amendment) Regulations, 2019.

17. Regulation 14.11: Applicability of PF Incentive/ PF Penalty for OA Consumption

17.1 Proposed in draft DOA (First Amendment) Regulations, 2019

"14.11. Availability of PF Incentive/ PF Penalty:

Entitlement to PF incentives or levy of PF penalty, as the case may be, as specified under Tariff Schedule of the Tariff Order issued from time to time shall be applicable only for the net energy supplied by Distribution Licensee to the Open Access consumer and captive user after adjusting the banked energy and actual open access consumption during the month."

17.2Comments received

Serum Institute of India submitted that, PF is worked out on average monthly reactive and active units by the meters itself or it can be manually calculated. Since Reactive energy is chargeable then PF incentive or penalty should not be applicable at generator end.

Mahindra CIE and others submitted that, so as to meet the key objective of maintaining Grid Stability, there shouldn't be any discrimination on the source of power as Open Access consumers are equally responsible for maintaining Grid Stability. Thus, Open Access consumer should get PF incentive on the entire energy consumed including Distribution Licensee's Power. Referring to the Commission's Order dated 28/11/2017 in Case No. 110 of 2017, OA consumers use Distribution System of the Distribution Licensees for wheeling power and thus contribute to system losses. Hence, PF incentive is necessary to encourage the OA consumers to maintain a higher PF.

Fourth Partner Energy and others submitted that, PF Incentives shall be provided to the OA consumer on its entire consumption as the measure to maintain PF by a consumer is for its entire consumption and not specifically for Distribution Licensee's consumptions.

SEP Energy submitted that, Distribution Licensees are not required to pay for the units they have not sold.

Hero Future Energies submitted that, Proposed Amendment is a violation to the statutory PF norms, as PF correction is technical requirement independent of source of energy as per CEA Technical Standards for grid connectivity, 2007.

MIAL submitted that, with reference to APTEL Judgement in Appeal No. 231 of 2012 and MERC Case No. 110 of 2017, it clarifies that PF incentive is to be given irrespective of the source of power and it would be applicable to the power procured through OA as well, since the principle of PF is purely technical and engineering principle.

Prayas Energy Group submitted that, PF Incentive to total consumption may be considered.

17.3 Analysis and Commission's Decision

The Commission opines that as per prudent financial principle, incentive/dis-incentive should be applicable only on the quantum of energy supplied by the Utility. An Open Access Consumer is required to maintain Power Factor within range stipulated as per CEA Regulations. Any variation beyond threshold shall be subject to the said regulatory framework and stipulated conditions. To this extent Licenses should neither charge nor provide PF Penalty/Incentive to the Partial OA Consumers for the energy transacted through Open Access.

Thus, it is proposed to retain the said provision of Draft Amendment.

Further, the Commission would like to highlight that in the earlier MTR Orders, the Commission has already outlined plan to move towards kVAh based tariff regime in the next control period. Post implementation of kVAh based billing, the issue of PF incentive/penalty would become redundant.

17.4 Provision in MERC DOA (First Amendment) Regulations. 2019

The Commission has decided to retain the provisions of the Draft DOA (First Amendment) Regulations, 2019.

18. Regulation 17: Installation of Generation Unit-Wise Special Energy Meters

18.1 Proposed in draft DOA Regulations, 2019

"17.8 (a). Generating Stations having multiple generating units wherein one or more units are contracted under captive route, such Generating Company, shall install at their cost, Special Energy Meters, separately for each generating unit, within six months from the notification of these Regulations, in accordance with requirements stipulated by the Nodal Agency and/or MSLDC.
Provided that the installed Special Energy Meters shall be available for inspection by the Distribution Licensee or the MSLDC at any time:
Provided further that such Generating Stations connected to Transmission or Distribution System, as the case may be, shall bear the cost of communication arrangements, for its integration into Control Centre as per the technical specifications stipulated by the Distribution Licensee and/or MSLDC"

18.2 Comments received

Tata Power submitted that, the presence of concerned nodal agency and their sealing should be mandatory while installation, commissioning and periodic testing of the meters and commissioning reports and periodic meter test reports of these meter are required to be submitted to the concerned distribution licensee.

Vaibhav Solar and others submitted that, SEMs have already been installed for group of machines, where energy is calculated and distributed with respect to individual meters of RE generators. Sudden change in metering arrangement would impose additional expenditure to wind turbine at the rate of Rs. 8-10 Lakh/WTG, which is not feasible considering RoE, which would burden RE Generators.

M/s Sheela Shivraj and others submitted that, the rules and Regulations governing the installation and placement of meters is within the exclusive domain of the CEA and Commission ought not to modify the existing regulatory framework governing metering by way of an amendment to the DOA Regulations. Any such modification sought to be carried out shall be contrary to the expression provisions of the CEA metering Regulations with Section 73 of the Act.

Tata Motors submitted that, installation of separate SEM for each windmill under captive use is not required as per the provisions of Electricity Rules 2005. Also, it is an undesirable economic burden on the captive OA Consumers who have to submit an Undertaking to

MSEDCL that they would comply with the Electricity Rules 2005 to qualify as captive consumers. Further, it is the responsibility of Distribution Licensee to install and operate real time energy data collection and communication system.

SEP Energy submitted that, if the generating units of small capacity (less than 1MW) and owned by same owner geographically located next to each other should be considered as one unit.

Krishna Valley Power Ltd. and others submitted that, SEM installation process and timeline should be streamlined by MERC and the SEM requirement for individual generating units within the generating stations (e.g. solar farms, wind farms, etc) should only be limited to captive generating units within such stations.

Indian Wind Power Association submitted that, it should not be necessary for each of the generating units to install special communication arrangements with SLDC for grid control purposes when SEM for the combined generation of all the units belonging to the company is already provided with communication arrangements for online visibility at SLDC. This provision may be deleted from the draft amendment.

Indian Wind Power Association (Northern Region) submitted that, the costing implication along with the methodology to recover the cost is not made clear in the regulations. Also, the stakeholders involved need to be consulted to understand the ease of putting up the meter along with the technical issues involved.

Retailers Association of India submitted that, proposed regulation regarding installation of SEM is a welcome step. And it requested Commission to identify timelines for the distribution licensee to grant permission/issue specifications for installation of such SEM Meters failing which the permission shall deemed to have been granted.

Vidyut Urja Equipments Pvt Ltd requested the Commission to weigh the need for amendment of SEM installations by individual generating plant instead of by generating stations, as there are no technical difficulties, cited till date neither by generators nor by Utility.

Further, it is submitted that, Commission should review the amendment regarding SEM installation at each generating unit considering facts and ground realities and difficulties with respect to need, relevance and necessity of the SEM at all, especially in the regime of Forecasting & Scheduling regulation.

Green Energy Association submitted that, MERC in its order dated 5 April, 2019 regarding installation of Individual meter has stated as under:

- In case, consumer/generator opts for installation of Special Energy Meter by the Maharashtra State Electricity Distribution Company Ltd. at former's cost, latter shall install the same as per provisions of the DOA Regulations, 2016 within a period of six months.
- In the intervening period till installation of Special Energy Meter, Maharashtra State Electricity Distribution Company Ltd. shall not deny Open Access to such consumer/generator.

Green Energy Association submitted that the same shall be considered while finalizing the draft.

18.3 Analysis and Commission's Decision

The technical difficulty in having common metring was already highlighted in the Explanatory Memorandum which outlines that *"if generating stations has multiple generating units, wherein some units having offtake arrangement under IPP route or some under captive route or some under open access and some under other offtake route, distinguishing and establishing generation from each respective units becomes difficult particularly when Electricity Rules provide for unit wise determination of generation for captive use."*

Individual SEMs are mandated to assess captive status/eligibility of generating units. Besides, as per electricity Rules 2005, Captive eligibility to be established with respect to generating unit.

Further, common SEM (i.e., Group metering SEM) if installed creates billing complications and is prone to disputes in case of captive wheeling and third party wheeling.

In view of the above, all captive generating units and units availing OA for third party wheeling should have generation unit-wise SEMs installed.

Further, the Commission has noted the suggestion with reference to choice to be made available for consumer to let Distribution Licensee install the SEM. Therefore, it is permitted that in case, consumer/generator opts for installation of SEM by Distribution Licensee at former's cost, latter shall install the same as per provisions of the Principle DOA Regulations, 2016 within a period of six months. In the intervening period till installation of Special Energy Meter, Distribution Licensee shall not deny Open Access to such consumer/ generator. Accordingly, the proposed draft amendment has been modified to this extent.

18.4Provision in MERC DOA (First Amendment) Regulations, 2019

The Commission has decided to retain the provisions of the Draft DOA (First Amendment) Regulations, 2019 with following modification and provision added:

> *"17.8(a). Generating Stations having multiple generating units wherein one or more units are contracted under captive route or third party route, such Generating Company, shall install at their cost, Special Energy Meters, separately for each generating unit, within six months from the notification of these Regulations, in accordance with requirements stipulated by the Nodal Agency and/or MSLDC.*
>
> *Provided that the installed Special Energy Meters shall be available for inspection by the Distribution Licensee or the MSLDC at any time:*
>
> *Provided that if generator opts for installation of Special Energy Meter by the Distribution Licensee at the former's cost, latter shall install the same. In the intervening period till installation of Special Energy Meter, Distribution Licensee shall not deny Open Access to such consumer/ generator.*

Provided further that such Generating Stations connected to Transmission or Distribution System, as the case may be, shall bear the cost of communication arrangements, for its integration into Control Centre as per the technical specifications stipulated by the Distribution Licensee and/or MSLDC"

19. Regulation 18.1.2: Transmission loss

19.1 Proposed in draft DOA Regulations, 2019

"18.1.2. Intra-State transmission losses:

…

Provided that the energy settlement shall be based on the approved loss in the Intra-State Transmission System."

19.2 Analysis and Commission's Decision

Commission has not received any comments towards this amendment proposed. The Commission has decided to retain the amendment as proposed in the Draft Regulations.

19.3 Provisions in MERC DOA (First Amendment) Regulations, 2019

The Commission has decided to retain the provisions of the Draft DOA (First Amendment) Regulations, 2019.

20. Regulation 20: Treatment of Banked Energy for Variable Renewable Energy (VRE)

20.1 Proposed in draft DOA Regulations, 2019

"20.1. Regulation 19.3 shall not be applicable in case an Open Access Consumer obtains supply from a Renewable Energy Generating Station identified as 'non-firm power' ***(viz.*** *Wind, Solar and Hybrid RE comprising Wind and Solar) by the Commission in its Regulations governing the Tariff for Renewable Energy.*

Provided that the settlement of deviation at the injection point in case of non-firm power (Wind, Solar and Hybrid RE comprising Wind and Solar) shall be governed as per provisions specified under Maharashtra Electricity Regulatory Commission (Forecasting, Scheduling and Deviation Settlement for Solar and Wind Generation) Regulations, 2018."

"20.2. The surplus energy from a 'non-firm' Renewable Energy Generating Station after set-off shall be banked with the Distribution Licensee subject to conditions stipulated under subsequent paragraphs."

"20.3. Banking of energy shall be permitted only on monthly basis.
Provided that the credit for banked energy shall not be permitted to be carried forward to subsequent months and the credit for energy banked during the month shall be adjusted during the same month as per the energy injected …"

"20.5. The unutilised banked energy at the end of the month, limited to 10% of the actual total generation by such Renewable Energy generator in such month, shall be considered as deemed purchase by the Distribution Licensee at a rate equivalent to the minimum of Tariff

Rate discovered under bidding process for procurement of renewable energy based on respective RE technology, carried out in the State in previous year, or Average Power Purchase Cost of the concerned distribution licensee, whichever is lower.
Provided that in case no bidding has been carried out in last one year for procurement of energy based on respective RE technology, the rate discovered under the latest bid process for any RE technology carried out in the State in the past shall be considered:
Provided that the entire unutilized banked energy injected into distribution grid shall be counted towards the Renewable Purchase Obligation of the Distribution Licensee, and the Generating Station would not be entitled to Renewable Energy Certificates to that extent.

20.2 Comments received

MSEDCL has suggested that since all consumers and generators opting for open access have to install SEM, all the energy adjustments to open access consumer are to be given in 15 min time block only. Besides, in order to make Open Access billing methodology more precise and prevent gaming by the consumer, adjustment in 15 minutes time block is necessary.

Prayas Energy Group submitted that, in terms of the 2% energy banking charge in kind, it is quite ad-hoc and should be revised, which will account for the value of the banked and unbanked energy on the system in terms of its marginal price.

Shree Cement submitted that, most States have followed a more liberal and graded approach wherein the period of banking has been reduced gradually and not in one go. Such gradual withdrawal of benefits would provide OA consumer an opportunity to adapt themselves for a change in regime. Further, Shree Cement submitted that, REC should be allowed for excess energy.

Emerson submitted that, allowing only 10% units and lapsing of rest banked units will result in substantial financial impact on RE projects considering mismatch of generation pattern and load pattern. Hence, the banking clause should remain unchanged.

IIT Roorkee submitted that, though SHP is indeed seasonal in nature, but hydro power especially small hydro power is renewable and should be taken similarly as Wind and Solar. Thus, Banking should be allowed to the same extent that is allowed for wind and solar power.

Vibrant Energy submitted that, the Purchase price cannot be Minimum Tariff Rate discovered in a Bidding process for following 3 reasons.

1. Cost of Tariff derived for plant to be constructed in future cannot be a benchmark for determining a purchase tariff of power from a plant which is already constructed and is in operation.
2. The plants setup for C&I segment OA transactions are of small size mostly ranging from 1MW to 50 MW whereas the one under bidding process is larger in size.
3. The Bidding price is excluding GST- 8.9% and safeguard duty of 25% and entire land and evacuation cost is provided by SECI.

Hence, it requested to maintain the Deemed purchase price as the Average Pooled cost of Power of Distribution Licensees, by which Distribution Licensees have no commercial loss.

It further suggested that stringent norms on Banking regulations of RE power shall completely be against the RE sector and shall jeopardise the investors' confidence in setting up of Renewable projects in Maharashtra. Hence it is requested to kindly retain the existing Banked energy regulation.

Green Energy Association submitted that, Hon'ble APTEL has set aside an Order of the KERC in which the Commission had reduced banking period from 1 year to 6 months. Notably the said reduction by the KERC has been relied upon by the MERC to propose reduction of banking period to 1 month in the Draft Amendments. Since the judgment of the Hon'ble APTEL has a bearing on the present consultation process for finalizing the Draft Amendments to the OA Regulation, the Commission is humbly requested to consider same at the time of finalizing the Draft Amendments.

Roha Dyechem and others submitted that, annual banking should be continued with the reasonable restrictions which are already provided in the principal regulations.

Sahyadri Renewables and others submitted that, as per the definition of infirm power as provided in the MERC Regulations the status of infirm power should be provided to other sources like small hydro, tidal, wave etc.

Further, Sahyadri Renewables and others submitted that, the APPC or RE tariff for different technologies for surplus power injection has to be declared by the Commission in the MYT regulations or Mid-term review.

Enrich Energy submitted that, referring only to Gujarat & Rajasthan state banking facility is not justifiable as various other states are also providing other benefits to OA consumers which should also be looked into by Commission and so implemented. It requested to continue Banking as per existing regulation.

Bharat Forge submitted that, in proposed amendment the basic principle of banking is defeated by adjusting the energy in the same month. This facility of banking is allowed in view of "Non-Firm" nature of Solar and Windmill power. Instead of disallowing Banking it is said that it will be adjusted in the same month. This is totally misleading consumers and RE generators. It is purchase of over injected power at very low price (profitable to distribution licensee) regulation. and that too limited to 10% of actual total generation. Further consumer is deprived of RECs.

Inox Air Products and others submitted that, if the Treatment of Banked Energy for VRE facility is reduced to monthly basis banked or unutilised power in every month will lapse and will cause losses to the RE generator.

Arvind Cotsyn submitted that, provision of TOD slot adjustment and yearly banking should be retained as per existing regulations.

Shri. Tatyasaheb Kore Warna Sahakari Navshakti Nirman Sanstha Ltd. submitted that there are many limitations on hydro power generation such as irrigation, water availability and norms of irrigation department as well as district office. So generation of power is according to the instructions given by irrigation and water resource department. In such scenario, it is not possible to generate power all the time and hence limitation of one month for banking is

not suitable for SHP. Hence, he requested to delete the clause of One-month period for banking and provide separate provisions for SHP.

20.3 Analysis and Commission's Decision

The detail rationale for the proposed amendment in banking provision has been elaborated in the Explanatory Memorandum published along with the Draft amendment to DOA Regulations.

The Commission observes that the annual banking facility for the variable RE projects, has continued in the State over last so many years as a promotional measure. One of the main reasons for promoting the renewable sources of energy was its high cost of generation, compared to the cost of generation from conventional power plants, which discouraged the Distribution Licensees to purchase power from the RE sources. The RE sector over the past few years has undergone substantial change. With advancement of technology, rapid growth in RE capacity additions, economies of scale resulting in substantial reduction in Capital Cost, coupled with competition, as well as, ease of access to low cost financing, have resulted in huge reduction in levellised cost of variable RE sources. The price discovered through bids from the wind and solar projects developers in the country today is below Rs 3.00 per unit. The same is considerably lower than the cost of generation from the new conventional power plants. Thus, today the RE sources, especially, wind and solar, are in a position to compete with the conventional power plants in terms of tariff. Hence, the Commission opines that promotional nature of banking facilities in the manner provided by distribution licensees as per the extant regulations is no longer necessary. Banking is still provided for a period of one month, basically to adjust on the margin the variations in generation by RE sources.

Besides, significant changes have been enabled in the framework for scheduling, metering, energy accounting and deviation accounting and load generation balancing framework for conventional as well as renewable energy based transactions. With improvement in deployment of advanced technology and tools for forecasting, metering, AMR facilities and communication infrastructure in the power system operations and in distribution systems, grid integration and mainstreaming of renewable energy into power system is already taking place. In view of the same, continuance of the promotional measures and other concessions, which are finally passed on to the consumers, is not justified.

With reference to suggestion of providing banking for SHP, Commission notes the difficulties highlighted by the objector. However, SHP may not be treated at par in terms of variability of Wind or Solar projects, considering that for wind and solar projects the uncetainity in respective resources is a natural phenomenon. Further, the Commission has also notified Forecasting and Scheduling Regulations for wind and solar projects. The infirmity in generation from SHP due to reasons as highlighted by the objector is not similar to diurnal variability observed for wind and solar. In view of the above, provisions related to banking as stipulated under this amended Regulations are not extended to SHP.

In view of above, the Commission is of the considered view that the amendment proposed under the draft Regulations should be retained with few modifications w.r.t the following:

1) Rate for deemed purchase: Deemed purchase by Distribution Licensee up to 10% of surplus banked power is considered towards RPO of Distribution Licensee and the rate applicable for such procurement could be the same as that applicable for RE purchase by such Licensees. Accordingly, for such deemed purchase as well, the rate as determined under the yearly Generic RE Tariff Order shall apply.
2) Eligibility for REC: The eligibility of deemed purchase of surplus banked RE power for REC shall be guided by the provisions of the CERC REC Regulations. Accordingly, reference to the same is decided to be removed from the proviso.

Based on the above, the proviso of deemed purchase is revised as under:

"Provided that such deemed purchase shall be counted towards the Renewable Purchase Obligation of the Distribution Licensee, which shall be procured by the Distribution Licensee at a rate equivalent to that stipulated under yearly Generic RE Tariff Order applicable for respective technology."

As regards applicability of proposed amendments to banking provisions on existing and new transactions, Commission is of the considered view that these amendments related to banking provisions shall be applicable for all existing and new transactions with prospective effect. Further, it is clarified that banking provision as per the Principal DOA Regulations, 2016 shall continue to apply for existing OA transactions till expiry of the approved period for such OA transactions. The revised banking related provisions as per the present amendment shall apply thereafter.

In this context, the Commission has taken into consideration the principles outlined in few case laws, which have been referred under the section on "Repeal and savings" in detail.

20.4 Provision in MERC DOA (First Amendment) Regulations. 2019

The Commission has decided to retain the provisions of the Draft DOA (First Amendment) Regulations, 2019 with certain modifications as outlined below.

> *"20.5. The unutilised banked energy at the end of the month, limited to 10% of the actual total generation by such Renewable Energy generator in such month, shall be considered as deemed purchase by the Distribution Licensee at a rate equivalent to that stipulated under yearly Generic RE Tariff Order applicable for respective technology.*
>
> *Provided that such deemed purchase shall be counted towards the Renewable Purchase Obligation of the Distribution Licensee.*

21. Regulation 31.1: Open Access Monitoring and Review Committee

21.1 Proposed in draft DOA (First Amendment) Regulations, 2019

"31.1. The STU shall constitute and be the Convener of an Open Access Monitoring and Review Committee comprising following members:
a) one member from the STU
b) one member from the MSLDC
c) one member from the State-owned Distribution Licensee
d) one member from the Privately-owned Distribution Licensee
e) a person nominated by the Commission from among its officers and
Provided that the Committee shall monitor the progress of Open Access and shall meet at least once in 6 months and shall submit half-yearly report of its proceedings;
Provided further that the Committee shall be responsible for assessing and recommending remedial measures for issues that may arise during the course of implementation of provisions of these Regulations and the rules and procedures developed under the provisions of these Regulations;
Provided that the Committee constituted under the previous Regulations shall continue until such time as the Committee under these Regulations is constituted."

21.2 Comments received

Tata Power submitted that, privately-owned Distribution Licensees including Deemed Distribution Licensees may be provided representation in the Open Access Monitoring and Review Committee on the lines of MSPC on annual rotation.

AEML submitted that, representative from each privately-owned distribution licensee must be added in the Committee.

Shree Cement submitted that, a person nominated from OA consumers and a person nominated from private generator should be added in the OA Review and Monitoring Committee, as representative from every type of consumer would help in better monitoring and development of OA in the State:

Emerson submitted that, one member from RE Projects should be included in proposed regulation.

Arvind Cotsyn submitted that, a member from captive power producers should be included in monitoring and review committee.

Serum Institute of India submitted that, representative from RE Investor from wind and solar each, as well as one investor from Conventional sources i.e., 3 members may be included in the subject amendment.

Tata Motors requested the Commission to reinstate clause 31.1 of the Principal Regulations 2016, which includes designated Consumer Representative on the OA Monitoring Committee. Further, the recommendations on the half-yearly reports of OA Monitoring Committee shall be published on the Commission's web site.

SEP Energy submitted that, the commission should consider adding one member from IWPA, IPPA and Consumers' association each.

Prestress Wires and others submitted that, the minutes of meeting and reports of the committee are not in public domain and suggests that a separate portal be made available for all the stakeholders to submit their issues that can be discussed in further meetings.

IWPA submitted that a person nominated by recognized associations of consumers and RE generators be invited to the review committee on issues affecting their interest.

M/s Sheela Shivraj and others requested to provide suitable representation to the RE sector as well in the committee so that issues and concerns of the sector may be effectively discussed and addressed.

Prayas Energy Group submitted that, there is no representation of interests of the open access consumers, the generators and the regulated consumers, who are among the key stakeholders. The committee constitution should be expanded to include independent members, such as sector experts, consumer organisations, and industry representatives.

21.3 Analysis and Commission's Decision

Commission notes that several suggestions have been received to include additional representation from the sector in the Open Access Monitoring Committee. The Commission finds merit in having views from multiple stakeholders. However, specific criteria should exist for permanent members of the Committee. Accordingly, the Commission finds it appropriate to add the following representation.

- One member from the privately-owned Distribution Licensee having overall demand of above 250 MW, on rotational basis

In addition, the Committee is allowed to nominate representatives from a Registered Industrial Association or Consumer Representative as it may decide.

21.4 Provision in MERC DOA (First Amendment) Regulations, 2019

The Commission has decided to retain the provisions of the Draft DOA (First Amendment) Regulations, 2019 with few modifications as under:

"31.1. The STU shall constitute and be the Convener of an Open Access Monitoring and Review Committee comprising following members:
a) one member from the STU
b) one member from the MSLDC
c) one member from the State-owned Distribution Licensee
d) one member from the Privately-owned Distribution Licensee, having overall demand of above 250 MW, on rotational basis
e) a person nominated by the Commission from among its officers and
f) Special Invitees upon nomination by Convener of Committee

Provided that the Committee may nominate representatives from a Registered Industrial Association or Consumer Representative, as it may deem fit.

Provided that the Committee shall monitor the progress of Open Access and shall meet at least once in 6 months and shall submit half-yearly report of its proceedings;

Provided further that the Committee shall be responsible for assessing and recommending remedial measures for issues that may arise during the course of implementation of provisions of these Regulations and the rules and procedures developed under the provisions of these Regulations;

Provided that the Committee constituted under the previous Regulations shall continue until such time as the Committee under these Regulations is constituted."

22. Regulation 38: Repeal and Savings

22.1 Proposed in draft DOA (First Amendment) Regulations, 2019

"Provided that the provisions of these regulation, as amended from time to time relating to Banking under Regulation 20, the definition of Billing Demand, change in injection or drawal point under Regulation 26 and revision in Contract Demand under Regulation 4.2 with amendments thereof shall be applicable to existing Open Access Agreements or contracts;

Provided further that a Consumer, Generating Station or Licensee who has applied for Open Access to the Distribution System in Maharashtra under the repealed Regulations and whose Application is under process on the date of coming into force of these Regulations or its amendments, need not reapply, and such Applications will be processed under the provisions of these Regulations or under the amended provisions of these Regulations respectively."

22.2 Comments received

Retailers Association of India submitted that, applicability of final regulations for all the transactions shall be from the date of Gazette Notification. Further, Consider notifying the Final Regulations after completion of the Generation Cycle of RE as applicability in mid of financial year may incur huge losses for the Wind/Solar Generators.

Tata power submitted that, the option to provide migration from net metering to gross metering if it gives more benefits in case of OA given by the regulation to the consumers, shall pose problem for Rooftop projects for which NOC has been issued by the distribution licensee and hence a time of at least 6 months should be provided for the projects with NOC issued, to be completed before the option to migrate comes into place.

TS Wind Power Developer and others submitted that, the Commission should continue existing contract/agreements for further at least 6 months period in order to avoid heavy penalty to OA consumers and losses to RE Generator. Since, applicability of proposed amendment would result in heavy penalty to OA consumers due to over drawl in absence of CD with licensee. This would further result in denying RE OA Power which tend to heavy losses to RE generator due to unutilised energy.

Mohite Industries and others submitted that, OA applications made under the Principal Regulations should be processed under the Principal Regulations itself and not under the amended Regulations.

22.3 Analysis and Commission's Decision

The Commission notes that several objections have been received highlighting legal tenability of making proposed amendments related to banking, revision in contract demand, eligibility conditions etc. to be applicable for the ongoing transactions. In this context, the Commission would like to highlight principles laid down for applying changes to existing contract; as can be assessed from perusal of Hon'ble Supreme Court Case (CERC Vs PTC) (2010) 4 SCC 603 (Paras 58, 60 and 66). Supreme Court has ruled that contract across the board can only be interfered with by framing of Regulations. The relevant extract of the said Order is reproduced as under.

> *"58. One must understand the reason why a regulation has been made in the matter of capping the trading margin under Section 178 of the Act. Instead of fixing a trading margin (including capping) on a case-to-case basis, the Central Commission thought it fit to make a regulation which has a general application to the entire trading activity which has been recognised, for the first time, under the 2003 Act. Further, it is important to bear in mind that making of a regulation under Section 178 became necessary because a regulation made under Section 178 has the effect of interfering and overriding the existing contractual relationship between the regulated entities. A regulation under Section 178 is in the nature of a subordinate legislation. Such subordinate legislation can even override the existing contracts including power purchase agreements which have got to be aligned with the regulations under Section 178 and which could not have been done across the board by an order of the Central Commission under Section 79(1)(j)."*

It is also noted that KERC Order trying to change banking with retrospective effect was quashed by APTEL citing supreme court case of CERC Vs PTC saying that interfering with existing contracts can be done through Regulations and that too with prospective effect. APTEL while doing so has relied on the aforementioned Supreme Court Judgment.

It may be noted that the changes proposed herein with respect to Banking, eligible capacity, Contract demand reduction, etc., are proposed thorough suitable amendments to Regulations and the changes can be made squarely applicable to new as also existing contracts albeit with prospective effect. Therefore, Commission has decided to apply the amendments prospectively to new and existing OA transactions. However, it is clarified once again that applicability of the amended regulations for ongoing transactions shall be purely on prospective basis and shall not affect past settlements made under the said transactions. Further, as clarified in the earlier paragraphs, that banking provision as per the Principal DOA Regulations, 2016 shall continue to apply for existing OA transactions till expiry of the approved period for such OA transactions. The revised banking related provisions as per the present amendment shall apply thereafter.

22.4 Provision in MERC DOA (First Amendment) Regulations. 2019

The Commission has decided to retain the provisions of the Draft DOA (First Amendment) Regulations, 2019 with following modification.

> ***"****Provided that the provisions of these regulation, as amended from time to time relating to Banking under Regulation 20, the definition of Billing Demand, change in injection or drawal point under Regulation 26 and revision in Contract Demand under*

Regulation 4.2 with amendments thereof shall be applicable to existing Open Access Agreements or contracts;

Provided further that provision relating to Banking of the Principal Regulations shall continue to apply for existing Open Access Agreements or contracts as on date of notification of the first amendment of the Principal Regulations, till the expiry of the approved period for such open access transactions, beyond which provision relating to Banking under Regulation 20 of the first amendment of the Principal Regulations shall apply.

Provided further that a Consumer, Generating Station or Licensee who has applied for Open Access to the Distribution System in Maharashtra under the Principal Regulations and whose Application is under process on the date of coming into force of these amendments, need not reapply, and such Applications will be processed under the provisions of these amended Regulations"

23. TOA Regulation 11.2 (a): Day Ahead Open Access

23.1 Proposed in draft TOA (First Amendment) Regulations, 2019

"Provided that the application for grant of Day-Ahead Open Access shall be made for continuous period of minimum duration of 8 hours or such other duration of number of time-blocks to be stipulated through separate Order from time to time either on Suo-motu basis or on the basis of application moved by affected party.

Provided further that the schedule given against the above day ahead open access sought shall be uniform at least for a period of eight hours and the minimum schedule during the day shall at any time not be less than 75% of the maximum schedule of the day."

23.2 Comments Received

AEML submits that for transmission system, the Distribution Licensees themselves are the OA users in addition to certain bulk consumers and generators. Therefore, by introducing the same amendment in TOA Regulations as that proposed in DOA Regulations, even the Distribution Licensees will face the same restrictions of minimum 8 hours of scheduling.

The Distribution Licensees are demand aggregators and are not serving their own demand but the demand of consumers at large. They are obligated to optimise the power purchase cost for their consumers and this requires flexibility in scheduling, so that it meets the requirement of Licensees most optimally. Distribution Licensees face varying peaks and sudden changes in demand due to weather, etc. Distribution Licensees face many demand uncertainties arising from a large number of causes, which they cannot control.

23.3 Analysis and Commission's Decision

As mentioned under the Explanatory Memorandum to the draft Regulations, the idea behind introducing these provisions is to bring more discipline in scheduling of power for Day-ahead OA transactions, so that the associated costs from such indiscipline is not borne by consumers of Distribution Licensee. However, imposing such restriction on Distribution Licensee and full Transmission Open Access Users (full TOAUs) would not be proper; as the distribution licensees and full TOAUs are expected to plan their power purchase and manage its load-

generation balance strictly as per regime outlined under DSM Regulations. Hence, putting a restriction of minimum 8 hours of scheduled for such Distribution Licensees or full TOAUs would be counter-productive. Accordingly, the proposed amendment to TOA Regulations has been modified suitably to exclude applicability of this restriction to distribution licensees and full TOAU.

23.4 Provision in MERC DOA (First Amendment) Regulations. 2019

The Commission has decided to retain the provisions of the Draft TOA (First Amendment) Regulations, 2019 with incorporation of additional third proviso to exclude the applicability of first and second proviso to Distribution Licensees and full TOAUs as under:

"Provided that the application for grant of Day-Ahead Open Access shall be made for continuous period of minimum duration of 8 hours or such other duration of number of time-blocks to be stipulated through separate Order from time to time either on Suo-motu basis or on the basis of application moved by affected party.

Provided further that the schedule given against the above day ahead open access sought shall be uniform at least for a period of eight hours and the minimum schedule during the day shall at any time not be less than 75% of the maximum schedule of the day.

Provided further that above conditions for scheduling for minimum eight hours and 75% of maximum schedule at any time, shall not be applicable for distribution licensees and full TOAUs."

24. TOA Regulation 27.1.3: Applicable RoE and Interest Rate

24.1 Proposed in draft TOA (First Amendment) Regulations, 2019

"27.1.3. The discount rate for computing the Net Present Value shall be the post-tax Weighted Average Cost of Capital, determined by the STU with the following assumptions:
a) Debt: Equity ratio of 70:30
***b**) Post-tax Return on Equity of 15.5%*
c) Interest rate calculated as one-year Marginal Cost of Funds-based Lending Rate ('MCLR') + 1.5%, where the MCLR is as on the first day of the respective financial years.

24.2 Comments Received

IWPA submitted that, post tax return on equity should be increased from 15.5% to 16% in line with the assumptions made in earlier orders of the Commission

24.3 Analysis and Commission's Decision

The RoE specified for Transmission Licensees in the MERC (MYT) Regulations, 2015 is 15.5%. For ample clarity, it is necessary to link the said rate to the RoE (%) as applicable for transmission business as specified under prevalent MYT Regulations. To this extent, modification has been proposed in the DOA (First Amendment) Regulations, 2019

24.4 Provision in MERC TOA (First Amendment) Regulations. 2019

The Commission has decided to retain the provision of the Draft DOA (First Amendment) Regulations, 2019, with few modification as below.

"27.1.3. The discount rate for computing the Net Present Value shall be the post-tax Weighted Average Cost of Capital, determined by the STU with the following assumptions:
a) Debt: Equity ratio of 70:30
***b)** Post-tax Return on Equity equivalent to the rate as applicable for transmission business as specified under prevalent MYT Regulations.*
***c)** Interest rate calculated as one-year Marginal Cost of Funds-based Lending Rate ('MCLR') + 1.5%, where the MCLR is as on the first day of the respective financial years.*

25. General Comments

25.1 Comments received

The process for amendment adopted by the Commission is 'Opaque' and 'Non-Transparent' and is contrary to the principles of EA, 2003.

The entire amendments sought to be brought about are 'Anti-Competitive' and will result in stifling of competition and will be against general public interest.

Several Petitions filed against MSEDCL on OA issues are pending, thus Regulations shouldn't be amended.

25.2 Analysis and Commission's Decision

As highlighted in the introduction section, due Regulatory process was followed by the Commission in publication of the present MERC (DOA) (amendment) Regulations, 2019 and MERC (DOA) (amendment) Regulations, 2019. The Commission published the draft DOA (amendment) Regulations, 2019 and TOA (amendment) Regulations, 2019 on its websites and sought suggestions and objections through a Public Notice (in Marathi and English) in daily newspapers on 11 March, 2019, by 1 April, 2019, which was further extended to 8 April, 2019 as per request of some stakeholders.

25.3 Provision in MERC DOA (First Amendment) Regulations. 2019 & MERC TOA (First Amendment) Regulations, 2019

No changes to MERC DOA (First Amendment) Regulations, 2019 and MERC TOA (First Amendment) Regulations, 2019 is necessary on this count.

26. Additional Comments

26.1 Comments received

Prayas Energy Group submitted that, it is important to review the format of the existing open access agreement and to modify it accordingly.

Prayas Energy Group further submitted that, 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 and to specify that open access agreement shall be entered into even by short term OA consumer with Distribution Licensee. It should be finalised based on public comments.

AEML suggested that just like National Open Access Registry, there should be one window State Open Access Registry.

Tata Power submitted that, there is no mechanism wherein the deviations in the schedule by the Open Access consumers (especially those embedded in the Distribution Licensees Demand) are captured and the applicable deviation charges get applied to the consumer who causes them. As a consequence, any deviation in schedule by the Open Access consumer is treated as a deviation of the Distribution Licensee and accordingly deviation charges are levied on the Distribution Licensee. Under new DSM Regulation, due to deviation by OA consumer schedule, it shall make the deviation of Distribution Licensee beyond the permissible limit & penalty will be double of DSM charges. Hence, the burden of deviation on account of open access consumers has to be borne by the non-open access consumers of the Distribution Licensee. In view of this, a mechanism to charge the deviations at Temporary Tariff or actual deviation charges for that period paid by Distribution Licensee whichever is higher needs to be established to ensure that the cost incurred on account of open access gets charged to open access consumers and make the Distribution Licensee "Revenue Neutral".

Tata Power additionally submitted that a) Reactive Energy Charges should be specified for each Tariff Category and b) A suitable mechanism for harmonics penalty linked with energy charges may be provided.

MSETCL has submitted following comments:

- Clarity is required on enhancement in power requirement of existing consumer for seeking connectivity.
- The actionable mechanism needs to be defined in case of not following payment security mechanism.
- The format of STU procedures for grant of connectivity/open access and BPTA may be added as annexures to the draft regulation.

Mr. Yudhishthir Verma requested Commission to give guidelines to MSEDCL to follow the provisions made in State Textile Policy 2018-23.

The provisions made in Textile Policy are as follows:

- Subsidy will be given to RE consumers availing power from Solar and Wind.
- Concessional rates for textile industry i.e. tariff rate of Rs. 3/ unit till consumers are setting RE plants.
- Wheeling charges will not be applicable for consumers who are availing power from RE.

Commission must consider the provisions made in State Textile Policy 2018-23 while finalizing DOA Regulations.

26.2Analysis and Commission's Decision

Commission notes the additional comments submitted by various parties. While many are relevant to the present Regulations and could be covered under operating procedures to be formulated thereunder, the same could be finalised only after due public consultation process. However, some of the comments such as state open access registry, review of Open Access Agreement, insisting for an agreement even for STOA transactions, additional issues highlighted by Tata Power and MSETCL etc. could be deliberated in the OA Monitoring

Committee which could then make appropriate suggestions with action plan for consideration of Commission and if any amendment is warranted, for due public consultation.

26.3 Provision in MERC DOA (First Amendment) Regulations. 2019

No changes to MERC DOA (First Amendment) Regulations, 2019 and MERC TOA (First Amendment) Regulations, 2019 is necessary on this count.

Sd/-	**Sd/-**	**Sd/-**
(Mukesh Khullar)	**(I. M. Bohari)**	**(Anand B. Kulkarni)**
Member	**Member**	**Chairperson**