

BRIEF ANALYSIS ON NEW OPEN ACCESS REGULATIONS IN THE STATE OF MAHARASHTRA



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BACKGROUND

The Electricity Act, 2003 (“**Act**”) was introduced to govern the laws relating to generation, distribution, trading and use of the electricity and generally for measures conducive to development of electricity.

Vide Section 181 of the Act; the State Commissions are empowered to make regulations with respect to various issues enumerated therein including that of the Distribution Open Access.

Vide their Notification dated March 30, 2016 the Hon’ble Maharashtra Electricity Regulatory Commission (“**MERC**” or “**Commission**”) has introduced the new Distribution Open Access Regulations, 2016 (“**2016 Regulations**”) which contains certain sweeping changes. These regulations repeal the erstwhile MERC (Distribution Open Access) Regulations, 2014 (“**2014 Regulations**”) and pursuant to finalisation of the Draft MERC (Distribution Open Access) Regulations, 2015 (“**Draft 2015 Regulations**”).

Keeping the Act, the rules made thereunder and the previous regulations in mind, the following analysis is made of the 2016 Regulations:

CLAUSE-WISE ANALYSIS OF THE REGULATION

The term “Open Access” (OA) has been defined under Section 2(47) of the Act as follows:

(47) “open access” means the 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 in accordance with the regulations specified by the Appropriate Commission.

Basically, it is the facility whereby any consumer (subject to the qualification imposed) can choose among the power company/ies from open market to buy and likewise for the power companies to



sell power by utilization of the infrastructure of the distribution system of the state utility. The intra-state open access is regulated by the respective state commissions within the state.

The Hon'ble MERC has vide its 2016 Regulations has brought about changes in the former regulatory regime of the 2014 Regulations which have been in force from June 2014.

The clause-wise analysis of the said 2016 Regulations is as follows:

1. Definitions

The following Definitions have been added/amended in the 2016 Regulations

- a) **"Banking"** means the Surplus Renewable Energy injected in the grid and credited with the Distribution Licensee after set off with consumption in the same Time of Day slot as specified in Regulation 20.
- b) **"Billing Demand"** for the purpose of these regulations in respect of a Partial Open Access Consumer, will be the higher of the following:
 - Actual Maximum Demand recorded less Open Access Demand availed by Partial Open Access Consumer in the month during 0600 hours to 2200 hrs;
 - 50% of retained Contract Demand with the Licensee.
- c) **"Change over Consumer"** means a Consumer who was taking supply from a Distribution Licensee through its distribution network and who has changed over to another Distribution Licensee for such supply but continues to be connected to the distribution network for the first Licensee for that purpose.
- d) **"Collective Transaction"** means a set of transactions discovered in Power Exchange through anonymous, simultaneous competitive bidding by buyers and sellers.
- e) **"Full Open Access Consumer"** means an Open access Consumer who maintains zero demand with the Distribution Licensee in whose area of supply he is located in order to cater to his load requirement.
- f) **"Open Access Agreement"** means an agreement for use of the Distribution System of a Distribution Licensee for Medium and Long Term Open Access:
 - entered into between the Distribution Licensee and a person whose premises are situated within its area of supply, where such person requires supply of electricity from a Generating Company or Licensee other than that Distribution Licensee or;



- entered into between the Distribution Licensee and a Generating Company or another Licensee for the purpose of giving supply of electricity to such person as referred to in (i) above by using the Distribution System of the Distribution Licensee for wheeling of electricity; or
- entered into between the Distribution Licensee and a person whose premises are situated within its area of supply, where such person requires supply of electricity from a Power Exchange, established under the relevant CERC Regulations;

in accordance with these Regulations.

- g) “Pooled Cost of Power Purchase” means the weighted average pooled price at which the Distribution Licensee has purchased electricity, including the cost of self-generation, if any, in the previous year from long-term and short-term energy suppliers, but excluding those bases on Renewable Energy sources.
- h) “Renewable Energy” means the grid quality electricity generated from Renewable Energy sources as may be defined in MERC orders or Regulations governing Renewable Energy.

2. Eligibility to seek open access

Regulation 3.1 and 3.2 of the 2016 Regulation provides as follows:

“3.1 Subject to the provisions of these Regulations,

- *A Generating Company which owns or operated or intends to own or operate a Generating Station in the State; or*
- *A Consumer eligible for Open Access; or*
- *A Distribution Licensee; or*
- *A Trading Licensee;*

may be an Applicant for Open Access

3.2 Subject to the provisions of these Regulations, a Consumer having Contract Demand of 1 MW 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;
- *Trading Licensees*
- *Power exchanges*
- *Other Distribution Licensee*
- *Any other sources*

Or a combination thereof, and all collectively called "Sources";

....."

Analysis: The 2014 Regulations contemplated that minimum power to be made available shall be 1MW at any time. The Draft 2015 regulations stated that a consumer having Contract Demand of 500 KW and above with a particular Distribution Licensee shall be eligible for Open Access for obtaining supply of electricity. However the 2016 Regulations retained the earlier minimum eligibility limit on the basis of contract demand of 1 MW and above which is line with Section 42 of the Act.

3. Power from multiple sources

"3.2 Subject to the provisions of these Regulations, a Consumer having Contract Demand 1 MW 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;
- *Trading Licensees*
- *Power exchanges*
- *Other Distribution Licensee*
- *Any other sources*

Or a combination thereof and all collectively called "Sources";

Provided that, for the purpose of unit conversion from MVA to MW, the utility power factor shall be considered;



Provided further that a Distribution Franchisee shall also be eligible for Open Access in his capacity as a Consumer;

Provided also that the Maximum Demand of such Consumer or person in each financial year subsequent to his being granted Open Access shall be equal to or greater than seventy (70) percent of the threshold level at which he has become eligible for Open Access”

Provided also that, if the Consumer fails to achieve the Maximum Demand in three consecutive months, 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;

Provided also that, if such Consumer or person has not complied with the above proviso in 3 consecutive months, the Distribution Licensee may initiate the process of reassessment and reinstatement or reduction of Contract Demand.”

Analysis: As per the proviso of 2014 Regulations, the Open Access Consumers could avail Open access from Multiple Generating Companies only to the extent to meet their Renewable Purchase Obligations as per the MERC (Renewable Purchase Obligation, its Compliance and Implementation and REC Framework) Regulations 2010. However, such restraint on sourcing power from multiple sources has been removed in 2016 regulations with a further clarity on permitting availing of Open access through Multiple Sources. This is a positive step which will not only encourage industries to manage their electricity costs efficiently but also create competitive market for sale and purchase of electricity.

4. Revision in Contract Demand

Regulation 4.2 of the Regulations 2016 provides as follows:

“4.2. 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."

Analysis: The 2014 Regulation expressly provided for automatic reduction in the Contract Demand to the extent of the electricity sought to be procured through OA and in case of infirm sources to the extent of the CUF (Capacity Utilization Factor). The 2016 Regulations provides for freedom to Consumer to choose their Contract Demand. The 2016 Regulation also states that if Consumer choses to reduce his Contract Demand then any consumption beyond Open Access generation in excess of the Contract Demand shall be charged at temporary tariff, but if the Consumption is within its Contract Demand then shall be charged at the tariff applicable to the respective tariff category. However, in case of STOA the consumer is not allowed to revise the contract demand. It may be pertinent to note that mandatory reduction of contract demand had caused severe impact to the open access consumers especially renewable energy generators as due to reduction most of the renewable energy open access consumers exceeded contract demand and had to bear temporary tariff which are mostly double the normal tariff.

5. **Categorization of OA periods**

The 2014 Regulations had categorized the OA periods into Long term, medium term and short term in Regulation 2.1 and the same has been retained in the 2016 Regulations in Regulation 7.2, however a proviso to Regulation 7.2 has been added and the same Regulation was also provided in the Draft 2015 Regulation, the said proviso states as follows-

"Provided that, for the period between three years and twelve years, the Applicant may seek multiple MTOA for a maximum period of three years at a time"

Analysis: Though 2016 Regulations has categorised the OA periods and the same has been retained, except the Proviso which has been added that categorically states that multiple medium term open access can be sought for a maximum period of three years. By virtue thereof, the ambiguity in 2014 Regulation with regard to period from three years to twelve years has been removed.



6. Day Ahead Open Access

Another difference that the 2016 Regulation has brought about is that of including provisions for Day Ahead Open Access which was proposed in the 2015 Regulations as well, however this was not included in the earlier 2014 Regulations but was present in the prior 2005 Regulations. The 2016 provides for provisions of Day Ahead Open Access as follows:

“11.3. Day-Ahead Open Access

Day-Ahead Open Access of Distribution System(s) shall be permitted only if surplus capacity is available in the concerned Distribution Licensee’s system.

- 11.4. *The Application for grant of Day-Ahead Open Access shall be made to the Nodal Agency only one day prior to the date of scheduling, up to 12:00 Hours, and all such Applications shall be treated as having being received at the same time and shall have the same priority;*

Illustration: An Application for Day-Ahead transaction on 15th August shall be received only on 14th August up to 12:00 hours.

Provided that any Application received after 12:00 hours of the day immediately preceding the date of scheduling or on the day of scheduling shall be considered in case of contingency of the Applicant, and the fee for such contingency Applications shall be five times the otherwise applicable Application fees.

- 11.5. *The Nodal Agency shall check for congestion and convey grant of approval or otherwise in the format provided in Annexure III [Format-ST2] by 14:00 Hours of the day preceding the date of scheduling of the transaction.”*

Analysis: The 2014 Regulations provided for week ahead basis. Pursuant to such restriction the business of power exchange was severely affected. The 2016 Regulations reintroduced the Day-Ahead Open Access as was allowed in the earlier regime i.e. 2005 Regulations.



7. Scheduling

Regulation 16.2 of the 2016 Regulation states that:

“16.2 Intra-State Open Access transactions in respect of Full Open Access Consumers connected to distribution system and all Generating Systems connected to Transmission System shall be scheduled by MSLDC in accordance with the provision State Grid Code.....”

Analysis: The 2014 Regulation expressly stated that Intra-State Open Access transactions in respect of consumers of load 1 MW and above shall be scheduled by SLDC. However in the 2016 Regulation this limit of ‘1 MW and above’ has been replaced by ‘Full Open Access Consumers’. The exemption to renewable energy generators identified as “non-firm” from the scheduling provided in the 2014 Regulations is retained in 2016 Regulations.

8. Scheduling, Metering , Revision and Losses

The 2016 Regulations, have modified the regulation of Scheduling, Metering, Revision & Losses by making purchase of Special Energy Meters (“SEM”) from Distribution Licensee for Consumers optional compared to the 2014 Regulations. The said 2016 Regulations states as follows:

“17.1. All Open Access Consumers and Generating Stations shall install Special Energy Meters (‘SEM’s):

Provided that any existing or prospective Consumer who has not sought Open Access but desiring it shall have the option to install such SEM at his premises.

17.2. Such Consumers or Generating Stations may procure the required SEM from any supplier in accordance with the standards and specifications stipulated in the Regulations of the Central Electricity Authority governing the installation and operation of meters.

17.3. The Consumer or Generating Station may also procure the required SEM from the Distribution Licensee;



Provided that, upon receipt of such request, the Distribution Licensee shall communicate the lead time for its procurement of such SEM in case it is not available with it so as to enable the Consumer or Generating Station to finalise its option for purchase:

Provided further that, if the Consumer or Generating Station chooses to purchase the SEM from it, the Distribution Licensee may require the payment of an advance not exceeding its price.

17.4. The Distribution Licensee shall test and install such SEM within sixty days from the receipt of a request from the Consumer or Generating Station, as the case may be.

17.5. The Distribution Licensee shall be responsible for reading the SEM at least once in every month:

Provided that the authorized representative of the Consumer, Generating Station or Licensee, as the case may be, shall be entitled to be present at the time of meter reading.

17.6. The SEM along with associated equipment shall be available for inspection by the Distribution Licensee at any time.

17.7. The metering points for provision of Open Access for the Consumer, Generating Station or Licensee, as the case may be, shall comply with the provisions of the State Grid Code.

17.8. All Full Open Access Consumers and Generating Stations connected to the Transmission System shall install, at their cost, Remote Terminal Units (RTU)-DC within six months from the notification of these Regulations, in accordance with specifications provided by the STU; and the MSLDC shall verify their installation for real-time monitoring:

Provided that the installed RTU-DCs shall be available for inspection by the Distribution Licensee or the MSLDC at any time:

Provided further that such Full Open Access Consumers and Generating Stations connected to Transmission Systems shall provide for or bear the cost of communication arrangements, the technical specifications of which shall be stipulated by the Distribution Licensee and/or MSLDC, for the purpose of real-time communication.



17.9. *The Distribution Licensee to whom the Consumer, Generating Station or Licensee is connected shall be responsible for providing the energy meter data to the MSLDC for the purpose of energy accounting.*

17.10. *If the Distribution Licensee establishes a distribution control centre similar to MSLDC, it may install communication and metering infrastructure at its own cost."*

Analysis: The 2014 Regulations stated that an Open Access Consumer irrespective of their capacity have to install SEMs as provided by the Distribution Licensee at the cost of the Consumer. The 2016 Regulation is amended and seems that there is lack of clarity as the proviso to Regulation 17.1 provides an option to the new consumer to install SEMs whereas various order of the Hon'ble Commission have made it amply clear that the installations of SEMs is mandatory.

9. Settlement of imbalance charge:

9.1. 2015 Regulations have made certain changes in respect of this Clause as compared to the 2014 Regulations. The Interest rate has been increased from 0.04% to 0.05%. Clause 19.6 of the 2016 Regulation states that,

"19.6 If payment of imbalance charge is delayed by more than two days, i.e., beyond twelve days from the issue of the statement, the defaulting party shall be liable to simple interest @ 0.05% for each day of delay."

Analysis: In the 2014 Regulation the defaulting party was liable to pay interest @0.04%. This is increased to 0.05% in the 2016 Regulations. Regulation 26.8 of the 2014 Regulations which provided exemption from payment of imbalance charges to open access consumers procuring power from renewable energy generators is removed. However, in view of scheduling not applicable to renewable energy generators and Regulation 20 providing exemption from Regulation 19.3 (pertaining to over injection and under injection), the imbalance charges should not be applicable to renewable energy generators.



- 9.2. Point (ii) under Regulation 19.2.1 of the 2015 and 2016 Regulation added a new proviso stating as follows:

“.....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.”

Analysis: The above mentioned proviso was not stated in the 2014 Regulations. Hence the 2016 Regulation increases the liability of the consumers by making them liable to pay penalty for exceeding the Contract demand.

10. **Banking**

Another sweeping change that the 2016 Regulations have brought about is including provisions for banking which was neither there in the earlier 2005 Regulations nor 2014 Regulations. The 2016 provides for provisions of banking as follows:-

“20.4. Banking of energy shall be permitted during all twelve months of the year:

Provided that the credit for banked energy shall not be permitted during the months of April, May, October and November, and the credit for energy banked in other months shall be as per the energy injected in the respective Time of Day (‘TOD’) slots determined by the Commission in its Orders determining the Tariffs of the Distribution Licensees;

Provided further that the energy banked during peak TOD slots may also be drawn during off-peak TOD slots, but the energy banked during off-peak TOD slots may not be drawn during peak TOD slots.

Illustration: Energy banked during:

- *Night off-peak TOD slot (2200 hrs – 0600 hrs) may only be drawn in the same TOD slot*



- *Off-peak TOD slot (0600 hrs – 0900 hrs & 1200 hrs – 1800 hrs) may be drawn in the same TOD slot and also during Night off-peak TOD slot
(However, the energy banked during night off peak and off peak shall not be drawn during morning peak and evening peak)*
- *Morning peak TOD slot (0900 hrs – 1200 hrs) may be drawn in the same TOD slot and also during Off-peak and Night off-peak TOD slots*
- *Evening peak TOD slot (1800 hrs – 2200 hrs) may be drawn in the same TOD slot and also during Off-peak and Night off-peak TOD slots*

20.5. *Banking charges shall be adjusted in kind @ 2% of the energy banked.*

20.6. *The unutilised banked energy at the end of the financial year, limited to 10% of the actual total generation by such Renewable Energy generator in such financial year, shall be considered as deemed purchase by the Distribution Licensee at its Pooled Cost of Power Purchase for that year:*

Provided that such deemed purchase shall not be counted towards the Renewable Purchase Obligation of the Distribution Licensee, and the Generating Station would be entitled to Renewable Energy Certificates to that extent.”

Analysis: As per the 2014 Regulations, the provision of Banking was not allowed. Prior to 2014 Regulations, banking was provided to renewable energy generators especially wind pursuant to the Order of the Hon’ble Commission dated November 24, 2003 (“**2003 Wind Tariff Order**”). Despite no specific provision for banking the aforesaid order provided the mechanism as well as purchase of 10% of banked energy at the end of financial year. By virtue of specific provision of banking in the 2016 Regulations the numerous litigation surrounding banking will be avoided and its legal sanctity is upheld. Whilst



most of the provisions of In the 2016 Regulation pertaining to banking are same as 2003 Wind Tariff Order under the 2016 Regulations, certain months i.e. April, May, October and November being peak demand months for Maharashtra banking is not available. Further, Banking charges at the rate of 2% of the energy banked are levied as specified as per the Order of the Hon'ble Commission in Case No. 92 of 2012 dated April 7, 2014.

As regards the surplus power that is to be purchased by the Distribution Licensee, 2016 Regulations provide that surplus power to the extent of 10% of the annual generation of the RE Generator (as was allowed prior to the DOA Regulations, 2014) will be purchased by Distribution Licensee at its Pooled Cost of Power Purchase for that year. This will limit any adverse financial impact on the Distribution Licensees and require greater discipline by RE Generators.

11. Flexibility to change points of injection and drawal

The minimum time for application for change in point of injection and/or drawal has been reduced in the 2016 Regulation from 3 months to 30 days.

Regulation 26.3 of the 2016 Regulation states that –

“In case of Long-term and Medium-term Open Access, the application for change in point of injection and/or drawal shall be made to the Distribution Licensee at least 30 days in advance”.

Analysis: The 2014 Regulation mentioned that the application for change in point of injection and drawal shall be made to the distribution licensee three (3) months in advance. However, this time limit is reduced in the 2016 Regulations and the revised time frame is thirty (30) days.

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NOTE - This Note in relation to the MERC (Distribution Open Access) Regulations, 2016 dealt with above is only for private consumption and review purpose only. Our views expressed herein are based on the Regulations made available on the website of MERC and on the basis of our analysis vis-a-vis old regulations, and there is no assurance that a regulatory authority may not adopt a variant position. In any event, no person shall be entitled to rely upon the views expressed herein without our prior written consent.