ETERNITY:LAW APPRISE

LIABILITY IN OPEN ACCESS METERING COMPLIANCE

Case Name: Maharashtra State Electricity Distribution Company Limited vs. Maharashtra Electricity Regulatory Commission and TATA Motors Limited
Appeal No.: 81 of 2018
Court: Appellate Tribunal for Electricity, New Delhi
Order Date: September 04, 2025

Facts of the Case:

The dispute concerns Maharashtra State Electricity Distribution Company Limited ("**MSEDCL**") and Tata Motors Limited ("**TML**"). TML operates a large automotive manufacturing facility and, since 2008, has been availing captive Open Access ("**OA**") for its wind-based generating units in Maharashtra, wheeling the generated energy to its plant through MSEDCL's distribution network.

In 2010-2011, MSEDCL along with Maharashtra State Electricity Transmission Company Limited ("**MSETCL**") upgraded TML's metering system, installing Special Energy Meters ("**SEMs**") equipped with Availability-Based Tariff ("**ABT**") features. These meters were configured to record energy data in 30-minute time blocks, duly tested and commissioned by MSEDCL. Consequently, OA permission was granted for FY 2013-14 and FY 2014-15 without any issues.

On June 25, 2014, a new regulatory framework came into effect pursuant to which the Ld. Maharashtra Electricity Regulatory Commission ("**Commission**") notified the Distribution Open Access Regulations, 2014 ("**DOAR, 2014**"), mandating SEMs to record energy in 15-minute time blocks, in line with the Central Electricity Authority Metering Regulations, 2006 ("**CEA Metering Regulations, 2006**"). Although MSEDCL internal communications from July 2014 identified TML's SEM as non-compliant, TML was officially informed by MSEDCL only in January 2015. Meanwhile, TML applied for OA renewal for FY 2015-16 in November 2014, but MSEDCL denied OA for period April to October of 2015, citing metering on-compliance and consequently and withheld energy credits for injected wind power during that period.

Despite this, TML actively cooperated, repeatedly offering to bear the cost of reprogramming or procuring new compliant SEMs and Current Transformers by October 2015. The new SEMs were installed in November 2015, after which OA was granted from that month onward. During the pendency of the dispute, TML also paid multiple OA processing fees.

Subsequently on June 24, 2016, TML filed petition bearing Case No. 88 of 2016 before the Ld. Commission seeking OA approval for the disputed period of April-October 2015, issuance of energy credit notes for injected energy and refund of excess OA processing fees. The Ld. Commission's order dated December 18, 2017 ruled in TML's favour, attributing delays to MSEDCL/MSETCL's mishandling and directed MSEDCL to grant OA for the disputed period, issue credits, and refund excess fees.

Aggrieved, MSEDCL appealed to the Hon'ble Appellate Tribunal for Electricity ("**Tribunal**") in Appeal No. 81 of 2018, challenging Ld. Commission's decision on metering compliance, responsibility, delays, and financial directions. The Hon'ble Tribunal dismissed the appeal, affirming Ld. Commission's order.

ISSUES

1. **Whether Ld. Commission was justified in directing the grant of OA to TML for April-October 2015 with energy credit adjustment despite the SEMs then being configured for 30-minute time blocks instead of the 15-minute requirement under the DOAR, 2014, and CEA Metering Regulations, 2006?**

   The Hon'ble Tribunal held that the Ld. Commission was justified in granting the OA and energy credits. Under the transitional provision of Regulation 44.3 of DOAR, 2014, which allows continuity of existing OA arrangements on original terms to avoid abrupt disruptions.

   The Ld. Tribunal held that the 15-minute requirement was intended to ensure accurate energy accounting, however, the SEMs had been installed and commissioned by the licensee (MSEDCL/MSETCL) in 2010-11 and were accepted in earlier OA renewals. MSEDCL's internal records showed awareness of non-compliance from July-2014, yet formal notice to TML came only in January 2015. Hence, the non-compliance arises from MSEDCL's lapses rather than the TML's fault.

   The Hon'ble Tribunal observed that TML had cooperated throughout, repeatedly sought reprogramming and agreed to bear costs; therefore, the delay in reprogramming, testing, commissioning was attributable to MSEDCL. The Ld. Tribunal observed that penalizing TML for the MSEDCL's lapses would be inequitable.

2. **Whether under the DOAR, 2014, SEMs must be programmed for 15-minute time blocks at the time of OA application/installation, or it is sufficient that they are capable of such con figuration, and who among the Distribution Licensee and the OA consumer bears the re-**

-sponsibility for programming, inspection, reprogramming, and ensuring compliance?

The Ld. Tribunal observed that the Regulation 23.2 of DOAR, 2014 requires SEMs to be capable of time-differentiated measurements. Regulation 23.1 of DOAR, 2014 assigns installation responsibility to the licensee at the cost of the consumer, and Regulation 23.4 of DOAR, 2014 mandates ongoing meter management by the licensee, requiring periodic meter reading/inspection by the licensee.

The Hon'ble Tribunal proceeded to view that the SEMs thus need only be technically capable of 15-minute time-block recording at installation or application; the actual programming/reprogramming, inspection, and compliance are the MSEDCL's responsibility, with TML being obligated to cooperate and bear costs. The TML's SEMs which were installed by MSEDCL, were capable but were not programmed due to MSEDCL's inaction. TML thus cannot be held liable for the MSEDCL's delays.

Penalizing TML would be inequitable, as the regulatory scheme places enforcement duties on MSEDCL to ensure accurate energy accounting as per Regulation 26.8 of DOAR, 2014. the Hon'ble Tribunal observed that the Ld. Commission held MSEDCL/ MSETCL mishandled the process, affirming capability suffices with licensee oversight.

3. **Whether the delay in reprogramming/replacing SEMs to meet the 15-minute time-block requirement and the resulting non-grant of OA during April-October 2015 was attributable to MSEDCL/MSETCL or to TML?**

The Hon'ble Tribunal held that the delay in SEM reprogramming/replacement and denial of the OA was attributable to the MSEDCL under the DOAR, 2014, as they bear statutory obligations for timely communication, inspection, and compliance enforcement. Internal communications within MSEDCL revealed that MSEDCL was aware since July 2014 of 30-minute configuration but delayed informing TML until Jan 2015. Upon being notified, TML in February 2015, promptly offered to reprogram/replace meters and procured new equipment by October 2015 and agreed to bear the requisite costs. TML's good-faith cooperation absolves them of liability.

MSEDCL/MSETCL's administrative inaction, lack of coordination, and failure to discharge their responsibilities under Regulations 23.1 and 23.4 of DOAR, 2014 were observed to cause the delay. Previously, the OA grants with the same setup indicated acceptance by MSEDCL.

Conclusion

The Hon'ble Tribunal upheld the findings of the Ld. Commission, affirming that the lapses in metering compliance and consequent denial of OA were primarily attributable to MSEDCL. The Hon'ble Tribunal emphasized that TML, having demonstrated consistent cooperation and willingness to comply, could not be faulted for delays arising from administrative inefficiencies of MSEDCL. The directions of the Ld. Commission to grant energy credits, regularize OA for the disputed period, and refund excess processing fees were found to be just, equitable, and within the regulatory mandate. Consequently, the appeal was dismissed, reinforcing the principle that consumers should not suffer for procedural lapses of utilities, and that regulatory continuity must prevail to uphold fairness and certainty in the OA framework.

LIABILITY AND COMPLIANCE IN GROUP CAPTIVE OPEN ACCESS UNDER THE ELECTRICITY ACT, 2003

Introduction

On September 23, 2025, the Ministry of Power released draft amendments to Rule 3 of the Electricity Rules, 2005 ("**Rules, 2005**"), targeting ambiguities in the Group Captive Open Access ("**OA**") model. These changes aim to preserve the original intent of captive power generation, delivering affordable, especially renewable, electricity to genuine users, while protecting the revenue stability and financial viability of Distribution Licensees ("**DISCOMs**") that rely on high-paying industrial consumers.

Background

Under Section 9 read with Section 2(8) of the Electricity Act, 2003, a Captive Generating Plant ("**CGP**") enjoys open access to the grid and exemption from Cross-Subsidy Surcharge ("**CSS**") and Additional Surcharge ("**AS**"). To qualify, Rule 3(1)(a) mandates two (2) tests: captive users must hold at least 26% equity ownership and consume at least 51% of the plant's annual output. The Group Captive model, often structured through an Association of Persons ("**AoP**") or Special Purpose Vehicle, has driven decentralized renewable energy growth, but the vague phrase "variation not exceeding ten per cent" in the proportionality proviso invited divergent interpretations by State Commissions, prolonged litigation, and misuse. Small equity holders were able to draw disproportionate power, converting genuine captive plants into de facto commercial suppliers evading surcharges. With DISCOMs already facing 17–22% AT&C losses and depending on industrial cross-subsidy, such gaming threatened grid infrastructure investment and overall system reliability.

Key Provisions/Amendments

1. Tightened proportionality rule for AoP consumption

Each captive user's eligible consumption is capped at 110% of their proportion-

-nate share of the mandatory 51% captive generation. This eliminates the ambiguous ±10% variation band, prevents minor shareholders from over-drawing power, and ensures strict alignment between equity stake and consumption.

2. **Non-Compliance Penalty**

If any individual user or the group fails to meet the 51% consumption threshold or breaches the 110% cap, the entire plant output is reclassified as commercial supply under Rule 3(2), resulting in loss of captive status, surcharge exemptions, and open access benefits.

3. **Expanded Definition of "Ownership"**

"Ownership" now includes equity with voting rights held directly or indirectly through holding companies, subsidiaries, or sister subsidiaries (as per Companies Act, 2013). This facilitates corporate restructurings, mergers, and group financing without jeopardizing the 26% ownership threshold.

4. **Centralized Inter-State CGP Verification**

For inter-state CGP's captive status verification is now mandated to the Central Electricity Authority ("**CEA**") using uniform, Government-approved procedures, replacing inconsistent state-level processes and reducing compliance delays.

5. **Removal of explicit Energy Storage Systems ("ESS") reference**

The earlier provision allowing captive consumption "through Energy Storage System" is deleted. Energy Storage Systems ("**ESS**") are now comprehensively governed under Rule 18 of the Rules, which treats storage as part of generation, transmission, or distribution.

Implications

The 110% cap compels developers to deploy real-time metering, scheduling, and settlement systems, ensuring consumption aligns strictly with equity stakes and curbing surcharge evasion. The broadened ownership definition reduces compliance friction during corporate transactions, fostering larger renewable projects. Centralized CEA verification streamlines inter-state open access, cutting delays for multi-state industrial consumers. Collectively, these measures safeguard DISCOMs revenues, discourage speculative captive structures, and reinforce genuine self-consumption, thereby supporting grid upgrades essential for higher renewable penetration while maintaining the promotional spirit of captive power.

Conclusion

The proposed amendments to Rule 3 strike a balanced reform: they close loopholes that undermined captive integrity, align the framework with modern corporate and storage realities, and establish uniform inter-state oversight. By anchoring benefits to proportionate equity and genuine use, the Ministry strengthens both renewable energy adoption and DISCOMs financial health, paving the way for sustainable decentralized generation across India.

Dear Readers,

In case you do not wish to receive our monthly update, please send us email on legalupdates@eternitylegal.com with the subject as “Unsubscribe”.

Warm Regards,

Dipali Sarvaiya Sheth

Founder

ETERNITY LEGAL
Advocates & Solicitor
Patent & Trademark Attorneys

D-226, Neelkanth Business Park,

Vidyavihar (West), Mumbai– 400086

Email: contact@eternitylegal.com | Tel no.: +91 22 2515-9001

Website: www.eternitylegal.com