

The



Kolkata

Gazette

सत्यमेव जयते

Extraordinary
Published by Authority

ASADHA 9]

THURSDAY, JUNE 30, 2005

[SAKA 1927

PART I—Orders and Notifications by the Governor of West Bengal, the High Court, Government Treasury, etc.

WEST BENGAL ELECTRICITY REGULATORY COMMISSION**NOTIFICATION**

No. 20/WBERC Dated, the 30th June, 2005.

In exercise of the powers conferred by Sections 39(2)(d), 40(c), 42(2), 42(3), 42(4), 86(1) read with Section 181 of the Electricity Act, 2003 (No. 36 of 2003) and all powers enabling on that behalf, West Bengal Electricity Regulatory Commission (WBERC) hereby makes the following Regulations:—

1. Short title, Commencement and Interpretation

- (i) These Regulations may be called the West Bengal Electricity Regulatory Commission (Terms and Conditions for Open Access) Regulations, 2005.
- (ii) These Regulations shall come into force on the date of their publication in the *Official Gazette* unless otherwise stated in these Regulations and shall be concurrent within the area of jurisdiction of West Bengal Electricity Regulatory Commission.

- (iii) The Bengal General Clauses Act, 1899 (Ben. Act I of 1899) shall apply to the interpretation of these Regulations unless otherwise indicated in these Regulations or inconsistent with the Provisions of the Electricity Act, 2003.

2. Definitions

In these Regulations, unless the context otherwise requires,—

- (a) The Act means the Electricity Act, 2003;
- (b) Regulations means the Regulations made under the Act;
- (c) Rules means the Rules made under the 'Act' by the Government of West Bengal (the State Government);
- (d) Commission means the "West Bengal Electricity Regulatory Commission" constituted under Section 82 of the Electricity Act, 2003 and in short called WBERC;

- (e) Open Access Customer means a person using or intending to use the transmission system or the distribution system or both of the Licensees in the State of West Bengal for transmission and wheeling of electricity in the said State;
- (f) Ownership of a generating station means, in case of a generating station set up by a company or any other Body Corporate, the equity share capital with voting rights. In other cases, ownership means proprietary interest and control over the generating station;
- (g) Licensee means the holder of a Licence granted by the Commission including the Licensees referred to in 1st to 5th proviso to Section 14 of the Electricity Act, 2003 and persons exempted either under Section 13 or 8th proviso to Section 14 of the Electricity Act, 2003. The Licensee shall also include the holder of Transmission or Trading licence granted by Central Electricity Regulatory Commission as may be applicable to and within the State of West Bengal;
- (h) "Nodal Agency" means the Nodal Agency defined in Regulation 9 of these Regulations;
- (i) State for the purpose of this Regulation shall mean the State of West Bengal;
- (j) Words and expression used and not defined in any of the Regulations shall have the meanings as defined in the Act.

3. Extent of Application

These Regulations shall apply to open access for use of Intra State Transmission Lines and/or Distribution Systems or associated facilities with such lines or systems of the Licensee in the State including any such lines and/or systems as are used in conjunction with Inter State Transmission Lines.

4. Eligibility for Open Access

4.1 Transmission:

Subject to the provisions of these Regulations, the Licensees, Generating Companies including persons who have established captive generating plant and consumers shall be eligible for Open Access to the Intra State Transmission Lines or Associated Facilities of the State Transmission Utility or Transmission Licensee within the State on payment of the transmission charges as may be determined by the Commission from time to time:

Provided that such Open Access for the use by any consumer shall be available on payment of cross-subsidy surcharge by the consumer in addition to transmission charges as may be determined by the Commission in accordance with the Regulations:

Provided further that cross-subsidy surcharge shall not be leviable in case Open Access is provided to a person for carrying electricity to the destination of his own use from a captive generating plant established primarily for his own use. For the purpose of these Regulations, the requirements to qualify as a captive generating plant shall be in accordance with Electricity Rules, 2005. Exemption of cross-subsidy surcharge will be only to the extent of owner's consumption of electricity supplied by such captive generating plant but limited to the extent of each user's proportional equity holding in such plant.

4.2 Distribution:

Subject to the provisions of these Regulations and West Bengal Electricity Regulatory Commission (Phasing for Open Access in Distribution/Sale of Electricity) Regulations, 2004, the Licensee, Generating Company including persons who have established captive generating plant and consumers shall be

eligible for Open Access to the distribution systems or associated facilities of a distribution Licensee on payment of wheeling charges as may be determined by the Commission from time to time:

Provided that such Open Access for the use by a consumer shall be available on payment of cross-subsidy surcharge and additional surcharge in addition to wheeling charges by the consumer as may be determined by the Commission in accordance with the Regulations framed for this purpose:

Provided further that cross-subsidy surcharge shall not be leviable in the case Open Access is provided to a person for carrying electricity to the destination of his own use from a captive generating plant established primarily for his own use. For the purpose of these Regulations, the requirements to qualify as a captive generating plant shall be in accordance with Electricity Rules, 2005. Exemption of cross-subsidy surcharge will be only to the extent of owner's consumption of such captive generating plant and limited in proportion to their shares in ownership of the plant:

Provided further that the person who has established a captive generating plant primarily for carrying electricity to the destination of his own use, shall have Open Access to the distribution systems or associated facilities of a distribution Licensee for carrying electricity to the destination of his own use from the date of publication of these Regulations subject to technical feasibility.

4.3 The use of intervening transmission facilities of a Licensee by another Licensee shall be regulated in terms of Sections 35 and 36 of the Electricity Act, 2003.

5. Special Provisions for Existing Distribution Licensees

The Distribution Licensee using Intra State Transmission Lines and the distribution systems or associated facilities with such line and system in the State on the date of coming into force of these Regulations under an existing agreement shall be entitled to continue to avail Open Access on such transmission and distribution systems along with the associated facilities on the same terms and conditions of the existing agreement and on payment of transmission charges and wheeling charges as may be determined by the Commission from time to time.

However, where the distribution Licensee is using such facilities not under an existing agreement but through an informal arrangement then a formal agreement shall be signed by the distribution Licensee on such terms and conditions which are otherwise in line with the existing arrangement for a period of 5 years but on payment of such transmission charges and wheeling charges as may be determined by the Commission from time to time.

6. Categorisation of Open Access Customers

The Open Access Customers shall be classified in the following categories:

(a) *Short Term Open Access Customer:*

An Open Access Customer availing open access on regular basis for a period of more than 6 months but less than one year shall be the Short Term Open Access Customer.

(b) *Long Term Open Access Customer:*

An Open Access Customer availing open access for a period of 1 year and more on regular basis shall be the Long Term Open Access Customer.

(c) *Temporary Open Access Customer:*

An Open Access Customer who intends to avail the open access on temporary basis for a period of 6 months or less shall be the Temporary Open Access Customer.

7. Allotment Priority

7.1 The priority for allowing open access shall be decided on the following criteria:

- (a) The Distribution Licensee shall have the highest priority in allotment of open access capacity to the extent of its requirement for its consumers within the State and for supplying power to other licensees.
- (b) Power fully based on co-generation within the State shall have the next highest priority.
- (c) Power fully based on Non-Conventional/Renewable sources shall have the next highest priority, their inter se priority being decided on first-come first-serve basis.
- (d) Power from captive generation based on gas.
- (e) Power from captive generation based on coal and oil.
- (f) Other sources, if any, not covered under (a) to (e).

7.2 The long-term open access customers shall have priority over short-term open access customers within each category. Short term open access customers shall have priority over temporary open access customer within each category. The decision to provide open access would be on the basis of first-come first-served separately under each category, keeping in view the allotment priority given above.

7.3 Notwithstanding anything contained hereinabove, the Commission may change in the priority of allotment to enable flow of adequate power to essential services including Public Pumping Station, Medical care, Mass Transportation, Dairy, Airport, underground mines, etc. or when unforeseen natural calamities or other emergencies seriously disrupt public life.

7.4 The open access for emergency requirement and requirement related to trial purpose for assessing technical feasibility of power flow from one point to another point will get highest priority over 7.1 and 7.2.

The emergency requirement means requirement of supply of power to

- (i) generating stations in case of total power failure.
- (ii) different open access customers in case of power failure resulting into threat to public safety.

Different open access customers have to indicate during application of open access the potential hazards concerning public safety in line with the Environmental Act, 1986 and any other law as applicable. On the basis of such declaration and subject to approval by the Commission after due consideration of such declaration the Open Access Customer will be listed for open access from different sources on emergency requirement.

The trial run requirement is to be decided by the transmission or distribution licensee and accordingly schedule is to be done with due consultation with SLDC.

8. Criteria for allowing Open Access

8.1 The capacity available for open access shall be considered after taking into account the following important factors:

(a) *Transmission Line or Associated Systems:*

- (1) In respect of transmission and associated systems forming part of evacuation system of a power station, load flows anticipated on line at assessed output from the power station with outage of any one of the single or double circuit line emanating from the power station.

- (2) (i) Maximum load on such transmission and associated system recorded during the previous year vis-a-vis safe capacity of such system;
- (ii) The appropriate load growth potential on such transmission and associated system;
- (iii) Additional investment planning on new lines or improvement in lines/systems;
- (iv) The capacity already allotted for open access for the relevant period;
- (v) Requirement, if any, of the State Grid Code, RLDC/SLDC;
- (vi) Evacuation network from on-going generating projects; and
- (vii) Other factors, which are essential and may be required to be considered to ensure safe and economic operations of the system or safety of the grid.

(b) Distribution and Associated System:

- (i) Maximum load on distribution and associated system recorded during previous year vis-a-vis safe capacity of the system;
- (ii) Appropriate load growth potential on such systems;
- (iii) Additional investment planning on new or such distribution system or impact of improvement in the distribution systems;
- (iv) Capacity already allotted for open access for the relevant period;

- (v) Requirement, if any, of the State Grid Code or SLDC;
- (vi) Future availability of power;
- (vii) Load flow anticipated on network with outage of any one circuit running in parallel;
- (viii) Sensitivity of load; and
- (ix) Other factors, which are essential and may be required to be considered to ensure safe and economic operation of the systems and safety of grid or in the interest of the consumer, if any.

9. Nodal Agency

9.1 The nodal agency for arranging the long-term open access within the State shall be the State Transmission Utility if its system is used, otherwise the nodal agency shall be transmission or distribution Licensee in whose system the point of drawal of electricity is situated.

9.2 The nodal agency for short-term open access, temporary open access, and open access for emergency power supply and trial run within the State shall be the State Load Despatch Centre.

10. Procedure for granting Open Access

10.1 An Open Access Customer shall file an application as specified by the Commission together with the non-refundable requisite fees with all the relevant information to the Nodal Agency along with relevant details such as capacity needed, maximum power to be conveyed, generation planned, power purchase contracted, point of injection of power, point of drawal of power, power factor, reactive compensation programme, harmonic distortions, duration of availing open access, peak load, average load, periods with time

slabs in line with the concerned grid code(s), etc. with copies to State Load Despatch Centre (if different from the Nodal Agency), Transmission Licensee(s) (if different from the Nodal Agency and who own the transmission line through which power is/are to be transmitted) and Distribution Licensee (if different from the Nodal Agency and in whose distribution network the point of drawal of power is located). Any other information / details that may be required by the concerned Transmission Licensee(s) / State Transmission Utility State Load Despatch Centre Distribution Licensee shall be provided promptly by the applicant.

10.2 The Nodal Agency shall, in consultation with State Load Despatch Centre, concerned Transmission Licensee(s) and / or Distribution Licensee, and based on system studies of the concerned Licensee(s), if required, assess the capacity available and communicate the decision in a format as specified by the Commission to the applicant within 30 days of the receipt of the application.

10.3 The Nodal Agency and the State Transmission Utility shall decide on availability of capacity consistent with the principles and guidelines, if any, issued by the Commission.

10.4 In case Open Access can be provided without any further system strengthening, the Nodal Agency shall give consent in a format as specified by the Commission for Open Access to the applicant within 30 days of the receipt of the application. However, for Open Access for trial run or temporary purpose such period shall be 15 days only. Open Access for emergency purpose will be decided by State Load Despatch Centre on requisition from Open Access Customer or generating station depending on the grid condition and grid code.

10.5 In case of Long Term Open Access only, if in the opinion of the Transmission Licensee(s) or Distribution Licensee, further system strengthening is essential before providing Long Term Open Access, the applicant may request the concerned Transmission Licensee(s) or Distribution Licensee, as the case may be, to carry out system studies and preliminary investigation for the purpose of arriving at cost estimates and completion schedule for system strengthening plan. The concerned Transmission Licensee(s) or Distribution Licensee shall, on receipt of such request, intimate estimated expenditure for carrying out such study.

10.6 The Transmission Licensee(s) or Distribution Licensee, as the case may be, shall carry out the studies immediately on deposit of estimated expenditure by the applicant and intimate the results of the studies to the Nodal Agency, State Load Despatch Centre (if different from Nodal Agency), applicant, State Transmission Utility and the Commission within 90 days from the date of deposit of amount of the estimated expenditure by the applicant.

10.7 The applicant shall bear the actual expenditure incurred by the Transmission Licensee(s) or Distribution Licensee, as the case may be, in this respect within the limit of cost estimate intimated by the Licensee as above. Adjustments, if any, will be effected accordingly within $\pm 5\%$ variation of the estimated cost subject to scrutiny by Commission in case of cost escalation.

10.8 In case the system requires strengthening, subject to approval of such strengthening by State Load Despatch Centre (if different from Nodal Agency) and State Transmission Utility (if different from Nodal Agency), the cost for such strengthening shall be paid by the

applicant to the concerned Licensee, if it is for exclusive use of the applicant. Any such extension or augmentation of the network to be executed for this purpose will remain as Licensees' properties. If for strengthening of existing infrastructure an Open Access Customer has incurred any expenditure and subsequently the same infrastructure is used by any other new Open Access Customer or Licensee to meet the demand of its enhanced load growth, the above cost shall be shared between the original Open Access user and new user with due consideration of depreciation. Extent of sharing shall be determined by the Commission on a case specific basis.

10.9 For Short Term Open Access Customer and Temporary Open Access Customer there will be no provision for system strengthening except the cases where the concerned licensees and the applicant agreed mutually through agreement. Thus in such cases the clauses 10.5 to 10.8 is not applicable for such Open Access Customers.

11. In case of any dispute in the availability of the Open Access, in case of transmission and/or distribution between the applicant/Open Access Customer and the Licensee or between Licensee and the State Transmission Utility and/or State Load Despatch Centre, as the case may be, the aggrieved party can file a petition along with all necessary documents before the Commission for adjudication/settlement of the dispute in accordance with this Regulation within 60 days from cause of action.

12. Open Access Agreement

12.1 An Open Access Customer who has been allowed Open Access shall enter into Commercial Agreement with the transmission and/or distribution Licensee(s), Generators, Traders and others as are applicable to him. The Agreement shall, *inter alia*, provide for the eventuality of pre-mature termination

of agreement and its consequences on the contracting parties, duration of the agreement, the maximum power to be wheeled, the point of injection, the point of drawal, duration and hours of availing Open Access, the time slabs, payment of wheeling charges, transmission charges and other charges, mode of payment, security deposit/advance payment including manner of payment of charges, metering of injection of energy and drawal of energy, manner of meter reading and its accounting, penalty and the charges for non-compliance of the direction of the State Load Despatch Centre, billing system and payment thereof.

12.2 After the agreement has been entered into, a copy of the same will be furnished to State Load Despatch Centre. The State Load Despatch Centre shall inform the Open Access Customer with copies to all relevant Licensees the date from which the Open Access will be available in a format as specified by the Commission which shall not be later than 3 days from the date of furnishing the Agreement.

13. Non-Utilisation/Under-Utilisation of Open Access capacity

13.1 In case an Open Access Customer is unable to utilize, full or substantial part of the capacity allotted to him, he shall inform the concerned Licensee, State Transmission Utility and State Load Despatch Centre giving reasons for his inability to utilize the capacity in full or in part as the case may be, and may surrender the capacity allotted to him.

13.2 The State Load Despatch Centre may reduce/cancel the allotted capacity of an Open Access Customer when such customer is frequently under utilizing the capacity allotted to him, or not utilizing the same and if the customer is not able to give justified reasons within a reasonable time for such non/under-utilisation.

Any open access approval under-utilized or non-utilized cannot be transferred in favour of another customer. All open access approval shall be customer and transaction specific.

13.3 An Open Access Customer, whose capacity has been reduced or cancelled, shall, in addition to discharging his contractual obligations, pay full charge for scheduling and system operation, as has been fixed by the Commission from time to time on full open access capacity allotted to him for the remaining period of the allocation. However, if the unutilized capacity is being used by any other Open Access Customer or any licensee, proportional charges are to be borne by the Original Open Access Customer. The reduction in the charges will take place from the date when the new Open Access Customers actually commence drawing power therefrom to the extent of full capacity allotted to the first customer. In case only part of the capacity has been allocated to any other consumer, the charge will be reduced proportionately. Similarly, the charges under contractual operations, to the extent relevant and consequential, shall be reduced proportionately in the same manner.

13.4 Notwithstanding any allocation for Open Access, it shall be lawful for the distribution licensee to utilize for the purpose of effecting supply for other purposes (except providing open access to other Open Access Customer), at any point of time, any portion of allotted capacity, if and to the extent found under-utilized by the Open Access Customer.

13.5 The Open Access Customer, Licensee, Generators and Traders shall be liable/responsible to follow from time to time the instructions of the State Load Despatch Centre in regard to optimum scheduling in despatch of electricity, safe and secured grid operation, keeping records for energy accounting,

grid discipline, economic operation of the State Grid in accordance with the relevant Grid Codes. The Open Access Customer, Licensee including Traders and Generators shall follow the provision of the Electricity Act, applicable Rules and the Regulations/Codes. Flow of power between point of injection and drawal should be on real time basis.

14. Charges for Open Access

Different charges for use of transmission systems of the transmission Licensee and distribution system of the Distribution Licensee shall be regulated as under:

14.1 Where any transmission line or associated systems thereof has been constructed for the exclusive use of an Open Access Customer, the transmission charges for such dedicated lines and systems shall be borne entirely by such Open Access Customer till such time as the surplus capacity, if any, is used for other persons or purposes.

14.2 In case Intra-State transmission system and/or distribution system within State is used by an Open Access Customer in addition to Inter-State transmission system, different charges shall be payable for the power being conveyed on Intra-State transmission system and/or distribution system in addition to payment of transmission and other charges for Inter-State system. The Open Access Customer shall directly pay the charges to the respective agencies providing open access as determined by the Commission.

14.3 For the purpose of this Regulation, the charges for Intra-State transmission and distribution shall mean charges and expenses on account of the following heads:

(a) *Transmission charge:*

Transmission charges will represent charges for conveyance of electricity on transmission line and associated systems of Transmission Licensee(s) and will be derived on the basis of principles specified by Central Commission.

(b) *Wheeling charge:*

The Wheeling charges will represent the charges for the use of distribution systems or associated facilities of a distribution Licensee for conveyance of electricity on distribution systems and associated systems and will be derived based on distribution network cost, units salable by the licensee to the consumers and units wheeled by the all Open Access Customers in the Network and as may be determined on these basis by the Commission from time to time.

(c) *Charges of the cost towards impact of reactive power drawal:*

As may be determined by the Commission from time to time.

(d) *Meter rent, Meter reading and other related activities charges:*

As may be determined by the Commission from time to time.

(e) *Grid support charge/parallel operation charge:*

As may be determined by the Commission from time to time.

(f) *Handling and service charges:*

As may be determined by the Commission from time to time.

(g) *Scheduling and system operation charges:*

Scheduling and system operation charges payable to State Load Despatch Centre by Open Access Customer shall be the same as may be determined by the Commission from time to time under Section 32(3) of the Electricity Act, 2003.

14.4 *Cross-subsidy surcharge* (if applicable):

- (a) Cross-subsidy surcharge shall be the difference between tariff applicable for the category of consumers being allowed open access and the cost avoided (per unit) by the licensee in this regard.

Explanation: For the purpose of this Regulation, avoided cost shall be computed as under:

Weighted average of

(i) Unit cost of pooled power purchase variable cost*

(ii) Own generation fuel cost

$$\frac{\text{(sent out) if any per unit}}{100-T \text{ \& D loss in percentage as allocable for the relevant Open Access case}} + \text{Wheeling charges as applicable to the relevant Open Access case}$$

* Where the power purchase cost is in single part the separation of fixed cost and variable cost will be as per the decision of the Commission.

(b) The amount of such surcharge shall be reduced and eliminated in the same manner as will be laid down for reduction and elimination of cross-subsidies.

(c) The amount of such surcharge shall be fixed by the Commission from time to time keeping in view the projected admitted cost of the Licensee for the relevant period.

(d) No surcharge shall be levied in case open access is provided to a person for carrying the electricity produced in a Captive Power Plant to the destination of his own use subject to Regulation 4.

14.5 *Additional surcharge* (if applicable):

(a) A consumer availing open access and receiving supply of electricity from a person other than a distribution Licensee of his area of supply, shall pay the distribution Licensee an additional surcharge in addition to any other charges including wheeling charges and surcharge(s) to meet the fixed cost of such distribution Licensee arising out of his obligation to supply in accordance with sub-section (4) of Section 42 of the Electricity Act, 2003.

(b) The Commission shall fix the amount of additional surcharge through individual orders in a case specific manner keeping in view the amount of fixed cost as has been allowed by the Commission to such Distribution Licensee towards his distribution business from year to year basis.

(c) The additional surcharge shall be decided and leviable for such period as the Commission may determine, keeping in view, *inter alia*, sales growth.

14.6 For the purpose of these Regulations:

(a) The surcharge(s) to be recovered from Open Access Customers shall be such charge as will be fixed by the Commission from time to time in line with these regulation.

(b) The Open Access Customers within the State who are exclusively availing Inter-State transmission system shall also pay applicable surcharge(s), to the extent applicable.

(c) The surcharge(s) shall be payable to the concerned distribution Licensee of the area of supply where the Open Access Customer's point of drawal of power is situated/located. In case multiple licensees exist within the same area, the surcharge(s) shall be payable to the distribution licensee with whose network the customer point of drawal is connected/located.

14.7 **Mode of Payment:**

Schedule of charges, different formats and mode of payment, of all charges including unscheduled/mismatch charges shall be as per separate regulation of the Commission.

14.8 **Transmission Loss Allocable:**

The allocable transmission loss for the transmission and associated systems will depend on conveyance of electricity on various voltages and will be adjusted in kind i.e. reduced from the energy injected based on the principles specified by Central Commission.

14.9 **Distribution Loss Allocable:**

The allocable T & D loss for the distribution and associated systems will depend on conveyance of electricity on various voltages and will be adjusted in kind, i.e. reduced from the energy injected based on the loss fixed by the Commission from time to time. Presently the T & D loss for different voltage level will be as under for the purpose of this regulations:

EHV — 4% of the energy at the point of injection at this voltage level.

HV — 8% of the energy at the point of injection at this voltage level.

LV & MV— As will be notified from time to time by the Commission.

15. **Metering and Accounting**

15.1 The generating company/Licensee contracting to effect supply, shall provide the main meters, as may be directed by Nodal Agency for such customer based on voltage, period of supply, and other relevant factors. The meters shall be provided at the point of injection and at the point of drawal and if required, at any inter-connecting point. The cost of meters is to be borne by the concerned Open Access Customer.

15.2 The generating company or the Licensee contracting to effect supply to an Open Access Customer shall also provide main meters at interconnecting points as may be directed by Nodal Agency to facilitate energy accounting of, *inter alia*, Eastern Regional Load Despatch Centre (ERLDC) and the State Load Despatch Centre. The cost of meters is to be borne by the concerned Open Access Customer.

15.3 The arrangements for communication equipment as may be necessary shall also be made available by the Open Access Customer as per the direction of the State Load Despatch Centre.

15.4 The distribution/transmission Licensee may also provide check meters at the cost of the concerned Open Access Customer of the same specification as of main meters at or around same locations subject to due intimation to the customer and the State Load Despatch Centre.

15.5 The main and check meters shall be periodically tested and calibrated by the concerned Licensee in the presence of other parties involved. The main and check meters shall be sealed by both the parties. The defective meters shall be replaced immediately at the cost of the concerned party.

15.6 Reading of main and check meters shall be taken periodically on the appointed day by the authorised representative of the concerned Licensee and the customer or his representative, if present. Meter reading shall be communicated to State Load Despatch Centre, customer, State Transmission Utility, relevant generating company/trader and the distribution/transmission Licensee, as the case may be, by the concerned Licensee within 48 hours. Check meter readings shall be considered when main meters are found to be defective or stopped.

15.7 Main and check meters shall have facility to communicate its reading to State Load Despatch Centre on real time basis or otherwise as may be directed by State Load Despatch Centre.

15.8 For the purpose of this Regulation:

(a) The term meter shall include current transformers, voltage/potential transformers wiring between them and meter box/panel.

(b) The distribution Licensee shall mean a distribution Licensee operating and maintaining the distribution systems to which consumer's/customer's premises are connected.

16. Communicating Facility

16.1 An Open Access Customer shall provide for all real and reasonable costs towards the equipment for communication up to the nearest grid sub-station or State Load Despatch Centre, as the case may be, for two communication channels for communicating the meter reading on real time basis. In case there is more than one Open Access Customer for such point of area of meter reading, then they will share such cost. An Open Access Customer shall also provide facilities for communication with the control room of the concerned distribution licensee.

16.2 An Open Access Customer shall set up a round-the-clock control room to take instructions from State Load Despatch Centre and/or communication with the Licensee and others through telephone/mobile and/or receipt of fax and e-mail.

17. Unscheduled/Mismatch charges in drawal/injecting the energy

The payment to and from for mismatch in drawal/injecting energy between various time slabs of the schedule and the actual drawn shall be governed by an agreement to be executed bilaterally between the licensee and the Open Access Customer in accordance with Section 49 of the Act, incorporating therein the charges to be paid by the Open Access Customer to the licensee for excess or less drawal of power on the basis of the ABT principle, TOD principle and factors like voltage, load factor, power factor and such other relevant factors. In fixing such charges, a distribution licensee shall not show any undue preference to any person or class of persons or discrimination against any person or class of persons.

18. Other Commercial Conditions

- 18.1 The Security Deposit equivalent to the total transmission charges, wheeling charges and all other charge(s) and surcharge(s) as may be applicable, shall be kept with the concerned Licensee and shall be equal to 3 months of average energy billing including surcharge, additional surcharge and other charges. The security shall be in the form and the manner as has been specified by the Commission in the Regulation No. 11/WBERC dated 12th November, 2003.
- 18.2 The bills would be raised on monthly basis and shall be paid by the concerned customer within 7 days of the presentation of the bill, failing which late payment surcharge shall be levied as determined by the Commission through the latest relevant tariff order and action to disconnect the arrangement shall be taken by the concerned Licensee under due intimation to the State Load Despatch Centre, Transmission Licensee and other concerned parties.
- 18.3 The surcharge and additional surcharge to the extent fixed by the Commission shall be paid to the concerned Distribution Licensee on monthly basis through the monthly bill raised for transmission/wheeling of energy.
- 18.4 A person having been declared insolvent or bankrupt shall not be eligible for open access.
- 18.5 A person having outstanding dues of any transmission or distribution licensee against a billing of two months or more shall become eligible for open access only after clearing his outstanding dues.
- 18.6 If an applicant for open access has already been charged for having committed any offence under Electricity Act, 2003, his application for Open Access shall be considered only after a Competent Court of Law or Judicial Forum clears him of the charges.

19. Compliance with Grid Discipline

- 19.1 The Open Access Customer and other authorities connected with such open access, shall abide by the Indian Electricity Grid Codes, the instructions given by the State Load Despatch Centre and other relevant authorities, if any, as applicable from time to time as per the provisions of the Act and the Regulations made there-under. Open Access Customer shall abide by all other applicable Codes/Regulations/Rules.
- 19.2 The Open Access Customer shall also abide by the Act, Rules, Regulations, Directions, Guidelines and Orders of the Commission from time to time.

20. Curtailment Priority

When because of constraints or otherwise, it becomes necessary to curtail open access services of the customer, curtailment shall be made in the inverse order of allotment priority as has been laid down in these Regulations.

21. Other Obligation of the Licensees

- 21.1 It is the obligation of the Licensee to adequately maintain and provide open access to the Open Access Customers without any discrimination subject to the provisions of the Act and the Regulations and maintain the line and distribution system in proper manner.
- 21.2 The Licensee shall be deemed to have failed to provide the requisite services, if it is not able to provide at least (a) in case of transmission and necessary facilities — 95% of the time in a year ending 31st March and (b) in case of distribution system — 90% of the time in a year ending 31st March. The Commission may provide for charges, which the Licensee has to pay to the Open Access Customers if the target network availability is not met. However, the same shall be subject to Force Majeure conditions and outages due to failure of upstream transmission system including generating stations.

22. Information System

The State Load Despatch Centre, State Transmission Utility and Licensee shall post the information as may be directed by the Commission from time to time on its Website in a separate page titled "Open Access Information" and shall issue a quarterly report containing such information.

23. Powers to Remove Difficulties

If any difficulty arises in giving effect to any of the provisions of these Regulations, the Commission may, by general and special order, direct the State Transmission Utility, State Load

Despatch Centre, Licensees, Traders, Generating Companies and Open Access Customers to take such action, not inconsistent with the Act, as may appear to the Commission to be necessary or expedient for the purpose of removal of the difficulties.

24. Dispute Resolution

24.1 In the event of any dispute on any or all of the following, the same shall be referred to the Commission for decision:

- (a) Available capacity of the system,
- (b) Operational constraints,

(c) Charges to be recovered,

(d) Eligibility of Open Access,

(e) Allotment/Curtailment priority, etc.

24.2 The Commission while deciding any dispute under this Regulation or otherwise by a general or special order made from time to time, may lay down, if required, the conditions to be complied with by the concerned Licensees, State Transmission Utility, State Load Despatch Centre and the persons seeking open access in regard to operation constraints and the open access shall be allowed only subject to the due satisfaction of such conditions.

25. Power to Amend

25.1 The Commission, at any point of time, at its own discretion, may vary, alter, modify, add or amend any provisions of these Regulations.

25.2 Nothing in this Regulation shall be deemed to limit or otherwise affect the inherent powers of the Commission to make such orders as may be necessary for meeting ends of justice or to prevent the abuse of the process of the Commission.

By order of the Commission,

D. CHAKRABORTY,

Secretary of the Commission.

Place: Kolkata

Date: 30.06.2005