

**Statement of Reasons (SOR) of West Bengal Electricity Regulatory Commission (Open Access) Regulations, 2022**

1. The West Bengal Electricity Regulatory Commission (herein after referred to as the 'Commission') has published West Bengal Electricity Regulatory Commission (Open Access) Regulations, 2007 on 12.04.2007. Subsequently such regulation was amended vide West Bengal Electricity Regulatory Commission (Open Access) (Amendment) Regulations, 2009 which was published on 22.05.2009 followed by another recent amendment vide West Bengal Electricity Regulatory Commission (Open Access) (Amendment) Regulations, 2019. These three Regulations related to Open Access shall in short be referred to as 'Existing Open Access Regulations'. For inter-state transmission system, Central Electricity Regulatory Commission (CERC) has issued the Central Electricity Regulatory Commission (Open Access in Inter-State Transmission) Regulations, 2008 for Short Term Open Access. Further, in 2009 CERC issued Central Electricity Regulatory Commission (Grant of Connectivity, Long-Term Access and Medium-Term Open Access in Inter-State Transmission and related matters) Regulations, 2009 which primarily dealt with long-term and medium-term Open Access. These two CERC regulations shall be referred in this SOR as 'CERC Open Access Regulations'.
2. Inter-state open access is of three types namely, short term, medium term and long term open access, whereas medium term open access does not exist in intra state open access as per Existing Open Access Regulations. Moreover, at present, CERC and WBERC have both moved from unscheduled interchange regime to deviation settlement mechanism (DSM) regime. As operation of inter-state open access is closely related with intra-state open access, the Commission has decided to realign the open access framework under Existing Open Access Regulations with the CERC Open Access Regulations for operational certainty and clarity in open access operations. In order to achieve proper alignment between the regulatory framework for open access in inter-state transmission system and intra-state transmission system, Commission had issued Draft Open Access Regulations in 2017. On receipt of stakeholders' comments on the draft regulation, it was observed that there are number of operational and other issues that were required to be addressed. Moreover, it was observed that in the inter-state DSM regime, numerous critical issues are required to be resolved before notifying an effective and implementable Open Access regulation by the Commission to replace the Existing Open Access Regulations. The CERC DSM Regulations have evolved through multiple amendments post their implementation. In the Commission's opinion, a majority of the DSM related issues have been resolved; hence it is now the right time to proceed for a new Open Access regulation applicable to the intra-state grid of West Bengal. The Commission has issued the West Bengal Electricity Regulatory Commission (Deviation Settlement Mechanism and related matters) Regulations, 2021 in order for more effective alignment of the State's transmission system with inter-state transmission system operation. Against this backdrop, draft West Bengal Electricity Regulation Commission (Open Access) Regulations, 2022 were published for consideration of all stakeholders



vide notice WBERC/Regu-54 (Open Access)/ dated 10<sup>th</sup> May 2022 which in this SOR shall henceforth be referred as 'Draft Open Access Regulations'. As per the notice the last date of submission of suggestions, objections and comments was 02-06-2022. Suggestions, objections and comments have been received from twelve stakeholders namely IPCL, Fourth Partner Energy, Star Cement Ltd, Bengal Energy Ltd, State Load Despatch Centre of West Bengal, ITC, IEX, CESC Ltd, FOSET, WBSEDCL, HINDALCO and Manikaran Power Ltd (MPL). Based on such suggestions, objections and comments, the Draft Open Access Regulations has been modified and West Bengal Electricity Regulation Commission (Open Access) Regulations, 2022 has been finalised, which in short will be called as 'Open Access Regulations 2022' in this SOR.

3. In addition to the incorporation of changes arising out of stakeholder's suggestions, objections and comments on the regulations, this SOR also covers the important updates and modifications that have been introduced in the Draft Open Access Regulations.

Post the last date of submission of stakeholder comments, being 02.06.2022, the Central Government has notified the Electricity (Promoting Renewable Energy Through Green Energy Open Access) Rules, 2022 on 06.06.2022 (which shall be hereinafter referred to as the 'Green OA Rules'). While finalising the Open Access Regulations 2022, provisions of the Green OA Rules have been incorporated in these regulations.

Important issues which have been considered in this Open Access Regulations 2022 are as follows:

- a) The concept of medium-term open access has been introduced along with definition of the period of long-term open access, medium-term open access and short-term open access in synchronization with the CERC Open Access Regulations.
- b) Introduction of DSM concept for Open Access transactions.
- c) Responsibility of Nodal Agency for application of open access has been bestowed on statutory body only like State Load Despatch Centre (SLDC) or State Transmission Utility (STU) to ensure non-discriminatory open access as well as to eliminate any possibility of access barrier.
- d) New definitions and concepts have been introduced in the Open Access Regulations 2022 with following objectives:
  - i) To achieve smooth operational efficiency of the Open Access Regulations 2022;
  - ii) To appropriately align with the Green OA Rules;
  - iii) To cover developments in the power sector post introduction of the Existing Open Access Regulations
  - iv) To ensure continued applicability and effectiveness of the Open Access Regulations 2022 without any requirement of amendment even after repealing of some other regulations that have been referred in the Open Access Regulations.

A few definitions that already exist in the Existing Open Access Regulations are being modified for abundant clarity. Such definitions are Backup Power, Captive



Generating Plant, Emergency Power, Long-Term Customer, Long Term Open Access, Open Access Customer, Open Access Source, RLDC, Short Term Customer, and Short Term Open Access.

Some new definitions are required to be introduced in view of accepting some stakeholders' suggestions. Further, the notification of Electricity (Promoting Renewable Energy Through Green Energy Open Access) Rules, 2022, has necessitated the introduction of five new definitions - Central Nodal Agency, Green Energy, Green Energy Open Access, Green Energy Open Access Consumers and Green OA Rules.

Two definitions in the Existing Open Access Regulations are being renamed viz. Additional Transmission Asset Creation Agreement and Additional Wheeling Asset Creation Agreement in these Open Access Regulations 2022, replacing Bulk Power Transmission Agreement and Bulk Power Wheeling Agreement of the Existing Open Access Regulations, respectively. This renaming has been done to ensure that the objective of the agreement is translated well so that no ambiguity arises.

- e) The provisions of Standby Power and Incidental Power in the Existing Open Access Regulations have been discontinued as the Consumer being granted with open access are entitled to drawal of Backup Power and Emergency Power just like other consumers when the supply from open access source is discontinued. In such a scenario, the Open Access Customer is being allowed an option to draw Backup power/ Emergency Power as a consumer from the licensee with whose infrastructure he is connected. Thus, the terms Standby Power and Incidental Power have been done away with. The definition of supplier has been also removed as the word supplier has not been used in any part of the Open Access Regulations 2022.
- f) The SLDC and STU have been made responsible for ensuring effective and seamless operationalization of Open Access. In order to achieve such objectives, 'SLDC Detailed Procedures' and 'STU Detailed Procedures' have been proposed to be prepared by SLDC and STU respectively. This shall be prepared after public consultation to ensure that non-discriminatory and transparent Open Access is provided.
- g) It has been clarified that any Open Access Consumer drawing power through dedicated transmission line from any generator has the liability of Cross-Subsidy Surcharge (if not a captive generating plant), Additional Surcharge and Electricity Duty (ED) as per Bengal Electricity Duty Act, 1935, as applicable.
- h) Long term Open Access has been given priority over medium and short term Open Access, medium term Open Access has given priority over short term Open Access.
- i) The interests of consumers have been duly considered in the priority list irrespective of whether such consumer is availing Open Access. In keeping with the same, the distribution licensee has the highest priority in all types of Open Access considering its important role in serving the interest of the consumers. For the same reason, in



case of short-term open access the priority of collective transaction through Power Exchange is only second to that of distribution licensee.

- j) The application fee has been simplified.
- k) Additional Surcharge has been detailed out in order to remove any ambiguity, so that all the important parameters can be made available in tariff order in a way so that the computation of Additional Surcharge becomes easy for distribution licensee.
- l) The cross subsidy surcharge has been formulated such that the Open Access Consumer and other consumers are treated similarly especially on the issue of regulatory asset subject to ceiling that the surcharge shall not exceed 20% of the tariff applicable to the category of the consumers seeking open access. Such ceiling has been stipulated in order to align it with the guidelines of the Tariff Policy. The formula has been made in such a way so that applicable Cross-Subsidy Surcharge for different classes of consumers are available in tariff order of respective licensee. However, as per mandate of Green OA Rules relaxation has been provided to Open Access Consumers on the quantum of energy drawal from certain specific sources as prescribed in Green OA Rules.
- m) Distribution Access Charges and Transmission Access charges in the Existing Open Access Regulations have been discontinued in the Open Access Regulations 2022 in order to keep parity between open access consumers and other consumers.
- n) The procedure for granting Long Term Open Access, Medium Term Open Access and Short Term Open Access under the intra-State Open Access has been aligned with the procedures followed in inter-state open access so that there are no contradictions or inconsistencies in the procedures related to inter-state open access and intra-state open access.
- o) Under the proposed Open Access Regulations, six types of agreements have been mentioned namely Connectivity Agreement, Power Purchase and Sale Agreement, Open Access Agreement, Backup Power Agreement, Additional Transmission Asset Creation Agreement, and Additional Wheeling Asset Creation Agreement. The main terms of these agreements have been indicated in the Open Access Regulations 2022 so that the Open Access customers are aware of the same and can contribute to the same for efficient operationalization of open access.
- p) Non utilization or underutilization of Open Access capacity by Open Access consumer will not be encouraged especially when there may be a need of Open Access for others. Accordingly part or full curtailment of the allotted capacity may take place as per the Open Access Regulations 2022. This is being done so that the utilisation of asset for conveying electricity in real term can be enhanced.
- q) Wheeling Charges for short term, medium term and Long Term Open Access have not been differentiated on any ground. However, while in Long Term and Medium Term Open Access, the transmission charges are considered on MW depending on the allotted or the reserve capacity, in short term Open Access the provision for transmission charge computation has been done by applying the transmission charge rate in paisa/kWh on energy against the approved capacity for each time block



separately of the entire open access period as approved on the basis of the open access application in order to keep compatibility with the Inter State Open Access regime under CERC.

- r) High voltage (HV) technical loss has been reduced to 4.0%.
  - s) An information dissemination system for Open Access has been envisaged in this draft regulation to facilitate availability of timely and accurate information on the website, clearly define the roles of the concerned entities and provide the Open Access customers with hassle free access to all the documents and information on Open Access in the state as and when required by them. This would enhance transparency in the information system and eliminate possibility of any access barrier for Open Access Customers.
4. Stakeholders have provided comments through written submissions on the Draft Open Access Regulations. The Draft Open Access Regulations have been referred to by various names by different stakeholders as follows:
- a) IPCL and ITC have referred to the Draft Open Access Regulations as 'Regulations'.
  - b) Bengal Energy Limited (BEL) has referred to the Draft Open Access Regulations as 'Proposed OA Regulations 2022' in its written submission
  - c) CESC has referred to the Draft Open Access Regulations as 'draft OA Regulations'.
  - d) FOSET has referred the Draft Open Access Regulations as 'Proposed Regulations' in its written submission.

The above references in the stakeholders' comments shall be considered as references to the Draft Open Access Regulations.

## **5. Preamble of the Draft Open Access Regulations**

### **5.1 Comments of Stakeholders**

#### ***a) Comments of CESC***

CESC highlights that 'Under Section 86(4) of the Electricity Act 2003 ("Act") it has been mentioned specifically that while discharging its function the State Commission shall be guided by the National Electricity Policy, National Electricity Plan and Tariff Policy published under section 3 of the Act. Since the framing of this draft OA Regulations is a legislative function, Hon'ble Commission may consider the policies and plans referred under section 86(4) of the Act as guideline. However, such policy is to be considered under the regulations if it is found to be consistent with the Act also in pursuance to regulation 181(1) of the Act.' Hence, CESC



proposed modification of the preamble to contain references to section 86(4) and 181 (1) of the Act as follows:

*'In exercise of the powers conferred by section 181 read with clause (d) of sub-section (2) of section 39, clause (c) of section 40, sub-sections (2), (3) and (4) of section 42 , section 66, sub-section (4) of Section 86 and section 181(1) of the Electricity Act, 2003 (36 of 2003) and all powers enabling it on that behalf and in supersession of notifications No. 35/WBERC dated 12th April 2007 published in the Kolkata Gazette, Extraordinary on 12th April 2007 along with all amendments, the West Bengal Electricity Regulatory Commission hereby makes the following regulations.'*

**b) Comments of FOSET**

According to FOSET in 'the Proposed Regulations the cross-subsidy surcharge determination methodology has been based on Tariff Policy of 2016. Similarly, there are other issues also which has been guided by the principles of Tariff Policy of 2016. This is a statutory requirement under Section 86(4) of the Electricity Act 2003 (hereinafter referred as 'Act') where it has been mandated that while discharging its function the State Commission shall be guided by the National Electricity Policy, National Electricity Plan and Tariff Policy published under section 3 of the Act. '

In view of the above fact the FOSET has suggested to replace the preamble of the Draft Open Access Regulations as follows:

*' In exercise of the powers conferred by section 181 read with clause (d) of sub-section (2) of section 39, clause (c) of section 40, sub-sections (2), (3) and (4) of section 42 , section 66, sub-section (4) of Section 86 of the Electricity Act, 2003 (36 of 2003) and all powers enabling it on that behalf and in supersession of notifications No. 35/WBERC dated 12th April 2007 published in the Kolkata Gazette, Extraordinary on 12th April 2007 along with all amendments, the West Bengal Electricity Regulatory Commission hereby makes the following regulations.'*

**c) Comments of BEL**

As in the Draft Open Access Regulations number of regulations has been framed based on Tariff Policy of 2016 thus BEL suggested that the preamble of the Draft Open Access Regulations may kindly be modified as follows:

*" In exercise of the powers conferred by section 181 read with clause (d) of sub-section (2) of section 39, clause (c) of section 40, sub-sections (2), (3) and (4) of section 42 , section 66, sub-section (4) of Section 86 of the Electricity Act, 2003 (36 of 2003) and all powers enabling it on that behalf and in supersession of notifications No. 35/WBERC dated 12<sup>th</sup> April 2007 published in the Kolkata Gazette, Extraordinary on*



*12<sup>th</sup> April 2007 along with all amendments, the West Bengal Electricity Regulatory Commission hereby makes the following regulations."*

## **5.2 Commission's Stand:**

Commission has often relied on the Tariff Policy of 2016, National Electricity Policy 2006 and latest National Electricity Plan on several issues as a guideline while also considering in context, the requirements of the State of West Bengal. Thus, in the preamble only specific section of the Act are required to be mentioned under which such Open Access Regulations 2022 is framed. Reference to sub-section (4) of section 86 of the Act is not required. Since Section 181(1) has been referred to in the preamble, the reference is not being repeated in sub-clauses.

## **6. Clause 2.1(h) of Draft Open Access Regulations**

### **6.1 Comments of CESC**

CESC has highlighted that as the West Bengal Electricity Regulatory Commission (Balancing and Settlement Code) Regulations, 2008 dated 25.03.2008 including the amendment West Bengal Electricity Regulatory Commission (Balancing and Settlement Code) (Amendment) Regulations, 2009 has been repealed by West Bengal Electricity Regulatory Commission (Balancing and Settlement Code) Regulations, 2021 thus accordingly the definition of "Balancing and Settlement Code" may be modified.

### **6.2 Commission's stand**

Suggestion of CESC is accepted.

## **7. Clause 2.1(n) of Draft Open Access Regulations**

### **7.1 Comments of CESC**

CESC claimed that the term 'Chief Grievance Redressal Officer' is not defined under Grievance Redressal Regulations. Thus, CESC suggested to delete such definition.

### **7.2 Commission's stand**

The term will be 'Central Grievance Redressal Officer' as per regulation 3.3 of the existing Grievance Redressal Regulations, i.e., West Bengal Electricity Regulatory Commission (Guidelines for Establishment of Forum for Redressal of Grievances of Consumers and Time and Manner of Dealing with such Grievances by the Ombudsman) Regulations, 2013. Accordingly, definition has been corrected in the Open Access Regulations 2022.



## **8. Clause 2.1 (q) of Draft Open Access Regulations**

### **8.1 Comments of Stakeholders**

#### **a) Comments of WBSEDCL**

According to WBSEDCL in real time, Distribution Companies may be compelled / ready to supply entire requirement of power to Open Access consumer without restriction (beyond critical load, if less declared in application) for avoiding Law & Order problem in the State / safety issues. Hence approved quantum for open access may be kept as back-up power. Thus, WBSEDCL suggested to modify the clause 2.1(q) Draft Open Access Regulations in following form:

“Critical Loads” means the approved Open Access quantum for which supply is to be maintained continuously and disruption of supply may result in Law & Order problems.

#### **b) Comments of IPCL**

According to IPCL the “definition of Critical load needs to be further specifically defined in the Regulations”. IPCL also meant that “the definition of critical load needs to be incorporated in the procedural document to be issued along with the Regulations so that there is less ambiguity while implementing Open access.”

### **8.2 Commission’s stand**

Open Access Consumer cannot be compelled to make arrangement of back-up power for critical load to the extent of entire requirement of power for which open access is applied for. For safety reason and law & order reason, the critical load is best judged by the Open Access Consumer. These regulations provide for directions issued thereof by any competent authority concerning the issue. In case Open Access Consumer needs back-up power greater than critical load during crisis, then he can always draw such power by paying additional demand charges along with energy charges, and penalties imposed by any regulations of the Commission. Hence, a consumer can decide its critical load. Thus, no change is being made to clause 2.1 (q). The definition of Critical Load is dependent on the decision of the consumer itself or State Government or Central Government or appropriate statutory authorities or Court of Law as has been elaborately defined in regulation 4.10 of the Open Access Regulations 2022. Thus inclusion of any separate definitions in the procedural document is not found to be necessary.

## **9. Clause 2.1 (v) of Draft Open Access Regulations**

### **9.1 Comments of Stakeholders**

#### **a) Comments of CESC:**

CESC has highlighted that Emergency power is required for generating stations as well as for open access customers also as the clause 6.4 of the Draft Open Access Regulations also mentions supplying emergency power to Open Access Customer.



Thus, CESC suggested that the definition should not be limited to only generating stations. CESC also suggested that the specification of the rate is equitable with embedded consumers and for ease of operational clarity. Accordingly, CESC recommends following definition for Emergency power

*"Emergency Power" means the requirement of supply of Start-up Power or survival power in case of total power failure and will be as per emergency supply rate of embedded consumers as per the relevant levels;"*

**b) Comments of WBSEDCL:**

WBSEDCL pointed out that in Tariff Regulation, Term "Survival Power" is used for same purpose and for which applicable Tariff (along-with MVCA) for such power should be as per applicable regulation and order on tariff. WBSEDCL also suggested that non-availability of such rate for any open access consumer, rate as determined by Commission shall be applicable or 110% of EC of Emergency Supply Tariff (Normal period) along-with MVCA shall be applicable. WBSEDCL also suggested that instead of Emergency Power such power shall be termed as 'Survival Power'.

**9.2 Commission's stand**

In the West Bengal Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2011, amended till date (herein after will referred as "Tariff Regulations") the provisions of supply under emergency category are detailed out in paragraph 12.6 of Schedule-5 of the Tariff Regulations. In paragraph (xi) of the note to the Annexure-C2 also the detailing of applicable tariff of start-up power and survival power has been recommended. There is also need of Emergency Power for Open Access Consumer as per clause 6.4 of Draft Open Access Regulations. Accordingly, the definition of "Emergency Power" is modified as follows:

*"Emergency Power" means the supply by any Distribution Licensee*

- i) of start-up Power or survival power to the captive generating plant or generator acting as an open access source in case of total power failure at a rate as applicable for start-up power or survival power as per Tariff Regulations;*
- ii) of power to the Open Access Consumer, connected to the Distribution Licensee, in case of failure of supply fully or partially from his open access source(s) and having no Backup Power facility, at a rate applicable to Emergency Supply in concerned tariff order of the Distribution Licensee as per Tariff Regulations;*
- iii) of power to the Consumer, connected to the Distribution Licensee, in case of failure of supply fully or partially from his captive generating plant (either in-situ or through dedicated transmission line) and having no Backup Power facility, under the emergency category as per Tariff Regulations at a rate as*

*applicable for Emergency Supply in the concerned tariff order of the Distribution Licensee;*

- iv) *of power to the Consumer drawing power from any in-situ generating plant or through dedicated transmission line from any generating plant that is not owned by the Distribution Licensee with whom the consumer is connected for drawing power from the Distribution Licensee as and when required in accordance with power supply agreement between the distribution licensee and the said consumer at a rate as applicable for Emergency Supply in the concerned tariff order of the Distribution Licensee in case of failure of supply from such generating plant and where Backup Power facility has not been availed by such consumer.'*

**[Explanation:** *As per West Bengal Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2011, amended till date the rate for start-up power and survival power is as per note (xi) of the Note of Annexure-C2. Similarly for consumer owning Captive generating plant the conditionalities of paragraph 12.6 of Schedule-5 of the Tariff Regulations is applicable. Such consumer being a default open access consumer as per definition of the open access who draws power through dedicated transmission line from generating source or internal network of the installation of in situ- generating station in a premises of such consumer is also entitled to Backup Power.]*

## **10. Clause 2.1 (ee) of Draft Open Access Regulations**

### **10.1 Comments of CESC**

To enhance comprehensibility CESC suggested following definition for inter-state transmission system as follows:

*"intra-State transmission system" or "InSTS" means any system for transmission of electricity within the State excluding (i) the Inter-State Transmission System (ISTS) as per Grid Code and (ii) transmission line(s) declared as essential part of the distribution system of a licensee by the Commission.'*

### **10.2 Commission's Stand**

CESC's suggestion has been accepted for sake of better clarity of the definitions.

## **11. Clause 2.1 (kk) of Draft Open Access Regulations**

### **11.1 Comments of CESC**

CESC is of opinion that as Hon'ble Commission is already determining tariff under Section 62 of the Electricity Act, 2003 for such area (s) in West Bengal thus the definition of Multiple license area may be modified slightly as below :



*“Multiple license area” means an area of supply where two or more Distribution Licensee or Suppliers are operating with the purpose to supply electricity to the consumers of that area at tariff determined by the Commission;’*

## **11.2 Commission’s stand**

CESC’s suggestion has been accepted with slight modification, the updated definition is as below:

*“Multiple license area” means an area of supply where two or more Distribution Licensees are operating with the purpose to supply electricity to the consumers of that area at tariff determined by the Commission;’*

The definition of Supplier has been omitted as the term has not been used in the Open Access Regulations 2022.

## **12. Clause 2.1(oo) of Draft Open Access Regulations**

### **12.1 Comments of Stakeholders**

BEL and CESC pointed out that the definition of the word supply according to the Electricity Act 2003 (herein after in short it will refer as “Act”) meant sale of electricity to licensee or consumer. As in case of drawing power from own captive generating source does not involve any sale thus according to BEL there is certain incompleteness in the said definition. BEL has suggested that the definition of Open Access Consumer in clause (oo) of regulation 2.1 of the Draft Open Access Regulations be substituted as follows:

*“Open Access Consumer” means the Open Access Customer who is also a consumer of the licensee with whose distribution system he is connected for drawing power through open access facility from its Open Access Source. ‘*

### **12.2 Commission’s Stand**

Basic contention of BEL and CESC has been accepted and the definition has been elaborated for the sake of clarity, as below:

*“Open Access Consumer” means the Open Access Customer who is also a consumer of the Distribution License with whose distribution system he is connected for getting supply of electricity in consumer mode and also connected for availing power through open access facility from its*

- i) Open Access Source either through the grid or*
- ii) in case of open access source being generator through Dedicated Transmission Line /internal network to its installations. ‘*

## **13. Clause 2.1(ww) of Draft Open Access Regulations**

### 13.1 Comments of CESC

CESC has opined that the distribution segment may also be included in the definition of Safe Capacity. Accordingly, the suggested definition is as follows:

*‘ “Safe Capacity” means continuous current carrying capacity considering outage of the largest element in such **distribution**, transmission and associated system or as stipulated in the planning criteria by the appropriate authority;’*

### 13.2 Commission’s Stand

CESC’s suggestion has been accepted.

## 14. Clause 2.1(ccc) of Draft Open Access Regulations

### 14.1 Comments of CESC

CESC has commented that the term “Start-up Power” is also used in different regulations. Thus, to avoid any confusion CESC proposes modification as below:

*‘ “**Start-up Power**” or “Startup Power” means the power required by any generating station or Captive Generating Plant situated in the State for black start or cold start of such generating station.*

### 14.2 Commission’s Stand

CESC’s suggestion has been accepted.

## 15. Clause 2.1(jjj) of Draft Open Access Regulations

### 15.1 Comments of CESC

CESC is of opinion that in terms of the Electricity Act, supply of electricity in a given area shall be affected only through the network of the licensee of that area. This regulation may kindly be deleted as it is against the Electricity Act, 2003. The definition in accordance with Section 2(17) of the Electricity Act, 2003 shall be.

*“Supplier” means a licensee who has been allowed to supply electricity to consumer within its area of supply through **its own** network but does not include a electricity trader.”*

### 15.2 Commission’s Stand

The definition of Supplier has been omitted as the term has not been used in the Open Access Regulations 2022. CESC’s view related to section 2(17) of the Act has been



dealt with by the Commission while discussing the stakeholder comments on clause 4.1 and 4.2.

## **16. New definitions proposed by Stakeholders**

### **16.1 Comments of WBSEDCL:**

WBSEDCL is of opinion that as far as official procedure is concerned only official working days should be considered and thus the word 'Day' may be defined as working day only in respect of time frame given in this Regulation.

### **16.2 Commission's Stand:**

The provision of the number of days for various regulations is adequate. In some cases two/three days have been allowed, especially in the context of short-term open access procedure, the reason being that short term open access application is related to real time power system operation and hence decisions are to be made within a limited time frame. Moreover, it is necessary to consider the time frame used in inter-state open access also for appropriate compatibility so that there are no procedural hitches. Since SLDC/ALDC operates on 24x7 basis such duration of two to three days is not unreasonable. Thus, WBSEDCL's proposal has not been accepted.

## **17. Clause 2.2 of Draft Open Access Regulations along with a new clause**

### **17.1 Comments of CESC:**

- a) To avoid any legal complexities CESC has suggested that after regulation 2.1 a fresh clause may be inserted as follows

*'Unless the context otherwise requires, all the terms used in these Regulations shall have the meaning assigned to them in the regulation 2.1 of these regulations notwithstanding their typesetting.'*

CESC also suggested to number such clause as 2.2 and the exiting clause 2.2 of the Draft Open Access Regulations is to be numbered as 2.3.

- b) According to CESC as the regulations of the Hon'ble Central Electricity Regulatory Commission do not cover the area of distribution of electricity thus the terms defined in the regulations of Hon'ble CERC may be adopted only to the extent applicable in the context of intra-state matters and thus the clause 2.2 of the draft Open Access Regulations may be defined as

*'Words or expressions used and not defined in these regulations but defined in the Act or any other Regulations framed by the Commission shall have the meanings*

*respectively assigned to them there in. Where the words "as specified" has been used, it shall mean as specified in these Open Access Regulations or under any other law or any regulations issued by CERC to the extent applicable or this Commission from time to time.'*

**17.2 Commission's Stand:**

Such suggestion of new clause is accepted but it will be numbered as 2.3. The proposed modification of clause 2.2 of the Draft Open Access Regulations by CESC has provided will allow the modification of the blanket provision of depending on CERC regulations. In case of any difficulty or a situation of incompatibility, the Commission can always resolve such incompatibility through issuance of any order on by seeking references or suggestions through stakeholder consultation. Accordingly, the said clause 2.2 is modified as follow:

*'Words or expressions used and not defined in these regulations but defined in the Act or any other Regulations framed by the Commission shall have the meanings respectively assigned to them there in. Where the words "as specified" has been used, it shall mean as specified in these Open Access Regulations or under any other law or any regulations issued by this Commission from time to time.'*

**18. Clause 3.1 of Draft Open Access Regulations**

**18.1 Comments of CESC:**

For clarity and better understanding of clause 3.1 at the end of the clause 3.1 the words "in the state of West Bengal" may be appended.

**18.2 Commission's Stand:**

Suggestion is accepted

**19. Clause 3.2 of Draft Open Access Regulations**

**19.1 Comments of CESC:**

For better clarity and better understanding of the clause 3.2 of Draft Open Access Regulations CESC suggested to introduce a definition of Effective Date.

**19.2 Commission's Stand:**

The Effective Date is already defined under clause 1.2 of the Draft Open Access Regulations. However, for clarity the clause 3.2 is modified slightly as follows

*"These regulations shall apply to all Open Access Customers who have been granted Open Access by the Commission or those who are availing Open Access before the Effective Date of these Open Access Regulations. Notwithstanding anything to the*



*contrary contained in earlier Regulations or orders of the Commission with respect to open access, these regulations shall have overriding effect."*

## **20. Clause 3.3 of Draft Open Access Regulations**

### **20.1 Comments of stakeholders:**

- a) WBSEDCL has requested for an explanation of the application of the expression "Distribution Access Charge"
- b) For proper clarity and better understanding of the clause 3.3 and also, to ensure recovery of applicable charges in case of open access involving captive generators CESC suggested following:
  - i) The phrase "*which is not captive generator*" may kindly be deleted as the provisions of this regulation squarely applies in the case of obtaining power from captive generator in open access mode.
  - ii) Distribution Access Charge is not defined in the Draft Open Access Regulations and thus reference may be removed.
  - iii) Last sentence of the clause may be changed as follows:  
*'Such customers shall ensure proper metering arrangement including interface meters in accordance with the CEA Meter Regulations to record the energy supplied to the consumer from the generator.'*

### **20.2 Commission's Stand:**

Distribution Access Charge has been discontinued. In view of the introduction of updated elaborated definition of Backup Power and Emergency Power the said clause 3.3 has also been modified accordingly. Thus, considering the comments of the stakeholders and as the said clause is covering a particular mode of open access the clause is modified as follows:

*'It is clarified that for persons who are drawing power or intend to draw power from any generator through dedicated transmission lines of the generator (including in-situ or off site captive generating plant) or any other arrangement not involving the use of intra-state transmission lines or distribution network of distribution licensee to whom such person is connected, the provisions of these Open Access Regulations shall be applicable to the extent relevant for such arrangement, including scheduling, determination of Cross-Subsidy Surcharge, additional surcharge, arrangement for Backup Power, supply of Emergency Power, payment of Electricity Duty (ED) to the State Government as per notification under Bengal Electricity Duty Act, 1935, etc. as such arrangement is also an Open Access mechanism. Such customers shall ensure proper metering arrangement including interface meters in accordance with CEA Meter Regulations to record the energy supplied to the consumer from the generator.'*

## **21. Clause 4.1 and 4.2 of Draft Open Access Regulations**

## **21.1 Comments of stakeholders:**

### **a) *Comments of IEX***

IEX has quoted fifth proviso of section 42(2) of the Act and as already five years has elapsed from coming into force of the Act thus the issue of phasing has already lost its relevance accordingly they have suggested due modification of both clause 4.1 and 4.2.

### **b) *Comments of MPL***

MPL is of opinion that eligibility criteria for open access for a quantum with respect to the contracted demand shall also be considered.

### **c) *Comments of CESC***

According to CESC such clause is violative of Section 2(17) of the Act which stipulates that distribution licensee is authorised to operate and maintain a distribution system for supplying electricity to the consumers in his area of supply. CESC has referred to their earlier comment for clause 2(jjj) wherein CESC has stated that in terms of the section 2(17) of the Electricity Act, supply of electricity in a given area shall be effected only through the network of the licensee of that area. Accordingly, CESC has suggested the addition of a proviso at the end of this clause stating that "Provided that a distribution licensee shall not be permitted to use network of another distribution licensee under open access in terms of section 2 (17) of the Act." CESC is also of opinion that reference to "any other person" is too general and hence may be omitted in the regulation as eligibility with respect to open access is adequately covered in the Draft Open Access Regulations.

## **21.2 Commission's Stand:**

- a) IEX's submission is limited to fifth proviso of the section 42(2) of the Act and not the section 42(2) as a whole and thus its suggestion is not considered.
- b) MPL's suggestion is not clear. However if it intends to mean that consumer with any contracted demand is to be considered eligible for open access then such suggestion is not accepted and the quantum remains unchanged.
- c) On CESC's submission, the Commission is of the view that by virtue of section 2(17) of the Act any distribution licensee has been authorised to operate and maintain a distribution system for supplying electricity to the consumers in his area of supply. But a consumer can procure power from another distribution licensee and the power so procured can be drawn by/ delivered to the consumer under open access mechanism through the distribution network of the distribution licensee with whom he is connected after payment of all applicable charges and losses including wheeling charges, Cross-Subsidy Surcharge and additional surcharge. But as this



has no relevance at present in the context of these particular clauses 4.1 and 4.2 for these Open Access Regulations thus no modification has been done. However, the words “any other person” have been deleted in finalized Open Access Regulations 2022.

Besides the above observations, the Commission has also considered the mandate in first proviso of rule 5(2) of the Green OA Rules.

Accordingly the modified clause 4.2 now stands as follows

*‘Subject to the provisions of these regulations and the regulations made under fifth proviso to sub-section (2) of section 42 of the Act, a Licensee or a generating company or a Captive Generating Plant or a consumer as may be declared eligible for Open Access by the Commission in a phased manner under sub-section (2) of Section 42 of the Act or any person engaged in the business of supplying electricity to the public under the Act shall be eligible for Open Access to the distribution system and associated facilities of a Distribution Licensee on payment of charges, as may be specified by the Commission, for using the distribution system and the associated facilities of the Distribution Licensee.*

*Provided that consumers who have contracted demand or sanctioned load of hundred kW and above shall be eligible to take green energy through green energy open access.*

*Provided further that there shall be no load limitation for captive consumers taking power under Green Energy Open Access.’*

In view of the above modification a definition of ‘Green Energy Open Access’ has also been introduced in the Open Access Regulations 2022.

## **22. Clause 4.4 of Draft Open Access Regulations**

### **22.1 Comments of IEX**

As per IEX the technical requirements for the purpose of Open Access have been covered under the CEA Regulations. According to IEX the proposed additional requirement of 24x7 control room etc. may not be necessary as technically a consumer will be drawing the same power from the grid, whether from Open Access or otherwise. If such requirement has not been felt necessary for a consumer drawing power from DISCOM, then it should not be necessary for the consumers drawing power through open access using the same grid.

### **22.2 Commission’s stand**

There is a distinction between normal consumer and open access consumer as in case of normal consumer it is the responsibility of distribution licensee to arrange the power, whereas open access consumer select its own source of power and in case of any failure from open access sources it depends on backup and / or emergency power from the licensee. Distribution licensee has to ensure its availability accordingly. Thus, 24x7 control room, dedicated communication and real-time monitoring is also required for open access consumer similar to that for open access customer connected at 33kV and above voltage level. Considering the practical reasons, the Commission has exempted such requirements for below 33kV. Thus, the proposed draft is retained along with a provision that SLDC shall specify the requirement of on-line display in its detailed procedure. Accordingly, such clause has been modified along with modification of clause 25(2) of these regulations for proper compatibility of these two clauses.

## **23. Clause 4.5 of Draft Open Access Regulations**

### **23.1 Comments of IEX**

According to IEX re-eligibility in any case will be examined each time an OA customer approached Nodal Agency and thus this clause may not be required as it may create confusion with regard to eligibility conditions.

### **23.2 Commission's stand**

IEX's suggestion is noted and accordingly the clause is modified for better clarity as follows:

*'An Open Access Customer shall be eligible to re-apply for fresh reservation of capacity for Open Access after expiry of his Open Access term, subject to fulfilling the eligibility criteria and all other provisions of these Regulations.'*

## **24. Clause 4.7 of Draft Open Access Regulations**

### **24.1 Comments of stakeholders**

#### **a) Comments of SLDC**

SLDC emphasised that outstanding dues against billing of DSMcharges and Reactive Charges may also be considered for inclusion in this clause.

#### **b) Comments of IEX**

IEX pointed out that in few instances a consumer applying for open access may have outstanding dues, which may be a result of an ongoing litigation or matter sub-judice in a court of law and thus IEX has requested to modify the clause to account for such instances.



## **24.2 Commission's Stand**

Commission agreed to the proposal of stakeholders and accordingly modify the first sentence of the clause as follows

*' An Open Access Customer having outstanding dues of any Transmission Licensee or Distribution Licensee or Nodal Agency or SLDC against billing for more than one month on account of any head shall not be allowed to avail Open Access except in case of ongoing litigation on such matter or matter being sub-judice wherein there is an explicit direction by any court of law or ombudsman that such billed amount is not required to be paid subject to other conditions as provided in such applicable direction. '*

## **25. Clause 4.8 of Draft Open Access Regulations**

### **25.1 Comments of MPL**

MPL wants clarification required if the party only charged on alleged offence is sufficient to make it ineligible or the alleged charges shall be proved before a court of law to make it ineligible for Open Access. MPL is of view that as the party is still not convicted so adverse action to be taken can be avoided. Accordingly, they suggested following modified clause:

*'If an Applicant for Open Access has already been charged and convicted by a court of law for having committed any offence under the Act, his application for Open Access shall be considered only after a competent court of law clears him. '*

### **25.2 Commission's stand**

MPL's suggestion is being accepted.

## **26. Backup Power issues and Clause 4.10 of Draft Open Access Regulations**

### **26.1 Comments of stakeholders**

#### **a) Comments of CESC**

CESC is of view that SLDC needs to identify the critical load Open Access Customers with in consultation with the Distribution Licensee. Accordingly, CESC suggested that following sentence may be appended at the end of the proposed clause 4.10:

*'SLDC shall consult with the concerned Distribution Licensee and indicate whether Open Access Customer needs arrangement of Backup Power while giving permission of Open Access to such Open Access Customer. '*

#### **b) Comments of Star Cement**



On this clause 4.10 and clause 12.3 Star Cement is of opinion that for embedded open access consumers, any off- take of power outside Open Access Schedule will be governed under the Contract Demand Agreement since the consumer has right to avail power from the distribution licensee under the agreement and thus it is suggested that no Backup Power arrangement may be required for the embedded OA Consumer if they avail STOA within the Contract Demand signed with the Distribution Licensee. Against clause 14 and clause 15.1 of the Draft Open Access Regulations Star Cement Ltd has urged that as the Open Access Customers, who does not have any Contract Demand, any power flow beyond Open Access Schedule shall be governed under Deviation Settlement Mechanism. Star cement suggested that sourcing of Backup Power by any Open Access Customer shall be made on its own discretion and also suggested against clause 15.5 that such backup power option shall not be made applicable on consumer.

## **26.2 Commission's Stand:**

- a) Open Access Consumer will have optional choice for Backup Power or Emergency Power. Backup power is an optional scheme to normal consumers who have options not to prefer to keep entire contract demand with the distribution licensee as its strategy except those require critical load as per this clause. Thus, the query of Star cement is clarified. The Backup Power arrangement for Open Access Consumer is not at all mandatory except for the Critical load where there is possibility of potential hazards concerning public safety in line with the Environment (Protection) Act, 1986 or any other law as applicable or there is possibility of law and order in case of power failure. However, if the Open access Consumers has a Contract Demand a part of which is met in consumer mode and balance in Open Access mode then no backup power is required to the extent of the Contract Demand. If beyond that the Open Access Consumer need Backup Power he can opted for that. The Backup Power arrangement has been provided in line with the provision of standby power as per Paragraph 8.5.6 of Tariff Policy and rule 9(4) of Green OA rules. The Open Access Consumer who does not avail Backup Power, he can rely on Emergency Power and draw it as a Consumer under consumer agreement as and when require following regulations of Commission. However, Emergency Power arrangement is not at all mandatory requirement for Open Access Consumer.
- b) To enhance the clarity of critical load vis-à-vis Backup Power the Commission has decided to merge clause 6.4 into clause 4.10 of these regulations which is further modified after considering the stakeholders observation on Critical Load and Backup Power.
- c) The issue of critical load has already been discussed against response to clause no 2.1(q) of the Draft Open Access in Paragraph 8 of this SOR.. As critical load will be determined by the Open Access Consumer only thus there is no necessity to consideration of the intervention from SLDC unless there is any direction on the quantum of Critical load to the Nodal agency from State Government or Central Government or appropriate statutory authorities or Court of Law. To keep proper



alignment with clause 12.3, clause 15.3(c) and definition of Backup Power in the Open Access Regulations 2022 the clause 4.10, clause 12.3 and clause 15.3(e) are required to be modified. Accordingly, modified clause 4.10 has been modified as follows:

*'In their application for Open Access, all applicants shall have to indicate the potential hazards concerning public safety in line with the Environment (Protection) Act, 1986 or any other law as applicable. In addition to the above declaration submitted by the Open Access Customer as per the application format, the applicants shall also be required to submit details of such Critical Load including its quantum in a specific format as will be developed in the SLDC Detailed Procedures / STU Detailed Procedures Critical Load. Subject to approval by the SLDC after due consideration of such declaration, the Open Access Customer will be listed for Open Access after ensuring arrangement of Backup Power for the Critical Load, as applicable. In case of issuance of any direction to the Nodal agency by the State Government or Central Government or an appropriate statutory authority or Court of Law on the quantum of Critical Load, the Nodal agency will insist for Backup Power for Critical Loads as per such direction where the disruption of supply may lead to law and order problem or may cause safety hazards and in such case the Open Access Consumer or Consumer drawing power from in-situ generation source not belonging to the distribution licensee with whom it is connected (including Captive Generating Plant) or through dedicated transmission line from generation source not belonging to the distribution licensee with whom it is connected (including Captive Generating Plant), as the case may be, arrangement of Backup Power shall be a condition of eligibility for getting Open Access and such applicant has to ensure that it adheres to the provisions as specified in regulation 12.3 and 15.3(c) of these Regulations.*

*Provided that if such direction of State Government or Central Government or appropriate statutory authorities or Court of Law has been issued after the open access application of such applicant has been accepted or operationalisation of open access for such applicant then within 7 working days the concerned Open Access Consumer has to issue a consent letter in a format as will be provided in SLDC Detailed Procedures indicating their acceptance of such Critical Load and such consent letter where applicable will be deemed to be a part of the Connectivity Agreement, the Backup Power Agreement and the Open Access Agreement..*

*Provided also that for the period from date of receipt of such direction and signing of amended agreement or issuance of consent letter the contracted demand of Backup Power will be the Critical Load as has been mentioned in such direction.*

*Provided further that non-receipt of such consent letter shall render the applicant ineligible for open access and in case the open access has been operationalized the consent for open access will be withdrawn by the Nodal Agency and open access shall be terminated.'*

In view of such revised clause 4.10 the definition of Backup Power has also been modified and clause 12.3 and clause 15.3(e) has also been modified. Definition of Backup Power Agreement has also been introduced for clarity.



## **27. Clause 4.11 of Draft Open Access Regulations**

### **27.1 Comments of FOSET**

FOSET has raised the question that in case there is any dispute exist between the distribution licensee and the consumer related to any bill while making application for Open Access then in order to avoid any confusion whether such open access application will be entertained or not. FOSET is of opinion that Commission should come with a clear directive on this issue. Thus, FOSET has suggested that in line with regulation 4.5 of Maharashtra Electricity Regulatory Commission (Distribution Open Access) Regulations, 2016, after regulation 4.11 the following proviso shall be added:

*'Provided that where there is a dispute between the Distribution Licensee and the Consumer relating to any claim of charge for electricity or some other charges for electricity, the application of open access by such consumer shall be admitted upon deposit of the claimed amount with the Distribution Licensee subject to subsequent settlement of said dispute by the Grievance Redressal Forum and subsequently by Ombudsman or any court of law as per Grievance Redressal Regulations.'*

### **27.2 Commission's stand**

FOSET's suggestion is accepted.

## **28. Suggestion of Insertion of new clause 4.12 and 4.13 in the finalised Open Access Regulations**

### **28.1 Comments of stakeholders**

#### **a) Comments of FOSET**

FOSET has apprehended that after admitting the open access application any dues may arise from consumer as per sub-section (2) of section 56 of Electricity Act 2003 in the period between the admission of open access application and operationalization of Open Access based on the approval order of Open Access from nodal agency. To handle such situation and to ensure payment FOSET suggested following two regulations 4.12 and 4.13 for insertion after regulation 4.11 of the Draft Open Access Regulations:

*'4.12 After admitting the open access application any dues may arise from consumer as per sub-section (2) of section 56 of Electricity Act 2003 in the period between the admission of open access application and operationalization of Open Access based on the approval order of Open Access from nodal agency. To protect such possibility such open access will not be operationalized in any case unless a certificate from Distribution Licensee reaches to SLDC with a copy to the Open Access Consumer that all the dues of the Distribution Licensee are paid specifically mentioning*



*that no dues are pending as per sub-section (2) of section 56 of Electricity Act 2003 prior to operationalization of Open Access within three working days after getting notice for operationalization of Open Access by the Distribution Licensee from SLDC.*

*Provided that where there is a dispute between the Distribution Licensee and the Consumer relating to any claim of charge for electricity or some other charges for electricity, the application of open access by such consumer shall be admitted upon deposit of the claimed amount with the Distribution Licensee subject to subsequent settlement of said dispute by the Grievance Redressal Forum and subsequently by Ombudsman or any court of law as per Grievance Redressal Regulations.*

*4.13 If the consumer does not pay the dues as per the orders of the Grievance Redressal Forum or Ombudsman or court of law as applicable in pursuance to the provisions in the proviso of regulation 4.11 and 4.12 of these regulations then Open Access will be cancelled. ‘*

**b) Comments of CESC**

CESC has also mentioned that in line with the proposed clause 4.11 in the Draft Open Access Regulations care should be taken for the situation wherein a consumer may have pending dues before the operationalization of the Open Access. Accordingly, CESC suggested a clause 4.12 almost in same line with first paragraph of the clause 4.12 as suggested by FOSET.

**28.2 Commission's stand**

*Considering the suggestion of the stakeholders the suggestion of FOSET and CESC is accepted.*

**29. Clause 5. of the Draft Open Access Regulations**

**29.1 Comments of IPCL**

IPCL suggested that for the multiple licensee/parallel licensee area, separate charges may be defined for network sharing amongst Parallel License etc.

**29.2 Commission's Stand**

This is not an issue of Open Access. This is not an issue of Open Access. If it is an issue of open access then in such cases Cross-Subsidy Surcharge and additional surcharge will become applicable and thus the purpose of net work sharing will be defeated. Thus, this issue cannot be treated under this Open Access Regulations.

### **30. Clause 6 of the Draft Open Access Regulations**

#### **30.1 Comments of Stakeholders**

##### **a) *Comments of WBSEDCL***

In reference to clause 6.2 WBSEDCL mentions that as licensee may have to seek open access for both import and export of power to meet any contractual obligation, thus modification is suggested as follows: *'The first priority within each category of Open Access Customers will be a Distribution Licensee to the extent of its requirement for meeting the demand of the Licensee.'*

##### **b) *Comments of IEX and MPL***

IEX pointed out that as the CERC (Indian Electricity Grid Code) regulations, 2010 provides that within the short-term transactions, collective transactions have higher priority over the bilateral transactions thus same should be incorporated in clause 6 of the draft Regulations.

IEX also pointed out that while draft Open Access Regulations has proposed allotment priority for Open Access, with highest priority to Long Term Customer and last priority to the Short-Term Customers the regulation has put highest priority to the Distribution Licensee in each category of long-term, medium-term and short term. According to IEX the Act provides for non-discrimination in the use of transmission and distribution system while allowing Open Access and thus clause 6 is against this basic principle of non-discrimination open access and therefore, clause 6.2 may be dropped. MPL has also give objections to clause 6.2 based on this principle of non-discriminatory open access.

##### **c) *Comments of ITC***

ITC is of opinion that priority should be given to Open Access Consumer for wheeling of power from renewable sources.

#### **30.2 Commission's stand**

- a) WBSEDCL's suggestion is being accepted by the Commission. -
- b) The IEX suggestion of giving priority to collective transaction is being accepted to keep parity with the CERC governed inter state open access framework so that the Opens Access Consumers availing open access through intra-state open access governed under the Open Access Regulations are not differently treated with Open Access Consumers taking open access through CERC governed inter state open access framework.



However regarding the objection of IEX and MPL against giving priority of Distribution licensee over the consumers in Open Access under each of the category of Long-Term Open Access, Medium-Term Open Access and Short-Term Open Access on the ground of principle of non-discriminatory open access has no merit as in that case the categorisation of Long-Term Open Access, Medium-Term Open Access and Short-Term Open Access based on time frame of Open Access and giving priority of Collective transaction in Short-Term Open Access has also to be removed. For the question of availability of any commodity other collective interest always get priority over the individual interest as already it is established through IEX's own submission in favour of collective transaction. Moreover, the distribution licensee has universal obligation of supply of electricity to consumers under section 43 of the Act. In fact the above categorisation are all reasonable. Thus, the IEX's suggestion to remove the priority of distribution licensee in each category of Open Access is not acceptable and thus the distribution licensee of West Bengal will have priority as discussed.

- c) ITC's suggestion could not be accepted as that differentiate in priority between two sets of consumers where one set of consumers applying for open access within the state only using intra-state transmission system and/or distribution system only and second set of consumers are consumers who are applying open access in intra-state transmission system through application of open access under CERC governed inter- state mechanism .

As per proviso to rule 7(4) of the Green OA Rules in the context of spare capacity availability in transmission system without augmentation for long term open access for non-fossil fuel sources have to be given priority over the open access from the fossil fuel.

Based on the above discussions the clause 6.2 shall be modified as follows:

*'The first priority within each category of Open Access Customers will be a Distribution Licensee to the extent of its requirement for meeting the demand of the licensee subject to following conditions:*

- a) *Within short-term transaction collective transaction through power exchange will get priority.*
- b) *Among collective transactions the power meant for Distribution Licensee will get priority.*
- c) *In the context of spare capacity availability in both transmission system as well as distribution system for long term open access non-fossil fuel sources will have priority over the open access from the fossil fuel. Among such non-fossil sources the power meant for Distribution Licensee will get priority. '*

Explanation: For the purposes of this clause, the term fossil fuel shall have the meaning as per Green OA Rules 2022.

### **31. Clause 6.4 of the Draft Open Access Regulations**

#### **31.1 Comments of Stakeholders**

##### **a) Comments of WBSEDCL**

WBSEDCL against clause 2.1(v) has requested to change the name of 'Emergency Power' as 'Survival Power' as used in Tariff Regulation for same purpose. Tariff for such power should be as per WBERC Tariff Regulation 2011 as amended. In continuity of such view WBSEDCL has requested to change the 'Emergency Power' in the clause 6.4 with the words 'Survival Power'.

##### **b) Comments of CESC**

CESC is of view that for clarity and better understanding a format shall be developed to made declaration whether the open access consumer premises has *the potential hazards concerning public safety in line with the Environment (Protection) Act, 1986 or any other law as applicable* and which shall be either specified by Commission or developed by SLDC as a working procedure and should be subject to prior publication and consultation with relevant stakeholders.

#### **31.2 Commission's Stand**

In view of discussion under clause 2.1(v) the definition of Emergency Power will continue. The suggestion of WBSEDCL has been accommodated through the definition of Emergency Power. However, the said clause 6.4 is being modified to accommodate the suggestion of CESC and to clarify the availability of power through Emergency Power and/or Backup Power.:

However as already discussed against clause 4.10 this clause 6.4 has been merged with clause 4.10 for a more comprehensive approach and as the contents of this clause are linked to the subject matter of regulation 4.10.

### **32. Clause 7.0 of Draft Open Access Regulations**

#### **32.1 Comments of Stakeholders**

##### **a) Comments of WBSEDCL**

Power connection is effected to the consumer by Distribution Licensee developing required infrastructure based on declared contract demand (CD) where N-1 provision is not followed like open access. Accordingly, WBSEDCL



has suggested deletion of the third sentence of the clause where it has been mentioned that “In case any existing consumer applies for Open Access for a quantum within the contract demand then such open access cannot be denied on the ground of non-availability of distribution system or associated transmission system availability for drawal purpose of power through Open access at drawal point.’

**b) Comments of CESC**

For safe operation at the consumer premises CESC proposed the modification of last paragraph of clause 7.0 as follows:

*‘However, if the consumer applies for Open Access for a quantum that is greater than its contract demand or if there is any problem in despatching power from Open Access source to the distribution system or associated transmission system resulting into non-delivery of power then Nodal Agency may deny the Open Access after consulting with the concerned Distribution Licensee / Transmission Licensee.’*

**c) Comments of BEL**

BEL suggests that the third sentence of the regulation 7.0 of the Draft Open Access Regulations shall be substituted as follows for better clarity:

*‘In case any existing consumer applies for Open Access for a quantum within the contract demand under which the existing consumer is operating prior to the Open Access application, then such open access cannot be denied on the ground of non-availability of distribution system or associated transmission system availability for drawal purpose of power through Open access at drawal point.’*

### **32.2 Commission’s standpoint**

WBSEDCL’s suggestion could not be accepted as N-1 provision is not related to these issues. The consumer who is drawing power under a contract demand as a normal consumer cannot be denied open access for corridor booking within such amount equivalent to contract demand for the reasons of network congestion within the distribution system as such system is already supporting the required power flow to the consumer’s premises. Thus, WBSEDCL’s suggestion is not accepted. CESC’s suggestion also cannot be considered only for the reason that he is applying for a corridor capacity above the contract demand under which the consumer was drawing power prior to the Open Access application submission. For each application it is to be checked whether open access corridor is available for applied quantum and then only a decision is to be taken. The suggestion of BEL will help enhance clarity. Accordingly, the modified clause will be as follows:

*'The technical feasibility for Open Access applied for by any Open Access Customer will be carried out only upon fulfilment of conditions under regulation 4 of these Regulations and any other Regulations as applicable from time to time. While providing medium term or Short Term Open Access, the Nodal Agency shall not compromise with the margin of different parameters of distribution systems and / or transmission lines / systems as have been provided in the State Grid Code. In case any existing consumer applies for Open Access for a quantum within the contract demand under which the existing consumer is operating prior to the Open Access application, then such open access cannot be denied on the ground of non-availability of distribution system or associated transmission system availability for the purpose of drawal of power through Open access at drawal point. However, if there is any problem in despatching power from Open Access source to the distribution system or associated transmission system resulting into non-delivery of power then such Open Access can be denied. The capacity available for Open Access shall be considered after taking into account the following factors:'*

### **33. Wrong referencing in Draft Open Access Regulations**

#### **33.1 Comments of FOSET, WBSEDCL, CESC**

FOSET, WBSEDCL and CESC has pointed the wrong referencing in clauses 7.1(b) , 7.2 (b) and 30.3(c).

#### **33.2 Commission' stand**

Considering above suggestions following modifications has been done :

- a) the said regulation no 7.6 has been replaced by 7.4 in clause 7.1(b);
- b) the said regulation no 7.7 has been replaced by 7.5 in clause 7.2(a);
- c) the said regulation no 7.6 has been replaced by 7.4 in clause 29.3(c).

### **34. Clause 7.1(g) of Draft Open Access Regulations**

#### **34.1 Comments of WBSEDCL**

WBSEDCL wants to specifically mention the load flow analysis with N-1 contingency as conceived in the present State Grid Code.

#### **34.2 Commission's stand**

If WBSEDCL's stand were to be accepted, any changes in the future in philosophy of contingency plan determination under load flow analysis in the State Grid Code would result in a dichotomy in implementation of this clause. Hence, the same has not been accepted by the Commission



### 35. Clause 7.4 of Draft Open Access Regulations

#### 35.1 Comments of stakeholders

##### a) *Comments of WBSEDCL*

WBSEDCL is of opinion while defining the methodology of working out of **capacity availability for open access in Transmission system**, the N-1 contingency criteria should be incorporated. The term Reliability Margin (RM) needs elaboration since it is not defined in Draft Regulation.

##### b) *Comments of CESC*

For clarity and better understanding CESC suggests that the definition may be modified to include reference to time period during which demand and capacity addition is being considered. Accordingly following modification in definition is suggested

*'SD = Sustained demand (peak load experienced) in MW recorded in the segment during the previous 12 months'*

*'NC = New transformer capacity in MVA expected to be added in next 12 months'*

##### c) *Comments of IEX*

IEX has referred the Total Transfer Capability (TTC) assessment based open access capacity determination formula used by National Load Despatch Centre in which Available open access capacity =  $TTC - RM - LTA/MTOA$

Where,

RM is Reliability Margin; LTA is Long term access ; MTOA is Medium Term Open Access

Accordingly, IEX requested to follow the above formula instead of what has been proposed in clause 7.4 of the Draft Open Access Regulations.

#### 35.2 Commission's stand

a) The suggestion of IEX is not acceptable as such formula is meant for short term open access in transmission system. Moreover, the formula used in clause 7.4 is more elaborate and gives a clearer picture of the transmission system availability for all type of open access.

b) The suggestions of CESC and WBSEDCL are accepted and accordingly the sub-clause (iii) of clause 7.4 shall be modified as follows:

*'For further detailing of methodology related to determination of available open access capacity, STU shall frame in SLDC Detailed Procedures / STU Detailed*

Procedures including reliability margin and contingency criteria as per State Grid Code.'

Further, the modification suggested by CESC in definitions have also been addressed by substituting existing definition of SD and NC with following definitions:

*'SD = Sustained demand (peak load experienced) in MW recorded in the segment during the previous 12 months'*

*'NC = New transformer capacity in MVA expected to be added in next 12 months'*

Moreover, for clarity in clause 16.1 and 16.2 the requirement of transfer capacity determination methodology including reliability margin and contingency criteria under SLDC Detailed Procedures and STU Detailed Procedures has been appropriately specified.

### **36. Clause 7.5 of Draft Open Access Regulations**

#### **36.1 Comments of IEX**

IEX has submitted that the SLDC, being the nodal agency for STOA, shall be more appropriate and equipped to determine the available capacity for open access to the Distribution system.

#### **36.2 Commission's stand**

It is not possible for SLDC to assess the open access capacity at the distribution level as according to clause (a), clause (b), clause (d) and clause (e) of section 32((2) of the Act read with section 2(32) of the Act SLDC is actually has authority and expertise only over the intra-state transmission system and has no operational expertise over the Distribution System of Distribution Licensee. Thus, proposal of IEX cannot be accommodated.

### **37. Clause 7.6 of Draft Open Access Regulations**

#### **37.1 Comments of WBSEDCL**

WBSEDCL suggested to modify the clause as follows:

*'Notwithstanding anything to the contrary contained in any other Regulations, while providing Open Access, the Nodal Agency shall ensure the grid security under (N-1) contingency to its satisfaction on the basis of the Act, Rules, different regulations of the Commissions and different guidelines of Authority.'*

#### **37.2 Commission's Stand**



WBSEDCL suggestion is not accepted as clause 7.6 is a generalised clause covering all aspects of ensuring grid security according to law which also includes (N-1) contingency plan.

### **38. Clause 8.1 of Draft Open Access Regulations**

#### **38.1 Comments of WBSEDCL**

WBSEDCL has referred existing provisions where distribution licensee is Nodal Agency for "Medium-Term Open Access" where both injection & drawl point is within same Distribution Licensee such as ECL, Reshmi Cement. Accordingly their suggested modified clause 8.1 is as follows:

'The Nodal Agency for arranging the Long-Term Access and Medium-Term Open Access within the State shall be the STU, if its system is used; Otherwise the Nodal Agency shall be the Transmission or the Distribution Licensee in whose system point of point of drawl and injection of electricity is located.'

#### **38.2 Commission's stand**

WBSEDCL's suggestion is not accepted as Commission intends to appoint only a neutral statutory body like the STU and SLDC as nodal agency, who do not hold a commercial interest.

### **39. Clause 8.3 of Draft Open Access Regulations**

#### **39.1 Comments of MPL**

MPL has suggested that STU shall update the open access related status in website for more transparency.

#### **39.2 Commission's stand**

MPL suggestion has been already taken care of in clause 30 of the Draft Open Access Regulations where the necessary information is being made available through website of SLDC and STU.

### **40. Clause 9.1 (a) of Draft Open Access Regulations**

#### **40.1 Comments of Stakeholders**

##### *a) Comments of SLDC*

With reference to clause 9.1(a) SLDC has pointed out that as NOAR has come into operation w.e.f 01.05.2022, any Applicant who is connected to distribution system/transmission system and seeking only Intra- state short term Open Access shall file application as per clause no 9. 1(a). This may please be considered to be specified in the clause.

**b) Comments of ITC**

ITC has brought into notice the following points

- (i) Application in Format 1 may be evaluated in light of following: (a)  
Application for interstate open Access through National Open Access Registry (**NOAR**).
- (ii) Purchase of power through Energy Exchange - Format 1 is not relevant

**40.2 Commission's stand**

SLDC's suggestion is accepted. In addition, as per rule 7(1) of Green OA Rule the Central Nodal Agency, as prescribed in the said rule, will come out with an application format for the prescribed Green Energy Open Access in consultation with Forum of Regulators. Thus, this issue has also been taken into consideration. Accordingly, the clause 9.1(a) has been modified as follows:

*'An Applicant shall, in all other cases except the cases falling under clause (g) of this Regulation, file an application, in the Format – 1 as per Annexure-1 to these regulations, together with all relevant information and documents mentioned therein to the Nodal Agency with copies to SLDC (if different from the Nodal Agency), the concerned Transmission Licensee or Distribution Licensee as the case may be. Such document shall also include the specific format as will be provided in SLDC Detailed Procedures / STU Detailed Procedures regarding critical load and necessary Backup Power as specified in regulation 4.10 of these Open Access Regulations. Such application shall also mention clearly whether Backup Power or Emergency Power is necessary.*

*Provided that for the open access applicant / Open Access Consumer, other than who has critical load, Backup Power or Emergency power is an optional choice. Open Access Consumer will be treated same as normal consumer for Backup power Or Emergency Power arrangement.*

*Provided also that for inter-state open access in short term where open access in distribution asset and/or intra- state transmission system of West Bengal is involved or Energy Exchange is involved then the application is to be submitted as per concerned regulations of CERC but the information as sought in Format-1 is to be submitted simultaneously to the SLDC immediately via mail or Fax for initiation of preparatory measures as well as for registration of information in the system that would be required for power sector planning for the State in the future.*

*Provided further that in future the application for Green Energy Open Access is to be filed in the portal set up by the Central Nodal Agency as per format that will be issued*



*by the Central Nodal Agency in accordance with rule 7 of the Green OA Rules. Such filling shall be started from a date that will be determined by the Commission through any separate order. In such case also the information as sought in Format-1 is to be submitted simultaneously to the SLDC immediately via mail or Fax for initiation of preparatory measures as well as for registration of information in the system that would be required for power sector planning for the State in the future. '*

#### **41. Clause 9.1 (b) of Draft Open Access Regulations**

##### **41.1 Comments of Stakeholders**

###### **a) Comments of SLDC**

SLDC has requested clarification - for providing concurrence to Open Access applicant or trader to avail Inter- state short term open access as per CERC ST Regulation, where RLDC is the Nodal agency, whether the non- Refundable application fees is applicable or not as per clause 9.1(b).

###### **b) Comments of ITC**

ITC suggested that full or part waiver should be given on application fee for all Customer Category wheeling power from Renewable Sources.

##### **41.2 Commission's stand**

a) Application fees specified in clause 9.1(b) is for processing the application for open access, checking the eligibility norms, carry out required load flow study for accessing network availability, identification of network strengthening etc. Hence, such application fees are required to be paid by the open access customer irrespective of inter-state or intra-state open access application for analysing the feasibility of open access through intra-state system.. Accordingly, clause 9.1(b) is modified suitably.

b) ITC' s suggestion is not acceptable as it will differentiate between consumers applying for open access in intra-state transmission system and/or distribution system of West Bengal through inter-state open access mechanism governed by CERC and the consumers applying for open access under this Open Access Regulations 2022.

#### **42. Clause 9.1 (C) of Draft Open Access Regulations**

##### **42.1 Comments of IEX**

IEX has submitted that the need of a consumer to avail open access is to optimize its power purchase costs by entering into agreements with reliable and cheap power sources with different suppliers. Under Clause 9 (1)(c) an open access consumer is restricted from entering into PPA or bilateral arrangement apart from purchase through open access, which would lead to sub-optimal utilization of Open Access capacity in the state.

#### **42.2 Commission's stand**

The point raised by IEX has merit. Thus, accordingly the clause 9.1(c) has been modified as follows.

*'If the applicant seeking Open Access is an Open Access Source for such open access then such applicant shall submit along with its application an undertaking of not having entered into multiple Power purchase agreements (PPA) or any other bilateral agreements for the same capacity (quantum of power) for which Open Access has been sought, except for Un-Requisitioned Surplus power. When the applicant is the Open Access Customer then he has to submit such undertaking from the Open Access Source in the form of a PPA or any letter from the authorized representative of Open Access Source in case of Short-Term Open Access.'*

#### **43. Clause 9.1 (f) of Draft Open Access Regulations**

##### **43.1 Comments of ITC**

IPCL has suggested that appropriate definition should be provided for 'Injection Point', 'Drawal Point',

##### **43.2 Commission's stand**

Suggestion of ITC accepted. Accordingly, the clause 9.1(f) has been modified by adding following sentences at the end of the clause.

*'For the purpose of this Open Access Regulations injection point shall mean the point where power is injected into the inter-state transmission or intra-state transmission system or distribution system, as applicable, from the Open Access Source under an open access transaction approved by the Nodal Agency against the application for such open access. Similarly, for the purpose of this Open Access Regulations the drawal point shall mean the point of the inter-state transmission or intra-state transmission system or distribution system, as the case may be, from where power is drawn by the Open Access Customer under an open access transaction approved by the Nodal Agency against the application for such open access.'*

#### **44. Clause 10.2 of Draft Open Access Regulations**



#### **44.1 Comments of Stakeholders**

##### **a) Comments of WBSEDCL**

WBSEDCL has suggested slight modification of the first sentence of clause 10.2 in following form:

‘An application for Long Term Open Access shall be made **at least** three years before the date from which such Open Access is sought.’

##### **b) Comments of MPL**

MPL suggested a new sub-regulation as follows :

‘Long term open access being a coordinated planning so processing of applications where augmentation is required can be adopted from CERC regulations.’

#### **44.2 Commission’s stand**

WBSEDCL’s suggestion is accepted. MPL’s suggestion cannot be accepted since for intra-state transmission system augmentation the STU has to co-ordinate with multiple Distribution Licensees during such planning process. Thus, the processing of application cannot be made identical with CERC Regulations.

#### **45. Clause 10.2 (b) of Draft Open Access Regulations**

##### **45.1 Comments of ITC**

ITC asks for full or part waiver should be given on fees for LTOA from renewable sources. ITC also suggested that “Regulation shall clearly state the process, approving authority, timelines for construction of dedicated transmission line etc.

##### **45.2 Commission’s stand**

Processing of LTOA application requires considerable effort and hence an application fee is being charged; moreover the Act has no provision for such type of waiver. The Draft Open Access Regulations has covered all the processes.

#### **46. Clause 10.2 (e) of Draft Open Access Regulations**

##### **46.1 Comments of WBESDCL**

WBSEDCL suggested slight modification of the clause 10.2 (e) as follows:

‘The aforesaid bank guarantee will stand discharged with the submission of bank guarantee required to be given by the applicant to the **Nodal Agency** during construction phase when augmentation / strengthening of transmission system and/or

Distribution System is required, in accordance with the provisions in the STU Detailed Procedures.'

#### **46.2 Commission's stand**

WBSEDCL's suggestion is accepted.

### **47. Clause 10.2 (g) of Draft Open Access Regulations**

#### **47.1 Comments of WBESDCL**

WBSEDCL suggested slight modification of the clause 10.2 (g) as follows:  
'If in the opinion of the Nodal Agency, Open Access cannot be allowed due to any ineligibility or because further system strengthening is essential before providing Long-Term Open Access, the Nodal Agency shall communicate the decision to the Applicant in Format-2A as per Annexure-2 within 30 days from receiving the application stating the detailed reasons which shall include detailed justification, load flow study reports in detail and all backup calculations with regard to non-availability of the concerned assets required for the Open Access. Construction of dedicated transmission line shall not be construed as augmentation / strengthening of transmission system for this purpose.'

#### **47.2 Commission's Stand**

WBSEDCL's suggestion is accepted.

### **48. Clause 10.2 (k) of Draft Open Access Regulations**

#### **48.1 Comments of Stakeholders**

##### ***a) Comments of WBSEDCL***

WBSEDCL suggested deletion of the proviso to keep parity with service connection cost paid by consumer in distribution segment and also to reduce financial burden of the other consumer. Thus, the cost of strengthening of transmission system, if any, should be borne by the Open Access consumer (i.e. no refund).

##### ***b) Comments of CESC***

CESC is of opinion that Cost incurrence should be in accordance with those applicable to normal consumers for jobs on consumer contribution under WBERC (Recovery of Expenditure for providing new connections), Regulations, 2013. Accordingly, CESC modified the proviso in following manner:



*'Provided that cost for strengthening of transmission system or distribution system shall be as per WBERC (Recovery of Expenditure for providing new connections), Regulations, 2013 read with amendments.'*

**c) Comments of FOSET**

With reference to clause (k) of regulation 10.2 of the Draft Open Access Regulations FOSET has discussed on following points:

- a) There is no binding on the distribution licensee to refund the deposited amount for the purpose of strengthening of systems by distribution licensee. There is no section of the Electricity Act 2003 by which such provision can be supported. Section 45 of the Electricity Act 2003 mandates that any fixed charge can be recovered through tariff. But this logic cannot be extended to recovers the cost of system strengthening in advance as under section 181(1) any regulation is to be consistent with the Act. Commission also cannot create any principle of differentiation among generators or licensees while fixing any charges or tariff that are to be applicable on generators and licensees. If such liberty has been given to Commission to go beyond the existing provisions of the Act, then section 181(1) of the Act would have been written as "The State Commissions may, by notifications, make regulations that are not inconsistent with the Act and rules generally to carry out the provisions of this Act."
- d) As per the Proposed Regulations the capital investment is **not done** by the distribution licensee. Thus. it is not justifiable to declare such asset to be owned by distribution licensee. However, if the deposited amount is refunded then such asset can be owned by the distribution licensee.
- e) Why not any interest will be paid by the concern licensee for the deposit make by the applicant as such deposit is nothing but providing capital to the transmission licensee as a loan. **Thus, it is suggested that there should be an arrangement of interest to be paid by the concern licensee to the applicant till the deposited amount is being refunded in seventy two instalments.**

Based on above arguments, FOSET proposed that the said clause 10.2(k) of the Draft Open Access Regulations may be substituted as follows;

*'In case the system requires strengthening for Long-Term Open Access, subject to approval of such strengthening by the STU (if different from Nodal Agency), the estimated cost for such strengthening as intimated under clause (i) above shall be paid by the Applicant to the concerned Licensee(s) where such strengthening is required for exclusive use of the Applicant at that point*

*of time.*

*Provided that for strengthening of transmission system or distribution system of 11 kV and above, such cost paid in advance shall be refunded by the Licensee(s) concerned to the Long-Term Customer in seventy-two equal monthly instalments along with interest at the rate of interest as applicable for security deposit.*

*Provided further that any such extension or augmentation of the network will become the asset of the Licensee(s).'*

While suggesting such modification of the clause 10.2(k) FOSET is of opinion that as the cost for such system strengthening will be approved by a **statutory body** STU thus the justification of such cost may be considered to be reasonable subject to fulfilling of their suggestions in paragraph (7) of their submission where it has been mentioned that 'in this Proposed Regulations the STU has number of independent roles along with other statutory roles that had been bestowed in the State Grid Code and other regulations of the Commission. Thus, it is the high time that Commission shall arrange for ringfencing of the STU authority in the same fashion that has been done for SLDC. The single entity of STU and WBSETCL may result into undesirable influence of commercial interest of WBSETCL in the functioning of STU.' In the paragraph (7) of their submission FOSET continued to says that 'Moreover, with the competitive bidding arrangement that has been adopted in the country for building up of different transmission corridor under the intra-state transmission network such ringfencing of statutory authority STU is needed further. Accordingly, a separate order for ring fencing of STU is require to be issued by the Commission at earliest.'

## **48.2 Commission's stand**

Going through the submission of different stakeholders Commission draws reference to West Bengal Electricity Regulatory Commission (Recovery of Expenditure for providing new connections), Regulations, 2013 for recovery of cost. The Commission finds that there is no provision of recovery of cost along with interest in the aforesaid regulations. It is further found that the said clause 10.2(k) is compatible with the West Bengal Electricity Regulatory Commission (Recovery of Expenditure for providing new connections), Regulations, 2013. Thus, Commission has decided to not make any change in the said clause.

## **49. Clause 11.2 (c) of Draft Open Access Regulations**

### **49.1 Comments of MPL**



MPL has suggested that all the applications received in a month within certain cut-off date in line with CERC regulations to be considered together for processing while assessing the transmission capacity availability. In case of applications received is more than available capacity, the approval may be on pro-rata basis instead of first come first serve.

#### **49.2 Commission's stand**

Commission has decided to consider the applications on first cum first serve basis to avoid unnecessary delay in approving open access applications.

### **50. Clause 12.1 of Draft Open Access Regulations**

#### **50.1 Comments of stakeholders**

##### ***a) Comments of IEX and MPL***

IEX pointed out that the inter-state STOA must be treated in accordance with the CERC (Open access in inter-state transmission) regulations, 2008 and amendments thereof. The CERC regulations only mandate two (2) basic necessities viz. (i) existence of infrastructure necessary for time-block-wise energy metering and accounting in accordance with the provisions of the Grid Code in force, and (ii) availability of surplus transmission capacity in the State network. According to IEX including any other conditions to verify eligibility for inter-state STOA will not be aligned with the CERC regulations and will defeat the purpose of open access.

IEX and MPL is of opinion that if the SLDC is to seek ALDC's views, in absence of any communication from ALDC within the prescribed timeline, the consent should be deemed to have been granted.

In view of such submission IEX and MPL requested for changes.

##### ***b) Comments of WBSEDCL***

According to WBSEDCL as clear three days will be required by ALDC for data collection from respective sites and technical analysis on the basis of such data thus WBSEDCL has suggested the modification of the proviso of such clause 12.1 as below:

‘Provided that in respect of a consumer connected to a distribution system seeking inter-State short-term Open Access, the SLDC, before giving its consent as required under the CERC ST Regulations, shall consult the ALDC of the respective distribution licensees and get their **concurrence** for giving such consent. ALDC have to submit their **concurrence** within 3 working days from receiving the request from SLDC in such format as provided in the SLDC Detailed Procedures. If Open

Access is not being granted, then such decision will be intimated to the Nodal Agency under concerned CERC ST Regulations in a manner as specified in the CERC ST Regulations.'

## 50.2 Commission's stand

- a) Suggestion of IEX and MPL for deemed granting of consent by ALDC in absence of the views / suggestion of ALDC is noted. The said clause 12.1 has not empowered the ALDC to give any consent. It can give only views and suggestions. Moreover, the purpose of this clause 12.1 is for assessing whether capacity of the transmission system and distribution system of the concerned licensees related to such open access is available and whether the appropriate metering and other infrastructure inclusive of accounting infrastructure needed for such open access is available. As according to clause (a), clause (b), clause (d) and clause (e) of section 32((2) of the Act read with section 2(32) of the Act SLDC is actually has authority and expertise only over the intra-state transmission system and has no operational expertise over the Distribution System of Distribution Licensee thus the views and suggestion from distribution licensee is essential. But to ensure Open Access Consumers interest SLDC has been bestowed with the power to give consent as explained in subsequent paragraph (b) .
- b) WBSEDCL's comments have been noted. As in the CERC ST Regulations the SLDC has been provided with 3 working days to convey its concurrence or 'no objection' or prior standing clearance, as the case may be, to the applicant by e-mail or fax, in addition to any other usually recognised mode of communication, within three (3) working days of receipt of the application. Thus, ALDC has to communicate its views/ suggestions within 2 working days. The power of concurrence has been given with SLDC in CERC ST Regulations and thus in this clause 12.1 also such power of concurrence has been bestowed on SLDC with additional objective to ensure a decision by a neutral statutory body that has no commercial interest. Based on such views/ suggestions of ALDC, SLDC will decide and give its concurrence or 'no objection' or prior standing clearance as specified in CERC ST Regulations or denied Open Access if system does not permit. In absence of any views from ALDC it will be construed that there is no problem from distribution side on granting approval of the short term open access application. This also is in line with the philosophy followed in CERC ST Regulations. However, when short-term open access has been applied for the first time by any person, the buyer or the seller, the ALDC shall convey to the SLDC such concurrence or 'no objection' or prior standing clearance, as the case may be, within four (4) working days of receipt of the application by e-mail or fax, in addition to any other usually recognised mode of communication. Accordingly, the modified proviso of clause 12.1 will be as follows:

*'Provided that in respect of a consumer connected to a distribution system seeking inter-State short-term Open Access, the SLDC, before giving its consent as*



*required under the CERC ST Regulations, shall consult the ALDC of the respective distribution licensees and get their views/ suggestions for giving such consent. ALDC has to submit their views/ suggestions within 2 days from receiving the request from SLDC in such format as provided in the SLDC Detailed Procedures and within 4 working days from receiving the request from SLDC when such application for short-term Open Access has been applied for the first time. In case of non-receipt of any views and suggestions from the ALDC it will be construed that there is no problem from Distribution Licensee's side in granting such open access. If Open Access is not granted by SLDC, then such decision will be intimated to the Nodal Agency under concerned CERC ST Regulations in a manner as specified in the CERC ST Regulations. "*

**51. Clause 12.2.1 of Draft Open Access Regulations**

**51.1 Comments of ITC**

According to ITC clarity is required on whether scheduling of power for each day in a month would be considered as separate transaction even if day wise details are mentioned in monthly application.

**51.2 Commission's stand**

The point raised by ITC on scheduling charge will be clear from scheduling charges as mentioned in Schedule of the Open Access Regulations 2022..

**52. Clause 12.2.2 (f) of Draft Open Access regulations**

**52.1 Comments of IPCL**

According to IPCL the Contract Demand should be reduced to the extent of Short Term OA sanctioned to Open Access Consumer at least during the tenure of the Short Term Open Access.

**52.2 Commission's stand**

This proposal of IPCL cannot be accepted as open access consumer's right cannot be differentiated from that of a normal consumer on the grounds of availing open access where both have right to have contract demand at any level if they meet the other conditionalities as per applicable regulations. Moreover, any person can have mixture of open access drawal as well as drawal under consumer mode.

### **53. Clause 12.2.4 (a) of Draft Open Access regulations**

#### **53.1 Comments of stakeholders**

##### ***a) Comments of ITC***

ITC suggested that Bank Guarantee should be applicable for only those applicants who are not paying the required charges in advance as mentioned in clause 12.2.4(v).

##### ***b) Comments of IEX***

IEX pointed out that as per the "Procedure for Scheduling the ISTS STOA Bilateral Transactions" of POSOCO, approved by the Hon'ble CERC, the day-ahead bilateral transaction applications for ISTS STOA can be received within three days prior to date of commencement of and up to 15.00 hrs. of the day immediately preceding the date of commencement of the Open Access. Accordingly, IEX request the timelines may be aligned to the practice in inter-state open access.

#### **53.2 Commission's stand**

- a) The suggestion of ITC of non-applicability of bank guarantee in case of advance payment is noted and accordingly the regulations are modified by providing following proviso at the end:

‘Provided where the applicants have agreed to pay open access related charges in advance as per clause 12.2.4(v) then such applicants will not be required to furnish any Bank Guarantee.’

- b) IEX's proposal for changes in the timeline is also accepted.

### **54. Clause 12.2.4 of Draft Open Access regulations**

#### **54.1 Comments of Stakeholders**

##### ***a) Comments of IPCL***

IPCL is of opinion that Day-Ahead purchase by Open Access Consumer should not be allowed or if allowed should only on RTC basis so that the Open Access Consumer could not making any gaming by drawing cheaper power during low rate period like night time/ weekends and purchase from Licensee when the market rates are high during peak hours.

IPCL also wants clarification on the process where only Open Access Consumers and Generating Stations connected to a Transmission System shall be scheduled by SLDC, and other Consumers and Generating Stations connected to the Distribution System should in addition submit their schedule to the Distribution Licensee.



**b) Comments of ITC**

Though against this particular clause ITC has no comments but in general ITC has argued for TOD based tariff structure for Open Access Consumer, an issue linked to this clause. ITC is of the opinion that TOD based Tariff structure should be applicable for Open Access Consumer to introduce TOD meter as a Non-Discrimination provision for providing Open Access and for promotion of competition for availability of cheaper and reliable power supply.

**54.2 Commission's Stand**

- a) The IPCL's suggestion that the Open Access Consumer should not be allowed or if allowed should only on RTC basis to solve their apprehension of gaming is already addressed as Open Access Consumers are not allowed TOD meter and TOD based tariff structure. This has been done so that the Open Access Consumers do not impose the burden of another form of cross-subsidy on normal consumers.
- b) The Open Access Consumers and Generating Stations connected to distribution system of distribution licensee are required to give the copy of the schedule to ALDC of Distribution Licensee also for proper monitoring and taking necessary action considering DSM issues and other system operational and commercial issues.

**55. Clause 12.2.5 of Draft Open Access regulations**

**55.1 Comments of CESC**

CESC has pointed out that in the event of emergency there should be provision of locating or arranging another source of power to meet requirement in real time so that load curtailment does not become necessary. With above objective and with introduction of Real Time Market, the suggested modification by CESC of first sentence of clause 12.2.5 are as follows:

*'In the event of emergency, the beneficiaries / buying utility may locate a source of power to meet Short Term emergency requirement on the same day as well as in real time and submit the application for Open Access to the SLDC.'*

**55.2 Commission's stand**

CESC's suggestion has been accepted.

**56. Clause 12.3 of Draft Open Access regulations**

**56.1 Comments of CESC**

According to CESC it is not clear which loads are to be designated as critical loads. Distribution licensees may be empowered to designate loads as critical considering various parameters.

## **56.2 Commission's stand**

Commission's stand on this issue has been already given in paragraph 9.2 against clause no 2.1(q) and paragraph 23.2 against clause no 4.10. Accordingly, the modified clause 12.3 will be as follows:

'For such loads, the Open Access Customer shall have to enter into agreements for Backup Power separately where applicable as per regulation 4.10 of these regulations and submit such agreement to the Nodal Agency prior to operationalizing the Open Access.'

## **57. Clause 13 of Draft Open Access regulations**

### **57.1 Comments of stakeholders**

The relevant comments of the Stakeholders are as follows:

#### **a) *Comments of IEX and Star Cement Ltd***

Both IEX and Star Cement Ltd has pointed out that the power exchange will apply for NOC through NOAR which should be rectified as open access applicant is required to apply through NOAR.

#### **b) *Comments of MPL***

According to MPL in case of no response from SLDC in due time it has to be considered that the application has been deemed approved.

### **57.2 Commission's stand**

- a) The suggestion of IEX and MPL has been noted and accordingly the first sentence of second paragraph of clause 13 has been modified as follows:

*'On getting application for short-term Open Access from applicant through National Open Access Registry (NOAR), SLDC shall give a prior no-objection to the applicant for power exchange based on assessment of capacity availability, which will be treated as final No Objection Certificate (NOC) for the periods for which SLDC has issued the NOC. '*

- b) The proposal of MPL of deemed approval in case of no response regarding issuing of NOC within due time has been noted. The suggestion of MPL has been considered and accordingly the clause is modified.



## 58. Clause 14(c) of Draft Open Access regulations

### 58.1 Comments of Stakeholders

#### a) *Comments of CESC*

In submission of CESC it is mentioned that Open Access is availed by generating companies, end consumers and distribution licensees to transact energy considering various unique factors e.g. diurnal load variation, seasonal load variation, availability of raw material / inputs for energy generation and so on. And even after implementation of the Electricity Act, 2003 for close to two decades, Open Access still is in nascent stage. Putting in restrictive clauses like mandatory conversion of repetitive short term open access to long term will defeat the purpose of encouraging open access. The provisions of this Regulation are not in sync with the CERC Open Access Regulations where there is no restriction on seeking short term open access on a repetitive basis.

#### b) *Comments of WBSEDCL*

*WBSEDCL sought explanation on the following portion of the regulation 'on a repetitive basis from any sources other than power exchanges for a period more than six months.' WBSEDCL also highlighted that power Exchanges have three types of product viz. DAM, RTM & TAM where first two are collective transaction & last one is bilateral transaction. All the transactions in Energy Exchange are scheduled through STOA mode. Membership of any Energy Exchange means a contract with a source which can supply any quantum of power within No Objection Certificate (NOC) allowed quantum by SLDC. So, STOA through Exchange should not be excluded from the purview. Accordingly, WBSEDCL suggested modification of clause 14(c) as follows:*

*'Notwithstanding anything contrary contained in these regulations in the event the Open access customer including a licensee draws power through Short Term Open Access (STOA) on a repetitive basis from any sources including power exchanges for a period more than six months in a year they shall be required to make payment of transmission charges payable by a LTOA customer on capacity basis compulsory.*

*Provided for this purpose maximum quantum scheduled during the period shall be treated as contracted capacity while computing the LTOA charges from the date of first application.'*

#### c) *Comments of ITC*

According to ITC following issues are there:

- (a) Applicability of LTOA transmission charges for Short Term customers will put additional burden and can prohibit consumers from Open Access.
- (b) Clarification is required that if only transmission charges of LTOA will be applicable or other charges (application fee etc.) of LTOA will be applicable.
- (c) Further open access power for more than Six months should be construed as MTOA and not LTOA.

ITC also suggested that this clause can be waived off for Open Access from Renewable sources as power generation from renewable sources depends upon climatic condition and hence STOA consumer cannot apply for open access at a time.

**d) Comments of MPL**

MPL wants clarification that whether the word “repetitive” in the said clause indicates continuous or aggregated in a year? According to MPL the Long Term Open Access (LTOA) charges payable by Short Term (ST) customers, will put additional burden and can prohibit consumers to go for open access transactions for more than 6 months. MPL has requested to waive off these charges as in CERC Regulations.

**e) Comments of FOSET**

FOSET has provided following observations sub-clause (c) of clause 14 of the Draft Open Access Regulations:

- a) There is need of a definition of repetitive basis as it has been kept open ended. Otherwise, it may generate a cause of corruption and legal complexity.
- b) The definition of Open Access Customer in sub-clause (pp) of clause 2.1 of the Proposed Regulations already includes the licensee. Thus, there is no necessity of mentioning the words “including a licensee” in the said sub-clause (c) of 14 of the Proposed Regulations. This unnecessary emphasising of a particular segment like licensee in reverse way may create future legal complexity.
- c) The sub-classification of power-exchanges for the purpose of the particular sub-clause (c) of clause 14 without mentioning any reasons elaborately in this Proposed Regulations itself or in any explanatory note will not be acceptable under the touching stone of legal prudence. Specially by drawing power by any person through exchange in repetitive way through short term open access over a period of more than six months such person is being given openly an advantage in transmission charges of short-term open access in comparison to



a person drawing power through bilateral mechanism under short-term open access. This type of differentiation is not at all permissible under the Act where differentiation in tariff is allowed only on specific ground under section 62(3) of the Act and that is to only for consumers but not to any licensee or generating company. But this principle of differentiation under section 62(3) of the Act neither can be extended on a generator or licensee nor any additional ground of differentiation beyond those mentioned in such section can be introduced in any regulations of the Commission as under section 181(1) of the Act any regulation is to be consistent with the Act. If such liberty has been given to Commission to go beyond the existing provisions of the Act, then section 181(1) of the Act would have been written as "The State Commissions may, by notifications, make regulations that are not inconsistent with the Act and rules generally to carry out the provisions of this Act."

- d) In case of repetitive short term open access for a period more than 6 months as per Central Electricity Regulatory Commission (Open Access in inter-State Transmission) Regulations, 2008 (in short will be called as "CERC OA Regulations 2008") there is no arrangement of short-term charges applicable on capacity basis instead of actual energy flow. Now if any consumer or generator applies under Inter-State Open Access governed by CERC OA Regulations 2008 where the intra-state transmission system or distribution system of West Bengal will also be involved then he has to be allowed Open Access in the consecutive month as per CERC OA Regulations 2008 and for him the applicable transmission charges for intra-state is to be as per Rs / Mwhr in pursuance to regulation 16(2) of the CERC OA Regulations 2008. In case if the intra-state transmission charges is not considered in Rs/Mwhr by state commission then the applicable intra-state transmission charges by such regulation will be Rs 80/Mwhr. WBERC has/had never challenged such CERC OA Regulations 2008 and in practice for inter-state short term open access SLDC had carried out such direction of regulations of CERC for using intra-state transmission assets through inter-state open-access mechanism as per CERC OA Regulations 2008 by applying Rs 80/Mwhr till the publication of regulation 62/WBERC, because the existing regulation 35/WBERC, i.e., West Bengal Electricity Regulatory Commissions (Open Access) Regulations, 2007 ( In short will be called as "WBERC OA Regulations 2007") has provided the short term open-access transmission charges in Rs/MW/day as per regulation 14.3.1(b) of the existing regulation 35/WBERC. Ultimately Commission has modified such WBERC OA Regulations 2007 vide 62/WBERC, i.e., West Bengal Electricity Regulatory Commissions (Open Access) (Amendment) Regulations, 2019 where the short term transmission charges has been modified to paisa/unit to align with the requirement of Rs/Mwhr under regulation 16(2) of CERC OA Regulations 2008. By introduction of sub-clause (c) of clause 14 of the Proposed Regulations



WBERC is again resorting to a complexity that had been existing prior to introduction the regulation vide 62/WBERC.

- e) In fact, WBERC has insisted on the requirement of alignment between regulations of CERC and WBERC while framing different regulations and recently has emphasised it while framing West Bengal Electricity Regulatory Commissions (Deviation Settlement Mechanism and related Matters) Regulations, 2021. While framing regulation no 71/WBERC Commission has made alignment with Central Electricity Regulatory Commission (Terms and Conditions for Renewable Energy Certificates for Renewable Energy Generation) Regulations, 2022 in the context of the definition of renewable energy sources though the such Regulations of CERC has never speaks of such requirement of alignment. But by introducing sub-clause (c) of clause 14 of Proposed Regulations such necessity of alignment principles between CERC OA Regulations 2008 and Proposed Regulations has been simply denied. This open access being an issue related to any grid code thus the alignment is also required as per clause (h) of section 86(1) of the Act between CERC OA Regulations 2008 and Proposed Regulations.
- f) Now by again introduction of transmission charge on capacity basis **under short-term open access for a period more than six months in a year** in this Proposed Regulations, following irrationalities have been generated:
  - i) Though regulation 16(2) of CERC OA Regulations 2008 insists for alignment in units of charges/tariff between regulations of state commissions and CERC, the said sub- clause (c) of clause 14 deviate for such requirement as the CERC OA Regulations 2008 is as per actual energy consumption/transmission basis whereas such sub- clause (c) of clause 14 of Proposed Regulations is on capacity basis.
  - ii) This sub- clause (c) of clause 14 of Proposed Regulations create same dichotomy between the CERC OA Regulations 2008 and the Proposed Regulations as it has been existed earlier prior to introduction of regulation 62/WBERC as described in para (d) above. Due to this sub- clause (c ) of clause 14 of Proposed Regulations the open access customers using intra-state transmission assets under the inter-state open access governed by CERC OA Regulations 2008 will pay @ of Rs 80 / Mwhr or Short term open access charges determined by WBERC in Rs/ Mwhr, as will be decided by the billing authority, **for amount of energy transmitted as per CERC OA Regulations 2008** and the intra-state transmission asset users availing short term open access mechanism under the intra-state transmission assets governed by Proposed Regulations will pay transmission charges on capacity basis. Thus, a discrimination between these two sets of Open Access Customers will arises which can never be defended as a reasonable differentiation under section 62(3) of the Act. This principle of differentiation under section 62(3) of the Act as applicable



on consumer tariff neither can be extended on a generator or licensee nor any additional ground of differentiation beyond those mentioned in such section can be introduced in any regulations of the Commission as under section 181(1) of the Act any regulation is to be consistent with the Act. Commission also cannot create any other principle of differentiation among generators or licensees while fixing any charges or tariff that are to be applicable on generators and licensees. If such liberty has been given to Commission to go beyond the existing provisions of the Act, then section 181(1) of the Act would have been written as "The State Commissions may, by notifications, make regulations that are not inconsistent with the Act and rules generally to carry out the provisions of this Act." ‘

On the basis of above argument FOSET has requested for removal of that sub-clause (c) of clause 14 of the Draft Open Access Regulations while finalising Open Access Regulations

## **58.2 Commission's stand**

In order to maintain consistency with CERC OA Regulations 2008 and also to avoid disparity between equally placed Open Access Consumers using State Grid assets through Inter-state Open Access application and Open Access Consumers through Intra-state Open Access application for using on intra-State transmission and Distribution System only, Commission has decided to remove the sub-clause (c) of clause 14.

## **59. Clause 15.1(b) of Draft Open Access regulations**

### **59.1 Comments of WBSEDCL**

WBSEDCL has suggested a modified clause 15.1(b) as follows:

‘The Connectivity Agreement of a consumer shall have a provision regarding Backup Power and/or Survival Power’.

### **59.2 Commission's stand**

Commission has noted the suggestion of WBSEDCL and modified the clause 15.1(b) as follows

‘The Connectivity Agreement of a consumer shall have a provision regarding Backup Power and/or Emergency Power as and where required.’

Additionally, wherever the agreement of Backup Power requirement is mentioned in other clause, it is always also covered alternatively through Open Access Agreement and Connectivity Agreement.

## **60. Second Paragraph of Clause 15.1(d) of Draft Open Access Regulations**

### **60.1 Comments of WBSEDCL**

WBSEDCL pointed out that connectivity agreement is the primary requirement in granting OA. Moreover, for registration in NOAR platform connectivity agreement is mandatory. So, under any condition OA cannot be granted without Connectivity Agreement.

### **60.2 Commission's stand**

Instead of deletion of the said second paragraph of the clause 15.1(d) as per suggestion of WBSEDCL, Commission has decided that at the end of the said second paragraph of clause 15.1(d) a sentence shall be added as follows:

*'Till the Standard Connectivity Agreement as per clause 15.11 of these regulations is made available, the connectivity agreement as per existing format of the concerned licensee shall be used to sign the connectivity agreement which will be subsequently replaced by the format of Standard Connectivity Agreement upon its publication.'*

## **61. Clause 15.2(b) of Draft Open Access regulations**

### **61.1 Comments of ITC**

ITC refers Electricity Rules 2005 where it is mentioned that 'not less than fifty one percent of the electricity generated in Captive Generation Plant on an annual basis is to be consumed for captive use'. Thus as, per ITC the limit of 100% should be changed to 51%.

### **61.2 Commission's stand**

Commission has noted the ITC's suggestion and accordingly modified the clause as follows:

*'For the applicant whose Open Access source is a Captive Generating Plant of which the applicant is the user of 100% power that is meant for captive use from such sources, no such PPA is required. However, the documentary evidence of 100% use of part of generation meant for captive use along with the share of ownership in the Captive Generating Plant is to be submitted along with the application for Open Access.'*

## **62. Clause 15.2(c) of Draft Open Access regulations**



### **62.1 Comments of ITC**

According to PPA between two different locations of same Company may not be feasible. There can be a Bilateral Agreement.

### **62.2 Commission's Stand**

There is no difference between bilateral agreement for sale/purchase of power and an agreement termed as PPA. Thus, no change is required in the said clause.

## **63. Clause 15.3 of Draft Open Access regulations**

### **63.1 Comments of Star Cement Limited**

Star Cement Limited has suggested that Backup Power for Open Access Consumer may not be required, since, the Open Access Consumer shall procure power through Open Access along with from the Distribution Licensee simultaneously. Star Cement Limited has also suggested that for an embedded consumer of a distribution licensee availing open access shall be billed on net-metering basis.

### **63.2 Commission's Stand**

It has been already mentioned that backup power is optional choice to an Open Access Consumer except those Open Access Consumer require critical load as per clause 4.10 of the Open Access Regulations 2022. Thus, the query of Star cement is clarified. The suggestion of Star Cement Limited of net metering for embedded Open Access Consumer is not acceptable as it will affect the Distribution licensee's financial health as well as tariff structure which is not desirable.

## **64. Clause 15.3(a) of Draft Open Access regulations**

### **64.1 Comments of WBSEDCL**

WBSEDCL suggested the modification of first sentence of clause 15.3(a) as follows :

“An applicant, who has been permitted to avail Long-Term Open Access or Medium-Term Open Access & **Short Term Open Access** to the transmission and/or distribution system of the State Grid by the Nodal Agency, shall enter into an Open Access agreement with the STU or a tripartite agreement with STU and relevant transmission / distribution License, in accordance with the provisions as may be made in the STU Detailed Procedures.’

## **64.2 Commission's Stand**

WBSEDCL's suggestion is accepted.

## **65. Clause 15.3(b) of Draft Open Access regulations**

### **65.1 Comments of FOSET**

The FOSET has raised certain points which are given below:

'The regulation 15.3(b) of the Proposed Regulations, it has been mentioned that the Additional Transmission Asset Creation Agreement and/or Additional Wheeling Asset Creation Agreement is to be signed in accordance with regulation 15.4 of these Open Access Regulations where such infrastructure will be created only for Long-Term Open Access or Medium-Term Open Access.

But above such type of provision is existed for Long-term Open Access only in the Central Electricity Regulatory Commission (Grant of Connectivity, Long-term Access and Medium-term Open Access in inter-state Transmission and related matters) Regulations, 2009 (in short will be called as CERC OA Regulations 2009). Under CERC OA Regulations 2009 if any consumer asks for medium-term inter-state open access and system strengthening is required then in such case legal complexities will arise as CERC OA Regulations 2009 has no such facility of system strengthening whereas this Proposed Regulations speaks of that. Moreover, the regulation 15.4 is only applicable in case of Long-Term Open Access. Thus, in order to keep parity with inter-state transmission open access and also with regulation 15.4 of this Proposed Regulations, the above regulation 15.3(b) may be kept for Long Term Open Access only and will not apply for medium term open access.' Accordingly, the proviso of regulation 15.3(b) shall be read as

*'Provided such infrastructure will be created only for Long-Term Open Access.'*

### **65.2 Commission's stand**

Suggestion of FOSET is accepted.

## **66. Clause 15.3(c) of Draft Open Access regulations**

### **66.1 Comments of WBSEDCL**

WBSEDCL has mentioned that in real time, Distribution Companies may be compelled / ready to supply entire requirement of power to Open Access consumer without



restriction (beyond critical load, if less declared in application) for avoiding Law & Order problem in the State / safety issues due to outage or less power flow from open access source. Accordingly, WBSEDCL suggested modified clause 15.3(c) as follows.

‘For an Open Access Consumer, the Open Access Agreement shall clearly indicate the treatment of Backup Power. Nodal agency can insist for Backup Power for critical loads where the disruption of supply may lead to law & order problem or safety hazards. Open Access Customer shall have to enter into agreements for Backup Power, as the case may be, separately and have to submit such agreement to the satisfaction of the Nodal Agency prior to operationalizing of the Open Access.’

## **66.2 Commission’s stand**

Considering the stand already taken in this SOR against clause 2.1(q) and clause 4.10 respectively and in order to ensure promotion of Open Access as per Act and to remove the possibilities of any access barrier, clause 15.3 (c) is modified as below:

*‘For an Open Access Consumer, the Open Access Agreement shall clearly indicate the treatment of Backup Power in accordance with regulation 4.10 of these regulations. Open Access Customer shall have to enter into agreements for Backup Power separately or as a part of Open Access Agreement or as part of connectivity agreement and shall have to submit such agreement to the satisfaction of the Nodal Agency prior to operationalizing of the Open Access.’*

## **67. Clause 15.5 of Draft Open Access regulations**

### **67.1 Comments of Stakeholders**

#### **a) Comments of Star Cement**

Star Cement has suggested that said clause may be made applicable for long term and medium term open access customer and not consumer.

#### **b) Comments of WBSEDCL**

WBSEDCL is of view that Backup power may be provided as per “Emergency Supply” tariff as determined in Tariff Order (along-with MVCA) or any rate separately determined by Commission. Moreover overdrawal beyond approved Back-up power will be 150% of normal rate of above stated Backup power.

WBSEDCL is also of opinion that Backup power requirement should be considered for entire open access period due to reason stated at 2.1 (q) above and not limited to maximum period 42 days for reason stated above. Hence this clause 15.5 may be deleted.

**c) *Comments of IPCL***

IPCL is of the view that for backup power requirements over and above a specified limit, the applicable backup charges should be prohibitive to discourage dependence on Distribution Licensee for such power. Thus, it should be at least 2 times the applicable tariff for that category and not temporary charges as specified in the Regulations. Moreover, IPCL is of opinion that backup charges should be based on a framework and not determined based on mutual agreement between the consumer and the Distribution Licensee and should have adequate annual escalations to protect small/non open access consumers and compensate the DISCOM for backup services and is easy to implement and levy.

**d) *Comments of BEL:***

BEL has submitted following arguments on clause 15.5 of Draft Open Access Regulations:

‘From this clause (e) of regulation 15.3 of the Proposed OA Regulations 2022 read with definition of Backup Power at clause (g) of regulation 2.1 of the Proposed OA Regulations 2022 clearly meant that Backup Power is an power source which an Open Access Consumer avail as a normal consumer by paying demand charge on regular basis. Open Access Consumer being simultaneously have an identity of consumer also as per the definition of Consumer in the Act. Thus, correctly in the clause (e) of regulation 15.3 of the Proposed OA Regulations 2022 provision has been kept of getting the facility of power supply as a normal consumer in the form of Backup Power by regularly paying demand charge. In fact, the two sets of consumers (one normal consumer and another consumer reserving his demand through demand charge) under same category of consumer cannot be differentiated as section 62(3) of the Act does not permit such type of differentiation. Any additional ground of differentiation beyond those mentioned in such section 62(3) of the Act cannot be introduced in any regulations of the Commission as under section 181(1) of the Act regulation of the Commission is to be consistent with the Act. If such liberty has been given to Commission to go beyond the existing provisions of the Act, then section 181(1) of the Act would have been written as “The State Commissions may, by notifications, make regulations that are not inconsistent with the Act and rules generally to carry out the provisions of this Act.” In such background in regulation 15.5 of the Proposed OA Regulations 2022 neither any restriction on period of Backup Power drawal in consumer mode by Open Access Consumer can be imposed by differentiating with normal consumer nor any temporary rate of charges separate from the charges under which such open access consumer is entitled as normal consumer under Backup Power facility by giving regular demand charge can be imposed. ‘



Based on such argument BEL has suggested that the regulation 15.5 of the Draft Open Access Regulations may kindly be changed in the following manner:

*‘In cases of outages of Open Access Source supplying power for any reason whatsoever to open access customer under open access, Backup Power arrangements should be provided by the distribution licensee, subject to the load shedding as is applicable to the embedded consumer of the licensee and the licensee shall be entitled to collect tariff as per prevailing schedule for the Category of Consumer under which the Open Access Consumer is considered as normal consumer and on the basis of which his demand charge is applied.*

*For the purpose of these regulations for Open Access Customer the tariff of backup power will be the same tariff as is applicable for him as a normal consumer. ‘*

e) **Comments of FOSET**

The views of FOSET on clause 15.5 of the Draft Open Access Regulations is almost same as that of BEL but suggested certain conditions in their suggested modified regulations

*‘In cases of outages of Open Access Source supplying power for any reason whatsoever to open access customer under open access, Backup Power arrangements should be provided by the distribution licensee, subject to the load shedding as is applicable to the embedded consumer of the licensee and the licensee shall be entitled to collect tariff as per prevailing schedule for the Category of Consumer under which the Open Access Consumer is considered as normal consumer and on the basis of which his demand charge is applied.*

*For the purpose of these regulations for Open Access Customer the tariff of backup power will be the same tariff as is applicable for him as a normal consumer. But he will not be entitled for TOD scheme. If he belongs to a category of consumer for whom non-TOD scheme is not available then his tariff will be the tariff of normal period of TOD scheme and will be treated as non-TOD scheme only. ‘*

## 67.2 Commission’s Stand

Considering certain merits of the above suggestions and the nature of the Backup Power the clause 15.5 has been modified as follows:

*‘In cases of outages of Open Access Source supplying power for any reason whatsoever to open access customer under open access, Backup Power arrangements should be*

*provided by the distribution licensee, subject to the load shedding as is applicable to the embedded consumer of the licensee. The licensee shall be entitled to collect tariff for such Backup Power as per prevailing schedule of tariff for the category of consumer under which such consumer otherwise belongs and on the basis of which his demand charge is applied for the entire period of the Open Access. Such Backup Power will be applicable for the entire period of Open Access mentioned in the Connectivity Agreement or Open Access Agreement or Backup Power Agreement as the case may be.*

*For the purpose of these regulations for Open Access Customer the tariff of backup power will be the same tariff as is applicable for him as a normal consumer. But he will not be entitled for TOD scheme. If he belongs to a category of consumer for whom non-TOD scheme is not available then his tariff will be the tariff of normal period of TOD scheme and will be treated as non-TOD scheme only.'*

It is also made clear that the tariff of both Backup Power and Emergency power will be under framework of Tariff Regulations. This option of backup power is available as an optional choice to Open Access Consumer. The Backup Power arrangement has been provided in line with the provision of standby power as per Paragraph 8.5.6 of Tariff Policy and rule 9(4) of Green OA rules. The suggestion of Star Cement is not accepted, Consumer is the sub-set of Open Access Customer, and hence the regulation shall apply accordingly.

## **68. Clause 15.6 of Draft Open Access Regulations**

### **68.1 Comments of stakeholders**

#### ***a) Comments of ITC***

According to ITC the timeline considered may not be feasible for Open Access consumer who is willing to set up new plant. Hence the timeline shall be determined based on the details such as Project Cost, Plant Capacity etc.

#### ***b) Comments of Star Cement Limited***

Star Cement Limited has suggested that such petitions may be treated on priority basis and may be disposed-off within 2 weeks.

### **68.2 Commission's Stand**

ITC could not provide any specific time frame and moreover open access agreement will be done only after selection of open access source. The suggestion of Star Cement Limited could also not be accepted as the time line of disposing any petition by Commission will depends on the content of the petition.



## **69. Clause 15.9(b) of Draft Open Access Regulations**

### **69.1 Comments of CESC**

CESC has expressed that the standard agreement will also be executed between Transmission Licensee and any Open Access Consumer/Open Access Customer, if required. Accordingly, the provided a modified clause 15.9 (b) as follows:

*'....b) Standard Open Access Agreement between Distribution Licensee and any Open Access Consumer/Open Access Customer as well as between Transmission Licensee and any Open Access Consumer/Open Access Customer.'*

### **69.2 Commission's Stand**

CESC's suggestion is accepted with certain modification and accordingly clause 15.9(b) is as follows:

*'....b) Standard Open Access Agreement between Distribution Licensee and any Open Access Consumer/Open Access Customer as well as between Transmission Licensee and any Open Access Consumer/Open Access Customer, where applicable.'*

## **70. Clause 15.10(a) of Draft Open Access Regulations**

### **70.1 Comments of stakeholders**

#### **a) Comments of Star Cement Limited**

Star Cement Limited suggested that the said clause shall be modified as follows:

*' Standard Connectivity Agreement for the connectivity between the Consumer / Customer and the Transmission licensee/ Distribution licensee.'*

#### **b) Comments of CESC**

CESC mentioned as follows :

*'In terms of the Electricity Act, supply of electricity in a given area shall be effected only through the network of the distribution licensee of that area. Supply of electricity to a consumer by a distribution licensee through open access of distribution network of another distribution licensee is not permitted under the*

Electricity Act, 2003. There might be existing cases where power interchange takes place between two distribution licensees whose networks are interconnected. Such cases are exceptions and standard connectivity agreement would not be necessary for such cases. Arrangements may be covered in case specific agreements for such cases.'

Accordingly, CESC suggested a modify clause 15.10(a) as follows:

*'Standard Connectivity Agreement for the connectivity between the distribution licensee and the Transmission licensee.'*

## **70.2 Commission's Stand**

The proposal of Star Cements is not acceptable as specific standard agreement related to Open Access Consumers / Open Access Customers has been considered in Regulation 15.9. In this context please see the Commission's stand on CESC's view in this SOR against clause 4.1 and 4.2 of the Draft Open Access Regulations. The ground on which CESC relies does not prohibit the exchange of power between two distribution licensees. Thus, Commission does not agree with CESC's suggestion that Standard Connectivity agreement between Distribution Licensee and Distribution Licensee is not required. There are situations when the connectivity between two distribution licensees becomes a necessity.

## **71. Clause 16.2 and 16.3 of Draft Open Access Regulations**

### **71.1 Comments of WBSEDCL**

Though the written submission of WBSEDCL makes reference to clause 16.1, from the description of the clause it is understood that the comment is in reference to clause 16.2. WBSEDCL has proposed to substitute the word 'STU' with the words 'Nodal Agency' on the grounds that in some cases distribution licensee will be the nodal agency. Based on such modification WBSEDCL has also proposed certain modification in clause 16.3.

### **71.2 Commission's stand**

Distribution licensee has not been considered as nodal agency at any stage. Moreover, the procedure is related to activity of STU only. Thus, the proposal of WBSEDCL has not been accepted for both clause 16.2 and clause 16.3.

## **72. Clause 17.7 of Draft Open Access Regulations**



## **72.1 Comments of Stakeholders**

### ***a) Comments of MPL***

According to MPL calculation of 66% is very complex and still unresolved in ISTS by CTU, CERC and APTEL. MPL suggested that it would be better that 12 years transmission charges as per present long term transmission rate is considered.

### ***b) Comments of Star Cement Limited***

Star Cement Limited suggested followings:

- a) relinquishment charges should be made applicable only in case the licensee incur additional cost towards system strengthening and augmentation to provide LTOA/MTOA to the Open Access Consumer/Customer.
- b) In case LTOA/MTOA was given to the Consumer/Customer from the existing Capacity of the licensee, no Relinquishment Charges should be applicable as there is no additional cost involved by the Licensee.
- c) Application queue of other Consumer/Customers needs to be considered to fix the relinquishment amount so as to avoid licensee from the double benefit for the same system.

## **72.2 Commission's stand**

As per section 61(a) of the Act the principles and methodologies specified by the Central Commission shall be guideline for State Commission while framing any regulations related to tariff. Thus, Commission finds no merit in making any modification of the said clause.

## **73. Clause 17.8 of Draft Open Access Regulations**

### **73.1 Comments of IPCL**

IPCL is of opinion that this Draft Open Access Regulations specifies underutilization of any allocated capacity by an Open Access customer. It must also be ascertained that if a Consumer has applied for Open Access, the Distribution Licensee may be allowed to initiate the reassessment and reinstatement/ reduction of Contract Demand. According to IPCL this will help the Distribution Licensees to assess the right energy requirement so that the Distribution Licensee may accordingly surrender the surplus power tie-ups under its sourcing arrangements and thus reduce the power purchase cost to its remaining Consumers.

### **73.2 Commission's stand**

Against any open access Distribution licensee is required to keep its preparedness limited to the contract demand for backup power that too is subject to other conditionalities as applicable for other consumers. If Open Access Consumer chooses to avail Emergency Power, then also the preparedness will be the same as the case when normal consumer seeks emergency power or generator seeks survival power. Thus, no special preparedness is needed for Open Access Consumers and there is no differential commercial implication for the distribution licensee. In fact, distribution business never makes arrangement of generation capacity to the total amount of the contract demand of the consumers. It always assesses it on the basis of overall system demand. Thus, no change has been made.

#### **74. Clause 17.9 of Draft Open Access Regulations**

##### **74.1 Comments of WBSEDCL**

WBSEDCL has proposed slight modification in first sentence of the clause 17.9 as follows:

*'The Open Access Customer, the Licensee(s), the generating company(ies) and the electricity trader(s) shall be liable / responsible to follow the instructions of the SLDC from time to time in regard to optimum scheduling **and** despatch of electricity, safe and secured grid operation, keeping records for energy accounting, grid discipline, economic operation of the relevant grid in accordance with the Grid Code and State Grid Code.'*

##### **74.2 Commission's stand**

WBSEDCL's suggestion is accepted.

#### **75. Clause 18. of Draft Open Access Regulations**

##### **75.1 Comments of IPCL**

According to IPCL the charges for Open Access related to CSS and Additional surcharge should be designed in such a way that it fully compensates the loss of revenue of Distribution licensee considering that although two part tariff has been introduced in most of the States, the structuring of fixed and variable components of tariff is not reflective of the actual proportion of fixed and variable cost liability of the DISCOMs and applicable time block based tariffs.

##### **75.2 Commission's stand.**

The Cross-Subsidy Surcharge and additional surcharge as formulated under this Open Access Regulations 2022 has adequately addressed the concern raised by IPCL.



## **76. Clause 18.2.1 (c) and 18.2.1 (d) of Draft Open Access Regulations**

### **76.1 Comments of Stakeholders**

#### **a) *Comments of MPL***

Clarity required whether STOA charges will be in Rs./kWh or paisa/ kWh

#### **b) *Comments of Star Cement Limited***

Star Cement Limited has suggested that 'Medium Term Open Access should also be taken in the calculation of Rate for Transmission Charges.'

### **76.2 Commission's stand**

The rate of STOA transmission charges (STOA\_Rate) is in paisa/kWh. The suggestion of Star Cement Limited is not considered at present, as medium-term open access can be as low as 3 moths.

## **77. Clause 18.2.1 (e) of Draft Open Access Regulations**

### **77.1 Comments of stakeholders**

#### **a) *Comments of CESC***

CESC highlighted that the unit of STOA\_Rate is in paisa/kWh and thus in the formula of *Transmission charge for STOA in Rs* the STOA\_Rate should be divided by 100 to keep the unit at Rs.

#### **b) *Comments of WBSEDCL***

WBSEDCL is of opinion that minimum period for Short Term Open Access, i.e. at least 12 hours, should be incorporated to restrict frequent change of load requirement by Open access customer and its impact on the operation of system of the Distribution Licensee of the State because it would create difficulty for Distribution Licensee in balancing such load requirement, besides managing load variation of own consumers depending on climate condition.

#### **c) *Comments of ITC***

According to ITC STOA transmission charges should be based on energy scheduled and not on capacity allotted.

#### **d) *Comments of MPL***

MPL suggested that Short Term Open Access charges should be based on energy scheduled instead of capacity allotted as per the CERC Regulations.

#### **e) *Comments of IEX***

IEX has raised the following points

- i) The Long and medium-term open access has priority over the short-term open access. Further, Short term OA is provided on the inherent margins available in the system and no capacity is being built for the short term open access. Accordingly, 100% ARR for STU is recoverable from long-term and medium-term customers and in case of any short term open access revenue, it is adjusted in the ARR of the STU to pass on the benefit to long and medium term customers.
- ii) Therefore, as such there is no "reservation" of capacity is envisaged for short term open access as neither any transmission system is being built for short term transaction nor its cost being allocated to short term customers.
- iii) It is rationale to apply transmission charges based on the use of transmission system by the Short-term customer instead of approved quantum under NOC as the NOC quantum only signifies the availability of the system which may or may not be used by the customer. Same practice is being followed under CERC Regulations also.
- iv) Thus, for computing the amount of transmission charges for STOA, schedule OA quantum by consumers may be considered.

#### 77.2 Commission's stand

- a) CESC's comments has been noted and modified the formula in clause 18.2.1 accordingly.
- b) WBSEDCL's suggestion could not be accepted because of the need of alignment with inter-state open access.
- c) The submission of IEX, MPL and ITC on wheeling charge calculation methodology has been noted. Moreover, as under inter-state open access regime the STOA is charged on the open access approved scheduled energy, thus the consumer using open access of distribution system under an inter-state open access would have an added advantage over the consumer using open access in distribution system through Intra-State Open Access only who will have to pay on the allotted capacity basis if the definition of OAC\_MW remains same as proposed in the Draft Open Access Regulations. Such requirement become more pertinent in view of second proviso to rule 5(2) of Green OA Rules.

Thus, the clause on transmission charges for STOA has been modified accordingly based on approved capacity for each time block based on application of Short Term Open Access as follows:

$$\text{Transmission charge for STOA in Rs} = \sum OAC\_MU_i \times STOA\_Rate \div 100$$



Where,

*i= ith block of the concerned period for which Transmission charges is to be calculated.*

*OAC\_MU= Open Access Capacity Approved in MW in Time Block  $\times (TB \div 60) \times 1000$ ;*

*TB= Period of each Time Block in minutes*

*Open Access Capacity Approved in MW in Time Block means the approval of the Nodal Agency of open access in MW for time block concerned against the Short-Term Open Access application ‘*

## **78. Clause 18.2.1 (g) & (h) of Draft Open Access Regulations**

### **78.1 Comments of IPCL**

According to IPCL under the proposed Reg 18.2.1(g) & (h), the distribution licensees may be exempted from payment of transmission charges for using intervening transmission facility within the state in case of Long term & medium term purchase of Renewable power for fulfilling renewable obligations.

### **78.2 Commission's Stand**

For intervening transmission facility of renewable power to renewable obligation no special dispensation can be given on the ground of intervening transmission facility as sufficient promotional arrangements are already in place under section 86(1)(e) and section 61(h) of the Act.

## **79. Clause 18.2.1(h) of Draft Open Access Regulations**

### **79.1 Comments of Stakeholders**

#### **a) Comments of WBSEDCL**

According to WBSEDCL reduction of transmission charge for wind and solar shall increase the financial burden of other consumers of Distribution Company. WBSEDCL also highlighted that Electricity Act do not have provision for such exemption for open access consumer. WBSEDCL also urged that such cross-subsidization of Transmission cost may be avoided.

#### **b) Comments of CESC**

CESC says that in order to encourage renewable and cogeneration power procurement, suitable incentive through reduced transaction charges is a necessity and thus the clause may be modified to include all renewable and cogeneration sources rather than only wind and solar. CESC also says that encouragement may be provided irrespective of period of open access.

*c) Comments of MPL*

MPL ask for clarity that whether said transmission charges against clause 18.2.1(h) given in the regulation are not clear as whether they will be applicable for Long Term (LT), Medium Term (MT) and Short Term (ST). They have suggested that the clause may be in line with CERC regulations. Further, clarity is required on transmission charges on procuring power from RE sources and also whether these charges are both for inter-state and intra-state.

*d) Comments of BEL*

On the clause 18.2.1(h) BEL has following observation:

‘WBERC can promote both generation of electricity from renewable sources of energy and electricity generated from cogeneration sources (irrespective of type of fuel) in a specific ways as per section 86(1)(e) of the Act. WBERC can also promote both these sources through setting terms and conditions of Tariff as per section 61(h) of the Act. Further, sub-classification for wind and solar energy under the clause (h) of the regulation 18.2.1 of the Proposed OA Regulations 2022 will distorted the balancing mechanism between different type of energy sources as envisaged by the legislature on the overall scheme of the Act. In fact, by introduction of clause (h) in the regulation 18.2.1 of the Proposed OA Regulations 2022 the other sources that are to be promoted under section 86(1)(e) of the Act had been made less competitive artificially in comparison to solar and wind sources. But neither the Section 86(1)(e ) and section 61(h) of the Act nor any other provision of the Act has given such liberty to any State Commission to make such differential treatment. As section 181(1) of the Act mandates for maintaining consistency between the Act and the regulations of any Commission, thus Commission **cannot** take any liberty to introduce following in its regulations:

- a) Any new sub-classification within the generation of electricity from renewable sources of energy and electricity generated from cogeneration sources, or
- b) any additional promotional measures beyond what has been mentioned in section 86(1)(e ) and 61(h) of the Act, or
- c) delete any promotional measures that have been conceived in 86(1)(e ) and 61(h) of the Act the Act.

If such liberty has been given to Commission to go beyond the existing provisions of the Act, then section 181(1) of the Act would have been written as “The State



Commissions may, by notifications, make regulations that are not inconsistent with the Act and rules generally to carry out the provisions of this Act.”

In this context any reference of any policy guidelines under Tariff Policy 2016, National Electricity Policy and National Electricity Plan and any regulations of CERC where applicable for transmission and generation as per section 61 and 86(1)(h) of the Act, are also to be considered for this Proposed OA Regulations 2022 only if such policy guideline or regulations are found to be consistent with the above principle of consistency as laid down in section 181(1) of the Act.’

With reference to the above argument BEL has proposed that the clause 18.2.1(h) of the Draft Open Access Regulations shall be either removed or shall be replaced as follows :

***‘In case of long-term and medium-term open access transmission charges of electricity generated from renewable sources of energy and cogeneration sources shall be at 1/4th of the normal long-term and medium-term open access charges.’***

***e) Comments of ITC***

ITC is of opinion that full or part waiver should also be given for STOA from renewable sources.

***f) Comments of IEX***

IEX suggested that this clause 18.2.1(h) shall also be applicable on short term open access and power procure through power exchange in view of the recent market development of green power in power exchange through GDAM and GTAM market.

***g) Comments of FOSET:***

FOSET has submitted its comments on the clause 18.2.1(h) and clause 18.2.2(d) of the Draft Open Access Regulations simultaneously. The arguments undertaken by BEL for suggesting modification of clause 18.2.1(h) has more or less been found in the submission of BEL also. In addition, FOSET has also categorically mentioned two points which are quoted below:

- (i) ‘Moreover, by arranging reduced transmission charge and wheeling charge for wind and solar power distortion has been made in power market and thereby causes adverse effect on competition in electricity industry in contradiction to the object of the Act. It has also distorted the legislative purpose of promotion of entire segment of renewable energy sources and cogeneration sources and not any specific sources out of those two sources.’

- (ii) 'Again, as per West Bengal Electricity Regulatory Commission (Phasing For Open Access in Distribution / Sale of Electricity) Regulations, 2006, only the Consumers having connected load exceeding 1MW has been allowed Open Access. Thus, the large section of Consumers who are not allowed for Open Access under section 42(2) of the Act having connected load below 1 MW will be bound to born the transmission charges at enhanced rate in cross-subsidy form in order to supplement the shortfall that may arise due to reduced transmission/wheeling charges payable by Open Access Customer as per clause (h) of the regulation 18.2.1 and clause (d) of the regulation 18.2.2 of the Proposed Regulations. This will be a discrimination to such large number of marginal consumers embedded in the distribution system through such so-called promotional measures. Otherwise, opportunity of such promotional measures has to be also extended to those marginal consumers by introducing Open Access facility for them also.'

Based on such points FOSET suggested that clause 18.2.1(h) of the Draft Open Access Regulations may be deleted while finalising such draft regulations or replaced with the below mentioned clauses:

In case of Long Term and Medium Term Open Access Transmission charges of electricity generated from renewable sources of energy and cogeneration sources shall be at 1/4<sup>th</sup> of the normal long term and medium term open access transmission charges.

In case of Long Term and Medium Term Open Access wheeling charges of electricity generated from renewable sources of energy and cogeneration sources shall be at 1/4<sup>th</sup> of the normal long term and medium term open access wheeling charges.

## **79.2 Commission's Stand**

The transmission charges under clause 18.2.1(h) are meant for Long term Open Access and Medium Term Open Access only. The reason is not to promote a particular renewable segment but to protect the solar and wind sources from higher landed cost. As the utilisation factor (CUF) of solar and wind are comparatively lower (ranges from 17 % to 30%), paying the transmission charge based on capacity contract will effectively increase their transmission charge per unit of generation 4 to 6 time from the sources who do not suffer from such natural variations. The proposed reduction in transmission charge and wheeling charge will put the solar and wind sources in same footing to other open access sources. This concessional transmission charges shall be applicable for pure solar or pure wind open access sources. For others like hybrid RE or storage, etc no such concessional tariff shall be applicable.



"Transmission charge for pure wind and pure solar sources shall be 1/4<sup>th</sup> of normal long-term and medium-term open access."

## **80. Clause 18.2.2(b) of Draft Open Access Regulations**

### **80.1 Comments of WBSEDCL**

WBSEDCL urged that the impact of true-up order may be taken to revise wheeling charge of distribution licensee determined during Tariff Order for claiming arrear from the concerned open access consumer.

### **80.2 Commission's stand**

Such claim of arrear recovery by this mechanism is not required as in the tariff order the impact of APR of past years are included and thereby such arrear is recovered through future tariff and wheeling charge.

## **81. Clause 18.2.2(c) of Draft Open Access Regulations**

### **81.1 Comments of stakeholders**

#### ***a) Comments of WBSEDCL***

WBSEDCL urged that minimum period for Short Term Open Access, i.e. at least 12 hrs, should be incorporated for restrict frequent change of load requirement by Open access customer and its impact on the operation of system of the Distribution Licensee of the State because it would create difficulty for Distribution Licensee in balancing such load requirement, besides managing load variation of own consumers depending on climate condition.

#### ***b) Comments of ITC***

STOA wheeling charges should be based on energy wheeled and not on capacity allotted.

#### ***a) Comments of IEX***

IEX refers to judgements of Hon'ble Appellate Tribunal of Electricity and specially the judgement dated 17.12.2014 in appeal no 142 of 2013 and 168 of 2013 where it has been held that wheeling losses and charges must be computed voltage wise. IEX also submitted the reference of Gujrat, Maharashtra, Delhi, Kerala and Karnataka where wheeling charge, according to IEX, is computed by considering

the ARR for HT Network only. Thus, IEX request Commission to work out wheeling charge separately for HT and EHT consumers.

IEX also suggested that wheeling charges to be levied on Open Access schedule quantum and not approved on Open Access capacity. Accordingly suggested the modification of definition of QAC\_MW as follows:

QAC\_MW = Open Access Scheduled Quantum

**b) Comments of Star Cement Limited**

Star Cement Limited has also suggested for voltage wise applicable charges.

**81.2 Commission's stand**

- a) The suggestion of voltage wise wheeling charge determination process is being noted. It being an issue of tariff order it shall be governed by Tariff Regulations.
- b) WBSEDCL's suggestion could not be accepted in order to keep proper alignment with transmission charges applicability in inter-state open access. This stand has been also mentioned against clause 18.2.1(e).
- c) The submission of IEX & ITC on wheeling charge calculation methodology has a merit. Even as per DSM regulations for Partial Open Access Consumer the actual drawal in consumer mode is computed by reducing the actual total drawal with **schedule drawal** in Open Access Mode. Thus, if fixed allotted capacity for entire open access period based wheeling charge determination is considered then for the difference between allotted capacity and scheduled drawal for each time block approved against STOA application the Open Access Consumer has to pay twice on account of wheeling charges as well as charges under consumer mode. Moreover, as under inter-state open access regime the STOA is charged on the open access schedule quantum as approved against inter-state STOA application, thus the consumer using open access of distribution system under an inter-state open access will get added advantage over the consumer using open access in distribution system through Intra-State Open Access only who will have to pay on the allotted fixed capacity of entire open access basis if the definition of OAC\_MW remain same as proposed in the Draft Open Access Regulations. Such requirement of STOA wheeling charge based on approved energy of each time block during the entire open access period become more pertinent in view of second proviso to rule 5(2) of Green OA Rules. Accordingly, modification has been done. Accordingly STOA wheeling charge will be as follows:

$$\text{Wheeling charge for STOA in Rs} = \sum OAC\_MU_i \times STOA\_Rate \div 100$$

Where,

*i=ith block of the concerned period for which wheeling charge is to be calculated.*



$OAC\_MU = \text{Open Access Capacity Approved in MW in Time Block} \times (TB \div 60) \times 1000;$

*TB = Period of each Time Block in minutes*

*Open Access Capacity Approved in MW in Time Block means the approval of the Nodal Agency of open access in MW for time block concerned against the Short-Term Open Access application. ‘*

## **82. Clause 18.2.2(d) of Draft Open Access Regulations**

### **82.1 Comments of stakeholders**

#### ***a) Comments of WBSEDCL on clause 18.2.2.d***

As per WBSEDCL reduction of wheeling charge for wind and solar shall increase the financial burden of other consumers of Distribution Company. WBSEDCL has also pointed out that Act do not have provision for such exemption for open access consumer. Thus, WBSEDCL is of opinion that such Cross-subsidization may be avoided.

#### ***b) Comments of IEX***

IEX suggested that the charges in clause 18.2.2 will be wheeling charges and this clause 18.2.2(d) shall also be applicable on short term open access and power procure through power exchange in view of the recent market development of green power in power exchange through GDAM and GTAM market.

#### ***c) Comments of ITC***

ITC referred that wheeling charges shall be in place of transmission charges. ITC is also of opinion that full or part waiver should also be given for STOA from renewable sources and for both Inter and Intra State transaction.

#### ***d) Comments of MPL***

MPL suggested that the charges in clause 18.2.2 will be wheeling charges.

#### ***e) Comments of BEL***

On this clause 18.2.2 of Draft Open Access Regulations BEL has following two observations:

- ‘a) Wheeling Mode is related to flow of power through distribution asset. Thus, there is no question of transmission charges while describing wheeling charges. Accordingly, correction is needed.

b) WBERC can promote both generation of electricity from renewable sources of energy and electricity generated from cogeneration sources (irrespective of type of fuel) in a specific ways as per section 86(1)(e ) of the Act. WBERC can also promote both these sources through setting terms and conditions of Tariff as per section 61(h) of the Act. Further, sub-classification for wind and solar energy under the clause (d) of the regulation 18.2.2 of the Proposed OA Regulations 2022 will distorted the balancing mechanism between different type of energy sources as envisaged by the legislature on the overall scheme of the Act. In fact, by introduction of clause (d) in the regulation 18.2.2 of the Proposed OA Regulations 2022 the other sources that are to be promoted under section 86(1)(e) of the Act had been made less competitive artificially in comparison to solar and wind sources. But neither the Section 86(1)(e ) and section 61(h) of the Act nor any other provision of the Act has given such liberty to any State Commission to make such differential treatment. As section 181(1) of the Act mandates for maintaining consistency between the Act and the regulations of any Commission, thus Commission **cannot** take any liberty to introduce following in its regulations:

- i) Any new sub-classification within the generation of electricity from renewable sources of energy and electricity generated from cogeneration sources, or
- ii) any additional promotional measures beyond what has been mentioned in section 86(1)(e ) and 61(h) of the Act, or
- iii) delete any promotional measures that have been conceived in 86(1)(e ) and 61(h) of the Act the Act.

If such liberty has been given to Commission to go beyond the existing provisions of the Act, then section 181(1) of the Act would have been written as “The State Commissions may, by notifications, make regulations that are not inconsistent with the Act and rules generally to carry out the provisions of this Act.”

BEL has also emphasised that “ In this context any reference of any policy guidelines under Tariff Policy 2016, National Electricity Policy and National Electricity Plan and any regulations of CERC where applicable for transmission and generation as per section 61 and 86((1)h) of the Act, are also to be considered for this Proposed OA Regulations 2022 only if such policy guideline or regulations are found to be consistent with the above principle of consistency as laid down in section 181(1) of the Act.’

Based on such argument according to BEL the clause (d) of the regulation 18.2.2 of the Proposed OA Regulations 2022 shall be either removed or shall be replaced as follows:



*'In case of long-term and medium-term open access wheeling charges of electricity generated from renewable sources of energy and cogeneration sources shall be at 1/4th of the normal long-term and medium-term open access charges.'*

**f) Comments of FOSET:**

FOSET has submitted its comments on the clause 18.2.2(d) of the Draft Open Access Regulations simultaneously. The arguments undertaken by FOSET for suggesting modification of clause 18.2.1(h) has more or less been found in the submission of BEL also. In addition, FOSET has also categorically mentioned two points which are quoted below:

- (i) 'Moreover, by arranging reduced transmission charge and wheeling charge for wind and solar power distortion has been made in power market and thereby causes adverse effect on competition in electricity industry in contradiction to the object of the Act. It has also distorted the legislative purpose of promotion of entire segment of renewable energy sources and cogeneration sources and not any specific sources out of those two sources.'
- (ii) 'Again, as per West Bengal Electricity Regulatory Commission (Phasing For Open Access in Distribution / Sale of Electricity) Regulations, 2006, only the Consumers having connected load exceeding 1MW has been allowed Open Access. Thus, the large section of Consumers who are not allowed for Open Access under section 42(2) of the Act having connected load below 1 MW will be bound to born the transmission charges at enhanced rate in cross-subsidy form in order to supplement the shortfall that may arise due to reduced transmission/wheeling charges payable by Open Access Customer as per clause (h) of the regulation 18.2.1 and clause (d) of the regulation 18.2.2 of the Proposed Regulations. This will be a discrimination to such large number of marginal consumers embedded in the distribution system through such so-called promotional measures. Otherwise, opportunity of such promotional measures has to be also extended to those marginal consumers by introducing Open Access facility for them also.'

Based on such points FOSET suggested that clause 18.2.2(d) of the Draft Open Access Regulations may be deleted while finalising such draft regulations .

## **82.2 Commission's Stand**

The issue has been elaborated in paragraph 79.2 above. The objective is not to promote or cross-subsidize and segment but to remove the natural difficulties faced by pure solar and wind sources by way of very low CUF.

### **83. Clause 18.2.3 (b) of Draft Open Access Regulations**

#### **83.1 Comments of MPL**

MPL wants clarity in the case of injection point and drawl point are in different area of distribution licensee involving a single transmission licensee or different transmission licensee.

MPL has also pointed out that Deviation charges applicable for RE sources has not been clarified in the DSM regulations 2021 or in RE regulations 2013 and its subsequent amendments. MPL suggested that it has to be in line with CERC regulations or the state commission needs to come out with separate regulation.

#### **83.2 Commission's Stand**

- a) In case of injection point and drawal point not lying with the distribution system of same distribution licensee, the same would be covered under the DSM Regulations and Balancing and Settlement Code.
- b) The applicability of deviation charges for renewable sources are specified DSM Regulations.

### **84. Introduction of New Clause 18.2.3 (c) of Draft Open Access Regulations – Source and Rationale**

In view of the second proviso of rule 5 of Green OA Rules Commission has introduced the new clause 18.2.3(c ) as follows :

*'While scheduling under green energy open access the Green Energy Open Access Consumer shall schedule the same quantum of power in each time block for every consecutive twelve time blocks starting from the zero time block.'*

### **85. Clause 18.2.4(b) of Draft Open Access Regulations**

#### **85.1 Comments of Stakeholders**

##### ***a) Comments of WBSEDCL***

WBSEDCL has highlighted that Cross subsidy surcharge formula may be determined during Tariff Order or guideline may be provided for determination of the component T, R & ACS of cross subsidy surcharge formula.



WBSEDCL also submitted that 20 % restriction of cross subsidy surcharge in the proviso would increase financial burden of other consumers of Distribution Company and hence may be deleted.

**b) Comments of CESC**

CESC highlighted that after finalizing the net Aggregate Revenue Requirement (ARR), adjustments, if necessary, arising from past period is required to be done to get the Total revenue to be recovered through tariff. CESC also highlight that the average tariff is calculated by dividing the total revenue to be recovered through tariff by the energy sales to own consumers. Accordingly, CESC wanted to change the definition of ACS in the cross-surcharge formula  $S=T-ACS+R$  in the following manner

*'ACS = Average Cost of Supply which for the present purpose would be obtained by dividing the Total revenue to be recovered through tariff by energy sale to consumer as done in the relevant tariff order.'*

**c) Comments of IEX**

IEX submitted that as per the methodology approved in the National Tariff Policy 2016, CSS is the difference of tariff payable and sum of cost of supply and per unit cost of carrying regulatory assets i.e.  $S= T-(ACS+R)$ . In such background as per IEX the formula proposed in Draft Open Access Regulations it seems to have an inherent error as it proposed to add the per Unit cost of regulatory asset in the tariff payable and not average cost of supply.

**d) Comments of Star Cement Limited**

Star Cement Limited has suggested that average Cost of Supply of Individual Consumer Category needs to be provided by the distribution licensee which would automatically determine the level of CSS and Tariff within a limit of +/- 20% of the Average Cost of Supply to be borne by the HT/EHT Consumer. Star Cement Limited has also suggested that formulae to be followed for determining the CrossSubsidy Surcharge needs to be in line with the National Tariff Policy, 2016:

**e) Comments of BEL**

On clause (b) of the regulation 18.2.4 of the Draft Open Access Regulations BEL has suggested following:

*'According, to clause (vii) of regulation 2.2.1 of West Bengal Electricity Regulatory Commissions (Terms and Conditions of Tariff) Regulations, 2011 (in short will be called as 'Tariff Regulations') Commission is committed to make the tariff progressively reflective to cost of supplies and within three years from 25-11-2011. According to Tariff Regulations Commission will also reduce the cross-subsidies*

in such a manner so that for any class of consumers the average tariff for that class does not go either below 80% of the average cost of supply or above 120% of the average cost of supply. In fact, these particular provisions are nothing but detailing of section 61 (g) of the Act which empowers Commission to do so. But since then, no tariff order has come out which categorically has shown with figures and data that such objective has been achieved for any of the distribution licensee. Moreover, there is no indication that tariff is gradually reflecting the cost of supplies because for that purpose voltage base tariff determination is necessary under Tariff Regulations. But till date Commission has not introduced voltage base tariff determination. In absence of such gradual reduction of cross-subsidy and introduction of voltage base tariff it is a pertinent question that why an open access consumer will continuously bear the liability of Cross-Subsidy Surcharge infinitely as per formula mentioned in clause (b) of the regulation 18.2.4 of the Proposed OA Regulations 2022. When a consumer started to draw power through open- access then the distribution licensee may have to bear the burden of surplus power arises out of such open access in certain cases till such power can be allocated to new consumers or can be sale to market or the liability of such power can be ended through termination of PPA(s). Moreover, depletion in certain amount of fixed charge recovery arises out of such open access may take some time to be recover through new consumers or may be relieved of such liability through contractual arrangement. Thus, after a certain time the open access consumers shall be relieved of burden of the Cross-Subsidy Surcharge as such liabilities are henceforth supposed to be borne by the other new consumers/ power procurer or distribution licensee is able to get relive of such liabilities as discussed above. ‘

Based on above arguments BEL has proposed that at the existing proviso at the end of clause (b) of the regulation 18.2.4 of Draft Open Access Regulations has be replaced with the following two proviso:

*‘Provided that the surcharge shall not exceed 20% of the tariff applicable to the category of the consumers seeking open access.*

*Provided further that the surcharge payable by a consumer shall initially be fixed to take care of 100% of the current level of cross-subsidy in accordance with the proceeding contents of this para and shall be progressively reduced ever year by 20% of the prevailing value for that consumer and after seventh year it shall be nil’*

## **85.2 Commission’s stand**

- a) WBSEDCL’s suggestion has been noted by the Commission. However, WBSEDCL’s submission for deletion of first proviso is not being accepted as cross-



subsidisation requires to be reduced as per Tariff Regulations to bring tariff of each category within  $\pm 20\%$  of the average cost of supply as per the principle laid down in paragraph 8.3(2) of Tariff Policy 2016. Thus, the existing proviso shall continue.

- b) CESC's suggestion is accepted for enhancing clarity.
- c) The second proviso as suggested by BEL has not been accepted as this will discriminate between normal consumer and open access consumer.
- d) In relation to the point raised by Star cement limited of declaring average Cost of Supply of individual consumer category, it is stated that such cost of supply is to be published in order to declare Cross-Subsidy Surcharge for each category of consumer.
- e) IEX's apprehension of error in treatment of R in the formula may be out of place if viewed from the perspective that both normal consumer and open access consumer, bearing the impact of the regulatory asset on equal footing. The Tariff Policy reduces the carrying cost of unamortised assets separately as it is part of the tariff charged to the consumer category while avoided cost of energy and distribution charges represent the stand-alone ACS for the year. In the present formula, ACS includes both carrying cost of unamortised regulatory assets as well as flow-through of amortised regulatory asset, as applicable and therefore, the calculated cross-subsidy in both formulae is the same. Additionally, carrying cost of regulatory asset for past years needs to be borne by both embedded consumers as well as Open Access Customers to avoid subsidisation of the later by the former, particularly in view of the fact that generally, Licensees have large proportion of small consumers with lower energy consumption and connected load.
- f) It is also provided in the regulations that all parameters for computation shall be provided in the tariff order and recovery through CSS shall be subject to true-up on APR.

Beside the above issues Green OA Rules has provided certain guidelines on Cross-Subsidy Surcharge at rule 9(2). Accordingly, clause 18.2.4(b) shall be replace as follows:

*' The formula for Cross – subsidy surcharge is as follows :*

$$S=T-ACS+R$$

*Where*

*S = surcharge*

*T = Tariff payable by the relevant category of Consumers, including reflecting the Renewable Purchase Obligation, if any.*

*ACS = Average Cost of Supply which for the present purpose would be obtained by dividing the Aggregate Revenue Requirement with energy sale to consumer as done in the relevant tariff order.*

*R = per unit cost arising due to amortization of regulatory assets including the carrying cost of the regulatory assets.*

Provided that the surcharge shall not exceed 20% of the tariff applicable to the category of the consumers seeking open access;

Provided also that Cross-Subsidy Surcharge shall not be applicable on the Open Access Consumer drawing power from a Waste-to-Energy Plant;

Provided also that Cross-Subsidy Surcharge shall not be applicable on quanta of green energy drawn by Open Access Consumer utilize such green energy to for production of green hydrogen or green ammonia;

Provided also that the Cross-Subsidy Surcharge that will be applicable on Green Energy Open Access Consumer for the quantum of green energy drawn only shall not be increased during twelve years from the date of operating of the generating plant using renewable energy sources, by more than 50% of the surcharge fixed for the year in which open access is granted;

Provided also that in case within the 12 years as mentioned in the fourth proviso the Green Energy Open Access Consumer shifts to other Open Access Source(s) of green energy other than the generating plant at different tenure in continuous or intermittent phase then also the start of date of Open Access for such facility of limitation of cross-subsidy within 50% of the first year shall remain unchanged from what has been considered in second proviso of this regulation for the drawl of green energy only;

Provided further that in case within the above mentioned 12 years in the fourth proviso of this regulations the power is drawn from Open Access Sources other than green energy such ceiling of 50% increase in Cross-Subsidy Surcharge within next 12 years will not be applicable on such power drawal.'

## **86. Clause 18.2.4(d) of Draft Open Access Regulations**

### **86.1 Comments of CESC**

CESC urged for the the responsibility of determination of surcharge to be kept with distribution licensee to ensure faster implementation of open access and recovery of requisite charges where such recovery will be subject to periodic true up exercise by the Hon'ble Commission. Accordingly, CESC suggested following modified clause 18.2.4(d) as follows:



*'The amount of such surcharge shall be determined by the distribution licensee following the formula provided in the Regulations and as per the parameters in latest Tariff Order from time to time subject to true-up.'*

#### **86.2 Commission's stand**

Commission is of opinion that Cross-subsidy – surcharge shall be billed by the distribution licensee. For computation of Cross-Subsidy Surcharge, category tariff, “T” for each of the categories will be declared in the Tariff Order of the Licensee. Average Cost of Supply (“ACS”) and per unit cost arising due to amortization of regulatory assets (“R”) are category agnostic and value of these two parameters will be same across categories and those also will be specifically declared in the tariff order for Cross-Subsidy Surcharge calculation. Accordingly said clause is modified with enhance clarity on source of availability of different parameters. Such modified clause is as follows:

*'The amount of such surcharge for Open Access Consumer shall be levied by the distribution licensee on the basis of the amount of energy drawn by the Open Access Consumer in the concerned billing period by applying Cross-Subsidy Surcharge rate (S) of the applicable category as available in latest Tariff Order from time to time subject to true-up. For the purpose of calculating the cross subsidy surcharge ACS and R for the Licensee will be provided by the Commission in the Tariff Order of the Distribution Licensee. The value of T and value of Cross-Subsidy Surcharge rate (S) for different category of consumers of the Licensee will be provided by the Commission in the Tariff Order of the Distribution Licensee.'*

#### **87. Clause 18.2.4(e) of Draft Open Access Regulations**

##### **87.1 Comments of ITC**

ITC has requested full or part waiver of Cross-Subsidy Surcharge for solar and wind energy to promote renewable energy.

##### **87.2 Commission's stand**

The waivers as suggested under the Green OA Rules have been accommodated as the regulation is to be kept consistent with the rules under section 181(1) of the Act. Moreover, waivers to certain categories results in increased burden of cross-subsidization to other consumers and hence the suggestion of waiver for energy drawn for sources other than the sources recognised specifically under the Green OA Rules has not been accepted.

#### **88. Clause 18.2.5(b) of Draft Open Access Regulations**

## 88.1 Comments of Stakeholders

### a) *Comments of WBSEDCL*

As per WBSEDCL Wheeling Charge and Cross-subsidy Surcharge should not be reduced from Additional Surcharge as proposed in the formulae of draft Regulation since those charges are taken from open access consumers for other purpose (to cover other cost element of Distribution Companies, such Fixed cost & cross-subsidization of tariff among different consumer category).

### b) *Comments of CESC*

The observation of CESC is quoted below:

‘It is submitted that it is the statutory obligation of the distribution licensees to provide universal service. In cases where an existing customer of distribution licensee opt for receiving electricity through open access, the distribution licensee still has the obligation to supply electricity to such customer to the extent of its contract with the distribution licensee.

In the prevailing scenario, only a part of fixed cost of the distribution licensee is recovered through demand charges and the balance fixed cost, is embedded in the energy charge and recovered accordingly.

The customer opting for the open access will not pay the distribution licensee the energy charge for the consumption under open access. Even if the customer opts for dual mode of open access where it remains the consumer of the distribution licensee and fulfil only a part of its energy requirement under open access, the fixed cost to the extent of electricity being drawn under open access will remain unrecovered and such fixed cost will be borne by the other customers of the distribution licensee.

Therefore, for equitable stakeholders’ interest, fixed cost related to generation and distribution, net off fixed cost that is being recovered through Demand Charge, Wheeling Charge and Cross-Subsidy Surcharge, should be allowed to recovered in form of Additional Surcharge.

Reduction of amount recovered through demand charge, wheeling charge or cross subsidy surcharge from fixed cost of power purchase (which is a part of content cost rather than distribution or transmission) is unrelated and artificially reduces cost responsibility for Open Access that overburdens embedded consumers, about 90% or more of whom has a mere 50 Unit or less monthly consumption. As stated above, since significant amount of fixed cost is recovered through energy charge rather than demand charge.’

Thus, to ensure complete recovery of fixed costs in case of Open Access CESC suggested for redefining ‘A’ in the formula of additional surcharges in following form:



*'A= Fixed cost of power purchase including fixed cost of own generation and fixed cost related to distribution & selling'*

**c) Comments of IEX**

IEX pointed out that to compute per unit fixed cost of power purchase and transmission, wheeling charges excluding demand charges the formula uses the energy wheeled under open access, whereas the wheeling charge and CSS to be subtracted from power purchase charges is computed on the total energy wheeled in the distribution system. Thus, according to IEX the different energy quantum is used for spreading over the costs in the formula. IEX request to use the same energy quantum for determining the ASC. IEX also made reference of Sharing Inter-State Transmission charges and Losses Regulations 2020 which states that that transmission charges paid by any short term embedded open access consumer shall be refunded to the state in which such consumer falls. Thereby, no additional liability or financial burden with respect to unrecovered ISTS charges shall arise on the DISCOM. Thus, IEX request that there should not be any of ISTS charges in the fixed cost of the available capacity while computing the Additional Surcharge will lead to double recovery of the transmission charges from the State Open Access Consumers. Thus, the Hon'ble Commission is requested to clarify in the regulation about the transmission charges being recovered through Additional Surcharge.

IEX also pointed out the paragraph 8.5.4 of National Tariff Policy 2016 where it is mentioned that ASC becomes applicable only if it is conclusively demonstrated that obligation of DISCOM, in terms of existing power purchase commitments has been and continues to be stranded due to Open Access. Thus, IEX has requested to consider fixed cost of power purchase and transmission & wheeling cost for the stranded power only.

IEX has pointed out that as eligible to avail open access have contracted capacity more than 1 MW thus the consumers utilizing the facility of Open Access must be connected to HT/EHT network only. Accordingly IEX has requested to clarify under component 'B' of the draft regulation that the wheeling cost of power purchase to be considered should be for HT network only. According to IEX other SERCs like the Hon'ble GERC and Hon'ble PSERC follow similar methodology for determination of ASC and consider distribution / wheeling charge per unit.

**88.2 Commission's stand**

- a) WBSEDCL's and CESC's suggestion, is accepted as it would result in equitable recovery of entire fixed cost without requirement of cross-subsidisation for the same by embedded consumers.



- b) IEX suggestion for using same energy denominator is addressed in present formula. It is clarified in terms of present framework of regulations that energy wheeled includes energy sold to all consumers in a distribution system and wheeling charges are included in tariff for embedded consumers. Accordingly, denominator is energy sold to consumers and licensee relating to obligation to supply and energy billed for wheeling/transmission to Open Access Customers.
- c) In terms of Section 42(4) of the Act, Additional Surcharge is payable to meet the fixed cost of distribution licensee arising out of its obligation to supply. The demand estimation leading to determination of applicable costs emanates out of such obligations being met through power procurement contracts by the distribution licensee. No reference of stranding could be found in the said Section. Further, if it has to be only power purchase costs, there would not have been any need for netting off wheeling charge or Cross-Subsidy Surcharge collected. It may be noted that dedicated assets created through Consumer Contribution is not charged through tariff. The Additional Surcharge Formula is subjected to adjustment for demand in subsequent applicable years being less than that considered in tariff order, to ensure reduction of Additional Surcharge with reduction in supply obligations as applicable
- d) All eligible Open Access Customers are required to pay Additional Surcharge to the extent of their Open Access drawal. The wheeling charge collected from such consumers is netted off by the formula. The related costs are embedded in aggregate revenue requirement in terms of applicable regulations. Wheeling charge for any consumer is also through specified formula in terms of regulations.

Beside the above stand the Commission has to also take into account the mandate of the rule 9(2) of the Green OA Rules on additional surcharge. Accordingly, the modified clause 18.2.5(b) shall be as follows:

$$^{\ast} \text{ Additional Surcharge Part A in Paise per unit, ( ASC}_{TR} ) = [(A+B -C) \div D] - E- F$$

*A= Fixed cost of power purchase including fixed cost of own generation and fixed cost related to distribution & selling related to obligation of supply of the Licensee as a whole;*

*B= Transmission and Wheeling Costs of Power Purchase related to obligation of supply of the Licensee as a whole;*

*C= Cost recovered through Demand Charges from all consumers;*

*D= Energy sold for consumers and licensee in consumer mode or radial mode from distribution system and units billed for Wheeling/ transmission for Open Access Customers;*

*E= Wheeling Charge in paise/unit;*



*F= Cross Subsidy Surcharge (if any) in paise/unit for the tariff category of the Open Access Customer in terms of these regulations;*

*In the above definitions, A, B, C and D applies to the entire system for which Licensee has its obligation to supply and includes energy sold to own consumers and Licensee and energy billed for transmission/wheeling in terms of these regulations. In case inter-state transmission charge or intra-state transmission charge are considered under power purchase cost (A) of distribution licensee then that cannot be considered again under (B).*

*The parameters "A", "B", "C", "D", "E" shall be provided by the Commission in the Tariff Order and "F" shall be calculated in terms of these Open Access Regulations from the appropriate figures provided in the latest tariff order in terms of regulation 18.2.4 of these Open Access Regulations. However, alternatively the Commission may derive consumer class wise ( $ASC_{TR}$ ) and declare in respective tariff order. The additional surcharge and recovery of CSS will be subject to true up by the Commission on APR.*

*Provided that Additional Surcharge so calculated will be considered nil if it is less than 0;*

*Provided also that recovery of the Additional Surcharge so calculated will be true up by the Commission in APR of the concerned year;*

*Provided that the additional surcharge shall not be applicable for Green Energy Open Access Consumers, if fixed/ demand charges are being paid by such consumer against the quantum of allotted capacity under Open Access;*

*Provided also that additional surcharge shall not be applicable on the Open Access Consumer drawing power from a Waste-to-Energy Plant;*

*Provided further that additional surcharge shall not be applicable on quanta of green energy drawn by Open Access Consumer who is utilizing such green energy for production of green hydrogen or green ammonia.'*

## **89. Clause 18.2.5(c) of Draft Open Access Regulations**

### **89.1 Comments of CESC**

CESC has requested for the responsibility of determination of surcharge to be kept with distribution licensee to ensure faster implementation of open access and recovery of requisite charges. This recovery will be subject to periodic true up exercise by the Hon'ble Commission. Accordingly, CESC suggested the modification of clause 18.2.5 (c) as follows:

*'The additional surcharge shall be decided and leviable for such period as **determined by distribution licensee following the formula provided in the Regulations and as per parameters of latest Tariff Order subject to true-up.***

### **89.2 Commission's stand**

*Considering the overall discussion and changes to clause 18.2.5 the clause 18.2.5(c) is modified as follows:*

*'c) The additional surcharge applicable on Open Access Consumer shall be calculated for the concerned billing period by the distribution licensee by applying additional surcharge rate ( $ASC_{TR}$ , as applicable) on the energy drawn by the Open Access Consumer under Open Access mode.'*

## **90. Clause 18.2.6 of Draft Open Access Regulations**

### **90.1 Comments of Stakeholders**

#### **a) Comments of WBSEDCL**

WBSEDCL is of the opinion Backup power charge, Parallel Operation Charge, Scheduling charge and handling charge emergency/survival power (as per existing regulation) may be included in schedule. WBSEDCL also mention that Backup power charge should be the "Emergency Supply" Tariff applicable for the consumers of Distribution Licensee given in Tariff Order.

#### **b) Comments of CESC**

CESC urged for introduction of Grid Support Charges / Parallel Operation Charges under this clause 18.2.6. In this context the company has also submitted a petition in Case No. OA-365/20-21 on 11.03.2021 and additional submissions were submitted on 25.01.2022 highlighting the necessity of introducing parallel operation charge along with an expert report.

### **90.2 Commission's Stand**

Since the same is already under separate proceedings in case no OA-365/ 20-21 thus Grid Support Charges / Parallel Operation Charges will not be considered under this Open Access Regulations for the time being till the order related to case no. OA-365/ 20-21 is issued. The issue of Backup power charge has been already addressed under clause 15.5 of the Draft Open Access Regulations. Scheduling charges have been provided in the Schedule.

## **91. Clause 18.2.7 of Draft Open Access Regulations**

### **91.1 Comments of WBSEDCL**

WBSEDCL is of opinion that as provisions of using transmission facility on Long-Term, Medium-Term and Short-Term basis by licensees are already included in draft regulation elsewhere, thus the Regulation 18.2.7 on intervening transmission facilities



should be deleted as it is not required to apply directly before the Commission for similar usage.

#### **91.2 Commission's Stand**

WBSEDCL stand is not acceptable in view of section 35 of the Act.

### **92. Clause 18.2.8 of Draft Open Access Regulations**

#### **92.1 Comments of IEX**

IEX submitted that as section 42 (2) of the Act does not allow levy of any such charge on the Open Access Consumers and hence clause 18.2.8 should be removed.

#### **92.2 Commission's Stand**

Section 42(2) speaks of availing open access by paying charges for wheeling and surcharges as determined by the Commission but it never says that other statutory duties and levies will not be applicable. In view of the electricity duty applicability under Bengal Electricity Duty Act, 1935 the above clause is modified as follows:

*'Any other charges, levies, duties, etc. prescribed under any rule or Act are to be borne by the Open Access Customer if such rule or Act is applicable to him.'*

### **93. Clause 19.0 of Draft Open Access Regulations**

#### **93.1 Comments of stakeholders**

##### ***a) Comments of WBSEDCL***

WBSEDCL has mentioned that reduction of loss level for HV system from 8% to 4% may be avoided since loss level for HV system is much more at actual. According to WBSEDCL if technical loss for open access consumers is kept at proposed level of 4%, then consumers of the state, who are not taking open access, will have to bear excess technical loss of the system on behalf of open access consumer. Thus, WBSEDCL suggested that existing provision of 8% loss for HV system may be continued.

##### ***b) Comments of BEL***

On clause 4.19 of the Draft Open Access Regulations BEL has stated the basis of fixing allocable technical losses has not been explained. BEL has also mentioned the following: 'If Commission has progressively reduced cross-subsidy and reflect the cost of supply as per clause (vii) of regulation 2.2.1 of Tariff Regulations then by this time voltage-based tariff would have been introduced and in such case obviously the technical losses at different voltage level would have been

determined. Instead of doing so Commission simply provided technical losses of EHV as per normative transmission losses of WBSETCL, 4% for HV level and normative distribution losses for LV&MV level of the concern distribution licensee. By relying on such normative losses actually Open Access Customer/ Consumer have to bear the commercial losses in addition to technical losses. It has to be noted that in Tariff Regulations such losses are never referred to as technical losses. Tariff Regulations simply speaks of distribution losses and transmission losses which includes also commercial losses. Moreover, in absence of any explanatory note it is not possible how this 4% losses at HV level has been conceived.'

BEL has also referred to the paragraph 5.11(f) of Tariff Policy 2016 which states that:

'The norms should be efficient, relatable to past performance, capable of achievement and progressively reflecting increased efficiencies and may also take into consideration the latest technological advancements, fuel, vintage of equipments , nature of operations, level of service to be provided to consumers etc. Continued and proven inefficiency must be controlled and penalized.'

BEL has also mentioned that 'In absence of explanatory note with this Proposed OA Regulations 2022 it cannot be assessed at this end that whether the 4% HV losses has been considered after considering past performance. Moreover, it has not become clear how the HV losses has been considered 4% across all the distribution licensees of the state specially when the normative overall distribution loss in the state has varied from 2.2% to 17.5 % and the actual losses for WBSEDCL (highest out of the licensees) is 20.89% in 2020-21 as per annual accounts. In view of such it will be prudent to declare loss for each distribution licensee separately.

In this regard we may request Commission to follow the methodologies adopted from open access regulation or tariff order of other Commissions. Accordingly, some examples are provided in Annexure-1 of this note of Comments/suggestion/objections against the Proposed OA Regulations 2022 vide notice reference no WBERC/Regu\_54 (Open Access) dated 10-05-2022.'

With a purpose to reduce the unnecessary burden of the open access customer or open access consumer after following the above examples in their submitted Annexure-1 BEL has suggested that following technical losses shall be introduced in West Bengal:

*'Technical Loss Allocable*

*The loss for transmission and distribution system for different voltage level will be as under for the purpose of these regulations only:*



A) *Transmission losses at EHV Level*

Supply	Drawal	West Bengal
400 KV	400 KV	0.25%
400 KV	230 KV	1.05%
400 KV	132 KV/66 KV	2.90%
230 KV	400 KV	1.05%
230 KV	230 kV	0.80%
230 KV	132 kV / 66 KV	2.65%
132/KV / 66 KV	400 KV	2.90%
132/KV / 66 KV	230 KV	2.65%
132/KV / 66 KV	132/KV / 66 KV	1.85%

B) *Distribution losses*

Supply	Drawal	WBSEDCL	CESC	DPL	IPCL	DVC
33 / 25 kV	33 / 25 kV	1.50%	1.50%	1.00%	1.00 %	1.00 %
33 / 25 kV	11 /6.6 / 3.3 kV	4.00%	4.00%	3.00%	3.00 %	2.00%
33 / 25 kV	LV&MV level	Normative distribution loss as per Tariff Regulations				
11 /6.6 / 3.3 kV	33 / 25 KV	4.00%	4.00%	3.00%	3.00 %	2.00%
11 /6.6 / 3.3 kV	11 /6.6 / 3.3 kV	2.50%	2.50%	2.00%	2.00 %	1.00%
11/6.6 /3.3 KV	LV&MV level	Normative distribution loss as per Tariff Regulations reduced by distribution losses at 33/25 KV of the concern licensees.				

*This distribution loss and technical loss henceforth will be change in every three years through a separate order after inviting objections and suggestions from public and other stakeholders through previous publications in at least three newspapers.’*

### 93.2 Commission’s stand

WBSEDCL has not established their claim through any audited technical loss data at high voltage level. Upon a study of different states and other licensees of West Bengal

it is found that 4% loss in high voltage is quite reasonable. Thus, WBSEDCL's suggestion to increase technical loss of HV to 8% is not acceptable.

As per para 7.2 (1) of the Tariff Policy, 2016, the loss framework for Transmission Loss should ensure that the loss compensation is reasonable and linked to applicable technical loss benchmarks determined by the Appropriate Commission after considering advice of CEA. Thus, above type of detailed losses considering different voltage level for injection and drawal point as proposed by BEL can only be done after collection of data over a period of time and doing the necessary technical studies.

Considering all such comments of stakeholders Clause 19 is retained without any modification.

#### **94. Clause 21 of Draft Open Access Regulations**

##### **94.1 Comments of Stakeholders**

###### ***a) Comments of SLDC (on clause 21.2)***

SLDC is of opinion that as STU is the nodal agency of intra state LTOA and MTOA customers and the agreement of LTOA & MTOA is done by STU, thus monthly accounting and billing of transmission charges, wheeling charges may be prepared by STU maintaining existing practice. Also, if PPA quantum is different from transmission service agreement quantum the same data may not be available at SLDC.

###### ***b) Comments of ITC (on clause 21.3a)***

ITC argued that STOA charges should be on actual units scheduled rather than full amount of capacity booked. They also suggested that advance payment of wheeling charges/ Meter Rent to be evaluated. Also, such payments are done to Distribution Licensee and not SLDC.

###### ***c) Comments of WBSED (on clause 21.3a)***

WBSEDCL scheduling Charges (i.e. Handling Charge) as per existing Regulation needs to be included in schedule.

###### ***d) Comments of CESC***

CESC is of opinion that recovery of wheeling, Cross-Subsidy Surcharge, additional surcharge from the open access customers may be left to the distribution licensee as per finally implemented schedule prepared by the SLDC on the ground that recovery by another agency and subsequent disbursement to distribution licensee will



elongate the working capital cycle of the already strained distribution licensees. Accordingly, CESC proposed that clause 21.2(ii) may be modified as follows:

- ‘ ii) STU, based on the monthly account prepared by the SLDC, will raise the bills to the Open Access Customers, separately indicating the charges receivable by SLDC, STU, transmission licensee as applicable, within 3 working days from receiving the account from SLDC. Distribution licensee will raise the bills for wheeling charge, Cross-Subsidy Surcharge, additional surcharge and other applicable charges, if any, separately to the Open Access Customers based on the incidence ’*

#### **94.2 Commissions stand**

- a) SLDC’s request could not be accommodated for following reasons:
- i) As SLDC collects the data for all commercial transactions and processes it for accounting of Short term Open Access thus the same operation for long term and medium term open access cannot be given to another agency as it may create issues of reconciliation of accounts appropriately,
  - ii) As STU is embedded in WBSETCL thus it cannot technically be considered as a utility completely free from commercial interest till appropriate ring fencing is done. Whereas for SLDC ringfencing has been done effectively.
- b) WBSEDCL’s suggestion for Scheduling charges is accommodated in the Schedule.
- c) ITC’s argument that STOA charges should be on actual units scheduled has already been discussed. ITC’s request of advance payment can always be done as per provision in clause 12.2.4(b) of these regulations.
- d) CESC’s suggestion is being accepted for the reasons raised by CESC. Accordingly, the modified Clause 21.2(ii) will be as follows:

*‘ STU, based on the monthly account prepared by the SLDC will raise the bills to the Open Access Customers, separately indicating the charges receivable by SLDC, STU, transmission licensee as applicable, within 3 working days from receiving the account from SLDC. Distribution licensee will raise the bills for wheeling charge, Cross-Subsidy Surcharge, additional surcharge and other applicable charges, if any, separately to the Open Access Customers. ’*

#### **95. Clause 21.3 of Draft Open Access Regulations**

## **95.1 Comments of IEX**

IEX pointed out that against the OA quantum allowed to a STOA consumer, the energy quantum scheduled is known on a post facto basis and the entire quantum allowed in NOC cannot be said to be the basis for levy of charges and the same is not practiced anywhere in the country. IEX also highlighted that in fact for procurement through the power exchange, the consumer can never be certain about the quantum to be cleared for consumption owing to the competitive nature of price discovery method at exchange. Therefore, IEX has requested to amend this clause 21.3 and provide for recovery of OA charges on a post facto monthly basis only.

## **95.2 Commission's stand**

The advance payment is not mandatory under the clause 21.3. There is arrangement of post facto payment by giving bank guarantee as payment security mechanism. The Commission has accepted the suggestion of IEX and the main clause 21.3(a) as well as the proviso have been duly modified in the finalised Open Access Regulations 2022.

## **96. Clause 21.4 of Draft Open Access Regulations**

### **96.1 Comments of WBSEDCL**

WBSEDCL suggested a modification as follows:

'Late Payment Surcharge applicable for consumer as per WBERC Tariff Regulation 2011 as amended shall be payable by an Open Access Customer for any payment after the due date.'

### **96.2 Commission's stand**

WBSEDCL's suggestion has been accepted to maintain parity between open access consumer and normal consumer.

## **97. Clause 22.1 of Draft Open Access Regulations**

### **97.1 Comments of Stakeholders**

#### ***a) Comments from CESC***

CESC suggested that Letter of Credit should be for three months to keep consistency with the security deposit criteria of normal consumers to avoid discrimination on the ground of preferential treatment of open access customers.



***b) Comments from ITC***

ITC is of opinion that there should be provision for advance payment and if payment is not done, provision for submission of BG should also be there.

**97.2 Commission's stand**

CESC's suggestion is accepted. ITC's proposal of Bank Guarantees has been also accepted. ITC's proposal of advance payment in Long-Term and Short-Term Open Access has been noted and after due diligence will be considered under STU Detailed Procedures.

**98. Clause 23 of Draft Open Access Regulations**

**98.1 Comments of ITC**

ITC pointed out that the format mentioned in regulation should not be applicable for transaction through energy exchange and also where Open Access application has to be filed through National Open Access Registry (NOAR).

**98.2 Commission's stand**

ITC's suggestion is already accommodated under clause 9.1(a). Accordingly, clause 23 is modified.

**99. Clause 24.5 of Draft Open Access Regulations**

**99.1 Comments of SLDC**

SLDC is of opinion that after commencement of AMR system, the Open Access customer should arrange for sending of meter data to SLDC through AMR system and accordingly the provisions may be modified.

**99.2 Commission's stand**

SLDC's suggestion is accepted and accordingly clause 24.5 has been modified as follows:

'Reading of main and check meters shall be taken periodically by the authorised representative of the concerned Licensee and the Open Access Customer or his representative. Meter reading shall be communicated to the SLDC, Open Access Customer, STU, relevant generating company, electricity trader, Connected Licensee, Distribution Licensee and Transmission Licensee, as the case may be, by the concerned Licensee within 48 hours from gathering readings. After commencement

of AMR system, the Open Access customer should arrange for sending of meter data to SLDC through AMR system. Check meter readings shall be considered when main meters are found to be defective or have stopped functioning.'

#### **100. Clause 25.1 of Draft Open Access Regulations**

##### **100.1 Comments of WBSIEDCL**

WBSIEDCL has provided a slight modification of the said clause 25.1 where it wants to replace the words 'control room' with the word 'ALDC', the word 'suspend' with 'disallow/suspend' and also requested deletion of the words 'for a reasonable period as defined in SLDC Detailed Procedures' from the clause without giving any background or reasons for seeking such deletion.

##### **100.2 Commission's stand**

WBSIEDCL's modification related to replacement of select terms is accepted. The modified clause 25.1 now stands as follows:

*'An Open Access Customer connected with the State Grid or under the purview of frequency linked deviation settlement mechanism shall provide for all actual costs towards the equipment for communication up-to the nearest grid sub-station or the SLDC, as the case may be, for two communication channels for online real-time display at SLDC through Supervisory Control and Data Acquisition (SCADA) along with meter reading on real time basis. In case there is more than one Open Access Customers for such point of area of meter reading, then they will share such cost. An Open Access Customer shall also provide same facilities for communication and real time display with the ALDC of the Connected Licensee concerned. STU shall assist in developing such facilities on request. For unavailability of such facility for a reasonable period as defined in SLDC Detailed Procedures, SLDC/ALDC may **disallow** /suspend the Open Access transaction for grid security purpose.'*

#### **101. Clause 27 of Draft Open Access Regulations**

##### **101.1 Comments of MPL**

MPL pointed out that in case of curtailment required DAM shall be curtailed followed by RTM in line with CERC Regulations.

##### **101.2 Commission's stand**

As both DAM and RTM operate in exchange platforms and are governed under CERC Regulations the same shall be become automatically applicable.



## 102. Clause 29.2 of Draft Open Access Regulations

### 102.1 Comments of Stakeholders

#### a) *Comments of WBSEDCL*

WBSEDCL is of opinion that availability should include outage due to downstream Distribution network, beyond the control of licensee like upstream transmission / Distribution system and / or generating stations. Hence 90% availability may be kept for distribution system.

#### b) *Comments of BEL*

Against such clause 29.2 of Draft Open Access Regulations BEL has highlighted that since 2007 the normative availability for distribution system is 95% as per WBERC OA Regulations 2007 vide 62/WBERC and such value is still persisting in the clause 29.2 of the Draft Open Access Regulations. BEL has also mentioned that as per Tariff Policy of 2016 such norms should reflect 'increased efficiencies'. On such background BEL has opined that 'By this time huge investment has been incurred for distribution system of West Bengal through own investment and different schemes of Government of India and Government of West Bengal for system strengthening. So, it is now natural expectation that the distribution system should have higher availability for better service to the consumer. Accordingly, in this Proposed OA Regulations 2022 the normative availability of distribution system may be increased to 97% to satisfy the conditionalities of reflection of "increased efficiencies" as per paragraph 5.10(f) of Tariff Policy of 2016.'

### 102.2 Commission's Stand:

Comments of BEL has been noted and accordingly the normative availability has been fixed at 96%. Considering WBSEDCL's suggestion accordingly the modified clause 29.2 will be as follows:

*'The Licensee shall be deemed to have failed to provide the requisite services, if it is not able to provide to the Long-Term Customer at least - (a) in case of transmission and necessary facilities - availability of 98% in a financial year and (b) in case of distribution system – availability of 96 % in a financial year. The Commission shall through separate order or tariff order specify the charges, which the Licensee has to pay to the Long-Term Customers if the target network availability is not met. However, the same shall not include non-availability due to any Force Majeure Event or outages/failure of the assets which are not owned by the concerned distribution licensee such as upstream/ downstream transmission/distribution asset of other licensees and / or generating stations.'*

### **103. Clause 30.3(e) of Draft Open Access Regulations**

#### **103.1 Comments of CESC**

CESC's comments are as below:

'In terms of the Electricity Act, supply of electricity in a given area shall be effected only through the network of the distribution licensee of that area. Supply of electricity to a consumer by a distribution licensee through open access of distribution network of another distribution licensee is not permitted under the Electricity Act, 2003. There might be existing cases where power interchange takes place between two distribution licensees whose networks are interconnected. Such cases are exceptions and standard connectivity agreement would not be necessary for such cases. Arrangements may be covered in case specific agreements for such cases.' But no specific suggestion has been given.

#### **103.2 Commission's stand**

Commission has already provided its stand on the same issue on clause 15.10(a).

### **104. Clause 33 of Draft Open Access Regulations**

In view of second proviso to rule 5(2) of Green OA Rules following sub clause of (d) to clause (33) is added in the Open Access Regulations 2022:

*"While scheduling under green energy open access the Green Energy Open Access Consumer shall schedule same quantum of power in each time block for every consecutive twelve time blocks starting from zero time block."*

### **105. Format-1 and Format-2 of Draft Open Access Regulations**

#### **105.1 Comments of WBSEDCL**

WBSEDCL has suggested addition of fields in the forms.

- Format – Annexure 1 –
  - 4C – Consumer Number
  - 5A - Source of Open Access: Captive/Name of power exchange/generator/licensee
  - 5B - Type of Generation: RE/Thermal/Hydro/Co-generation
- Copy to:
  - C – Distribution Licensee (if different from the Nodal Agency and in whose distribution network the point of drawal or injection of power is located.



- Format 2 Annexure 2
- 2 – Name of the Applicant and their consumer number if any
- 7 - Source of Open Access: Captive/Name of power exchange/generator/licensee
- 8 - Type of Generation: RE/Thermal/Hydro/Co-generation

## **105.2 Commission's Stand**

All the suggestions are accepted for further clarity and ease of operations and such format has been also changed to accommodate the requirement of Backup Power/ Emergency Power.

## **106. Schedule of Draft Open Access Regulations**

### **106.1 Comments of Stakeholders**

#### ***a) Comments of ITC***

As per ITC the charges for meter reading should remain as per existing regulation. ITC also wants to know the reason for applicability of Bank Guarantee along with application fee for registering his name for day-ahead transactions and for same day transaction.

#### ***b) Comments of MPL***

According to MPL there is no reason for putting this Bank Guarantee (BG) here which is unnecessary and puts additional burden on the customer and it is also not as per CERC Regulations. Thus this point should be omitted.

#### ***c) Comments of Star Cement Limited***

Star Cement Limited has suggested that as SLDC may collect the data through Remote Terminal Unit and as all facilitation charges for Open Access by the SLDC is already covered under Scheduling and Operating Charges, thus imposition of additional cost of Rs. 4000.00/month for each meter for data collection may please be reconsidered by the Hon'ble Commission which is not in practice in most of the states.

### **106.2 Commission's stand**

The scheduling and operating charges do not include the cost of meter reading and other related charges. ITC's suggestion on meter reading and other related charges is partially addressed by reducing the proposed rate from Rs 4000/- to Rs 3000/-.

Unlike Long-term and medium-term open access, in case of short-term open access payments has to be made in advance. Hence to ensure timely disposal of day ahead and same day transaction the provision of advance registration with bank guarantee has been specified as a payment security mechanism. The quantum of bank guarantee shall be at least 80% of the short- term open access charges for the intended day ahead or same day short term transactions subject to a minimum of Rs. 1 lakh. Accordingly, the said provision has been modified.

## **107. Points raised by Fourth Partner Energy Private Limited & HINDALCO Industries Limited**

### **107.1 Comments of Stakeholders**

#### ***a) Comments of Fourth Partner Energy Private Limited***

Fourth Partner Energy Private Limited submitted that for promotion of renewable energy projects in the State WBERC should provide exemption for 5 to 10 years on transmission charges and losses, wheeling charges and losses, SLDC operating Charges, Electricity duty and Cross-Subsidy Surcharge. Fourth Partner Energy Private Limited also asked facility of banking of energy for April to March (12 months) with nominal banking charges of 2 % and also requested that land for proposed renewable energy projects must be deemed to be considered with non-agricultural status.

#### ***b) Comments of HINDALCO Industries Limited***

HINDALCO has requested for concession in wheeling charges and transmission charges for renewable projects in order to make renewable energy projects viable. They also requested for the transmission charges to be calculated in Rs/ kWh instead of Rs/MW/ Month on wheeling long term open Access due to very low PLF of solar power generating stations. They have further requested for exemption of electricity duty for a period of 10 years. Another request is for payment mechanism to be linked to a single distribution licensee where conveying of electricity under open access involves multiple distribution licensees.

### **107.2 Commission's Stand**

Commission has a statutory duty of oversight of the promotion of renewable sources and cogeneration sources under section 86(1)( e) and 61(1)(h) of the Act in a specific manner. It has also other duties of reducing cross-subsidy, looking after consumer's interest, and ensuring recovery of cost of electricity in a reasonable manner, etc. Thus, Commission has to strike a balance among all these factors. Hence, the Commission cannot grant such prayer of exemption/ concession of these charges and losses. In this context, discussion in Para 79.2 may also be taken into consideration. The request for



transmission charges in Rs/kWh for long term open access cannot be agreed to on similar principles. Further, the request for payment at single distribution licensee in case of involvement of multiple distribution licensees cannot be accepted as quick fund transfer is necessary to reduce the stress in working capital cycle.

Banking of Energy issue will be dealt in future separately after evaluation of the Model regulation on methodology as will be framed by Forum of Regulators as per Electricity (Promoting Renewable Energy Through Green Energy Open Access) Rules, 2022. Electricity duty and status of land issues are governed under different acts administered by other authorities and thus Commission has no jurisdiction pertaining to electricity duty and land usage.

#### **108. Additional Points raised by WBSEDCL**

- (a) According to WBSEDCL, since system is developed for supply of power in consumer mode based on consumers' declared five year Contract Demand, there should be a Lock-in period to avoid financial burden of above asset on other consumers. Accordingly, WBSEDCL suggested inclusion of a clause stating that existing consumer of a Distribution Licensee shall be eligible for Open Access, for the quantum of power projected during application, only after expiry of "lock-in" period of five (05) years from the date of connection in consumer mode.

**Commission's Stand:** The Act speaks of non-discriminatory open access. Moreover, there is no question of financial burden as the invested amount is recoverable through wheeling charges in the same proportion in which he as a consumer would have to pay as embedded cost of his tariff. Further, the distribution licensee is also protected by additional surcharges.

- (b) According to WBSEDCL Parallel operation charge / Grid synchronization charge should be applicable for grid synchronization of captive Generator of consumer at same premises, as many states have already introduced the same. WBSEDCL suggested that parallel operation charge / grid synchronization charge shall be applicable for Captive Generating Plant of the consumer (located at same premises) for running it in synchronization of grid of connected Dist. Licensee. WBSEDCL has also suggested that such rate will be the Demand Charge/ Fixed charge as applicable as per Tariff order depending on consumer category and capacity of captive generator to be synchronized.

**Commission's Stand:** The issue is already discussed against clause no 18.2.6 in this SOR.

- (c) Provision for ED may be included so that open access customer shall be liable to pay Electricity Duty (ED) to State Govt. as per notification under Bengal Electricity Duty Act, 1935 as amended, if applicable to such customer on the consumption at the drawal point in the state through open access source.

**Commission's Stand:** WBSEDCL's point has been duly incorporated.

- (d) WBSEDCL suggested to insert a new clause stating that 'To avoid the operational inconvenience of the distribution/transmission grid operator due to time block wise frequent ramp up & ramp down of open access schedule, the existing consumer who intend to procure power partly or fully from the collective transactions of Energy Exchange have to submit their non revisable procurement schedule on day ahead basis within 11.00 hrs of preceding day of delivery in compliance with the Grid Code & intra state DSM regulation 2021.'

**Commission's Stand:** This are the operational issues which would be covered under SLDC Detailed Procedure.

Changes suggested by WESEDCL in the forms have been accepted.

#### 109. Additional Points raised by FOSET

The general points raised by FOSET in paragraph 13, 14 and 15 of their submission are being quoted below along with the Commission's stand:

- (a) 'In recent past it has been observed that in West Bengal the Annual Performance Review and the annual Fuel And Power Purchase Cost Adjustment are being done in quite delay (in certain cases it takes for than 6-7 years). Thus, the distribution licensee may object to operationalise such open access for want of non-realisation of past dues.

Commission shall make it clear in the Proposed Regulations that the reasons of delayed order of APR and FPPCA shall not be a reason to hold open access as this can be always recovered after ward for past period as such open access consumer, being connected to the distribution system of the distribution licensee, as per definition of consumer is legally always a consumer of such licensee also even after operationalisation of Open Access. In this Proposed Regulations it shall be mentioned that in case the consumer does not pay past dues then his supply line shall be disconnected.'

**Commission's Stand:** As per this Open Access Regulations, it is the SLDC and STU who are designated as nodal agencies and have the powers to accord approval to open access applications; the distribution licensee does not enjoy such powers. Further, the eligibility criteria for Open Access as laid down under this Open Access Regulations 2022 do not include the condition listed by FOSET.

- (b) 'Different Stakeholders may propose different propositions in this public consultation. Commission may accept certain propositions. In such case we will request that Commission shall ensure that due to such propositions there will be no discriminations in any sense between the following two sets of open access customers as mentioned below:



- i) Open Access Customers using intra-state infrastructure through inter-state open access permission governed under CERC OA Regulations 2008 or CERC OA Regulations 2009.
- ii) Open Access Customers using intra-state infrastructure through intra-state open access permission governed under this Proposed Regulations.

**Commission's Stand:** FOSET's point has been noted and Commission has endeavoured to maintain parity as per the Act while also addressing the unique requirements of the State.

- (c) 'Commission should have come out with an explanatory note in line with the practice of issuance of explanatory memorandum for any regulations of CERC, so that the reasons of different changes that had taken place in the Proposed Regulations with respect to the existing WBERC OA Regulations 2007 could have been available for better understanding as well as for future requirement so that in case of any legal complexity such explanatory note could have been used effectively for resolution of the legal complexity. Thus, we would request that in Statement of Reasons of the finalised Proposed Regulations such reasons of changes shall be mentioned in addition to the reasons of rejection or acceptance of comments, suggestions and objections raised by the stakeholders.'

**Commission's Stand:** FOSET's point has been noted and it may be noted that paragraph 1 to 3 of this SOR will provide the necessary background and explanatory note for framing these Open Access Regulations 2022 besides specific clause wise and general analysis.

#### 110. Additional Points raised by ITC

- a) ITC has requested for provision for Banking of Renewable Power to motivate private players to invest in renewable energy projects.

**Commission's stand:** This issue is already discussed against additional point raised by Fourth Partner Energy Private Limited.

- b) ITC is of opinion that as the regulation has been drafted in line with CERC regulations a clause may be inserted stating that in case of any dispute between the State regulation and CERC regulations the clauses as per CERC regulation would prevail.

**Commission's stand:** ITC's suggestion of a blanket provision may not be appropriate in all cases. If a situation of incompatibility arises, the Commission can always resolve such incompatibility through issuance of any order on by seeking references or suggestions through stakeholder consultation.

- c) ITC suggested insertion of a clause – "Open Access should be provided if contract demand of consumer is above 1 MW and there is no bar whatsoever on quantum of Open Access"

***Commission's stand:*** ITC's suggestion is already recognized in the provisions of this Open Access Regulations 2022.