



**Maharashtra State Electricity Distribution Co. Ltd.**

(A Govt. of Maharashtra Undertaking)  
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PLOT No. G-9, PRAKASHGAD  
Prof. ANANT KANEKAR MARG  
BANDRA (East)  
MUMBAI-400051

No. CE/Comm/Petition /OA Banking/

No 0 0 2 1 8 4 4

Date: 3 AUG 2019

To,

**The Secretary,**

Maharashtra Electricity Regulatory Commission,

13<sup>th</sup> Floor, World trade Centre, Cuffe parade, Culaba,

Mumbai- 400005.

**Sub:** Petition for removal of difficulties in implementation of MERC (Distribution Open Access) Regulations, 2016 and MERC (Distribution Open Access) (First Amendment) Regulations, 2019, (Provision of Banking).

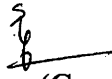
Respected Sir,

Please find enclosed herewith the MSEDCL's Petition for removal of difficulties in implementation of MERC (Distribution Open Access) Regulations, 2016 and MERC (Distribution Open Access) (First Amendment) Regulations, 2019, (Provision of Banking).

Fees for filing Petition Rs. 10000/- is paid through RTGS vide UTR No. **MAHBH19215223614.**

Thanking You!

Yours faithfully,

  
**Chief Engineer (Commercial)**

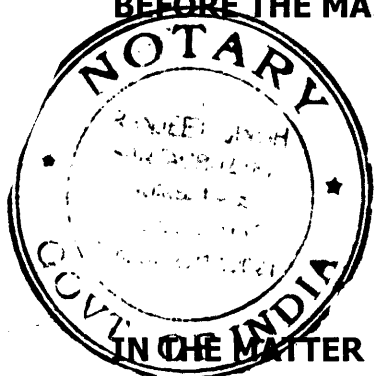
Copy S.w.r. to:-

- 1) The Director, (Commercial), MSEDCL, Mumbai.

Copy to:

- 1) Prayas (Energy Group), Amrita Clinic, Athawale Corner, Deccan Gymkhana Karve Road, Pune 411 004.
- 2) Mumbai Grahak Panchayat, Grahak Bhavan, Behind Cooper Hospital, Vile Parle (West), Mumbai 400 056.
- 3) The General Secretary, Thane Belapur Industries Association, Robale Village, Post Ghansoli, Navi Mumbai 400 701.
- 4) Vidarbha Industries Association, 1<sup>st</sup> Floor, Udyog Bhavan, Civil Line, Nagpur 440 001.
- 5) Chamber of Marathwada Industries & Agriculture, Bajaj Bhavan, P-2, MIDC Industrial Area, Railway Station Road, Aurangabad – 431005
- 6) Maharashtra Chamber of Commerce, Industries & Agriculture, Oricon House, 6th Floor, 12 K, Dubash Marg, Fort, Mumbai – 400001.

BEFORE THE MAHARASHTRA ELECTRICITY REGULATORY COMMISSION, MUMBAI



FILING NO:

CASE NO:

IN THE MATTER OF

**PETITION FOR REMOVAL OF DIFFICULTIES IN IMPLEMENTATION OF MERC (DISTRIBUTION OPEN ACCESS) REGULATIONS, 2016 AND MERC (DISTRIBUTION OPEN ACCESS) (FIRST AMENDMENT) REGULATIONS, 2019, (PROVISION OF BANKING).**

**AND**

**IN THE MATTER OF**

**REGULATION 20 OF THE MERC (DISTRIBUTION OPEN ACCESS) REGULATIONS, 2016 (PROVISION OF BANKING) AND AMENDED REGULATION 38 OF MERC (DISTRIBUTION OPEN ACCESS) (FIRST AMENDMENT) REGULATIONS, 2019 (PROVISION OF BANKING).**

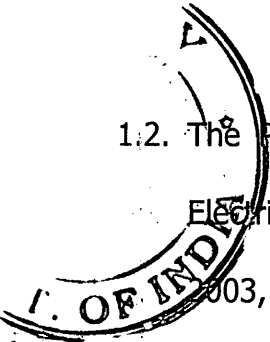
**IN THE MATTER OF**

**MAHARASHTRA STATE ELECTRICITY DISTRIBUTION COMPANY LIMITED – THE PETITIONER**

Maharashtra State Electricity Distribution Company Ltd. respectfully submits as under:

**1. Background**

1.1. The Petitioner is a Company constituted under the provisions of Government of Maharashtra, General Resolution No. PLA-1003/C.R.8588/Energy-5 dated 25th January 2005 and is duly registered with the Registrar of Companies, Mumbai on 31st May 2005.



1.2. The Petitioner is functioning in accordance with the provisions envisaged in the Electricity Act, 2003 and is engaged, within the framework of the Electricity Act, 2003, in the business of Distribution of Electricity to its consumers situated over the entire State of Maharashtra, except Mumbai City & its suburbs (excluding Mulund&Bhandup).

1.3. The Petitioner submits that the Distribution Open Access Amendment Regulations 2019 needs to be clarified further in terms of Banking of Renewable Energy generation. Therefore, the Petitioner approaching the Hon'ble Commission for seeking clarification in clause 38.3 of the MERC (Distribution Open Access) (First Amendment) Regulations, 2019.

1.4. The Petitioner submits that Hon'ble Commission has issued the Distribution Open Access Regulations, 2016 vide No. MERC/Tech/Open Access Distribution/2016/01742 dated 30th March, 2016 (Herein after to be referred as "DOAR 2016"). (*The relevant pages of DOAR 2016 are annexed as **Annexure A***)

1.5. It is submitted that the Banking Provisionas per DOAR 2016 is as under:

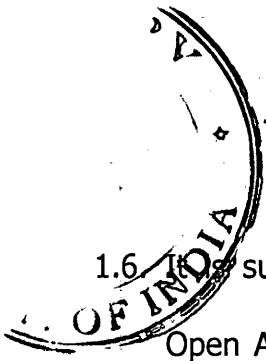
**20. Banking of Renewable Energy generation**

.....

20.3. *The banking year shall be the financial year from April to March.*

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

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



1.6. It is submitted that recently this Hon'ble Commission has issued the Distribution Open Access (First Amendment) Regulations, 2019 vide No. MERC/Tech/ 2019/097 dated 8th June, 2019 (Herein after to be referred as DOAR 2019). (*The relevant pages of DOAR (First Ammendment) Regulation 2019 are annexed as **Annexure B***)

1.7. It is submitted that this Hon'ble Commission in said DOAR 2019 has amended the Regulation 20 ( Banking of Renewable Energy generation) of DOAR 2016 as under:

**14. Amendment in Regulation 20 of the Principal Regulations:**

.....

C. *The existing Regulation 20.3 shall be deleted.*

D. *The existing Regulation 20.4 shall be renumbered as 20.3 and amended as under:*

*20.3. Banking of energy shall be permitted only on monthly basis.*

*Provided that the credit for banked energy shall not be permitted to be carried forward to subsequent months and the credit for energy banked during the month shall be adjusted during the same month as per the energy injected in the respective Time of Day ('TOD') slots determined by the Commission in its Orders determining the Tariffs of the Distribution Licensees;*

.....

1.8. It is submitted that this Hon'ble Commission has also amended Regulations 38 as under:

**DOAR 2016:**

38. Repeal and Savings



15. Consumers, Generating Stations or Licensees, as the case may be, availing Open Access to the Distribution System in Maharashtra on the date of coming into force of these Regulations under an existing agreement or contract shall be entitled to continue to avail such access on the same terms and conditions as stipulated under such existing agreement or contract:

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

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

.....

**DOAAR 2019:**

***16. Amendment in Regulation 38 of the Principal Regulations:***

*The provisos of existing Regulation 38.3 shall be amended as under:*

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

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

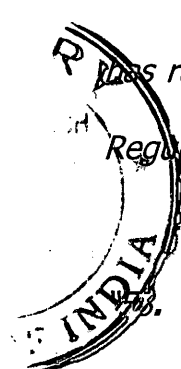
*Provided further that provision relating to Banking of the Principal Regulations shall continue to apply for existing Open Access Agreements or contracts as on date of notification of the first amendment of the Principal Regulations, till the expiry of the approved period for such OA transactions, beyond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

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

- 1.9. It is submitted that this Hon'ble Commissions has also issued Statement of Reason (SOR) in respect of DOAAR 2019 wherein the relevant para for amendment of Regulation 38 of DOAR 2016 are as under:

*22. Regulation 38: Repeal and Savings*

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



*It has ruled that contract across the board can only be interfered with by framing of Regulations. The relevant extract of the said Order is reproduced as under:*

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

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

*It may be noted that the changes proposed herein with respect to Banking, eligible capacity, Contract demand reduction, etc., are proposed thorough suitable amendments to Regulations and the changes can be made squarely applicable to new as also existing contracts albeit with prospective effect. Therefore, Commission has decided to apply the amendments prospectively to new and existing OA transactions. However, it is clarified once again that applicability of the amended regulations for ongoing transactions shall be purely on prospective basis and shall*

*not affect past settlements made under the said transactions. Further, as clarified in the earlier paragraphs, that banking provision as per the Principal DOA Regulations, 2016 shall continue to apply for existing OA transactions till expiry of the approved period for such OA transactions. The revised banking related provisions as per the present amendment shall apply thereafter.*

1.10. The Petitioner submits that this Hon'ble Commission in its DOAAR 2019 Regulation 38 para 1 has mentioned that the provisions of amended regulations relating to Banking under Regulation 20, the definition of Billing Demand, change in injection or drawal point under Regulation 26 and revision in Contract Demand under Regulation 4.2 shall be applicable to existing Open Access Agreements or contracts;

1.11. The Petitioner submits that this Hon'ble Commission in its DOAAR 2019 Regulation 38 para 2 has mentioned that the provision relating to Banking of DOAR 2016 shall continue to apply for existing Open Access Agreements or contracts as on date of notification of the first amendment of the Principal Regulations, till the expiry of the approved period for such OA transactions, beyond which provision relating to Banking under Regulation 20 of the first amendment of the Principal Regulations shall apply.

1.12. It is further submitted that in SOR for DOAR 2019; this Hon'ble Commission has directed that changes proposed herein with respect to Banking, eligible capacity, Contract demand reduction, etc., are proposed through suitable amendments to Regulations and the changes can be made squarely applicable to new as also existing contracts albeit with prospective effect. *(The relevant pages of SOR for DOAR 2019 are annexed as Annexure C)*

1.13. It is submitted that in SOR for DOAAR 2019; this Hon'ble Commission has further clarified that applicability of the amended regulations for ongoing transactions shall



be purely on prospective basis and shall not affect past settlements made under the said transactions.

It is further submitted that in SOR for DOAAR 2019; this Hon'ble Commission has clarified that banking provision as per the Principal DOA Regulations, 2016 shall continue to apply for existing OA transactions till expiry of the approved period for such OA transactions.

1.15. The Petitioner submits that the directions of this Hon'ble Commission in para 1 and para 2 of DOAAR 2019 are in contradiction with each other and also the clarifications issued in SOR of DOAAR 2019 are in contradiction with each other.

1.16. The Petitioner submits that there are many existing LTOA transactions wherein the validity of said OA transaction is more than twenty (20) years and it is not clear that how the provisions of said amendment are to be applied to such transactions.

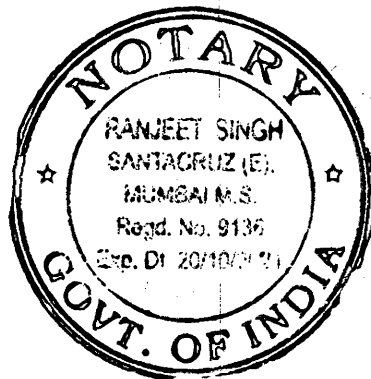
1.17. The Petitioner submits that the direction in amendment is not clear whether the amendment in Banking provisions are applicable to existing OA contracts or transactions (Existing MTOA and LTOA). Hence the said clarification petition is being filed before this Hon'ble Commission.


1.18. The Petitioner further submits that in SOR of DOAAR 2019, this Hon'ble Commission has referred Hon'ble Supreme Court Case (CERC Vs PTC) (2010) 4 SCC 603 (Paras 58, 60 and 66) wherein the Hon'ble Supreme Court of India has directed that a regulation made under Section 178 has the effect of interfering and overriding the existing contractual relationship between the regulated entities. The Hon'ble Supreme Court of India has further directed that a regulation under Section 178 is in the nature of a subordinate legislation and can even override the existing contracts including power purchase agreements. Hence, it is therefore prayed as under.

## 2 PRAYERS

The Petitioner; based on the submissions made in the foregoing paragraphs, most earnestly prays to the Hon'ble Commission:

- 2.1 To clarify whether the amendment in Banking provisions as mentioned in DOAAR 2019 are applicable to existing OA transactions form date of notification of DOAAR 2019;
- 2.2 To allow applicability of Regulation 20 as amended in DOAAR 2019 uniformly to all the OA transactions from date of notifications of DOAAR 2019.
- 2.3 To condone any error/omission and to give opportunity to rectify the same;
- 2.4 To permit the Petitioner to make further submissions, addition and alteration to this Petition as may be necessary from time to time.
- 2.5 To pass any order that deems fit in view of submissions made in said petition



  
**MSEDCL**  
 Chief Engineer (Com.)  
 MSEDCL Ltd., Prakashgad,  
 5th Floor, Bandra (East),  
 Mumbai - 400 051.

BEFORE THE MAHARASHTRA ELECTRICITY REGULATORY COMMISSION,  
MUMBAI

FILING NO:  
CASE NO:

IN THE MATTER OF  
PETITION FOR REMOVAL OF DIFFICULTIES IN IMPLEMENTATION OF MERC  
(DISTRIBUTION OPEN ACCESS) REGULATIONS, 2016 AND MERC  
(DISTRIBUTION OPEN ACCESS) (FIRST AMENDMENT) REGULATIONS,  
2019, (PROVISION OF BANKING).

AND  
IN THE MATTER OF  
REGULATION 20 OF THE MERC (DISTRIBUTION OPEN ACCESS)  
REGULATIONS, 2016 (PROVISION OF BANKING) AND AMENDED  
REGULATION 38 OF MERC (DISTRIBUTION OPEN ACCESS) (FIRST  
AMENDMENT) REGULATIONS, 2019 (PROVISION OF BANKING).

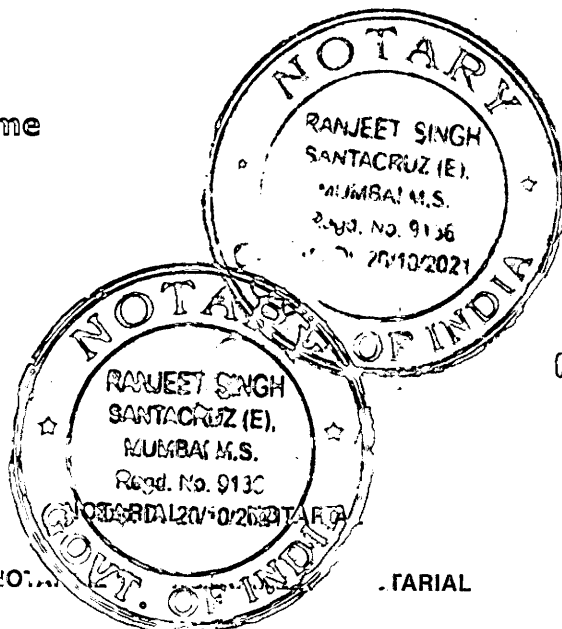
IN THE MATTER OF  
MAHARASHTRA STATE ELECTRICITY DISTRIBUTION COMPANY LIMITED –  
THE PETITIONER

AFFIDAVIT ON BEHALF OF PETITIONER (MSEDCL)

1. I, Sunil Deshpande, aged 53 Years, son of Shri Dattatraya Deshpande, having my office at 5th Floor, Prakashgad, Bandra (East), Mumbai-400051 do solemnly affirm and say as follows:
2. I am the Chief Engineer (Commercial) of Maharashtra State Electricity Distribution Co. Ltd., the Petitioner in the above matter and am duly authorized as the Respondent to make this affidavit.
3. The statements made in the enclosed submission are based on the information received from the concerned officers of the Company and I believe them to be true.

I solemnly affirm at Mumbai on this 3rd day of August 2019 that the contents of this affidavit are true to my knowledge, no part of it is false and nothing material has been concealed there from.

Identified before me



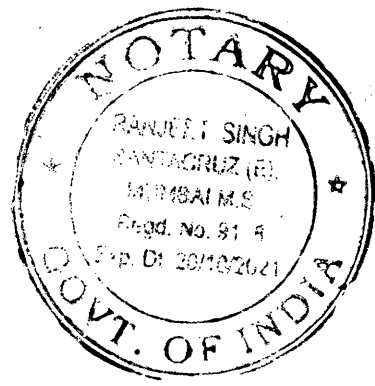
*S. Deshpande*  
Deponent  
Chief Engineer (Com.)  
MSEDCL Ltd., Prakashgad,  
5th Floor, Bandra (East),  
Mumbai - 400 051.

BEFORE ME  
*R. Singh*  
RANJEET SINGH  
M.Sc.LL.B.  
NOTARY  
MAHARASHTRA  
GOVT. OF INDIA  
20/08/2019

MAHARASHTRA ELECTRICITY REGULATORY COMMISSION  
(DISTRIBUTION OPEN ACCESS) REGULATIONS, 2016



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**20. Banking of Renewable Energy generation**

20.1. Regulation 19.3 shall not be applicable in case an Open Access Consumer obtains supply from a Renewable Energy Generating Station identified as 'non-firm power' by the Commission in its Regulations governing the Tariff for Renewable Energy.

20.2. The surplus energy from a 'non-firm' Renewable Energy Generating Station after set-off shall be banked with the Distribution Licensee.

20.3. The banking year shall be the financial year from April to March.

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

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

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

Illustration: Energy banked during:

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

A(3/5)



- *Morning peak TOD slot (0900 hrs – 1200 hrs) may be drawn in the same TOD slot and also during Off-peak and Night off-peak TOD slots*
- *Evening peak TOD slot (1800 hrs – 2200 hrs) may be drawn in the same TOD slot and also during Off-peak and Night off-peak TOD slots*

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

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

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

**21. Reactive Energy Charge**

21.1. The methodology for payment for the reactive energy charges by an Open Access Consumer, Generating Station or Licensee with load of 5 MW or more shall be in accordance with the State Grid Code and the Regulations of the Commission governing Multi-Year Tariff or relevant orders of the Commission.

21.2. The reactive energy charges in respect of Open Access Consumers with load less than 5 MW shall be calculated on Power Factor basis as may be specified in relevant orders of the Commission.

21.3. The reactive energy charges in respect of Renewable Energy Generating Stations shall be in accordance with the charges approved by the Commission in its relevant Tariff Orders.

**34. Exemption**

- 34.1. Nothing contained in these Regulations shall apply to a Local Authority engaged in the business of distribution of electricity before the appointed date.
- 34.2. Changeover Consumers shall be governed by the relevant orders of the Commission.

**35. Issue of Orders and Practice Directions**

Subject to the provisions of the Act, the Commission may issue Orders and Practice Directions with regard to the implementation of these Regulations.

**36. Power to Amend**

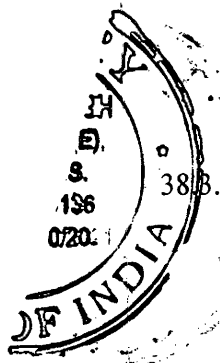
The Commission may, at any time, vary, alter, modify or amend any provisions of these Regulations.

**37. Powers to Remove Difficulties**

If any difficulty arises in giving effect to the provisions of these Regulations, the Commission may, by general or specific order, make such provisions, not inconsistent with the provisions of the Act, as may appear to be necessary or expedient for the purpose of removing such difficulty.

**38. Repeal and Savings**

- 38.1. Save as otherwise provided in these Regulations, the Maharashtra Electricity Regulatory Commission (Distribution Open Access) Regulations, 2014, shall stand repealed from the date of notification of these Regulations.
- 38.2. Notwithstanding such repeal, anything done or purported to have been done under the repealed Regulations shall be deemed to have been done or purported to have been done under these Regulations.



38.B. Consumers, Generating Stations or Licensees, as the case may be, availing Open Access to the Distribution System in Maharashtra on the date of coming into force of these Regulations under an existing agreement or contract shall be entitled to continue to avail such access on the same terms and conditions as stipulated under such existing agreement or contract:

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

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

38.4. Nothing in these Regulations shall, expressly or impliedly, bar the Commission from dealing with any matter or exercising any power under the Act for which no Regulations have been framed.

Mumbai,  
Date: 30 March, 2016

**ASHWANI KUMAR**  
Secretary,  
Maharashtra Electricity Regulatory Commission



MAHARASHTRA ELECTRICITY REGULATORY COMMISSION

NOTIFICATION

Annexure B (1/4)

ELECTRICITY ACT, 2003.

No. MERC / Tech /2019/ 097.—In exercise of the powers conferred under sections 86(3) and 181 of the Electricity Act, 2003 and all other powers enabling it in this behalf, and after previous publication, the Maharashtra Electricity Regulatory Commission makes the following Regulations to amend the Maharashtra Electricity Regulatory Commission (Distribution Open Access) Regulations, 2016 ('the Principal Regulations') namely :

**1. Short title and commencement :**

1.1. These Regulations may be called the Maharashtra Electricity Regulatory Commission (Distribution Open Access) (First Amendment) Regulations, 2019.

1.2. These Regulations shall come into force from the date of their publication in the *Official Gazette*.

**2. Amendment to Regulation 2 of the Principal Regulations :**

The following definitions shall be amended in Regulation 2 of the principal Regulations :—

"(4) "Banking" means the surplus Renewable Energy injected in the grid and credited with the Distribution Licensee after set off with consumption in the same Time of Day slot as specified in Regulation 20;"

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

- (i) in the agreement for supply of electricity; or
- (ii) through other written communication."

"(20) (a) "Gross metering" means a metering arrangement wherein, the entire energy generated by rooftop solar PV system is fed into the electrical grid subject to permissible technical limits as per interconnection standard and the system owner is benefited by way of sale of solar power to the Distribution Licensee at rate approved or adopted by Commission;"

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

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

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

**3. Amendment in Regulation 3 of the Principal Regulations :**

The existing Regulation 3.2 shall be substituted by the following :

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

- (a) Generating Plants or Stations, including Captive Generating Plants;
- (b) Trading Licensees
- (c) Power Exchanges
- (d) Other Distribution Licensees
- (e) any other sources,

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

Provided also that, if the Generating Station fails to inject according to the Open Access schedule and does not immediately revise its schedule, it shall be liable to a penalty equivalent to two times the SMP plus other incidental charges (Net UI charges, additional UI charges) or any other intra-State Deviation Settlement charges stipulated under the intra-State Deviation Settlement Mechanism operating in Maharashtra; notwithstanding which it shall be liable to pay the Open Access charges for the full reserved capacity for the entire period."

H. The existing Regulation 19.3.3 (a) shall be amended as under:

"19.3.3. In the event that a Generating Station in Maharashtra is declared as a State Pool Participant as per the Deviation Settlement Mechanism, the following would be applicable:

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

#### 14. Amendment in Regulation 20 of the Principal Regulations :

A. The existing Regulation 20.1 shall be amended and a new proviso is added as under :

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

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

B. The existing Regulation 20.2 shall be amended as under:

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

C. The existing Regulation 20.3 shall be deleted.

D. The existing Regulation 20.4 shall be renumbered as 20.3 and amended as under:

"20.3. Banking of energy shall be permitted only on monthly basis.

Provided that the credit for banked energy shall not be permitted to be carried forward to subsequent months and the credit for energy banked during the month shall be adjusted during the same month as per the energy injected in the respective Time of Day ('TOD') slots determined by the Commission in its Orders determining the Tariffs of the Distribution Licensees ;

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

*Illustration* : Energy banked during :

- o Night off-peak TOD slot (2200 hrs – 0600 hrs) may only be drawn in the same TOD slot
- o Off-peak TOD slot (0600 hrs – 0900 hrs & 1200 hrs – 1800 hrs) may be drawn in the same TOD slot and also during Night off-peak TOD slot

(However, the energy banked during night off-peak and off peak shall not be drawn during morning peak and evening peak)

- Morning peak TOD slot (0900 hrs – 1200 hrs) may be drawn in the same TOD slot and also during Off-peak and Night off-peak TOD slots
- Evening peak TOD slot (1800 hrs – 2200 hrs) may be drawn in the same TOD slot and also during Off-peak and Night off-peak TOD slots”

E. The existing Regulation 20.5 shall be renumbered as 20.4.

F. The existing Regulation 20.6 shall be renumbered as 20.5, amended and a new proviso is added above the existing proviso as under:

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

Provided that such deemed purchase shall be counted towards the Renewable Purchase Obligation of the Distribution Licensee.

**15. Amendment in Regulation 31 of the Principal Regulations:**

The existing Regulation 31.1 shall be amended and a new proviso is added above the existing proviso as under:

“31.1. The STU shall constitute and be the Convener of an Open Access Monitoring and Review Committee comprising following members:

- (a) one member from the STU
- (b) one member from the MSLDC
- (c) one member from the State-owned Distribution Licensee
- (d) one member from the Privately-owned Distribution Licensee (having overall demand of above 250 MW) on rotational basis
- (e) a person nominated by the Commission from among its officers and
- (f) Special Invitees upon nomination by Convener of Committee

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

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

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

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

**16. Amendment in Regulation 38 of the Principal Regulations :**

The provisos of existing Regulation 38.3 shall be amended as under :

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

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

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

**17. New Regulation 39 to the Principal Regulations :**

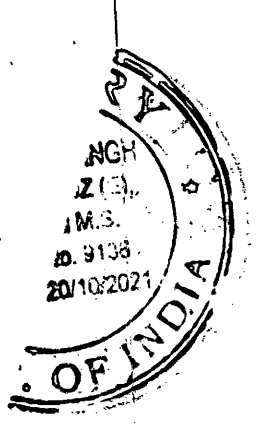
A new Regulation shall be added as Regulation 39 to the Principal Regulations :

"39. Power to Relax.

The Commission may by general or special order, for reasons to be recorded in writing, and after giving an opportunity of hearing to the parties likely to be affected by grant of relaxation, may relax any of the provisions of these Regulations on its own motion or on an application made before it by an interested person."

Mumbai,  
dated the 7th June 2019.

ABHIJIT DESHPANDE,  
Secretary,  
Maharashtra Electricity Regulatory Commission.



Annexure C (1/5)

**MAHARASHTRA ELECTRICITY REGULATORY COMMISSION**

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

And

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

**STATEMENT OF REASONS**

**Dated: 3 June, 2019**

**Introduction**

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

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

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

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

## **22. Regulation 38: Repeal and Savings**

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

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

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

### **22.2 Comments received**

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

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

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

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

### **22.3 Analysis and Commission's Decision**

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

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

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

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

#### **22.4 Provision in MERC DOA (First Amendment) Regulations, 2019**

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

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

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

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

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

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

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

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

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

**23.2 Comments Received**

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

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

**23.3 Analysis and Commission’s Decision**

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



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

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

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

Sd/-  
**(Mukesh Khullar)**  
**Member**

Sd/-  
**(I. M. Bohari)**  
**Member**

Sd/-  
**(Anand B. Kulkarni)**  
**Chairperson**