

**Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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CASE No. 8 of 2017

**In the matter of
Petition of Maharashtra State Electricity Distribution Co. Ltd. for directions and orders
on various issues under the Distribution Open Access Regulations, 2016**

Coram

**Shri Azeez M. Khan, Member
Shri Deepak Lad, Member**

Maharashtra State Electricity Distribution Co. Ltd. Petitioner

V/s

Maharashtra State Load Despatch Centre
Maharashtra State Electricity Transmission Co. Ltd.
Tata Power Co. Ltd. (Distribution)
Reliance Infrastructure Ltd. (Distribution) Impleaded Respondents

Appearance:

For the Petitioner	: Smt. Deepa Chawan, Counsel : Shri Ashish Singh, Adv. : Shri B Y Khandait
For Respondent 1	: Shri E.T. Dhengle
For Respondent 2	: Shri A. V. Shinde
For Respondent 3	: Smt. Deepa Chawan, Counsel
For Respondent 4	: Shri Ghansham Thakkar
For Authorised Consumer Representative	: Dr. Ashok Pendse, TBIA

ORDER

Dated: 4 May, 2018

Maharashtra State Electricity Distribution Co. Ltd. (MSEDCL) has filed a Petition on 26 December, 2016 seeking directions or orders on various issues under the MERC (Distribution Open Access) Regulations ('DOA Regulations'), 2016.

2. MSEDCL's prayers are as follows:

- 1) *"The present Petition be directed to be heard in a Public hearing with notice to all stakeholders in the State.*
- 2) *That this Hon'ble Commission may be please to issue directions and Orders regarding irregular denial of Transmission charges to the Distribution Licensee;*
- 3) *That this Hon'ble Commission may be please to issue directions and Orders to ensure compliance with Regulations;*
- 4) *That this Hon'ble Commission may be please to issue necessary practice directions regarding lack of information relating to outcome of bid submitted to power exchange for day ahead transactions;*
- 5) *That this Hon'ble Commission may be please to issue Orders and directions to the day ahead Open Access consumers to schedule power from open access for complete 24 hours of the day and shall intimate schedule to SLDC and the Petitioner, which shall be uniform for such period as directed by this Hon'ble Commission and the minimum schedule during the day be not less than 75% of maximum schedule of day;*
- 6) *That this Hon'ble Commission may be pleased to issue directions regarding non permitted use of banked energy in the months of April, May, October and November;*
- 7) *That this Hon'ble Commission may be pleased to issue directives qua the compulsory purchase of 10% of banked energy for meeting the RPO of the Distribution Licensee;*
- 8) *That this Hon'ble Commission may be pleased to issue orders for willful default by Open Access consumer to achieve Maximum Demand equal to or more than 70% of the threshold limit at which the consumer has become eligible for Open Access. Further, this Hon'ble Commission may consider that consumers not complying with provision in any month in a year instead of 3 consecutive months should be the criterion, for imposing the penalty.*
- 9) *That this Hon'ble Commission may be pleased to issue or provide for regulatory framework to transparently make available the information relating to the trading margins of trader.*

- 10) That this Hon'ble Commission may be pleased to issue appropriate directions for regulating the supply agreement executed by the Electricity Trading Licensees with the consumers/ generators terming themselves as Facilitator/Consultants to escape from their responsibilities which has been entrusted upon them vide various Regulations;
- 11) That this Hon'ble Commission may be pleased to direct and mandate the installation of RTU-DC by Partial Open Access consumers also;
- 12) That this Hon'ble Commission may be pleased to direct the SLDC to treat those of the Short Term Open Access Transactions consecutively taken or with any mechanical gaps but which otherwise qualify for Medium Term and Long Term transaction as per the definition of the Statutory Regulations as being rightfully treated as Medium Term / Long Term as the case may be.”

3. The Petition states as follows:

3.1 Irregularity of Transmission Charges based on duration of Open Access as per Open Access Regulations:

- 3.1.1 As per the MERC (Distribution Open Access) Regulations, 2016 (.DOA Regulations, 2016'), Short Term Open Access (STOA) has been permitted for a period not exceeding one month at a time, whereas Medium Term Open Access (MTOA) is for a period exceeding three months.
- 3.1.2 As per the DOA Regulations, 2016, the charges applicable to Open Access consumers include Transmission Charges, apart from Wheeling Charges, Cross Subsidy Surcharge (CSS), Additional Surcharge and Fees and Charges of Maharashtra State Load Despatch Centre (MSLDC):

“14. Billing

14.1 The bill for use of the Distribution System for wheeling of electricity in its network shall be raised by the Distribution Licensee on the entity to whom the Open Access is granted, and shall indicate the following:

- (i) Wheeling Charges;*
- (ii) Cross-Subsidy Surcharge;*
- (iii) Additional Surcharge on the charges for wheeling;*
- (iv) MSLDC fees and charges.*

Provided that, if the Distribution Licensee schedules power for the Open Access Consumer, Generating Company or Licensee, as the case may be, the MSLDC fees and charges payable by the Licensee shall be shared by them in the ratio of scheduled demand of Open Access

sought to the total demand of the Distribution Licensee on a pro-rata basis for Long-term and Medium-term Open Access;

Provided further that the scheduling and other operating charges, as may be applicable, shall be levied by the Distribution Licensee on the Short-term Open Access Consumer, Generating Station or Licensee at the rate approved for Short-term Open Access by the Commission in its Order determining MSLDC Fees and Charges;

Provided also that any specific methodology for charging MSLDC fees and charges as may be approved by the Commission from time to time through separate Order or any other Regulations shall be applicable.

(v) Transmission Charges:

Provided that a Partial Open Access Consumer, Generating Station or Licensee, as the case may be, shall pay the Transmission Charges to the Distribution Licensee instead of the Transmission Licensee for using a transmission network:

(vi) Any other charges, surcharge or other sum recoverable from the Consumer under the Act or any Regulation or Orders of the Commission:”

3.1.3 As per the above provisions, a partial Open Access consumer has to pay Transmission Charges to the Distribution Licensee instead of to the Transmission Licensee for usage of a transmission network. Any Open Access consumer wheeling power through the State Transmission System which is connected to the Distribution Licensee for meeting its partial power requirement/ demand is required to pay the Transmission Charges to the Distribution Licensee.

3.1.4 Regulation 61.3 of the MERC (Multi Year Tariff (MYT)) Regulations, 2015 specifies the formula for determination of Base Transmission Tariff of each year of the Control Period for long, medium and short term transactions:

“61.3 Base Transmission Tariff for each Year shall be determined as ratio of approved ‘TTSC’ for intra-State transmission system and approved ‘Base Transmission Capacity Rights’ and shall be denominated in terms of “Rs/kW/month” (for long-term/medium-term usage) or in terms of “Rs/kWh” (for short-term bilateral open access transactions usage, short-term collective transactions over Power Exchange and for Renewable Energy transactions) in accordance with the following formula:

$$\text{Base Transmission Tariff (t) long term or short term} = \frac{\text{TTSC(t)}}{\text{Base TCR (t)}}$$

$$\text{Base Transmission Tariff (t) (Short-term) (Rs/kWh)} = \frac{\text{TTSC(t)}}{\sum_{i=1}^n (\text{Energy Transmitted by Tx i})}$$

Where,

TTSC (t) = Pooled cost for InSTS for yearly period (t) of the Control Period;

Base TCR(t) = Base Transmission Capacity Rights for the yearly period (t);

n = Total number of Transmission Licensee(s) in that particular year of Control Period;

Txi = ith Transmission Licensee:

Provided that the energy units transmitted by the Transmission Licensees shall be based on the energy input requirement of the Distribution Licensees at Generation InSTS interface point, as projected by each Distribution Licensee as part of its MYT Petition for the Control Period and as approved by the Commission;

Provided further that any revisions in Base Transmission Capacity Rights and Base Transmission Tariff as determined in Regulations 61.2 and 61.3 due to the variation in the actual and approved CPD and NCPD shall be made at the time of Mid-Term Review and at the end of the Control Period for the subsequent years;

Provided also that in case new Transmission Licensees are added to the intra-State transmission network during the Control Period, then the TTSC, Base Transmission Capacity Rights and Base Transmission Tariff as referred under Regulations 61.1, 61.2 and 61.3 shall be re-determined for each remaining Year of the Control Period.”

3.1.5 Accordingly, the Commission has determined the Transmission Tariff for the uses of the Intra-State Transmission System (InSTS) network for the 3rd Control Period vide its InSTS Tariff Order dated 22nd July, 2016 :

<u>TSU - Distribution Licensees</u>	<u>Units</u>	<u>FY 2016-17</u>	<u>FY 2017-18</u>	<u>FY 2018-19</u>	<u>FY 2019-20</u>
TTSC (approved)	Rs. Crore	4,596.26	5,805.51	6,519.27	6,599.91
Base TCR (approved)	MW	18,757	20,168	21,404	22,719
Transmission Tariff (long term/ medium)	Rs./kW/	<u>204.24</u>	<u>239.88</u>	<u>253.82</u>	<u>242.08</u>

term)	month				
Transmission Tariff (short term/ short term collective/ renewable energy)	Rs./kWh	<u>0.28</u>	<u>0.32</u>	<u>0.34</u>	<u>0.32</u>

- 3.1.6 The Commission has also considered the month-wise Coincident Peak Demand (CPD) and Non-Coincident Peak Demand (NCPD) details for Transmission System Users (TSUs) for FY 2015-16 as provided by the MSLDC. However, MSLDC has not separated the contribution of the partial Open Access consumers in the area of MSEDCL from MSEDCL's share. Accordingly, the Commission has considered the Base Transmission Capacity of 18,824 MW considering the 12-monthly average of CPD and NCPD of TSUs from April, 2015 to March, 2016. There is no reduction of contribution of the partial Open Access consumers in the area of MSEDCL in the CPD and NCPD.
- 3.1.7 The Commission has determined the Transmission Tariff for the 3rd Control Period FY 2016-17 to FY 2019-20 considering the Total Transmission System Cost (TTSC) and Base Transmission Capacity Rights (TCR) vide Intra-State Transmission System Tariff (InSTS) Order dated 22nd July, 2016. The Commission has determined the Transmission Tariff considering the total demand of the partial Open Access consumers in the MSEDCL area.
- 3.1.8 The TTSC determined by the Commission for the 3rd Control Period has to be shared among the long-term TSUs, including MSEDCL, in accordance with their contribution to the average of CPD and NCPD. MSEDCL is liable to pay its entire share of TTSC, which includes the contribution in the CPD and NCPD of the partial Open Access consumers. Thus, until and unless the contribution by the partial Open Access consumers is not separately provided, MSEDCL is liable to pay the Transmission Charges for their contribution to the CPD and NCPD.
- 3.1.9 Certain consumers are taking undue advantage of the interpretation of the definition in the DOA Regulations, 2016 and are seeking Open Access for a period of one month under STOA for consecutive periods of more than 3 months, which should have come under MTOA.
- 3.1.10 The Commission has determined the Transmission Tariff for MTOA and STOA users in terms of Rs./kW/month and Rs./kWh respectively. There is a difference in the charges for a STOA consumer (for one month) and a MTOA

consumer (more than 3 months but upto 3 years). The lower Open Access transmission charges for availing STOA is leading to certain consumers taking undue advantage of the Regulations and seeking STOA for consecutive months (>3 months) instead of opting for MTOA. This is putting additional financial burden on MSEDCL and in turn getting passed on to the consumers of MSEDCL by way of increased tariffs.

3.1.11 A sample calculation depicting the losses suffered by MSEDCL for a consumer availing STOA for three consecutive months as against MTOA is shown below:

<u>Month</u>	<u>Open Access CD (kVA)</u>	<u>Transmission units (kWh)</u>	<u>Applicable Transmission charges</u>		<u>Transmission charges (Rs. Crores)</u>		<u>Difference (Rs. Crores)</u>
			<u>STOA (Rs./kWh)</u>	<u>MTOA (Rs./kW/month)</u>	<u>STOA</u>	<u>MTOA</u>	
May, 2016	300000	209004258	0.26	194.79	5.43	5.84	0.41
Jun, 2016	300000	165958195	0.26	194.79	4.31	5.84	1.53
Jul, 2016	224000	149207935	0.28	204.24	4.18	4.57	0.40
<u>Total</u>	<u>824000</u>	<u>524170388</u>	-	-	<u>13.93</u>	<u>16.26</u>	<u>2.34</u>

3.1.12 Thus, MSEDCL is incurring a loss of Rs. 2.34 crore over just a period of 3 months in case a consumer availed STOA consecutively for 3 months instead of 3 months' MTOA. MSEDCL is paying the entire charges based on the share of average of CPD and NCPD in MW to the State Transmission Utility (STU) whereas it is able to recover only a part of it from the Open Access consumers using the Transmission System.

3.1.13 The Central Electricity Regulatory Commission (CERC) has taken up this matter in its draft CERC (Grant of Connectivity, Long-term Access and Medium-term Open Access in inter-State Transmission and related matters) (Sixth Amendment) Regulations, 2015 and draft CERC (Sharing of Inter-State Transmission Charges and Losses) (Fifth Amendment) Regulations, 2016.

3.1.14 The Open Access consumers are entering in to medium-term and long-term Connection Agreements with the Generators from whom they are sourcing power. A list is submitted along with the Petition. However, they are seeking only STOA, thereby denying the legitimate revenue of MSEDCL.

3.2 Day-Ahead Open Access:

3.2.1 The DOA Regulations, 2016 permit Day-Ahead Open Access if surplus capacity is available in the Distribution Licensee's network. The Commission has also issued Practice Directions on 19 October, 2016 for processing of Open Access applications with regard to Day-Ahead Open Access:

“1. Where an Application is made for Short-Term Open Access (other than one day prior) for availing power from any source, including through Power Exchanges, the Nodal Agency has to follow the procedure specified in Regulation 11.2 of the DOA Regulations and Regulation 11.1 of the TOA Regulations, as the case may be; and the procedure specified in Regulations 11.3 to 11.6 of the DOA Regulations and Regulation 11.2 of the TOA Regulations for Day-ahead Open Access. Day-ahead Open Access refers only to Short-term Open Access applied for a day in advance, and not to any particular type of source or a specific product of a Power Exchange.

2. Where an Application is made for Transmission or Distribution Open Access for sourcing power through Power Exchanges, MSLDC shall provide clearance to the Nodal Agency as per the formats prescribed by the Central Electricity Regulatory Commission, with a copy to the Open Access Applicant.”

3.2.2 Under these provisions, the Application for such Open Access is to be made to the Nodal Agency (Distribution Licensee) only one day prior to the date of scheduling up to 12.00 Hours, and grant of approval or otherwise is to be conveyed by 14.00 hrs. by the Nodal Agency.

3.2.3 The Commission has specified that 'Day-Ahead Open Access' refers only to STOA applied for a day in advance, and not to any particular type of source or a specific product of a Power Exchange. However, practically, transactions through Power Exchanges only avail of Day-Ahead Open Access.

3.2.4 The consumer otherwise eligible for Day-Ahead Open Access will submit its bid at the Power Exchange for its requirement, on Day-Ahead basis at 10:00 hrs. and would come to know about the status of its bid at around 17:00 hrs the same day. In case the consumer does not receive the required quantum of power from the Power Exchange at the desired rate, he will directly draw

power from MSEDCL. In case such consumer has not revised its Contract Demand, then it will not be liable for any penal charges if its consumption is within the limits of Contract Demand. There is no mechanism whereby a Distribution Licensee is informed of the outcome of bids on the Power Exchange.

3.3 Lack of framework to consider deviations between Contract Demand and actual drawal by the STOA consumers sourcing power through Power Exchange:

- 3.3.1 The consumer-inclined provisions of the Regulations encourage gaming. If the consumer did not receive power from the Power Exchange, it would not cause any financial loss to the consumer, but MSEDCL would have to make all efforts to ensure availability of power for it.
- 3.3.2 After receipt of application for Day-Ahead Open Access, MSEDCL would frame its scheduling (Demand Forecasting for the next day) considering such Day-Ahead Open Access quantum. In case the consumer is unable to get power from the Power Exchange, such additional quantum equivalent to Day-Ahead Open Access would have to be made available by MSEDCL from other high-cost sources.
- 3.3.3 In such situation, MSEDCL may or may not be able to tap additional generation, and that may lead to MSEDCL either restricting the availability of power supply to other consumers or purchasing comparatively costly power to bridge the demand and supply gap.
- 3.3.4 In the former case, the power supply availability of MSEDCL's own consumers would be adversely affected. In the latter situation, the Average Power Purchase Cost (APPC) would increase, which would be again shared by MSEDCL's own consumers by way of increased Fuel Adjustment Charge (FAC).
- 3.3.5 In both situations, the interest of MSEDCL's consumers would be at stake, even though such consumers are least concerned with the Day-Ahead Open Access sought by any other consumer.
- 3.3.6 The earlier DOA Regulations, 2014 had a provision for "Procurement of Power from Power Exchange on Week Ahead Basis (Regulation 3.1). That provision was contested by Wind World (India) Ltd. in Writ Petition (No. 2294 of 2014) in the Bombay High Court. The Commission in its reply had defended these provisions citing following grounds:

“44.2 Network Congestion: It may happen that the Open Access consumer gets power through Exchange from a remote State generator and due to congestion in the Grid, the same could not be transacted. The consumer in this case also will draw Licensee’s power, hence it will lead to system instability & State’s network congestion;

44.3 Gaming: Switch On / Switch Off: power rates at Energy Exchange are volatile in nature over the year. They are low in rainy season and are high in summer season. Therefore, the consumers are keen to transact at Energy Exchanges in the rainy / monsoon season to explore the possibility of availing cheaper power. They intend to revert back to the host utility for the rest of the seasons. Such switch on & switch off of load in respect of Open Access consumers purchasing power from Energy Exchange may severely damage the reliability and quality of supply measures of host Licensee;

44.4 Operational Difficulty: If consumer purchases power from a generator which is not a State Pool Participant (SPP) in FBSM, the crediting of energy will be on actual basis. If there are multiple consumers taking power from such a generator, calculation of energy to be credited is on pro rata basis will be a complex task. Further there could be impact on Grid Management. In case if bi-lateral contracts, when there is forced outage of unit, consumer will continue to draw power from the Grid. This could create operational difficulties for SLDC in real time as well as for DISCOMS. Further this could lead to over drawal from the National Grid. DISCOMS will have to carry out load shedding in the State for no fault of other consumers. The State in such situations may overdraw power from the Grid which may call for heavy UI (Unscheduled Interchange) charges, UI penalties, transmission deviation charges, congestion charges, Grid indiscipline notice, opening of lines by RLDC, imposition of fine on SLDC etc. Stricter imposition on drawal of power through UI now in place at regional level. SLDC has to manage the Grid only with the power available through the contracts and not in the support from National Grid as per regulations. Further if a consumer purchases power from a Power Exchange, the clearance of quantity of power may not be uniform over all time blocks of the next day (of actual power transaction). This information is made available from Power Exchange only by 6 pm of the previous day of actual power transaction. This leads to power management problem for the DISCOMS.”

- 3.3.7 If the consumers are allowed to purchase power from the Power Exchange only during off-peak hours when the demand of MSEDCL is quite low, it will badly affect the load curve. It may lead to backing down of Generating Stations, which will adversely affect their generation cost per unit. The situation in the peak hours would be exactly opposite, and the Open Access consumers would not opt to purchase power from the Power Exchanges,

obviously for the reason that the price in the Power Exchange would be higher. The Open Access consumers in such situation would be dependent on the power supply from MSEDCL, which will also result in MSEDCL paying a higher cost for its power purchase.

3.3.8 MSEDCL is required to maintain a flat daily load curve to economize on power purchase cost. The cost of market power during off-peak hours is much cheaper than during peak hours and therefore it is likely that some of the Open Access consumers may procure power from the market only during off peak periods and will continue to draw power from the Distribution Licensee during peak hours. In such a situation, the Distribution Licensee may be required to back down even the cheaper generation during off – peak periods and may have to procure comparatively costlier power during peak hours, which may increase the cost of power purchase, which would have to be shared by the common consumers of the Distribution Licensee as an additional burden.

3.3.9 The Commission may issue appropriate Practice Directions regarding “Day-Ahead Open Access transactions” considering the following issues too:

- a) Contract Demand of Day-Ahead Open Access consumers shall stand reduced by the quantum equivalent to the Open Access quantum;
- b) The Day-Ahead Open Access consumer shall schedule power from Open Access for the entire 24 hours of the day and shall intimate its schedule to the MSLDC and the Distribution Licensee, which shall be uniform for such period as directed by the Commission, and the minimum schedule during the day may be not less than 75% of the maximum schedule for the day;

3.4 Banking of RE Generation:

3.4.1 As per DOA Regulations, 2016, banking of energy is permitted during all twelve months of the year, provided that the credit for banked energy is not permitted during the months of April, May, October and November. 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 Tariff Orders of the Distribution Licensees.

3.4.2 DOA Regulations, 2016 further provide 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.

- 3.4.3 Though MSEDCL had specifically raised objection to such provisions on the grounds of financial implications, it was not considered by the Commission. MSEDCL being revenue neutral, obviously such financial implications will reflect in its Aggregate Revenue Requirement (ARR) / Tariff determination proceedings and will result in increasing tariffs to a certain extent.
- 3.4.4 The Commission may consider permitting banking of energy to only such Renewable Energy (RE) Projects which will be undertaking “Day-Ahead scheduling of power” subject to variation of say (+/-) 10 to 15%. This proposed provision will facilitate MSEDCL to carry on its own scheduling of power in a more appropriate manner.
- 3.4.5 The Commission has already ruled that the banked units shall not be credited in the months of April, May, October and November. On similar grounds, the Commission may not allow banking of power in June, July, August and September also. The data of the banked units in this period along with simultaneous backing down data is submitted along with the Petition.
- 3.4.6 The Commission has further made it compulsory for the Distribution Licensee to purchase unutilized banked energy at the end of the financial year, limited to 10% of the actual total generation by such RE Generator, but that such deemed purchase shall not be counted towards the Renewable Purchase Obligation (RPO) of MSEDCL. MSEDCL is presently in an energy surplus situation and any extra injection of RE power naturally results in backing down of its own contractual generation, resulting in payment of fixed charges as per terms of its Power Purchase Agreements (PPAs). With compulsory purchase of 10% of such extra injection, MSEDCL has to face financial burden and, therefore, such compulsory purchase should be considered as RE power purchase eligible to meet the RPO.
- 3.4.7 The existing provisions permits a RE Generator to inject power without any schedule and also provides benefit to RE Generator by way of compulsory purchase (up to 10%) by the Distribution Licensee, with entitlement to Renewable Energy Certificates (RECs). Such dual benefit to RE Generators needs to be reconsidered in such manner that initially the RE Generator can be permitted to become entitled for RECs only up to 90% of the generation and subsequently, at the end of the financial year, the accounts can be settled.
- 3.4.8 In the DOA Regulations, 2014, the provision of banking was absent and certain stake holders had contested this in the Bombay High Court. In those proceedings, the Commission in its reply stated that:

4.9.1 With interstate ABT mechanism in place in the State, settlement of energy other than 15 minutes' time block basis would have adverse financial impact on MSEDCL;

4.9.2 Banking of energy results in non-firm energy getting exchanged with firm power of MSEDCL simply because banked energy could be utilized any time of the banked period;

4.9.3 Such exchange will put MSEDCL at a disadvantage with corresponding adverse impact on supply to consumers;

4.9.4 The Act 2003 mandates for promotion of RE Power, but the said Act does not stipulate that banking is the only promotional measure that needs to be adopted;"

- 3.4.9 Subsequently the Commission included the provision of banking in the DOA Regulations, 2016 and, therefore, on this ground also, the Commission may reconsider the entire issue; or, in the alternative, the Commission may allow such compulsory purchase of 10% of banked energy for meeting the RPO of the Distribution Licensee and issue Practice Directions.

3.5 Eligibility to seek Open Access:

- 3.5.1 Regulation 3 of DOA Regulations, 2016 defines the eligibility criteria for Open Access, which inter – alia states that consumers having Contract Demand of 1 MW and above are eligible for Open Access. The 5th and 6th provisos to Regulation 3 provides for the penal action which can be taken against an Open Access consumer who defaults in achieving Maximum Demand equal to or more than 70% of the threshold limit at which he has become eligible for Open Access.
- 3.5.2 The penalty provided for not maintaining the Maximum Demand is negligible and, if the consumer defaults consecutively in 2 months and again crosses the threshold limit in 3rd month, he is not liable for any penal charge.
- 3.5.3 The Commission may consider issuing orders for willful default by Open Access consumer to achieve Maximum Demand equal to or more than 70% of the threshold limit at which he has become eligible for Open Access. The Commission may consider that consumers not complying with provision in any month in a year instead of 3 consecutive months should be the criteria, for imposing the penalty.

3.6 Irregularities of Traders:

- 3.6.1 The Licence for Inter-State Trading is granted by the CERC to the Trading Licensees subject to the terms and conditions contained in the EA, 2003, the Rules made by the Central Government and the CERC Regulations.
- 3.6.2 The Licence specifies that, the trading margin in the Inter-State trading of electricity fixed by CERC shall apply to the Trading Licensee. Also, the Licensee is required to submit information to the CERC from time to time.
- 3.6.3 The CERC, being of the opinion that it is necessary to fix trading margin for Inter-State trading in electricity, has published the CERC (Fixation of Trading Margin) Regulations, 2010 on 11 January, 2010. These Regulations are applicable to the short-term buy - short-term sell contracts for Inter-State trading in electricity undertaken by a Licensee. As per these Regulations, the Trading Licensee cannot have a trading margin exceeding Rs. 0.04/0.07 per unit on the scheduled quantity of electricity under Open Access:

“Trading margin: The licensee shall not charge trading margin exceeding seven (7.0) paise/ kWh in case the sale price is exceeding Rupees three (3.0)/kWh and four (4.0) paise/kWh where the sale price is less than or equal to Rupees three (3.0)/kWh. This margin shall include all charges, except the charges for scheduled energy, open access and transmission losses. The trading margin shall be charged on the scheduled quantity of electricity.”

- 3.6.4 The CERC (Procedure, Terms and Conditions for grant of Trading License and other related matters) Regulations, 2009, amendment dated 11th October, 2012, mandates the Electricity Traders to submit the energy transacted by them to the CERC:

“(1) Clause (b) of Regulation 9 of Principal Regulations shall be substituted as under:

“(b) furnish monthly information in Forms IV-A, IV-B, IV-C, IV-D, IV-E, IV-F, IV-G and IV-H in respect of inter-State trading, intra-State trading, trading through power exchanges and long term trading, cross border trading and banking transactions so as to reach the Commission before 15th of the succeeding month:

Provided that the information sent to the Commission shall be posted on the website of the licensee by 15th of the succeeding month, and such report shall be available on the website for not less than two years.”

- 3.6.5 The major quantum of conventional Open Access is through Inter-State Trading Licensees. The details of Inter-State short term transactions through Traders for September, 2016 are as below:

<u>Sr. No.</u>	<u>Name of the Trader</u>	<u>No. of consumers</u>	<u>Interstate OA capacity in MW</u>
1	M/s Mittal Processors Ltd.	68	191
2	M/s Adani Pvt. Ltd.	32	84
3	M/s Manikaran Power Ltd.	11	35
4	M/s Global Energy Pvt. Ltd.	58	168
	Total	169	479

* Intra-State transactions of the Trading Licensees are not included.

3.6.6 There is no mechanism available in the regulatory framework to transparently make available the information relating to the trading margins of Trader. Also, the Electricity Trading Licensees are executing Supply Agreements with the consumers/ Generators terming themselves as facilitator/ consultants to escape from their responsibilities entrusted upon them vide various Regulations.

3.6.7 MSEDCL has already taken up the matter with the CERC. This Commission may introduce Trading Margin Regulations so as to bring in transparency and also clarification with regards to the terms used by the Trading Licensees in the Supply Agreement, namely Facilitator/ Consultant, etc.

3.7 Remote Terminal Units (RTU)- Data Concentrator (DC):

3.7.1 As per Regulation 17.8 of the DOA Regulations, 2016, all Full Open Access Consumers and Generating Stations connected to the Transmission System shall install, at their cost, RTU-DC within six months from notification of the Regulations, in accordance with specifications provided by the STU, and the MSLDC shall verify their installation for real-time monitoring.

3.7.2 Majority of the Open Access consumers are availing partial Open Access to escape from Temporary tariff charges levied towards shortfall.

3.7.3 As such, the Commission may direct the installation of RTU-DC by Partial Open Access consumers also.

4. In its submission dated 20 February, 2017, RInfra-D has stated as follows:

4.1 Issue: Irregularity in recovering Transmission Charges:

4.1.1 The DOA Regulations, 2016 provide, with respect to billing and remittance of transmission charges, as below:

“14.1(v) Transmission Charges:

...Provided that a Partial Open Access Consumer, Generating Station or Licensee, as the case may be, shall pay the Transmission Charges to the Distribution Licensee instead of the Transmission Licensee for using a transmission network;

...14.5 The Distribution Licensee shall pay the Transmission Licensee, MSLDC and any other entity all the charges collected on their behalf from the Open Access Consumer, Generating Station or Licensee within seven days:..”

- 4.1.2 As per the Regulations, the Distribution Licensee is required to bill and collect Transmission Charges from its partial (embedded) Open Access consumers and remit them to the STU.
- 4.1.3 The Transmission pricing framework in Maharashtra is demand-based, which means that the Transmission Charges are shared among the Long-Term TSUs on the basis of their demand proportion in the total demand imposed on the system by such TSUs. The proxy for demand as prescribed by the Regulations in Maharashtra is the average of CPD and NCPD for Distribution Licensees, and for Long-Term Open Access users (excluding partial OA users), the same is taken as the allotted Open Access capacity.
- 4.1.4 The present CPD and NCPD of the Distribution Licensees considered for allocation of Transmission Charges includes the allotted Open Access demand of partial (embedded) Open Access consumers of such Distribution Licensee. There is no provision for setting off the demand of these consumers while computing the CPD and NCPD of the Distribution Licensee. Therefore, the Distribution Licensee, while paying for Transmission Charges based on average CPD/NCPD already pays for the Transmission Charges corresponding to the demand of its partial (embedded) Open Access consumers as well. It is for this reason that the Regulations (quoted above) exclude partial Open Access users from sharing of Transmission Charges.
- 4.1.5 The exclusion provided in the above Regulations does not absolve the partial (embedded) Open Access users from payment of Transmission Charges. It only means that their allotted Open Access capacity will not be included while allocating the Transmission Charges among the TSUs, as their Open Access capacity is already included in the parent Distribution Licensee’s CPD/NCPD. Accordingly, while the Distribution Licensee should bill such Open Access users for Transmission Charges, it should not be made to pass on such charges to the STU, as that would amount to double payment of Transmission Charges for the same demand (i.e. once by the Distribution Licensee (by way of its CPD/NCPD share) and then by the partial Open Access user).

4.1.6 To illustrate this, consider a Distribution Licensee having demand (average of CPD/NCPD) of 1000 MW, which includes 950 MW from its own consumers and 50 MW of demand through Open Access pertaining to the partial (embedded) Open Access consumers. Now, if such Distribution Licensee pays for Transmission Charges corresponding to 1000 MW of demand, it has a right to recover the Transmission Charges corresponding to the 50 MW of Open Access consumers' demand from such consumers and to retain it. Instead, if these charges are remitted onwards to the STU, it would mean that the Licensee's own consumers will pay for Transmission Charges corresponding to 1000 MW of demand, even though their own demand is only 950 MW. Ideally, own consumers are entitled for the set off of charges corresponding to 50 MW, as that is not their demand. That set off can only be provided if the transmission charges recovered from partial Open Access consumers are retained by the Distribution Licensee. The other way to provide the set off is to reduce the Distribution Licensees' CPD/NCPD by the allotted Open Access Capacity, so that Transmission Charges allocated to a Distribution Licensee include the demand from its own consumers only.

4.2 Issue: Irregularity of Transmission Charges based on duration of Open Access as per DOA Regulations:

4.2.1 MSEDCL has raised an issue about Open Access consumers availing STOA, instead of LTOA/MTOA, even when the duration of Open Access required by them is more than one month.

4.2.2 In respect of Transmission Charges for different types of Open Access consumers, the MYT Regulations, 2015 provide as below:

“61.3 Base Transmission Tariff for each Year shall be determined as ratio of approved 'TTSC' for intra-State transmission system and approved 'Base Transmission Capacity Rights' and shall be denominated in terms of "Rs/kW/month" (for long-term/medium-term usage) or in terms of "Rs/kWh" (for short-term bilateral open access transactions usage, short-term collective transactions over Power Exchange and for Renewable Energy transactions)...”

4.2.3 Accordingly, the Transmission Charges were determined by the Commission for the 3rd MYT Control Period vide the InSTS Tariff Order in Case No 91 of 2016.

4.2.4 There is an advantage in availing STOA, as against LTOA or MTOA, as the Transmission Charges are lower in case of STOA.

- 4.2.5 The DOA Regulations, 2016 specifically provide for STOA only in cases where the requirement is for a period of one month at a time. However, this does not mean that the consumer should be allowed to obtain such STOA consecutively every month, each time for a duration of one month. That would amount to bypassing the need for MTOA and LTOA completely.
- 4.2.6 As the DOA Regulations do not provide any limit on repeated and consecutive STOA applications by the same consumer, the consumers are taking undue advantage. The demand of these consumers is also included in the demand of the parent Distribution Licensee and the Distribution Licensee is therefore making full payment of Transmission Charges as a long term TSU. However, the Transmission Charges that it is able to bill these consumers are short-term charges, and that too, as per the DOA Regulations, it is required to remit to the STU.
- 4.2.7 In RInfra-D's area, at least 9 Open Access consumers have been taking STOA consecutively for more than 3 to 28 months, each time for duration of one month. Even if RInfra-D is able to retain the Transmission Charges recovered from these consumers and not pass it on to the STU (if its submissions on the above issues are accepted), it still causes a revenue loss to RInfra-D because, being a Distribution Licensee, while it pays Long Term Transmission Charges to the STU, it recovers only Short Term Transmission Charges from such consumers for the same demand.
- 4.2.8 Short Term Transmission Charges are lower than Long Term or Medium Term. The Short Term Transmission Charges are presently worked out at 100% Load Factor in the InSTS Tariff Order. RInfra-D being a Long Term TSU, its own customers suffer a transmission charge equivalent to long-term transmission charges which, at present, is about Rs. 0.40 per unit (FY 16-17). However, the same customer, after moving out to Open Access is able to reduce these charges to Rs. 0.28 per unit (FY 16-17) by simply applying for STOA, even though its actual requirement is long-term or medium-term. Thus, by exploring the loophole in the system, the Open Access consumer is able to save on Transmission Charges. This affects the competitiveness of RInfra-D vis-à-vis Open Access suppliers.
- 4.2.9 The issue can be resolved if consumers availing STOA for more than 3 months in a year consecutively are levied the same Transmission Charges as those applicable to LTOA/MTOA customers. This will ensure that only those consumers whose genuine requirement of OA is for a short duration obtain STOA.

4.2.10 Alternatively, the Commission may consider equating the Transmission Charges on Rs/kW/Month basis for all types of users like LTOA, MTOA or STOA. This would automatically prevent the gaming that consumers are resorting to, to avoid paying Transmission Charges. Further, if all users pay the same Transmission Charges, there will be parity between the own consumers of a Distribution Licensee and the Open Access consumers and there will be no distortion to fair competition between Open Access suppliers and Distribution Licensee on this account. In this regard, the CERC has recognized the issue of increased dependence of consumers on STOA as compared to LTOA/MTOA and, through the CERC (Grant of Connectivity, Long-term Access and Medium-term Access in inter-State Transmission and related matters)(Sixth Amendment) Regulations 2015 and draft CERC (Sharing of Inter-State transmission charges and losses) Regulations, Fifth Amendment 2016, it has specified 120% of the normal Tariff for availing STOA.

4.3 Issue: Day-Ahead Open Access:

- 4.3.1 DOA Regulations, 2016 allow Day-Ahead Open Access to Consumers (Regulation 11.3), wherein it can be seen that such Day-Ahead power purchase will be largely from Power Exchanges and not any bilateral contract unless in case of contingency.
- 4.3.2 The bid clearing of requisitioned power on the Power Exchanges is not guaranteed as clearing of the bids depends on various factors such as quantum of sale bids, price quoted by buyer, transmission corridor availability etc.
- 4.3.3 The Distribution Licensee and the Open Access Consumer have the same window period for bidding on the Power Exchange. Therefore, the Open Access consumer will not intimate / give advance notice to Distribution Licensee for Day-Ahead power purchase. Hence, the Distribution Licensee will purchase only for its own requirement excluding Open Access, assuming the Open Access consumer will buy for its requirement. Now, if the bid of the Open Access consumer is not cleared on the Power Exchange, the Distribution Licensee would not be able to alter its schedule from Power Exchange for the next day. This exposes the Distribution Licensee to a risk of over-drawal to meet the requirement of the Open Access consumer.
- 4.3.4 DOA Regulations, 2016 provide the option to STOA consumer for reduction in Contract Demand. It is possible that consumers, particularly those who avail power from Power Exchange, would not opt for reduction in Contract Demand

so that they can simply fall back on the Distribution Licensee in the event their bid at Power Exchange is not cleared. This provides total immunity to the consumers from the risk of non-allocation of power from the Power Exchange and the entire risk is passed on to the Distribution Licensee. In situations where a large amount of power is being bid at Power Exchange by the Open Access consumers on Day-Ahead basis, the risk of over-drawal by the Distribution Licensee would be considerably large, which its own consumers would end up bearing either in terms of higher power purchase cost to them, or their power supply getting curtailed in the event over-drawal is not allowed by MSLDC.

- 4.3.5 In order to balance the risk, such Day-Ahead Open Access should be allowed only with mandatory reduction of Contract Demand of the consumer. In this case, if power is not scheduled to the consumer, its drawal from the Distribution Licensee would be charged at Temporary Tariffs as per the provisions of the DOA Regulations, 2016. This would neutralize the risk of higher cost of power getting passed on to the own consumers of the Distribution Licensee. As per the applicable Tariffs, the difference between regular category Tariffs and Temporary Tariffs is considerably bridged and thus the levy of Temporary Tariff to such Open Access consumers would only pass on a legitimate risk premium to such consumers, without unduly burdening them.

4.4 Issue: Banking of RE Generation:

- 4.4.1 Regulation 20 of the DOA Regulations, 2016 allows banking facility to the RE sources (Wind and Solar) with certain conditions:

“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;

...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.”

- 4.4.2 Non-firm energy is not subject to Day-Ahead scheduling and hence any surplus energy on account of banking is a surplus with the Distribution Licensee, which results in financial loss to it and has to be ultimately borne by its consumers. Such generation should be subject to scheduling with the defined deviation levels in line with CERC (Indian Electricity Grid Code) (Third Amendment) Regulations, 2015.
- 4.4.3 The surplus energy purchased by the Distribution Licensee from Non-firm Open Access consumers is a mandatory purchase as per the DOA Regulations, 2016. This energy should, therefore, be counted towards RPO of the Distribution Licensee. This would provide some benefit to the Distribution Licensee's own customers (avoidance of REC cost to meet RPO). Alternatively, such surplus energy may be purchased at the State's lowest Variable Cost as the power is unscheduled power with no RE component.
- 4.4.4 The promotional measures such as banking and purchase of surplus RE power for Open Access consumers should also provide some benefit to the non-Open Access consumers of the Distribution Licensee for a balanced, win-win situation.

4.5 Issue: Irregularities by Traders:

- 4.5.1 MSEDCL has pointed out the transparency issues with respect to electricity trading activity and lack of Regulations on Trading Margin.
- 4.5.2 RInfra-D agrees with MSEDCL, and the Commission may notify Trading Margin Regulations.

5. In its submission dated 22 February, 2017, TPC-D stated that:

5.1 Issue: Transmission Charges and term of Open Access:

- 5.1.1 The DOA Regulations, 2016 provides for three types of Open Access (STOA, MTOA and LTOA) based on the duration of the Open Access. STOA is for a period not exceeding one month, MTOA is for a period exceeding three months but not exceeding three years, and LTOA is for a period exceeding twelve years but not exceeding twenty five years.

- 5.1.2 Ideally, when a consumer seeks power supply under Open Access, the period ought to be aligned with the duration of power supply. If the consumer seeks power for a period of more than twelve years through Open Access, he ought to apply for LTOA. Similarly, if a consumer seeks power supply for up to three years under Open Access, he ought to apply for MTOA. A consumer seeking power for one month ought to apply for STOA.
- 5.1.3 Regulation 14.1 (v) of DOA Regulations, 2016 provides that a partial Open Access consumer shall pay the Transmission Charges to the Distribution Licensee and not to the Transmission Licensee. Further, Regulation 14.5 states that Distribution Licensees are required to pay the transmission Charges to MSLDC or any other entity, within 7 days.
- 5.1.4 Regulations 61.3 of the MYT Regulations, 2015 provides that the Transmission Charges for STOA are calculated on unit basis (Rs. /kWh) whereas the Transmission Charges under MTOA and LTOA are calculated on the quantum (Rs. /kW/ month) basis. The consumers under STOA would generally have to pay lesser Transmission Charges as compared to MTOA.
- 5.1.5 Accordingly, the Transmission Charges have been determined by the Commission for the 3rd MYT Control Period vide the InSTS Tariff Order in Case No 91 of 2016.
- 5.1.6 Being aware of the advantage in Transmission Charges, the consumers are now deliberately seeking continuous and consecutive STOA that would otherwise come under MTOA.
- 5.1.7 To demonstrate the difference between Transmission Charges under MTOA and STOA, TPC-D has provided details of the Transmission Charges payable by one of its consumer had it taken power on STOA vis-a-vis MTOA as under:

Month	Monthly Energy (kWh)	STOA Transmission Charges (Rs/ unit)	Transmission Charges (STOA)	MTO A (MW)	MTOA Transmission Charges (Rs/ unit)	Transmission Charges (STOA) (Rs)	Difference
Apr 15	2977125	0.49	1458791.25	6	367.19	2203140	744348.75
May 15	3273250	0.49	1603892.50	6	367.19	2203140	599247.50
Jun 15	2660500	0.26	691730.00	6	194.79	1168740	477010.00

Jul 15	2719375	0.26	707037.50	6	194.79	1168740	461702.50
Aug 15	2943375	0.26	765277.50	6	194.79	1168740	403462.50
Sep 15	3015875	0.26	784127.50	6	194.79	1168740	384612.50
Oct 15	3131375	0.26	814157.50	6	194.79	1168740	354582.50
Nov 15	2846625	0.26	740122.50	6	194.79	1168740	428617.50
Dec 15	3258500	0.26	847210.00	6	194.79	1168740	321530.00
Jan 16	3133250	0.26	814645.00	6	194.79	1168740	354095.00
Feb 16	3015375	0.26	783997.50	6	194.79	1168740	384742.50
Mar 16	3228375	0.26	839377.50	6	194.79	1168740	329362.50
Total	36203000		10850366.25			16093680	5243313.75

- 5.1.8 To prevent such exploitation by the Open Access consumers, the Commission may provide that, if a consumer applies for consecutive STOA for power from the same source for more than three months, the STOA ought to be automatically converted to MTOA since its beginning and the consumer shall pay the transmission Charges as per MTOA for entire period.
- 5.1.9 The Distribution Licensees are Long Term TSUs of the InSTS. They are paying Transmission Charges monthly as determined under the MYT Regulations.
- 5.1.10 When a consumer opts for partial Open Access, such consumer is required to pay the Transmission Charges to the Distribution Licensee. In terms of Regulation 14.5, the transmission charges collected by the Distribution Licensee have to be remitted to the STU. However, the Distribution Licensee continues to pay the Transmission Charges as determined by the Commission irrespective of the fact that demand is no longer with the Distribution Licensee.
- 5.1.11 A partial Open Access consumer is required to pay Transmission Charges to the Distribution Licensee. Such Transmission Charges are then recovered by the STU and eventually by the Transmission Licensee. The situation that has now arisen is that, in the event a consumer of TPC-D seeks partial Open Access, not only is TPC-D paying the Transmission Charges based on the Contract Demand but also the Transmission Charges recovered from such

partial Open Access. This has resulted in payment of Transmission Charges twice for the same demand.

5.1.12 Since Transmission Charges are already paid by the Distribution Licensee to the STU, the Commission may permit it to retain the Transmission Charges it collects from the partial Open Access consumers.

5.2 Issue: Day-Ahead Open Access:

5.2.1 The DOA Regulations permit a consumer to seek supply of power under Day-Ahead Open Access. The procedure is provided in Regulations 11.3 to 11.8 from which following position emerges:

- a) Day-Ahead Open Access shall be permitted only on the availability of surplus capacity in the Distribution System.
- b) Application for Day-Ahead Open Access has to be made to the Nodal Agency a day prior to the date of scheduling, by 12:00 hrs
- c) The Nodal Agency shall approve or reject the grant of Day-Ahead Open Access by 14:00 hrs.
- d) All other provisions applicable to STOA shall apply to Day-Ahead Open Access.

5.2.2 The Distribution Licensees submit their first schedule to MSLDC at 10:00 hrs on the preceding day. A consumer seeking supply of power on Day-Ahead basis from the Power Exchange is required to place its bid by 12:00 hrs of the preceding day. In this scenario, normally the Distribution Licensee does not arrange or tie up the quantum of power for such partial Open Access consumers.

5.2.3 The trade confirmation of the power on the Power Exchange is available by 17:00 hrs on the preceding day. If a consumer is not satisfied with the outcome of the bid (quantum or rate), it can resort to power supply from the Distribution Licensee with which it maintains a Contract Demand. In such situation, it becomes extremely difficult for the Distribution Licensee to tie up power urgently. The Distribution Licensees are forced to purchase expensive power, impacting the Tariff of its normal consumers.

5.2.4 In view of the above, the Commission may devise an appropriate mechanism which would enable the Distribution Licensee to carry out effective management of its power procurement.

5.3 Issue: Banking of Renewable Energy:

- 5.3.1 The DOA Regulations, 2016 permit banking of energy throughout the financial year, provided that the credit for banked energy is not to be permitted during the months of April, May, October and November. This is because maximum demand is observed in those months. However, in June to September, the situation reverses. The Distribution Licensee faces lower demand and the RE generation is at its maximum. Therefore, by applying the same logic, banking should also be restricted in June to September.
- 5.3.2 If the Commission allows the prayer of MSEDCL that the purchase of 10% surplus energy should be considered as RE power purchase eligible to meet the RPO, the Commission should also clarify that the Distribution Licensee shall not be penalized in case the Distribution Licensee exceeds its RPO on account of mandatory purchase of the 10% of unutilized power. Alternatively, such excess power may be considered as conventional power purchased by the Distribution Licensee.

5.4 Issue: Eligibility to seek Open Access

- 5.4.1 Regulation 3 of DOA Regulations, 2016 defines the eligibility criteria for Open Access. It states that consumers having Contract Demand of 1 MW and above are eligible for Open Access. The 5th and 6th provisos provide for penal action which can be taken against an Open Access consumer who defaults in achieving Maximum Demand equal to or more than 70% of the threshold limit at which he has become eligible for Open Access.
- 5.4.2 Certain consumers are utilizing the loopholes in the DOA Regulations and not meeting the Maximum Demand, and hence the Commission may consider evolving a mechanism whereby such practices of Open Access consumers are curbed.

6. At the hearing held on 23 February, 2017:

6.1 MSEDCL drew attention to the following issues while implementing the DOA Regulations, 2016:

- i. Recovery of Transmission charges by Distribution Licensee for partial Open Access as per DOA Regulations, 2016.
- ii. Day-Ahead Open Access.
- iii. Lack of any framework or direction for deviations between Contract Demand and actual drawal by the STOA consumers sourcing power through Power Exchanges.
- iv. Banking of RE Generation.

- v. Eligibility to seek Open Access.
- vi. Irregularities by Traders.
- vii. RTU and DC that ought to be required for partial OA consumers.

6.2 On these issues, MSEDCL stated that:

- a. Open Access consumers are availing STOA instead of MTOA because of the differential Transmission Charges. If a consumer seeks Open Access monthly for a continuous period of three months instead of MTOA for three months, he ends up paying less.
- b. Even where consumers have long term power procurement contracts with Generators, they are seeking monthly STOA. The Commission observed that they are doing so by taking the risk of not having the power scheduled owing to the lowest priority of STOA in scheduling.
- c. In Day-Ahead Open Access, the outcome of the bidding at Power Exchanges is not made known to the Distribution Licensee, which affects the load management of MSEDCL. This affects it badly if a major source of power is from Power Exchanges.
- d. Traders are working as facilitators/ consultants and signing 'Power Supply Facilitation Agreements' with the consumers. MSEDCL has approached CERC in this regard.
- e. The purchase of banked energy to the extent of 10% provided in the Regulations may be counted for the RPO of the Distribution Licensee.

6.3 RInfra-D supported the issues raised by MSEDCL except in respect of RTU and DC. The Open Access consumers are taking advantage of the differential Transmission Charges between STOA and MTOA. the STOA and MTOA charges may be brought on par. Open Access Consumers sourcing power from Power Exchanges may be required to purchase power Round the Clock (RTC). The Commission may also allow the 10% purchased surplus energy to meet the RPO.

6.4 Smt. Deepa Chawan, Counsel stated that, while she is representing the Petitioner (MSEDCL) in this Case, TPC-D is also supporting MSEDCL's Petition and, since there is no conflict of interest, and she is also representing TPC-D in the matter.

6.5 TPC-D stated that it supports MSEDCL's stand, except with regard to irregularities by Traders and RTU/DC. The STOA transactions are small as of now but may increase over time, which may create difficulties in planning the power procurement of the Distribution Licensees. Hence, the contract demand of the STOA applicants may be treated as deemed to be reduced the extent of the Open Access quantum. Purchase of 10% of the surplus energy is mandatory for the Licensee, and may be allowed to meet its RPO.

6.6 Dr. Ashok Pendse, for Thane - Belapur Industries Association (TBIA), an Authorised Consumer Representative, noted that the Distribution Licensees have come together to raise these issues on the DOA Regulations, 2016. The Open Access consumers who would be affected should also be given the opportunity to be heard if the Commission is inclined to allow the changes suggested. He further stated that there is an Open Access Monitoring and Review Committee under the DOA Regulations to discuss difficulties, but it has not met in the last six months. Instead of discussing these issues in the Committee, MSEDCL has approached the Commission directly through this Petition.

7. In its additional submission dated 8 December, 2017 reiterated its earlier submissions relating to Day-Ahead Open Access, and added that :

7.1 In case an Open Access consumer's bid is unsuccessful or if the consumer is unsatisfied with the market-driven cost of power as per the bid outcome, it has the option of drawing power from the Distribution Licensee with whom it maintains its Contract Demand.

7.2 The quantum of power being sourced through Day-Ahead STOA is significant (between 20 MW to 50 MW) in case of TPC-D, and over-drawal against that quantum results in burdening its direct non-Open Access consumers with higher tariff only on account of such Open Access consumers. In addition to purchasing the unscheduled power at a much higher cost, TPC-D also becomes liable to pay a penalty to MSLDC for deviating from its schedule on account of over-drawal.

7.3 As per the DOA Regulations, consumers have the option of revising or reducing their Contract Demand, which they usually do not opt for. Thus, TPC-D is obligated to provide power supply to such Open Access consumers and is, therefore, constrained to overdraw power from the grid at a higher power purchase cost.

Commission's Analysis and Ruling

8. **Except for its suggestion to introduce limits on Trading Margins, the issues raised by MSEDCL concern the DOA Regulations, 2016. These Regulations were notified on 30 March, 2016 after a due process of public consultation during which MSEDCL gave its detailed views. MSEDCL is now, only 9 months after the Regulations, in effect seeking extensive amendments. The Commission's analysis and conclusions on the issues raised in this Petition are set out below.**

Issue 1: Irregular denial of Transmission Charges:

8.1 **MSEDCL's main grievance in this regard is that consumers are taking undue advantage of the DOA Regulations, 2016 by availing STOA for one month at a**

time for consecutive periods of more than 3 months, for which MTOA should have been sought.

8.2 The DOA Regulations, 2016 define STOA and MTOA as follows:

“(24) ‘Medium Term Open Access’ or ‘MTOA’ means the right to use the Distribution System for a period exceeding three months but not exceeding three years.

...(33) ‘Short Term Open Access’ or ‘STOA’ means the right to use the Distribution System for a period not exceeding one month at a time.”

8.3 Regulation 7.2 of the DOA Regulations, 2016 categorizes Open Access on the basis of its duration:

“7.2 Duration of Open Access

The Open Access shall be categorized on the basis of its duration as follows:

<i>Open Access Category</i>	<i>Duration</i>
<i>Long-term Open Access (LTOA)</i>	<i>Exceeding twelve years but not exceeding twenty-five years</i>
<i>Medium-term Open Access (MTOA)</i>	<i>Exceeding three months but not exceeding three years</i>
<i>Short-term Open Access (STOA)</i>	<i>Not exceeding one month</i>

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

8.4 The charges applicable to Open Access consumers, set out below, include Transmission Charges, apart from Wheeling Charges, CSS, Additional Surcharge on the charges for wheeling and MSLDC Fees and Charges:

“14. Billing

14.1 The bill for use of the Distribution System for wheeling of electricity in its network shall be raised by the Distribution Licensee on the entity to whom the Open Access is granted, and shall indicate the following:

- (i) Wheeling Charges;*
- (ii) Cross-Subsidy Surcharge;*
- (iii) Additional Surcharge on the charges for wheeling;*
- (iv) MSLDC fees and charges.*

Provided that, if the Distribution Licensee schedules power for the Open Access Consumer, Generating Company or Licensee, as the case may be, the MSLDC fees and charges payable by the Licensee shall be shared by them in the ratio of scheduled demand of Open Access sought to the total demand of the Distribution Licensee on a pro-rata basis for Long-term and Medium-term Open Access;

Provided further that the scheduling and other operating charges, as may be applicable, shall be levied by the Distribution Licensee on the Short-term Open Access Consumer, Generating Station or Licensee at the rate approved for Short-term Open Access by the Commission in its Order determining MSLDC Fees and Charges;

Provided also that any specific methodology for charging MSLDC fees and charges as may be approved by the Commission from time to time through separate Order or any other Regulations shall be applicable.

(v) Transmission Charges:

Provided that a Partial Open Access Consumer, Generating Station or Licensee, as the case may be, shall pay the Transmission Charges to the Distribution Licensee instead of the Transmission Licensee for using a transmission network:

(vi) Any other charges, surcharge or other sum recoverable from the Consumer under the Act or any Regulation or Orders of the Commission:...

8.5 Regulation 61.3 of the MYT Regulations, 2015 specifies the formula for the determination of Base Transmission Tariff for each year of the MYT Control Period for Long, Medium and Short Term transactions:

“61.3 Base Transmission Tariff for each Year shall be determined as ratio of approved ‘TTSC’ for intra-State transmission system and approved ‘Base Transmission Capacity Rights’ and shall be denominated in terms of “Rs/kW/month” (for long-term/medium-term usage) or in terms of “Rs/kWh” (for short-term bilateral open access transactions usage, short-term collective transactions over Power Exchange and for Renewable Energy transactions) in accordance with the following formula:

$$\text{Base Transmission Tariff (t) long term or short term} = \frac{\text{TTSC(t)}}{\text{Base TCR (t)}}$$

$$\text{Base Transmission Tariff (t) (Short-term) (Rs/kWh)} = \frac{\text{TTSC(t)}}{\sum_{i=1}^n (\text{Energy Transmitted by Tx } i)}$$

Where,

TTSC(t) = Pooled cost for InSTS for yearly period (t) of the Control Period;

Base TCR(t) = Base Transmission Capacity Rights for the yearly period (t);

n = Total number of Transmission Licensee(s) in that particular year of Control Period;

Txi = ith Transmission Licensee;

Provided that the energy units transmitted by the Transmission Licensees shall be based on the energy input requirement of the Distribution Licensees at Generation-InSTS interface point, as projected by each Distribution Licensee as part of its MYT Petition for the Control Period and as approved by the Commission;

Provided further that any revisions in Base Transmission Capacity Rights and Base Transmission Tariff as determined in Regulations 61.2 and 61.3 due to the variation in the actual and approved CPD and NCPD shall be made at the time of Mid-Term Review and at the end of the Control Period for the subsequent years;

Provided also that in case new Transmission Licensees are added to the intra-State transmission network during the Control Period, then the TTSC, Base Transmission Capacity Rights and Base Transmission Tariff as referred under Regulations 61.1, 61.2 and 61.3 shall be re-determined for each remaining Year of the Control Period.”

...62.1 The long-term Transmission System Users shall share the TTSC of the intra-State transmission system in the proportion of Base Transmission Capacity Rights of each Transmission System User to the total Base Transmission Capacity Rights allotted in the intra-State transmission system.

62.2 The Annual Transmission Charge payable by Transmission System User shall be computed in accordance with the following formula:

$$ATC (u)(t) = TTSC(t) X ([Base TCR(u)](t) / [Base TCR(u)](t))$$

Where,

ATC (u)(t) = Annual Transmission Charges to be shared by Transmission System User (u) for the yearly period (t);

$$Base TCR (u) = [CPD (u)(t) + NCPD(u)(t)] / 2$$

Where,

Base TCR represents the Base Transmission Capacity Right of each Transmission System User (u) for the yearly period (t);

CPD (u)(t) = Average Coincident Peak Demand of the Transmission System User (u) for the yearly period (t);

NCPD (u)(t) = Average Non-coincident Peak Demand of the Transmission System User (u) for the yearly period (t):

Provided that the Allotted Capacity for long-term Open Access Users, excluding partial Open Access Users shall be considered in lieu of the average monthly CPD and NCPD for calculating the Base TCR for such Open Access Users.”

- 8.6 Thus, Open Access applicants can apply for STOA, MTOA or LTOA as per their requirement or choice. STOA being the last priority in scheduling, the STOA applicant has to face the risk of being rejected, by which time it would be too late to apply for a longer period instead. LTOA and MTOA consumers avail power through Open Access after securing the Transmission or Distribution Capacity Rights, whereas that is not the case with STOA. Moreover, STOA enables utilization of spare capacity in the system, which is an added advantage to the Licensees in terms of the STOA Charges.
- 8.7 The Commission also notes that the Transmission Charges for STOA transactions are being determined on Rs/kWh basis for a long time, since the Tariff Order dated 10 September, 2010 in Case No. 103 of 2009 which stated as follows:

“2.15 ...Commission’s Rulings

The Commission observes that denomination of short term open access charges in Rs/MWh or Rs/kWh instead of Rs/MW/day would be simple and easy to implement. The Commission observes that earlier condition that short term open access charges shall be payable for minimum 6 hours duration within day was rendering the short term open access transactions for duration lower than 6 hours un-economical. The Commission also notes that MSETCL as largest transmission licensee in the State has not objected to proposed suggestion of revision in denomination of transmission pricing for short term open access transactions in terms of Rs/kWh or Rs/MWh. Accordingly, the Commission accepts the suggestion made by the objector and rules that the transmission charges for short term open access transaction shall be denominated in Rs/MWh and the condition of payment of transmission charges for minimum 6 hours duration shall no longer be applicable...”

However, the Commission recognizes concerns that the present regulatory framework may make it worthwhile for some consumers to avail STOA even if their requirements are consistently for longer periods and who could have taken MTOA or LTOA instead; and that this has some implications for Distribution Licensees. At the same time, the interests of consumers who want access to the full range of

choices offered by the Power Exchanges or who may have regular Open Access requirements but not over the whole month have to be considered. In these proceedings, the manner in which a balance could be struck has not emerged.

- 8.8 Nevertheless, considering the intent and purpose of the provisions for different OA durations, the Commission believes that it would be worth revisiting them in terms of introducing some limitations, or for transition of STOA to MTOA after some consecutive periods. The Commission may separately undertake an exercise to examine the issues involved and the alternatives, keeping in view all these considerations. Thereafter, in any case, public consultation would be required for any amendments to the Regulations. The 'removal of difficulties' provisions of the Regulations are not relevant to such changes, nor can they be made through orders or Practice Directions.

Issue 2: Day-Ahead Open Access

9. MSEDCL contends that the Regulations do not provide a mechanism for requiring an Open Access consumer to inform it of the results of transactions through Power Exchanges. If such consumer is not allotted the required quantum of power from the Power Exchange, it falls back on the Distribution Licensee. This disturbs the scheduling quantum of MSEDCL. A mechanism to require an OA consumer to inform MSEDCL about the outcome of its bid on the Power Exchange is, therefore, necessary.
10. The extent to which this issue has a significant impact and the modalities may be taken up by MSEDCL in the Open Access Monitoring and Review Committee constituted under the DOA Regulations, which would provide inputs to the Commission.

Issue 3: Absence of framework to consider deviations between Contract Demand and actual drawal by the STOA consumers sourcing power through Power Exchanges

11. MSEDCL seeks that, in case of Day-Ahead Open Access through Power Exchanges, the Open Access consumer should reduce its Contract Demand at the application stage itself, for which the Commission may issue Practice Directions. Further, a Day-Ahead Open Access consumer should be required to schedule power for the entire 24 hours of the day (round-the-clock (RTC)); and consistently, with the minimum schedule being limited to 75% of maximum schedule for the day.
12. The DOA Regulations, 2016 expressly give the consumer the option to retain its level of Contract Demand with the Distribution Licensee or otherwise. Moreover, for the sake of argument, a consumer who seeks RTC power from a Power Exchange has no guarantee of its allocation, as admitted by MSEDCL itself. The Commission is of the view that compelling the scheduling of power on RTC basis under Day-Ahead

Open Access through Power Exchanges would be contrary to the mandate of the EA, 2003 with regard to development of the power market and restrict without sufficient cause the choice that can be made available to consumers. The power system dynamics have to take care of such issues. Moreover, the quantum of power involved in such Open Access from the Power Exchanges is negligible in comparison with the quantum dealt with by MSEDCL.

13. The Commission is of the view, therefore, that such restrictions would not be appropriate or justified at the present time.

Issue 4: Review of banking of RE Generation, and purchase of 10% banked energy against RPO of Distribution Licensee

14. MSEDCL is, in effect, proposing that banking of RE power be done away with except to a very limited extent, as was the case in the earlier Regulations; or, in the alternative, that the months in which credit for the banked energy cannot be claimed be increased, that the purchase of surplus banked energy at the end of the year be counted against its RPO, that the provisions be revenue-neutral, and others set out earlier in this Order.
15. The Commission notes that, in its recent Order dated 27 March, 2018, the Commission has dealt extensively with these and other issues relating to the banking of RE power raised by MSEDCL in its Petition in Case No. 85 of 2017. The Commission's analysis and rulings in that Order may be referred to, and are not being repeated here.
16. In that Order, the Commission had also stated as follows with regard to counting the purchase of surplus banked power at the end of the year against the RPO of Distribution Licensees' RPO:

“13. As regards counting of the surplus RE (upto 10%) at the end of the year against the RPO of the Distribution Licensee, MSEDCL may refer to the Commission's conclusion in its Statement of Reasons for the DOA Regulations, 2016:

“...since it will be difficult for Distribution Licensees to account the surplus RE in its annual renewable purchase planning to meet their RPO, RE Generators will be allowed to claim REC benefits on this power and Distribution Licensees will not be able to consider this power purchased against their RPO.”

14. In view of the foregoing, the Commission does not consider it necessary or appropriate at present to initiate amendment of the DOA Regulations, 2016 to the extent sought by MSEDCL.”

17. The Commission notes that MSEDCL has been raising similar or identical issues on the banking of RE power in several Petitions since the DOA Regulations, 2016. The Commission is constrained to say that this amounts to an abuse of process at the cost of the Commission and others.

Issue 5: Eligibility for Open Access:

18. The DOA Regulations, 2016 provide as follows with regard to the eligibility for Open Access :

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

Provided also that, if the Consumer fails to achieve the Maximum Demand in three consecutive months, the Distribution Licensee shall be entitled to a penalty equal to two times the wheeling charges for the financial year or part thereof for which the Consumer failed to achieve such Maximum Demand;

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

19. After due public consultation, the Commission has sought, through these provisions, to balance the interests of both the Distribution Licensees and consumers seeking Open Access for sourcing power from elsewhere. MSEDCL has not given any sufficient justification for such amendment. Therefore the Commission does not find any merit in the submission of MSEDCL to revise the criteria.

Issue 6: Trading Margins for Intra-State Trading Licensees

20. MSEDCL has sought that the Commission introduce limits on the Trading Margins of Inter-State Trading Licensees, as in the case of the CERC. In its recent Order in Case No. 83 of 2017, the Commission has stated that, considering the potential and development of the Intra-State power market, it may separately review whether such trading margins are now required. MSEDCL may note however, that these may also apply to Distribution Licensees when they trade in electricity.

Issue 7: Remote Terminal Units - DC:

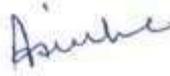
21. Regulation 17.8 of the DOA Regulations, 2016, require Full Open Access Consumers and Generating Stations connected to the Transmission System to install, at their cost, Remote Terminal Units (RTU) - DC within 6 months as per STU specifications, and that the MSLDC shall verify their installation for real-time monitoring.

22. MSEDCL has stated that most Open Access consumers are availing partial Open Access to avoid Temporary charges levied towards shortfall and that, hence, such consumers also be required to install RTU-DC.
23. The Commission is of the view that MSEDCL has not appreciated the purpose, spirit and the technical necessity of this provision in relation to full as against partial Open Access consumers, and that its suggestion is conceptually ill-conceived.

The Petition of Maharashtra State Electricity Distribution Co. Ltd. In Case No. 8 of 2017 stands disposed of accordingly.

Sd/-
(Deepak Lad)
Member

Sd/-
(Azeez M. Khan)
Member


(Ashwani Kumar Sinha)
Secretary

