

CE/Comm/OA/RE/ **No 2 1 6 5 8**

Date: 15 SEP 2021

To,

The Deputy Secretary to the Government of India,

Ministry of Power,

Shram Shakti Bhavan, Rafi Marg,

New Delhi.

Sub:-Suggestions/Comments on Draft Electricity (Promoting Renewable Energy through Green Energy Open Access) Rule 2021.

Ref: - Ministry of Power No -23/9/2021 R& R dated 16.8.2021.

Sir,

The Ministry of Power (MoP), vide letter dated 16.08.21, has circulated the Draft Electricity (Promoting renewable energy through Green Energy Open Access) Rules, 2021 and sought comments from all stake holders.

The proposed Draft Electricity Rules, 2021 endeavor to provide various provisions for promoting renewable energy through Green Energy Open Access. The important provisions are Renewable Purchase Obligation, Green Energy Open Access and its procedure, Banking, Cross Subsidy Surcharge, etc.

In this regards, the suggestions/comments of Maharashtra State Distribution Company Ltd.,(MSEDCL) which needs to be considered while finalizing the Draft Electricity (Promoting Renewable Energy through Green Energy Open Access) Rule 2021 along with its rationale are as summarized as below:-

Comments & Suggestions:

Open Access:

It is submitted that as per the Section 42 (2) of the Electricity Act, 2003, the State Electricity Regulatory Commission has been vested with the

powers to introduce Open Access and its terms & conditions by specifying the Open Access Regulations.

Accordingly, the Maharashtra Electricity Regulatory Commission (MERC) notified the MERC (Distribution Open Access) Regulations, 2005 and introduced open access in the state to all HT consumers having Contract Demand more than 1 MVA.

However, it is important to note that prior to these regulations, the concept of Open Access i.e. wheeling of power from the generation source (Generator end) to the destination of use (Consumer end) using distribution (MSEDCL) grid was previously permitted, especially to wind generators (Green Energy Generators), through Energy Wheeling Agreements by the MERC through an order dated 24.11.2003. The third party sales as well as captive use both were permitted for wind generators.

Therefore, it is submitted that the wheeling of power under the concept of open access has been carried out in Maharashtra almost since 2003 i.e. more than 15 years. In the meantime, the MERC has addressed various issues of Open access of HT consumers, RE generators and Distribution Licensees through orders & regulations from time to time. Thus, the open access terms and conditions have been scrutinized in detail and have been now settled as per prevalent law, rules and regulations.

Accordingly, the MERC (Distribution Open Access) Regulations, 2005 have been revised from time to time i.e. firstly in 2014, then in 2016 and lately in 2019 suitably in order to amend the provisions to incorporate various new concepts as required.

The existing regulations specify the open access procedure in detail which also include various provisions related to Renewable Energy open access, banking, energy settlement, cross subsidy surcharge, additional surcharge, wheeling & transmission charges, standby supply charges, etc.

Rooftop Solar:

The MERC has also notified MERC (Net Metering for Rooftop Solar) Regulations, 2015 and MERC (Grid Interactive Rooftop Renewable Energy Generating System) Regulations, 2019 and has set up procedures for Solar Net metering, Net billing and Behind the meter solar connectivity.

It is submitted further that most of the concepts / provisions proposed in the above said in the Draft Electricity Rules have been considered and are already provided through regulations in Maharashtra since long and are being implemented.

However for creating the uniform open access procedure all over the states the comments & suggestions regarding specific provisions on the Draft Electricity Rules are submitted wherever found necessary for consideration.

1. Eligibility Criterion for Green Energy Open Access: 100 KW

As per the Section 42 (2) of the Electricity Act, 2003 the appropriate commission shall introduce the Open Access for consumers having the (CD) Contract Demand \geq 1 MW / 1 MVA. The existing MERC (Distribution Open Access) Regulations, 2016 have specified the eligibility criterion as CD \geq 1 MVA which is in force since 2005.

As per the existing open access transaction settlement system, the energy accounting and billing is carried out on 15 min time block basis and it is required to install Special Energy Meters. Also, it is necessary to schedule the open access power on day ahead basis to these consumers.

Further, the open access energy scheduling, accounting, billing and disputes thereof may become un-manageable considering the increase in the eligible consumers.

Further, there will be impact of cross subsidy surcharge on utilities as there is a capping (upper limit) for increase in the CSS.

In view of the above, the SERCs have not lowered the eligibility bar over the years. Therefore, it is submitted that the existing criterion of 1 MVA should be retained, the lowering of the eligibility bar for Open Access upto 100 KW is unnecessary and not recommended.

2. Banking:

It is submitted that in terms of Open Access, the duty of Distribution Licensee (Section 42) is just to provide a corridor for wheeling of electricity. Thus, the Electricity Act, 2003 does not contemplate "banking" in open access (injection at a time and drawal at different time). Therefore, it is submitted that the provision of banking is not in line with the Act.

In case non-firm generating sources such as Wind & Solar, the generation of energy is infirm (uncontrollable) in nature. It becomes difficult to predict the generation for a particular period, so the Power Planning becomes complex.

Further, MSEDCL as a State Distribution Licensee has to match its injection and drawl of energy on 15 min time block basis under Energy Accounting & Billing Settlement with the SLDC. There is heavy penalty for deviation. The provision of banking makes it very difficult.

The banking of energy i.e. injection in one time slot and drawal in other time slot results in financial implications as the power purchase cost of Distribution Licensee for different time block is different and it may increase the burden on common consumers.

In view of the above, it is submitted that the provision of banking has financial implications as stated above and therefore the same can be provided as an exception (for promotion of RE) but with certain restrictions in line with the provisions made under existing MERC (Distribution Open Access) Regulations, 2019.

Presently, the MERC (Distribution Open Access) Regulations, 2019 allow the banking of green energy on monthly basis in Time of the Day (TOD) time slots only. [The energy injected during peak hours can be adjusted with the energy consumed during peak hours only. The energy injected during OFF peak hours can be set off against the energy consumed in off peak hours, but can not be set off against the energy consumed during peak hours.] The unutilized banked energy upto 10 % of monthly generated energy is purchased by the Distribution Licensee at MERC determined RE tariff and the same is accounted for the RPO.

3. Cross Subsidy Surcharge:

Provisions of Electricity Act 2003:

Section 42 (2) of the Electricity Act 2003 provides:

The State Commission shall introduce open access in such phases and subject to such conditions, (including the cross subsidies, and other operational constraints) as may be specified within one year of the appointed date by it and in specifying the extent of open access in successive phases and in determining the charges for wheeling, it shall have due regard to all relevant factors including such cross subsidies, and other operational constraints:

Provided that [such open access shall be allowed on payment of a surcharge] in addition to the charges for wheeling as may be determined by the State Commission:

Provided further that such surcharge shall be utilized to meet the requirements of current level of cross subsidy within the area of supply of the distribution licensee

It is submitted that as per the Electricity Act, 2003, the Cross Subsidy Surcharge (CSS) shall be provided so as to compensate the Distribution Licensee

(DL) for the loss of cross subsidy due to migration of its (cross subsidizing) consumers to open access.

The existing MERC (Distribution Open Access) Regulations, 2016 do provide for the same as per the Regulation No. 14.7.

The powers of providing the CSS are vested with the SERCs which have adopted the separate methodologies for the determination of CSS considering the state specific power sector scenario and the associated issues.

It is submitted that the determination of CSS is related to the tariff of respective (cross subsidizing) consumer category and the same is not at all related to the type of generator (Whether RE or otherwise) under open access.

The loss of cross subsidy for Distribution Licensee (DL) is same for all open access transactions for a consumer category whether power is sourced from Green Energy generator or conventional generator.

In view of the above, it is submitted that the proposed special concessions (capping of CSS up to 12 years) to Green Energy Open Access are not justified as the revenue loss due to loss of cross subsidy will ultimately be borne by the common consumers by the way of increase in tariff.

It is submitted that in context of the Maharashtra State, the concept of CSS determination has come a long way. Initially, the MERC had determined Zero CSS for all open access transactions in the year 2006 which continued till September 2011. Thereafter, the CSS was de-novo determined by MERC vide Order dated 09.09.2011 in Case No. 43 of 2010.

However, in the same order the concessional 25% CSS was made applicable for RE Open Access (from 2011) in view of promotion of RE, which continued till 2017. Now, from 2018 onwards, there is no concession for RE and the same CSS is made applicable for all open access transactions.

In FY 2020-21, in MSEDCL area, 793 MW power was wheeled under RE Open Access whereas, 553 MW was wheeled under conventional open access.

It is submitted therefore that having enjoyed various benefits & concessions from the Regulatory bodies in long run (from 2003 to 2018) now RE Open Access has evolved to a stage that it can compete with conventional power open access; and hence require no further concessions or promotional benefits.

4. Additional Surcharge:

Provisions of Electricity Act 2003:

Section 42 (4) of the Electricity Act 2003 provides:

..... Where the State Commission permits a consumer or class of consumers to receive supply of electricity from a person other than the distribution licensee of his area of supply, such consumer shall be liable to pay an additional surcharge on the charges of wheeling, as may be specified by the State Commission, to meet the fixed cost of such distribution licensee arising out of his obligation to supply.

Provisions of National Electricity Policy:

Clause 5.8.3 of the National Electricity Policy provides for recovery of additional surcharge from open access consumers.

Under sub-section (2) of Section 42 of the Act, a surcharge is to be levied by the respective State Commissions on consumers switching to alternate supplies under open access. This is to compensate the host distribution licensee serving such consumers permitted open access under section 42(2), for loss of the cross-subsidy element built into the tariff of such consumers. An additional surcharge may also be levied under sub-section (4) of Section 42 for meeting the fixed cost of the distribution licensee arising out of his obligation to supply in cases where consumers are allowed open access.

Provisions of National Tariff Policy:

Section 8.5 of the National Tariff Policy provides following provisions that deal with calculation of cross subsidy surcharge and applicability of additional surcharge to be paid by open access consumers.

“8.5.4 The additional surcharge for obligation to supply as per section 42(4) of the Act should become applicable only if it is conclusively demonstrated that the obligation of a licensee, in terms of existing power purchase commitments, has been and continues to be stranded, or there is an unavoidable obligation and incidence to bear fixed costs consequent to such a contract. The fixed costs related to network assets would be recovered through wheeling charges.”

Provisions of MERC (Distribution Open Access) Regulations, 2016

14.8 Additional Surcharge

a. An Open Access Consumer receiving supply of electricity from a person other than the Distribution Licensee of his area of supply shall pay to the Distribution Licensee an Additional Surcharge on the charges of wheeling and Cross-Subsidy Surcharge to meet the fixed cost of such Distribution Licensee arising out of its obligation to supply, as provided in sub-section (4) of Section 42 of the Act.

As per the provisions of the Electricity Act, 2003, National Electricity Policy and the National Tariff Policy, the additional surcharge is payable by the open access consumer.

It is submitted that the obligation of the MSEDCL in terms of power purchase agreements has been and continues to be stranded due to rise in open access in the state (RE & Non RE) and there is an unavoidable obligation and incidence to bear fixed costs consequent to such agreements.

Accordingly, the MERC has been determining the additional surcharge payable by the open access consumers since last 3-4 years (Previously it was zero) at the time of approval of MYT tariff orders of MSEDCL in line with the above said legal and regulatory provisions.

It is submitted that in FY 2020-21, around 793 MW power was wheeled under RE Open Access amounting to total 786 MU in MSEDCL area. Considering the Additional Surcharge @Rs. 1.30 p.u. a revenue of Rs. 102 Crs was generated which was utilized for paying fixed costs of stranded capacity of PPAs.

It is therefore submitted that the proposed exemption of Additional Surcharge to Green Energy Open Access is not justified as the revenue loss of MSEDCL will ultimately be borne by the common consumers by the way of increase in tariff.

It is submitted therefore that having enjoyed various benefits & concessions from the Regulatory bodies in long run (from 2003 to 2018) now RE Open Access has evolved to a stage that it can compete with conventional power open access; and hence require no further concessions or promotional benefits.

In view of the above, it is submitted that the applicability of Additional Surcharge to RE Open access as per the provisions of Electricity Act, 2003, National Electricity Policy, National Tariff Policy and the MERC (Distribution Open Access) Regulations, 2016 should be retained without any discrimination.

5. No CSS or Additional Surcharge for Waste to Energy Projects:

It is submitted that in case of waste to energy projects, additional concession in terms of non-applicability of CSS & AS for sourcing this power through open access is not justified. As mentioned above, the loss of revenue in terms of CSS & AS will be recovered by DL by the way of increase in tariff of common consumers.

In view of the above, it is submitted that the applicability of CSS & AS for open access related to waste to energy projects should be retained.

6. Open Access charges:

It is submitted that the open access charges include Cross Subsidy Surcharge, Additional Surcharge, Wheeling charges, transmission charges and Open Access operating charges etc.

The cross subsidy surcharge is related to the cross subsidy inbuilt in the tariff of the consumer category of open access consumer. The additional surcharge is related to the stranded capacity under Power Purchase agreements.

The wheeling charges are related to the O&M cost pertaining to the LT-HT network of the distribution licensee, its length, magnitude of load handled, distribution losses, etc.

Operating charges are also related to the quantum of open access power handled, its scheduling, energy accounting, billing, etc. The transmission charges are separately determined for the State Transmission Licensee.

In view of the above, it is submitted that all the above charges and the parameters considered for the same are different for different states. Thus, it is submitted that the powers to determine these charges may be continued to be vested with the State SERC in line with the provisions of the Act on the basis of state specific power scenario.

7. No limit for supply of power for captive consumers under Green Energy Open Access:

Provisions of Electricity Act 2003:

Section 42 (2) of the Electricity Act 2003 provides:

The State Commission shall introduce open access in such phases and subject to such conditions, (including the cross subsidies, and other operational constraints) as may be specified within one year of the appointed date by it and in specifying the extent of open access in successive phases and in determining the charges for wheeling, it shall have due regard to all relevant factors including such cross subsidies, and other operational constraints:

It is submitted that as per the provisions of the Act, the open access shall be introduced subject to the operational constraints. The provisions of parent Act cannot be altered through Rules made there under.

Therefore, the open access could be allowed to the extent it is technically possible to wheel the power from the generation end up to the destination of use at consumer end up to contracted demand only. The technical constraints would be defined by the current carrying capacity of the feeder

conductor, the sanction load / contract demand of the consumer, the ratings of the Metering Instruments, the capacity of the Distribution Transformer, etc.

Therefore, it is submitted that open access can be permitted subject to technical constraints if any at either end and cannot be permitted without any limit.

In view of the above, the provision regarding no limit for green energy open access will pose technical issues & it is not recommended.

Considering the submission in the forgoing paragraph, MSEDCL requests to consider the above said issues. It is requested to take on record comments/suggestions of MSEDCL while finalizing the draft Electricity (Promoting Renewable Energy through Green Open Access) Rules, 2021.

Encl: The comments and suggestions in tabulated form


(Satish Chavan)
Director (Commercial),
MSEDCL

COMMENTS ON ELECTRICITY (PROMOTING RENEWABLE ENERGY THROUGH GREEN ENERGY OPEN ACCESS) RULES, 2021

Sr No	Rule No	Title & Content	COMMENTS	Remarks
1	2(b)	<p>Definition: “Entity” means any consumer who have contracted demand/sanctioned load of 100 kW or more except for captive consumers.</p>	<p>As per the Section 42 (2) of the Electricity Act, 2003 the appropriate commission shall introduce the Open Access for consumers having the (CD) Contract Demand \geq 1 MW / 1 MVA. The existing MERC (Distribution Open Access) Regulations, 2016 have specified the eligibility criterion as CD \geq 1 MVA which is in force since 2005.</p> <p>As per the existing open access transaction settlement system, the energy accounting and billing is carried out on 15 min time block basis & required to install Special Energy Meters. Also, it is necessary to schedule the open access power on day ahead basis to these consumers. Further, the open access energy scheduling, accounting, billing and disputes thereof may become un-manageable considering the eligible consumers.</p> <p>Further there will be impact of Cross Subsidy Surcharge on utilities as there is a capping (upper limit) for increase in the CSS.</p> <p>In view of the above, the SERCs have not lowered the eligibility bar over the years. Therefore, it is submitted that the existing criterion of 1 MVA should be retained, the lowering of the eligibility bar for Open Access upto 100 KW is unnecessary and not recommended.</p>	
2	2 (C)	<p>“Green energy” means electrical energy generated from renewable sources of energy;</p>	<p>All the renewable energy sources including Municipal Solid Waste are covered under MERC regulations.</p>	
3	4(C)	<p>Renewable Purchase Obligation (RPO):- By requisition from distribution licensee:- (a) Any entity may elect to purchase green energy only upto a</p>	<p>In the year 2010, the MERC also notified the MERC (Renewable Purchase Obligation) Regulations, 2010, which were revised in 2016 and lately in 2019 and the</p>	

		<p>certain percentage of the consumption or its entire consumption and they may place a requisition for this with their Distribution Licensee, which shall procure such quantity of green energy and supply it.</p> <p>(b) Green energy can be purchased against Renewable Purchase Obligation on consumption from captive power plant or energy availed through open access from sources other than Renewable Energy sources;</p> <p>(c) Consumer may purchase - on a voluntary basis - a larger quantity / share of renewable energy than he is obligated to do. For ease of implementation this may be a minimum 50% of consumption from green energy, which can go upto 100% in step of 25% (i.e. 50%, 75%, 100%).</p> <p>(d) The Tariff for the Green Energy shall be determined by the Appropriate Commission, which may comprise of the average pooled power purchase cost of the renewable energy, cross subsidy charges (if any) and service charges covering all prudent cost of the distribution licensee for providing the green energy.</p> <p>(e) Any requisition for green energy from a distribution licensee shall be for a minimum period of one year. The quantum of green energy shall be Pre-specified for at least one year. (f) Green energy purchased from distribution licensee shall be counted towards Renewable Purchase Obligation compliance of the distribution licensee.</p> <p>(g) Accounting of renewable energy supplied at distribution licensee level will be on monthly basis.</p>	<p>RPO targets are being stipulated for all obligated entities from time to time.</p> <p>MERC (Renewable Purchase Obligation) Regulations, 2019 have been notified and the RPO limit (Solar & Non Solar) has been prescribed for all obligated entities for control period from FY 2020-21 upto FY 2024-25.</p>	
4	5	<p>Green Energy Open Access: The Appropriate Commission shall put in place regulations in accordance with this Rule to provide Green Energy Open Access to consumers who are willing to consume the Green energy. All applications</p>	<p>Eligibility Criterion for Green Energy Open Access: 100 KW</p> <p>As per the Section 42 (2) of the Electricity Act, 2003 the appropriate commission shall introduce the Open Access</p>	

for open access of Green Energy shall be granted within a maximum of 15 days.
Provided that only Consumers who have contracted demand /sanctioned load of hundred kW and above shall be eligible to take power through green energy open access.
There shall be no limit of supply of power for the captive consumers taking power under green energy open access.
Provided further that reasonable conditions such as the minimum number of time blocks for which the consumer shall not change the quantum of power consumed through open access may be imposed so as to avoid high variation in demand to be met by the distribution licensee.

for consumers having the (CD) Contract Demand ≥ 1 MW / 1 MVA. The existing MERC (Distribution Open Access) Regulations, 2016 have specified the eligibility criterion as CD ≥ 1 MVA which is in force since 2005.
As per the existing open access transaction settlement system, the energy accounting and billing is carried out on 15 min time block basis and it is required to install Special Energy Meters. Also, it is necessary to schedule the open access power on day ahead basis to these consumers. Further, the open access energy scheduling, accounting, billing and disputes thereof may become un-manageable considering the increase in the eligible consumers. Further there will be impact of cross subsidy surcharge on utilities as there is a capping (upper limit) for increase in the CSS.
In view of the above, the SERCs have not lowered the eligibility bar over the years. Therefore, it is submitted that the existing criterion of 1 MVA should be retained, the lowering of the eligibility bar for Open Access upto 100 KW is unnecessary and not recommended.

No limit for supply of power for captive consumers under Green Energy Open Access:

Provisions of Electricity Act 2003:

Section 42 (2) of the Electricity Act 2003 provides:

*The State Commission shall introduce open access in such phases and subject to such conditions, (including the cross subsidies, **and other operational constraints**) as may be specified within one year of the appointed date by it and in specifying the extent of open access in successive phases and in determining the charges for wheeling, it shall have due regard to all relevant factors including such cross subsidies, **and other operational constraints**:*

			<p>It is submitted that as per the provisions of the Act, the open access shall be introduced subject to the operational constraints. The provisions of parent Act cannot be altered through Rules made there under.</p> <p>Therefore, the open access could be allowed to the extent it is technically possible to wheel the power from the generation end up to the destination of use at consumer end. Up to contracted demand only. The technical constraints would be defined by the current carrying capacity of the feeder conductor, the sanction load / contract demand of the consumer, the ratings of the Metering Instruments, the capacity of the Distribution Transformer, etc.</p> <p>Therefore, it is submitted that open access can be permitted subject to technical constraints if any at either end and can not be permitted without any limit.</p> <p>In view of the above, the provision regarding no limit for green energy open access will pose technical issues & it is not recommended.</p>	
5	8	<p>Banking:-</p> <p>(1) Banking may be permitted on monthly basis on payment of charges to compensate additional costs, if any, to the distribution licensee by the Banking. The appropriate Commission shall fix the applicable charges.</p> <p>(2) The quantum of banked energy by the green open access consumers shall not be more than ten percentage of the total annual consumption of electricity from the Distribution licensee by the consumers.</p>	<p>It is submitted that in terms of Open Access, the duty of Distribution Licensee (Section 42) is just to provide a corridor for wheeling of electricity. Thus, the Electricity Act, 2003 does not contemplate “banking” in open access (injection at a time and drawal at different time). Therefore, it is submitted that the provision of banking is not in line with the Act.</p> <p>In case non-firm generating sources such as Wind & Solar, the generation of energy is infirm (uncontrollable) in nature. It becomes difficult to predict the generation for a particular period, so the Power Planning becomes complex.</p> <p>Further, MSEDCL as a State Distribution Licensee has to</p>	

			<p>match its injection and drawl of energy on 15 min time block basis under Energy Accounting & Billing Settlement with the SLDC. There is heavy penalty for deviation. The provision of banking makes it very difficult.</p> <p>The banking of energy i.e. injection in one time slot and drawal in other time slot results in financial implications as the power purchase cost of Distribution Licensee for different time block is different and it may increase the burden on common consumers.</p> <p>In view of the above, it is submitted that the provision of banking has financial implications as stated above and therefore the same can be provided as an exception (for promotion of RE) but with certain restrictions in line with the provisions made under existing MERC (Distribution Open Access) Regulations, 2019. Presently, the <u>MERC (Distribution Open Access) Regulations, 2019</u> allow the banking of green energy on monthly basis in Time of the Day (TOD) time slots only. [The energy injected during peak hours can be adjusted with the energy consumed during peak hours only. The energy injected during OFF peak hours can be set off against the energy consumed in off peak hours, but can not be set off against the energy consumed during peak hours.] The unutilized banked energy upto 10 % of monthly generated energy is purchased by the Distribution Licensee at MERC determined RE tariff and the same is accounted for the RPO.</p>	
6	9	<p>Cross Subsidy Surcharge: (a) Cross Subsidy Surcharge shall be levied on consumers who are permitted open access as per the provisions of Tariff policy notified by the Central Government under the Electricity Act 2003:</p>	<p>Cross Subsidy Surcharge: <u>Provisions of Electricity Act 2003:</u> Section 42 (2) of the Electricity Act 2003 provides: <i>The State Commission shall introduce open access in such phases and subject to such conditions, (including the cross</i></p>	

	<p>Provided that the surcharge for green open access consumer purchasing green energy, from a generating plant using renewable energy sources, shall not be increased, during twelve years from the date of commissioning of the generating plant using renewable energy sources, by more than fifty percent of the surcharge fixed for the year in which open access is granted.</p> <p>Provided further that Additional surcharge shall not be applicable for green open access consumers;</p> <p><u>Provided further that Cross Subsidy Surcharge and Additional Surcharge shall not be applicable in case power produced from a Waste-to-Energy plant is supplied to the open access consumer.</u></p> <p>(b) The Cross Subsidy Surcharge payable by a consumer shall be such as to meet the current level of cross subsidy within the area of supply of the distribution licensee.</p> <p>(c) Standby charges, if required, shall be specified by the State Commission.</p>	<p><i>subsidies, and other operational constraints) as may be specified within one year of the appointed date by it and in specifying the extent of open access in successive phases and in determining the charges for wheeling, it shall have due regard to all relevant factors including such cross subsidies, and other operational constraints:</i></p> <p><i>Provided that <u>[such open access shall be allowed on payment of a surcharge]</u> in addition to the charges for wheeling as may be determined by the State Commission: Provided further that <u>such surcharge shall be utilised to meet the requirements of current level of cross subsidy within the area of supply of the distribution licensee</u></i></p> <p>It is submitted that as per the Electricity Act, 2003, the Cross Subsidy Surcharge (CSS) shall be provided so as to compensate the Distribution Licensee (DL) for the loss of cross subsidy due to migration of its (cross subsidizing) consumers to open access.</p> <p>The existing MERC (Distribution Open Access) Regulations, 2016 do provide for the same as per the Regulation No. 14.7.</p> <p>The powers of providing the CSS are vested with the SERCs which have adopted the separate methodologies for the determination of CSS considering the state specific power sector scenario and the associated issues.</p> <p>It is submitted that the determination of CSS is related to the tariff of respective (cross subsidizing) consumer category and the same is not at all related to the type of generator (Whether RE or otherwise) under open access. The loss of cross subsidy for Distribution Licensee (DL) is same for all open access transactions for a consumer category whether power is sourced from Green Energy generator or conventional generator.</p> <p>In view of the above, it is submitted that the proposed special concessions (capping of CSS up to 12 years) to</p>	
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Green Energy Open Access are not justified as the revenue loss due to loss of cross subsidy will ultimately be borne by the common consumers by the way of increase in tariff. It is submitted that in context of the Maharashtra State, the concept of CSS determination has come a long way. Initially, the MERC had determined Zero CSS for all open access transactions in the year 2006 which continued till September 2011. Thereafter, the CSS was de-novo determined by MERC vide Order dated 09.09.2011 in Case No. 43 of 2010.

However, in the same order the concessional 25% CSS was made applicable for RE Open Access (from 2011) in view of promotion of RE, which continued till 2017. Now, from 2018 onwards, there is no concession for RE and the same CSS is made applicable for all open access transactions. In FY 2020-21, in MSEDCL area, 793 MW power was wheeled under RE Open Access where as 553 MW was wheeled under conventional open access.

It is submitted therefore that having enjoyed various benefits & concessions from the Regulatory bodies in long run (from 2003 to 2018) now RE Open Access has evolved to a stage that it can compete with conventional power open access; and hence require no further concessions or promotional benefits.

Additional Surcharge:

Provisions of Electricity Act 2003:

Section 42 (4) of the Electricity Act 2003 provides:

..... *Where the State Commission permits a consumer or class of consumers to receive supply of electricity from a person other than the distribution licensee of his area of supply, **such consumer shall be liable to pay an additional surcharge** on the charges of wheeling, as may be specified by the State Commission, to meet the fixed cost of such distribution licensee arising out of his obligation to supply.*

Provisions of National Electricity Policy:

Clause 5.8.3 of the National Electricity Policy provides for recovery of additional surcharge from open access consumers.

*Under sub-section (2) of Section 42 of the Act, a surcharge is to be levied by the respective State Commissions on consumers switching to alternate supplies under open access. This is to compensate the host distribution licensee serving such consumers permitted open access under section 42(2), for loss of the cross-subsidy element built into the tariff of such consumers. **An additional surcharge may also be levied under sub-section (4) of Section 42 for meeting the fixed cost of the distribution licensee arising out of his obligation to supply in cases where consumers are allowed open access.***

Provisions of National Tariff Policy:

Section 8.5 of the National Tariff Policy provides following provisions that deal with calculation of cross subsidy surcharge and applicability of additional surcharge to be paid by open access consumers.

“8.5.4 The additional surcharge for obligation to supply as per section 42(4) of the Act should become applicable only if it is conclusively demonstrated that the obligation of a licensee, in terms of existing power purchase commitments, has been and continues to be stranded, or there is an unavoidable obligation and incidence to bear fixed costs consequent to such a contract. The fixed costs related to network assets would be recovered through wheeling charges.”

Provisions of MERC (Distribution Open Access)

Regulations, 2016

14.8 Additional Surcharge

a. An Open Access Consumer receiving supply of electricity from a person other than the Distribution Licensee of his area of supply shall pay to the Distribution Licensee an

Additional Surcharge on the charges of wheeling and Cross-Subsidy Surcharge to meet the fixed cost of such Distribution Licensee arising out of its obligation to supply, as provided in sub-section (4) of Section 42 of the Act.

As per the provisions of the Electricity Act, 2003, National Electricity Policy and the National Tariff Policy, the additional surcharge is payable by the open access consumer.

It is submitted that the obligation of the MSEDCL in terms of power purchase agreements has been and continues to be stranded due to rise in open access in the state (RE & Non RE) and there is an unavoidable obligation and incidence to bear fixed costs consequent to such agreements.

Accordingly, the MERC has been determining the additional surcharge payable by the open access consumers since last 3-4 years (Previously it was zero) at the time of approval of MYT tariff orders of MSEDCL in line with the above said legal and regulatory provisions.

It is submitted that in FY 2020-21, around 793 MW power was wheeled under RE Open Access amounting to total 786 MU in MSEDCL area. Considering the Additional Surcharge @Rs. 1.30 p.u. a revenue of Rs. 102 Crs was generated which was utilized for paying fixed costs of stranded capacity of PPAs.

It is therefore submitted that the proposed exemption of Additional Surcharge to Green Energy Open Access is not justified as the revenue loss of MSEDCL will ultimately be borne by the common consumers by the way of increase in tariff.

It is submitted therefore that having enjoyed various benefits & concessions from the Regulatory bodies in long run (from 2003 to 2018) now RE Open Access has evolved to a stage that it can compete with conventional power open access; and hence require no further concessions or

			<p>promotional benefits.</p> <p>In view of the above, it is submitted that the applicability of Additional Surcharge to RE Open access as per the provisions of Electricity Act, 2003, National Electricity Policy, National Tariff Policy and the MERC (Distribution Open Access) Regulations, 2016 should be retained without any discrimination.</p> <p>No CSS or Additional Surcharge for Waste to Energy Projects:</p> <p>It is submitted that in case of waste to energy projects, additional concession in terms of non-applicability of CSS & AS for sourcing this power through open access is not justified. As mentioned above, the loss of revenue in terms of CSS & AS will be recovered by DL by the way of increase in tariff of common consumers.</p> <p>In view of the above, it is submitted that the applicability of CSS & AS for open access related to waste to energy projects should be retained.</p>	
7	12	<p>In order to have common methodology for calculation of all the open access charges, Forum of Regulators shall prepare a model regulation on methodology for calculation of open access charges for open access consumer in four months from the date of notification of this Rule.</p>	<p>It is submitted that the open access charges include Cross Subsidy Surcharge, Additional Surcharge, Wheeling charges, transmission charges and Open Access operating charges etc.</p> <p>The cross subsidy surcharge is related to the cross subsidy inbuilt in the tariff of the consumer category of open access consumer. The additional surcharge is related to the stranded capacity under Power Purchase agreements. The wheeling charges are related to the O&M cost pertaining to the LT-HT network of the distribution licensee, its length, magnitude of load handled, distribution losses, etc.</p> <p>Operating charges are also related to the quantum of open access power handled, its scheduling, energy accounting, billing, etc. The transmission charges are</p>	

			<p>separately determined for the State Transmission Licensee.</p> <p>In view of the above, it is submitted that all the above charges and the parameters considered for the same are different for different states. Thus, it is submitted that the powers to determine these charges may be continued to be vested with the State SERC in line with the provisions of the Act on the basis of state specific power scenario.</p>	
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