

EXPLANATORY MEMORANDUM

Historical Background

1. The Central Electricity Regulatory Commission (Open Access in Inter State Transmission) Regulations, 2008 (hereinafter referred to as “the Open Access Regulations”) were notified on 25.01.2008. The Regulations were amended on 20.05.2009 based on sectoral and operational issues pertaining to the Open Access in Inter State Transmission and after evaluation of the working experience of the Open Access Regulations.

2. Central Electricity Regulatory Commission (Sharing of inter-State Transmission Charges and Losses) Regulations, 2010 (hereinafter referred as "Sharing Regulation") were notified on 15.06.2010 and came into force from 1.07.2011. Since, the implementation of the Sharing Regulations also required the certain changes in the open access regulations, the corresponding changes have been done through the Removal of difficulty Order dated 28.6.2011. Sharing Regulations were amended vide notifications dated 24.11.2011 and 28.3.2012. The Commission has proposed the amendment to Open Access Regulations in order to align it with the requirements of Sharing Regulations. Based on the feedback received from NLDC/RLDC and Power Exchanges regarding the difficulties encountered in operationising the Open Access Regulations, some amendments have been proposed. The reasons for the proposed amendment are discussed in the succeeding paragraphs.

3. Date of implementation of amended regulations

After notification of the proposed amendment to the Open Access Regulations, POSOCO would be required to modify the Detailed Procedure after approval of the Commission. NLDC, RLDC & SLDC would also require sometime to make changes according to the amended regulations. Therefore, the amended regulations would come into force after approval of the Detailed Procedure. Therefore, it has been proposed that effective date of the amended regulations would be notified by the Commission separately.

Amendment of Regulation 2 (Definition)

4. Insertion of regulation 2(g-a). To bring clarity in the regulations, there is a need to define 'intra-day transactions/contingency transactions' in line with the definition of intra-day contracts/contingency contracts in the Central Electricity Regulatory Commission (Power Market) regulations, 2010. Accordingly, Regulation 2(g-a) has been proposed in the draft regulations.

5. Amendment of the definition of "intra-State entity" and "State Utility" has been proposed to bring clarity.

Amendment of Regulation 8; No Objection or Prior Standing Clearance

6. The existing regulation 8 (2) of Open Access Regulations states as under:

“8. (2) When a State utility or an intra-State entity proposes to participate in trading through a power exchange, it shall obtain a “no objection” or a prior standing clearance from the State Load Despatch Centre in such form as may be prescribed in the detailed procedure, specifying the MW up to which the entity may submit a buy or sell bid in a power exchange.”

Power Exchange of India Limited has brought to the notice of the Commission that some of the SLDCs are insisting on the intra-state entities to apply for No Objection/ Prior Standing Clearance (Power– Exchange wise) in case of collective transactions. Most of the SLDCs give concurrence/ no objection/ prior standing clearance for the total quantum of the power to be traded for both the exchanges together. The matter was discussed by the Staff of the Commission with the other Power exchange IEX and NLDC. The unanimous view is that if the clearance is given for the total quantum irrespective of the power exchange, the participating entity can optimize its bid on daily basis between exchanges. Necessary modifications in the format would be done in the detailed procedure by NLDC.

7. The following amendment in the Regulation 8(2) has been proposed:

“8. (2) When a State utility or an intra-State entity proposes to participate in trading through power exchange(s), it shall obtain a “no objection” or a prior standing clearance from the State Load Despatch Centre in such form as may be prescribed in the detailed procedure, specifying the aggregate MW up to which the State utility or intr-State entity may submit buy or sell bid(s) in the power exchange(s) taken together.”

Combined “No objection or a prior Standing Clearance” of State Load Despatch Centre for collective transactions and intra-day transactions/ contingencies transactions.

8. Intra-day/contingency contracts facilitate generators and suppliers to match out demand and supply based on real time load conditions and contingencies. Such contracts in OTC market and power exchanges are in operation. However, the liquidity in intra-day contracts has been negligible. One of the reasons emerging is the processing time required for receiving SLDC clearance. In case of intra-day/contingency contracts, the scheduling is done in accordance with procedure of scheduling of bilateral transactions, where each buyer/seller of any transaction is required to bring SLDC clearance before filing application for scheduling with Nodal RLDC. Such SLDC clearances are sometimes required at odd hours and further burdens the SLDC with procedural matters and increased work load as these are separate applications. The issue was discussed in CAC meeting held on 20th September 2010. There was consensus in the CAC meeting that the prior standing clearance obtained by an intra-state entity may be used both for day ahead or intra-day/contingency transactions irrespective of any particular power exchange. This should, however, be subject to the real time operational instructions by SLDC, if any, to address unforeseen congestion in STU system.

10. In the Commission's view, the “no objection or prior standing clearance” granted by SLDC should be allowed to be used by the intra-State entity or State utility for collective transactions (day ahead contracts on Power Exchange) or for intra-day / contingency transactions (in OTC market and/or Power Exchange Market) or both as per its choice. However, in order to ensure that the entity does not misuse the provision, a clause has been proposed for taking undertaking from the intra-State entity or State utility not to exceed the clearance limit as given by SLDC considering all collective transaction in day ahead in all exchanges and intra-day/contingency transactions (in OTC market and Power Exchange Market) at all times. Accordingly, clause (2) of Regulation 8 has been proposed to be amended and a new clause (2A) has been proposed to be inserted as per the draft regulations.

Amendment in Regulation 8 (3)

11. Presently, SLDC has to consider only two conditions while granting concurrence /no objection/standing clearance sought under Open Access Regulations. Regulation 8(3)(b)(c) ii extracted as under:

“ (3) (a) For obtaining concurrence or ‘no objection’ or prior standing clearance an application shall be made before the State Load Despatch Centre who shall, acknowledge receipt of the application, either by e-mail or fax, or any other usually recognised mode of communication, within twenty four hours from the time of receipt of the application:

Provided that where the application has been submitted in person, the acknowledgement shall be provided at the time of submission of the application.

(b) While processing the application for concurrence or ‘no objection’ or prior standing clearance, as the case may be, the State Load Despatch Centre shall verify the following, namely-

- (i) existence of infrastructure necessary for time-block-wise energy metering and accounting in accordance with the provisions of the Grid Code in force,
- (ii) availability of surplus transmission capacity in the State network, and

(c) Where existence of necessary infrastructure, availability of surplus transmission capacity in the State network has been established, the State Load Despatch Centre shall convey its concurrence or ‘no objection’ or prior standing clearance, as the case may be, to the applicant by e-mail or fax, in addition to any other usually recognised mode of communication, within three (3) working days of receipt of the application:”

12. In the past, a number of petitions have been filed in the Commission relating to issue of denial of concurrence/“no objection”/ prior standing clearance, for Short-term Open Access by SLDCs, on the ground that valid PPAs with Distribution Companies in the states were subsisting for the same power for which the concurrence/no objection/prior standing clearance was sought. Under the provisions of Section 32(2) (a) of the Act, the SLDC is responsible for optimum scheduling and despatch of electricity within a State, “in accordance with the contracts entered into with the licensees or the generating companies operating in that State”. The Ministry of Power (MoP) in the office memorandum dated 25.08.10 addressed to CEO, POSOCO (NLDC) has observed that some of the Power Project Developers have indulged in not honouring Power Purchase Agreement (PPA), entered into by them with distribution companies and are selling this power in the short term market to gain monetary benefits. In response to the same, POSOCO also has proposed some amendments in the detailed procedure.

13. The concerned load dispatch centre has to prima facie satisfy itself that in case of bilateral transaction, there is a valid contract for the proposed transaction and there is no existing contract to sell the same power to any other person. In case of collective transaction through power exchange, the load despatch centre should satisfy itself that prima facie, there is no existing contract to sell the same power to any other person. Accordingly, amendment to Regulation 8(3) has been proposed to Open Access Regulations requiring the applicant for open access to submit necessary affidavit regarding existence of contract for the power for which open access.

Amendment in Regulation 8 (4)

14. The existing Regulation 8(4) provides for the following:

"(4) In case the application has been found to be in order but the State Load Despatch Centre refuses to give concurrence or 'no objection' or prior standing clearance as the case may be, on the grounds of non-existence of necessary infrastructure or unavailability of surplus transmission capacity in the State network, such refusal shall be communicated to the applicant by e-mail or fax, in addition to any other usually recognized mode of communication, within the period of three (3) working days or seven (7) working days, as the case may be, from the date of receipt of the application, specified under clause (3), along with reasons for such refusal:

Provided that where the State Load Despatch Centre has not communicated any deficiency or defect in the application within two (2) days from the date of receipt of application or refusal or concurrence or 'no objection' or prior standing clearance, as the case may be, within the specified period of three (3) working days or seven (7) working days, as applicable, from the date of receipt of the application, concurrence or 'no objection' or prior standing clearance, as the case may be, shall be deemed to have been granted:

Provided further that where concurrence or 'no objection' or prior standing clearance, as the case may be, is deemed to have been granted by the State Load Despatch Centre, the applicant while making application shall submit to the nodal agency an affidavit (in the format provided in the detailed procedure), duly notarised, declaring that –

(a) the State Load Despatch Centre has failed to convey any deficiency or defect in the application or its refusal or concurrence or 'no objection' or prior standing clearance, as the case may be, within the specified time,

(b) necessary infrastructure for time-block-wise energy metering and accounting in accordance with the provisions of the Grid Code in force, is in place; and enclosing with the affidavit –

(i) a copy of the complete application after removal of deficiency or rectification of defects, if any communicated, made to the State Load Despatch Centre for seeking concurrence or 'no objection' or prior standing clearance, as the case may be, and

(ii) a copy of the acknowledgement, if any, given by the State Load Despatch Centre, or any other evidence in support of delivery of the application to the State Load Despatch Centre."

15. As per the existing regulations, in case of bilateral transactions excluding the intra-day transactions/contingency transactions, the application for short term open access is made at least four days in advance from the date of commencement of the transactions. In case of collective transactions, the applicant is the power exchange and the power exchange makes an application for scheduling of collective transactions only at 3.00 P.M. for transactions to be implemented on the following day. In case of deemed concurrence, the applicant is required to submit the affidavit to the nodal agency alongwith the application. However, as per the detailed procedure for collective transactions, approved by the Commission, in case of deemed concurrence, the State utilities and intra State entities as the case may be, are to submit the affidavit to power exchange with a copy to the concerned SLDC. Therefore, the onus of submitting the copy of the affidavit to SLDC was on the intra State entity or the State utility as the case may be.

16. It is felt that in case of deemed concurrence for collective transaction and for intra-day transaction/contingency transaction through the power exchange, the onus of submitting the copy of affidavit to SLDC should be on power exchanges instead of intra State entity or State utility, as the case may be. The affidavit should be submitted to the power exchange by the intra-State entity or the State utility as the case be, at least three days in advance from the date of delivery and the power exchange in turn should submit the same to nodal agency and SLDC concerned for information on the same day it is received. Similarly, in case of bilateral transactions other than those through the power exchange, the copy of the affidavit should be submitted to SLDC by the nodal agency instead of intra State entity or State utility on the same day it is received. The affidavit should be submitted to the nodal agency by the applicant at least three days in advance in case of bilateral transactions directly or through traders. Therefore, in order to bring more clarity, amendment to Regulation 8(4) has been proposed as per the draft regulation.

Insertion of Regulation 14(IA):

17. A new provision with respect to revision of schedules in case of forced outage of a generating unit for a short term bilateral transaction has been provided in IEGC 2010. To bring the provisions regarding revision of schedules under Open Access

Regulations in line with IEGC 2010, it has been proposed to include reference to Regulation 6.5 of Grid Code in Regulation 14(IA) in the draft regulations.

Amendment in Regulation 14(3):

18. There was earlier no clear provision for payment of operating charges in case of downward revision for which operating charges would continue to be payable. Therefore, to have more clarity on operating charges in case of downward revision, the existing clause 3 of Regulation 14 of Open Access Regulations have been proposed to be amended.

Amendment in Regulation 16:

19. Regulation 16 of Open Access Regulations provides as under:

“Transmission Charges

16. (1) In case of bilateral transactions, the transmission charges at the rate specified hereunder shall be payable by the short term customer for the energy approved for transmission at the point or points of injection:

| Type of Transaction (Rs./MWh) | Transmission charges(Total) |
|--|-----------------------------|
| (a) Bilateral, intra-regional | 80 |
| (b) Bilateral, between adjacent regions | 160 |
| (c) Bilateral, wheeling through one or more intervening regions | 240 |

(2) In case of collective transactions, transmission charges at the rate of Rs.100/MWh for energy approved for transmission separately for each point of injection and for each point of drawal, shall be payable.

(3) The intra-State entities shall pay the transmission charges for use of the State network as fixed by the respective State Commission in addition to the charges specified under clauses (1) and (2).

Provided that in case the State Commission has not determined the transmission charges, the charges for use of respective State network shall be payable at the rate of Rs.80/MWh for the electricity transmitted:

Provided further that non-fixation of the transmission charges by the State Commission for use of the State network shall not be a ground for refusal of open access:

Provided also that the transmission charges payable for use of the State network shall be conveyed to the Regional Load Despatch Centre concerned who shall display these rates on its web site:

Provided also that the transmission charges shall not be revised with retrospective effect.”

20. Clauses (1) and (2) of Regulation 16 of Open Access Regulations have been repealed by clause (1) of Regulation 19 of the Sharing Regulations. Consequently, the provisions of Sharing Regulations including the removal of difficulty orders issued by the Commission will be applicable for deciding the rates for transmission charges for bilateral and collective transactions through short term open access. Regulation 16 provides for transmission charges. The new regulation on Sharing of transmission charges and losses specifies the process to determine the point of connection (POC) transmission charges which shall be applicable to short term open access transactions also. These charges shall be applicable for zone in which point of injection or point of drawal falls. In lieu of the same, a provision has been made to discontinue the determination of transmission charges as per the existing methodology given in the Open Access Regulations and to provide for sharing of the transmission charges in accordance with the Sharing Regulations Further to bring about transparency, the SLDC shall be required the transmission charges payable for the use of the state network on their website. Accordingly, Regulation 16 has been proposed to be amended as per the draft regulations.

Amendment of Regulation 20 of Open Access Regulations

21. Since the definition of 'State Utility' has been proposed to be changed, it has necessitated change in Regulation 20(3) in order to substitute State utility with State Agency.

22. The existing clause 5 of the Regulation 20 provides for:

"(5) Unless specified otherwise by the concerned State Commission, UI rate for intra-State entity shall be 105% (for over-drawals or under generation) and 95% (for under-drawals or over generation) of UI rate at the periphery of regional entity."

This provision provides for UI rate for an intra-state entity for inter-State short term transaction in case the State Commission has not specified any UI rates. There is a need to clarify that in case this provision is applicable, then accounting of UI charges shall be done as per Central Electricity Regulatory Commission (Unscheduled Interchange charges and related matters) Regulations, 2009 as amended from time to time. Accordingly, a proviso to clause (5) of the regulation 20 has been proposed.

Special Energy Meters

23. The existing clause (1) of Regulation 22 provides as under:

“(1) Special Energy Meters shall be installed by the Central Transmission Utility for and at the cost of the regional entities and by the State Transmission Utility for and at the cost of the intra-State entities.”

As per the feedback received from the stakeholders, some of the industrial consumers connected on 33 kV system are facing problem in getting the open access from SLDCs. As per the regulations of some of the State Commissions, installation of meters for consumers connected on 33 kV system is not within the jurisdiction of STUs. Discoms or any other authorized utility within the State are relying on Regulation 22 (1) of Central Electricity Regulatory Commission (Open Access in inter-State Transmission) Regulations, 2008 (as amended from time to time) are insisting that the meters should be installed by STU. In order to provide for demarcation of clear-cut responsibilities for installation of meters, it has been proposed to amend clause (1) of Regulation 22 as under:

“(1) Special Energy Meters shall be installed by the Central Transmission Utility for and at the cost of the regional entities and by the State Transmission Utility or the distribution licensee as the case may be, for and at the cost of the intra-State entities.”

Amendment to Regulation 23(Transmission losses)

17. Existing Regulation 23 of Open Access Regulations provides as under:

“Transmission Losses

23 (1) The buyers and sellers of the electricity shall absorb apportioned energy losses in the transmission system as estimated by the Regional Load Despatch Centre and the State Load Despatch Centre concerned, and applied in accordance with the detailed procedure.

(2) The energy losses shall be accounted for by providing a differential between schedules at the points of supply, inter-utility transfer and drawal of electricity.

(3) The applicable transmission losses for the regional transmission system as well as for State network shall be declared in advance and shall not be revised retrospectively.”

Regulation 23 provides for transmission losses. The Sharing Regulations specifies the process to determine the point of connection (POC) transmission losses allocation which shall be applicable to short term open access transactions also. These losses shall be applicable for the zone in which point of injection or point of

drawal falls. It has been proposed to amend Regulation 23 of the Open Access Regulations to align with the provisions of Sharing Regulations.

Amendment to Regulation 25 (Collection and disbursement of Transmission Charges and Operating Charges)

18. The existing Regulation 25 of Open Access Regulations provides as under:

"The Transmission charges and the operating charges payable by the persons allowed short-term open access shall be collected and disbursed by the nodal agency, except for transmission charges for State network and operating charges for State Load Despatch Centre in the case of collective transaction.

(1) The transmission charges collected by the nodal agency for use of the transmission system other than State network, for a bilateral transaction shall be directly disbursed to the long-term customers after disbursing 25% of such transmission charges to the Central Transmission Utility in the following manner;

(a) In case of intra-regional bilateral transaction: 75% of the transmission charges to the region concerned.

(b) In case of bilateral transaction between adjacent regions: 37.5% of the transmission charges for each region.

(c) In case of bilateral transaction through one or more intervening regions: 25% of the transmission charges for each of importing and exporting each region and remaining 25% of the transmission charges to be allocated equally among all intervening regions.

(2) The transmission charges collected for use of the transmission system other than State network for a collective transaction for each point of injection and each point of drawal shall be disbursed by the nodal agency in the following manner, namely-

(a) Central Transmission Utility: 25%

(b) Long-term customers of the region of point of injection or drawal, as the case may be, in suitable: 75%

(3) The transmission charges shall be disbursed to the long-term customers in proportion to the monthly transmission charges payable by them.

(4) The transmission charges for use of State network shall be disbursed to the State Transmission Utility concerned.

(5) In case (a State utility) is the short-term customer, the operating charges and the transmission charges collected by the nodal agency shall not include the charges for use of State network and operating charges for the State Load Despatch Centre."

19. Regulation 25 of Open Access Regulations provides for collection and disbursement of Transmission Charges and Operating Charges. In the Detailed Procedure for Billing, Collection and Disbursement issued under the Sharing Regulations, it has been provided that the short-term open access charges to a Region shall be offset against the long-term access charges to the same region without identified beneficiaries. To bring this provision in line with the provision in the Sharing Regulations, amendment to Regulation 25 has been proposed.

20. In accordance with the Sharing Regulations, the transmission charges for Long Term access, Medium Term open access and Short Term open access are equal. The charges received for Medium Term open access and Short Term open access are additional revenues for CTU over and above the transmission charges admissible to CTU in accordance with the CERC (Terms and Conditions of Tariff) Regulations, 2009. The details of short term open access charges collected during the years 2008-09, 2009-10 and 2010-11 and after implementation of Sharing Regulations is given in the table below. This clearly indicates that after 1st July, 2011, the transmission charges collected through Short Term open access have increased substantially:

| Year | 2008-09 | 2009-10 | 2010-11 | 2011-12 (Apr-Dec,2011) |
|--|---------|---------|---------|---------------------------|
| Energy (MU) | 30521 | 39547 | 55232 | 52354 |
| Short Term Open Access Transmission Charges (Rs. Crs) | 166 | 510 | 846 | 1025 |

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| | April | May | June | July | Aug | Sept | Oct | Nov | Dec | Apr-Dec |
|------------------------------------|-------|------|------|------|------|------|------|------|------|---------|
| Energy in MU | 5539 | 5262 | 5518 | 7606 | 7428 | 6205 | 4513 | 4751 | 5532 | 52354 |
| STOA Transmission Charges(Rs Crs.) | 80 | 84 | 79 | 136 | 148 | 129 | 115 | 118 | 136 | 1025 |

As Short Terms Open Access is provided only on the available margins on the existing transmission system, this additional income should be passed on to the Long Term Transmission Customers. Many stakeholders like WBSEDCL, MPERC and R2India in their comments on draft First Amendment to Sharing Regulations have requested for passing on the short term open access charges to the Long Term Transmission Customers. Accordingly, Regulation 25 is proposed to be substituted as per the draft amendment regulation.

Amendment to Regulation 25(A)

21. The existing Regulation 25A of Open Access Regulations provides as under:

“25 A. When so directed by the Commission, the National Load Despatch Centre or the Regional Load Despatch Centre, as the case may be, shall not grant short-term open access to the entities and associates of such entities, who consistently and wilfully default in payment of Unscheduled Interchange charges, transmission charges, reactive energy charges, congestion charges and fee and charges for National Load Despatch Centre or Regional Load Despatch Centre including the charges for the Unified Load Despatch and Communication Scheme.”

As the transmission is an indivisible, non-transferrable and pooled public service, the common and collective services such as transmission, System Operation, Deviation settlement etc are pooled. Default in payment of the pool charges has the propensity to disrupt the entire electricity sector. Therefore, pool payments should have priority over one-to-one or bilateral settlements.

22. For successful operation of power market whether bilateral or collective, transmission system acts as the backbone and a robust transmission system is an enabler and fundamental building block for functioning of a competitive electricity market in India. So any default in payment of transmission charges, system operation charges and other Regulatory charges should be given top priority. It should not happen that a utility defaulting in payment of its obligation under long term access of transmission facility should be allowed to avail short term access on same transmission infrastructure of Inter State Transmission system. To bring more clarity that this clause is applicable for all short term transactions including through Power Exchanges also, the amendment has been proposed.

23. Further, a letter has been received from Chhattisgarh SERC referring to the issue related to default in payment of Unscheduled Interchange charges by an intra state entity for an interstate transaction. It is a matter of concern, therefore, a condition in case of default in payment of UI charges to SLDC by an intra state entity

for an inter-State transaction has also been considered as one of the condition for not granting short term open access. The proposed amendment is as under:

“25A. When so directed by the Commission, the National Load Despatch Centre or the Regional Load Despatch Centre, as the case may be, shall not grant short-term open access (including transactions through Power Exchange) to the entities and associates of such entities, who consistently and willfully default in payment of Unscheduled Interchange charges, transmission charges, reactive energy charges, congestion charges, fee and charges for National Load Despatch Centre or Regional Load Despatch Centre including the charges for the Unified Load Despatch and Communication Scheme and Unscheduled Interchange charges to SLDC by an intra state entity for a short term interstate transaction.”

Amendment of Regulation 27

24. In Regulation 27(f) of the Open Access Regulations provides that state utilities shall provide the details of transmission charges and applicable losses for various state network to NLDC and RLDCs for posting the information on their website. On account of the proposed amendment in the definition of 'state utility', it has become necessary to substitute the words 'state utility' with the words 'State Transmission Utility'.