

**BEFORE THE HON'BLE CENTRAL ELECTRICITY REGULATORY COMMISSION,  
NEW DELHI**

IN THE MATTER OF:

"Draft Central Electricity Regulatory Commission (Sharing of Inter State Transmission Charges and Losses) (Fifth Amendment) Regulations, 2016" read with the Explanatory Memorandum issued by the Hon'ble Commission.

AND IN THE MATTER OF:

Open Access Users Association  
2nd Floor, D21 Corporate Park,  
Sector 21, Dwarka,  
New Delhi - 110 075



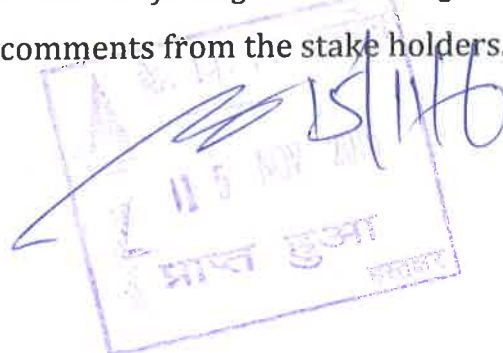
..... OBJECTOR.

**SUGGESTIONS / OBJECTIONS ON BEHALF OF THE OBJECTOR**


**MOST RESPECTFULLY SHOWETH**

1. The Hon'ble Commission has issued the "*Draft Central Electricity Regulatory Commission (Sharing of Inter State Transmission Charges and Losses) (Fifth Amendment) 2016 (Hereafter referred to as "Regulation")*" calling for comments/suggestions from all interested parties by issuing a public notice.
2. The present submissions/objections are being filed by the Open Access Users Association (OAUA). It is an association of industries where the members of Objectors are running manufacturing and other industries in the country and are purchasing power through open access.
3. The Hon'ble Commission has issued the *draft Regulation along with the Explanatory Memorandum* calling for comments from the stake holders.

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4. It is respectfully submitted that the Amendment Regulations as proposed contain several provisions which will instead of promoting, prohibit the open access in the country. It is stated that one of the objectives of the Electricity Act, 2003 is to promote open access and provide non-discriminatory open access to the consumers subject to payment of charges. However, the scheme of the proposed amendments as per Draft Regulations will not achieve this mandate and will instead; create several impediments and road-blocks in obtaining the open access for consumers.
5. Further, the purchase of power by most of the consumers is through the Energy Exchange which is interstate transfer of power through open access and the present regulation will pose a warning to this form of purchase of power if the present draft Regulation is finalised.
6. The main reason for proposed amendments is brought out in the Section A (Background) of the explanatory memorandum which states that the quantum of purchase of power in short term format has increased many fold over the years. Further, the price of power has also gone down year on year .As the transmission lines are built based on the quantum of Long Term PPAs/Access and due to decreasing number of long term consumers, the augmentation of transmission lines and creation of new transmission corridors is also suffering. However, for transfer of power, more transmission corridors are required urgently. .At the same time, the generators which have been allowed Long Term Access on the basis of target region and unable to find Long Term Buyers are under threat as they are unable to make up for their cost being incurred in the process as the price under LTOA is always more than that of MTOA and STOA:
7. In this regard, it is submitted that there is large scale variations in the demand pattern of various discoms spread over the length and breadth of the country. The seasonal variations due to changing weather pattern in northern

   
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region is so wide that demand in winter reduces to almost 50 to 60% of the summer demand whereas the variations in southern region is not so prominent. The demand pattern varies over the 24 hours period also depending up on the economic prosperity of the state, extent of industrialisation of the state, Agriculture pattern etc. Under these circumstances the Discom has to prudently decide on the quantum of power to be generated from own sources and quantum to be procured under long term contracts depending on the base load and future projections of load growth. Balance requirement has to be arranged thro' short term open access. As such the short term access is utmost necessary to keep the sale of power tariff to consumer's low otherwise discom/bulk consumers will be burdened with fixed charges of surrendered power affecting their ability to serve the consumers.

8. In view of the above submissions, Hon'ble Commission is requested to take into account the difficulties of discoms and consumers also while deciding on the relief proposed to be given to the generators who have obtained long term access based on target region but after commissioning of their projects are not able to find buyers. The Hon'ble Commission, instead of burdening the end consumers by forcing the discoms to enter into long term PPAs for power required only for part of the period over the year or for part of the day, may devise other ways and means to develop the transmission corridors/lines for flow of power from one region to other region etc.
9. The short term open access is availed mainly by Discom or industrial consumers. The increase in short term CTU charges will increase the tariff for Industry which is already facing stiff competition from other countries mostly China and Korea etc which are offering their products much cheaper compared with Made In India produce. Therefore the price of electricity

  
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needs to be kept lower for which transmission charges need to be kept competitive and short term access should not be made to cross subsidise the long term access of generators who have set up their projects without entering into long Term PPAs.

10. With the above background, It is respectfully submitted that some of the provisions of the draft regulations may require amendment to respect the principle of comity of jurisdiction. The submissions on the individual proposed Regulations is as under –

**a. Amendment to Regulation 9 of the Principal Regulations:**

*“(1) Sub-clause (1) of Regulation 9 of the Principal Regulations shall be substituted as under:*

*“(1)The transmission charges for MTOA customers who are not availing LTA to target region for the capacity under MTOA shall be charged 1.25 times of the LTA POC rates as notified by the Commission from time to time.*

*(2) The transmission charges for STOA customers who are not availing LTA to target region for the capacity under STOA shall be charged 1.35 times of the normal STOA POC rates as notified by the Commission from time to time.*

*Provided that the surplus charges collected under above clauses shall be reimbursed back to DICs paying charges under first bill in the next month.”*

As per the above proposal, the Hon'ble Commission has proposed for an increase in the MTOA and STOA charges by 1.25 times and by 1.35 times respectively.

It is our humble submission that in order to let Open Access survive in the country, the increase in transmission charges should be avoided as the proposed hefty increase in

  
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transmission charges shall increase the landed/delivered price of the short term power and in such case the landed price for power under STOA and MTOA shall become onerous for the open access consumers in the state.

Further, the STOA and MTOA is allowed only on the surplus margin of the transmission system which is likely to remain unutilized and is additional revenue. STOA has the last priority for allotment and first priority for cancellation. Charging higher than actual cost to serve when the usage is to meet the variation in demand due to natural causes etc is certainly unfair to the STOA consumers.

As a result of this, the very essence of competitive power under open access will be lost due to which this will lead to complete confusion and will kill the short term open access completely.

**b. A New Sub clause (y) to Clause (1) to Regulation 7 of Principal Regulations shall be added as under:**

*"No transmission charges and losses for the use of ISTS network shall be attributed to wind based generation for the projects awarded through competitive bidding and commissioned till 31.3.2019. This shall be applicable for a period of 25 years from the date of commissioning of such projects.*

*Provided that such waiver will be available only for the projects entering into Power Purchase Agreements (PPAs) for sale of electricity to the Distribution Companies for compliance of their renewable purchase obligation."*

As per the above amendment, it is submitted that it is great step taken by the Hon'ble Commission towards promotion of wind energy in the market but in such case we would humbly suggest the Hon'ble commission to take a step ahead and include Small Hydro Plants upto 25 MW under the same exemption policy as small hydro is also a renewable form and hence comes under renewable energy approved by MNRE. Such step can

  
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bring a boom in the development of new small hydro projects as well as renewable market.

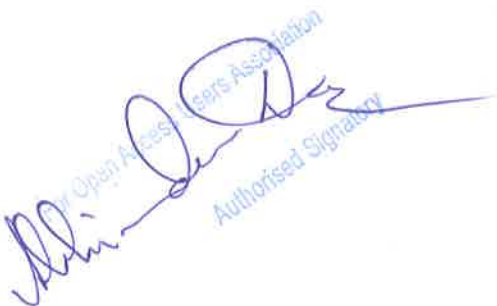
In the above case, we would further suggest the Hon'ble commission to give such exemption to the generators in case they sell their power under Open Access arrangement too. It is submitted that the EA 2003 delicensed the generation of electricity .The generator is therefore, free to choose to which entity it wants to sell power .It is a settled principle of law that no policy document can be issued which brings back even an iota of the earlier licensing regime through back door, thereby creating a mechanism of any kind of control over generators post the enactment of the EA 2003. This above mentioned clause of this regulation is not only hostile to the interest of the other RE Generators but also stands in contravention to the right of the said generators to supply electricity to any licensee or to any consumer under sub section 2 of Section 42.

The selective treatment to exempt transmission charges for only those wind generators which enter into PPAs with Discoms is violative of level playing field for consumers and generators of other RE technologies.

**c. Amendment to Clause (9) to Regulation 11 of the Principal Regulations:**

*First, Second and third proviso to clause (9) of Regulation 11 of the Principal Regulations shall be substituted as under:*

*"Provided that a DIC which has been granted LTA to a target region and is paying injection charges for Long Term Access avails Short Term Open Access to any region, the quantum of Short Term Open Access shall be adjusted in the following month against the quantum of Long Term Access to target region limited to quantum of Long Term Access to the extent of the quantum for which DIC has paid charges.*

  
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*Provided further that a DIC, who has been granted Long-term Access to a target region, shall be required to pay PoC injection/ withdrawal charge for the Approved Injection/Withdrawal for the remaining quantum after offsetting the quantum for Medium-term Open Access, and Short-term open access to the extent of the quantum for which DIC has paid charges.*

*Provided also that the Withdrawal PoC charges paid by DIC towards Short- term open access given to a DIC shall be offset against the corresponding Withdrawal PoC charges to be paid by the Withdrawal DICs for Approved withdrawal limited to difference of Approved Withdrawal and Net withdrawal (load minus own injection) considered in base case, if Approved withdrawal is less than the Net Withdrawal.” “*

We support Amendment to Clause (9) to Regulation 11 of the Principal Regulations regarding offset of POC charges for generators under LTA selling power under STOAMTOA market. They shall be given offset if charges towards MTOA/STOA is already paid. In such case, we would suggest the Hon' ble Commission to come up with a mechanism for implementation of the same so that it clarifies the process regarding the above mentioned process.

**d. Amendment to Annexure of the Principal Regulations:**

*Sub clause under Para 2.8.1.c shall be substituted as follows:*

*“(i) Reliability Support Charges shall be 10% of the Monthly Transmission Charges.*

*The Reliability Support Rate, in Rs/MW/month shall be as under:*

*Reliability Support Charge for Withdrawal DIC shall be obtained by multiplying the above rate (in Rs/MW/month) by Approved Withdrawal (LTA/MTOA). For Generator with Long term Access to target region shall be obtained by multiplying these charges by Approved Injection. For Generators whose Connectivity is for quantum more than its LTA+MTOA, Reliability Support Charges shall be obtained by multiplying the above rate by [Connectivity quantum – (LTA+MTOA)].*

  
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*The above principle shall also apply for additional MTOA."*

This part mentioned above needs clarification as to which part the amendment is to be made because in the principle regulation there is no sub regulation as "2.8.1.c."

### AFFIDAVIT


I, Mr. Abhinandan Das , S/o Sh. Debasish Das, aged about 28 years, working for gain at Open Access Users Association, working as Legal Officer of the Objector , R/o D108, 3th Floor, Dwarka Sector 8, New Delhi – 110075 , do hereby solemnly affirm and state as follows:

1. That I am the Legal Officer and the authorized representative of the Objector in the abovementioned matter, I have been dealing with the matters relating to the above mentioned case and I am conversant with the facts of the case.
2. I have read the accompanying Comment ad Suggestions and I say that its contents are true to my knowledge and belief and based on records which are believed to be true and correct.

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### VERIFICATION:

I, the Objector above named do hereby verify that the contents of the above affidavit are true to my knowledge, no part of it is false and nothing material has been concealed therefrom.

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