

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Coram:
Shri P.K.Pujari, Chairperson
Shri M.K.Iyer, Member

No. PM/NOAR/2016/CERC

Dated: 02 January, 2019

In the matter of

Central Electricity Regulatory Commission (Open Access in inter-State Transmission) (Fifth Amendment) Regulations, 2018

Statement of Reasons

1. Introduction

- 1.1. The Commission vide notification dated 8th August, 2018 issued the Draft Central Electricity Regulatory Commission (Open Access in inter-State Transmission) (Fifth Amendment) Regulations, 2018 along with Explanatory Memorandum seeking comments/suggestions/observations from the stakeholders/public.
- 1.2. In response to the above, the written comments were received from the following organizations:
 - (1) Gujarat Energy Transmission Corporation Ltd. (GETCO)
 - (2) Indian Energy Exchange Ltd (IEX)
 - (3) Indian Energy Regulatory Service (IERS)
 - (4) Maharashtra State Electricity Distribution Company Ltd. (MSEDCL)
 - (5) MP Power Management Company Ltd. (MPMCL)
 - (6) Multitudes Intellect
 - (7) Open Access Users Association Ltd. (OAUA)
- 1.3. Subsequently the Commission conducted the Public Hearing on 14th November, 2018 during which the following organizations made their oral submissions:
 - (1) Indian Energy Exchange Ltd
 - (2) NLC India Ltd (NLCIL)
- 1.4. The amendments proposed in the Draft Regulations, deliberation on the comments/suggestions offered by the stakeholders on the proposed amendments and the reasons for decisions of the Commission are given in the succeeding paragraphs.

2. Stakeholders Comments and Commission's Analysis

2.1. Definition and Function of NOAR (New Regulation 3A(1))

Comments Received:

2.1.1. GETCO submitted that the Gujarat SLDC is currently processing the short term open access applications through their EASS software and since it is functioning smoothly they may be allowed to do their transactions using the software. Further, GETCO has requested to provide web based linkage between NOAR and EASS software of Gujarat SLDC so that all the applications which are to be routed to NOAR can be processed as per GERC Open Access Regulations in force according to which the EASS software has been designed.

2.1.2. IEX submitted that the information viz. standing clearance provided, availability of transmission corridor, short term open access granted etc. envisaged to be shared by the NOAR and discussed in the explanatory memorandum should be provided under the functions of NOAR specified in Regulation 3A(1). Further, IEX has suggested displaying the above information online on a real time basis.

2.1.3. IEX further submitted that the scope of NOAR may be expanded to include processing of day ahead scheduling of long, medium and short-term contracts. The standing clearance should not only cover the short term transactions but should also include the details related to long-term and medium-term transactions. IEX also submitted that provision should be there to automatically convert un-requisitioned surplus power to standing clearance for enabling participation in real time market.

2.1.4. IERS submitted that NOAR should be made capable to interact with State stakeholders/intra-state entities too for addressing core problems of the consumers applying for Open Access else NOAR may only act as software application for mere information sharing and would not meet its objectives.

2.1.5. MSEDCL submitted that a mechanism may be devised for online co-ordination between SLDC and Discom for issuance of NOC in case of inter-state OA transaction.

Analysis and Decision:

2.1.6. The Commission is conscious that the process followed for granting short-term open access may vary from State to State. Further, some of the States viz. Gujarat, Telangana etc. have already implemented their software for processing the short term open access applications in accordance with their respective State's Open Access Regulations. In order to avoid any conflict with the procedure followed by

the different States, it has been envisaged that NOAR shall be designed in such a manner that it can be seamlessly interfaced with the SLDC's software for processing the short term open access applications pertaining to inter-state transmission system. The same has been provided under the Regulation 3A(1)(v) as given below:

3A (1). NOAR shall be a common electronic platform for short term open access and vested with the following functions, namely:

.....

(v) To interface with the short term open access application software of the RLDC's and SLDC's for processing short-term inter-state open access transactions

2.1.7. The Commission agrees to the suggestion given by IEX regarding mentioning of the information to be provided by NOAR under the functions of NOAR specified in Regulation 3A(1). As regards to the suggestion for displaying information on a real time basis, it has been noted and will be considered while implementing the NOAR in consultation with NLDC (POSOCO). Accordingly, the clause (iv) of the Regulation 3A(1) has been revised as given below:

3A (1). NOAR shall be a common electronic platform for short term open access and vested with the following functions, namely:

.....

(iv) To act as a repository of information related to short term open access in inter-state transmission including standing clearance issued by RLDC's or SLDC's, availability of transmission corridor, and short term open access granted to the open access customers and make such information available to the stakeholders online.

2.1.8. Regarding the expansion of scope of NOAR as proposed by IEX, the Commission is of the view that NOAR in its present form has been conceptualized for processing the short term inter-state open access applications. The scope may be subsequently expanded subject to further deliberation & examination of the issues involved. Further, as suggested by IEX, the automatic conversion of un-requisitioned surplus power to standing clearance is not possible at this stage as the beneficiary can recall the power. However, as indicated by the IEX the same may be further examined when the Real Time Market and Gate Closure concept proposed vide CERC discussion paper dated 25th July, 2018 gets further crystallized.

2.1.9. Regarding IERS and MSEDCL suggestion to include intra-state entities in NOAR, it may be reiterated that CERC jurisdiction is limited to inter-state transmission system and accordingly the NOAR has been conceptualized for streamlining of short term open access applications concerning inter-state transmission system only. Since the concerned SLDC shall be acting as the interface between intra-state entities and inter-state transmission system, there is no requirement to include intra-state entities in the NOAR.

2.2. Disaster Recovery Mechanism (New Regulation 3A(3))

Comments Received:

2.2.1.MSEDCL submitted that in event of failure of NOAR server like fire, downtime of server, hacking etc. there needs to be an alternate arrangement

Analysis and Decision:

2.2.2.The Commission concurs with the suggestion given by MSEDCL and has accordingly provided for a disaster recovery mechanism under clause (ii) of Regulation 3A(3) as given below:

- (3). *NLDC shall be the nodal agency for implementation and operation of NOAR and shall have the following responsibilities*
- i. To take all steps necessary to ensure cyber security compliance of NOAR in accordance with Cyber Security Policy of Government of India;*
 - ii. To put in place an appropriate disaster recovery mechanism for ensuring business continuity; and*
 - iii. To review the operations of NOAR from time to time and suggest changes required if any.*

2.3. Detailed Procedure (Amendment to Regulation 4)

Comments Received:

2.3.1.GETCO submitted that before finalizing the Detailed Procedure to NOAR by NLDC, all SLDCs and RLDCs must be consulted for their suggestions/comments. Further, if possible a one day workshop on the Detailed Procedure may be held before submitting the same to the Commission for final approval.

Analysis and Decision:

2.3.2.The Commission clarifies that as per the amendment proposed in Regulation 4, NLDC is required to conduct stakeholder's consultations before submitting the Detailed Procedure to the Commission for approval. In the explanatory memorandum also it was very clearly specified that the NLDC shall conduct stakeholder's consultations and take into considerations the comments/suggestions provided by them while finalizing the Detailed Procedure. If required, NLDC may conduct the workshop in each region in order to clarify any queries of the stakeholders with regard to the Detailed Procedure. The amendment to Regulation 4 proposed in the Draft Regulations further revised to give clarity regarding stakeholders consultations is as given below:

4. Subject to the provisions of these regulations, NLDC shall issue the detailed procedure to operationalise open access through NOAR and on any residual matter not covered under these regulations.

Provided that NLDC shall carry out stakeholders' consultation and obtain the approval of the Commission before issue of the detailed procedure.

2.4. Registration with NOAR (New Regulation 5B)

Comments Received:

2.4.1. GETCO submitted that the fees for registration and its renewal may be increased to Rs. 10,000/- and Rs. 5,000/- instead of Rs. 2,000/- and Rs. 1,000/- respectively as proposed in the Draft Regulations. GETCO further submitted that the validity of the registration may be decreased from 3 years to 2 years while 50% of the registration fees may be shared with the concerned SLDCs.

Analysis and Decision:

2.4.2. The fees proposed here are one time fees either for registration or for renewal of registration with NOAR and the fees so collected will go towards meeting the expenses incurred for implementation & operation of NOAR. Since SLDC shall not be required to incur any substantial expenditure separately in relation to the implementation of NOAR, the Commission is of the view that the fees collected for registration and renewal of registration with NOAR may be retained with the NLDC to meet any cost on infrastructure and updation of associated software. As regards registration and renewal fees, the Commission has decided to increase it to Rs. 5000/- and Rs.2000/- respectively, in order to discourage non-serious applicants from seeking registration or renewal of registration with NOAR. As regards the suggestion of GETCO to reduce the validity period of registration from 3 years to 2 years, no justification has been provided for seeking such reduction. The Commission is of the view that the 3 year period of validity of registration is reasonable and need not be modified.

2.5. Issuance of Standing Clearance (Amendment to Regulation 8)

2.5.1. Duration of the Standing Clearance (Regulation 8(3))

Comments Received:

2.5.1.1. GETCO submitted that the standing clearance may be issued up to a maximum period of 1 month instead of 3 month as proposed in the Draft Regulations.

- 2.5.1.2. IEX submitted that the instead of capping the maximum period of standing clearance, it may be aligned with the time period in the definition of short term open access.
- 2.5.1.3. Multitudes Intellect submitted that the standing clearance should be issued for a maximum period of three months at a time after which automatic renewal for a period of three months shall be effected if neither the concerned RLDC/SLDC has any objection to do so nor the open access customer has specifically requested for any change thereof.

Analysis and Decision:

- 2.5.1.4. The Commission is of the view that the duration of 3 months for the standing clearance is the ceiling and an open access applicant can apply for short term open access for period less than 3 months and the concerned RLDCs/SLDCs may grant short term open access for a period of less than 3 months depending upon the availability of transmission capacity. A maximum period of validity of 3 months has been prescribed as it would reduce the time & effort on the part of both the short term open access applicant and the RLDCs & SLDCs. Regarding automatic renewal of standing clearance as proposed by Multitudes Intellect, the Commission is of the view that this may not be appropriate as due diligence after every three months regarding the availability of infrastructure and surplus capacity in the transmission network by the concerned RLDC/SLDC would aid in improved planning and resource allocation.

2.5.2. Timelines for issuance of Standing Clearance (Regulation 8(3))

Comments Received:

- 2.5.2.1. GETCO submitted that the time for issuing the standing clearance may be increased to 5 & 10 (first time application) days instead of 3 & 7 days respectively proposed in the Draft Regulations. GETCO also submitted that the time for intimating about the defect or deficiency in the application and the time for responding to reminder message from NOAR may be increased to 3 days instead of 2 days proposed in the Draft Regulations.
- 2.5.2.2. MSEDCL submitted that the time period of 3 or 7 days is insufficient for issuing the standing clearance and hence should be increased to 7 or 14 days. MSEDCL submitted that as per the State Regulations the consent of Discom is required which takes at least 2 weeks time.

MSEDCL also submitted that 2 days proposed under Draft Regulations for communicating the deficiency or defect in the application would be insufficient.

- 2.5.2.3. NLCIL submitted that as the NOAR is introduced as an additional agency to the existing practice and since it has been directed in the Draft to route every action through the proposed nodal agency NOAR, this may require extra time in processing the application which may lead to unnecessary delay in administering the short term open access.

Analysis and Decision:

- 2.5.2.4. The Commission observes that the timelines proposed in the Draft Regulations i.e. 2 days for intimating any defect or deficiency in the application and 3 or 7 days (if the application is made for the first time) for issuing of Standing Clearance is exactly similar to what has been provided under the prevailing Regulations. Further, the Commission is of the view that after implementation of IT enabled system i.e. NOAR it is unlikely that the processing of application for the Standing Clearance would require more time than previously prescribed. However, an additional 2 days time has also been provided to the RLDCs or SLDCs to respond to the reminder message from the NOAR beyond the response time of 3 or 7 days. . In the above backdrop, the Commission is not inclined to increase the timelines related to issue of Standing Clearance as suggested by GETCO or MSEDCL.

2.5.3. Declaration from the Applicant (Regulation 8(1))

Comments Received:

- 2.5.3.1. MSEDCL submitted that while submitting the application the open access customer initially may submit an affidavit stating that necessary infrastructure for time block wise energy metering and accounting is in place so that no subsequent issues arise for commercial settlement of open access transaction of applicant whose open access application has been deemed sanctioned on account of procedural delay from RLDC or SLDC.

Analysis and Decision:

- 2.5.3.2. The Commission concurs with the suggestion given by MSEDCL regarding submission of infrastructure related declaration at the time of application itself. As per the prevailing Regulations, where the standing clearance is deemed to have been granted, the applicant is required to

submit an affidavit declaring that the necessary infrastructure for time block wise metering and accounting in accordance with Grid Code is in place. However, with the implementation of NOAR the standing clearance shall be automatically deemed to have been granted after the stipulated time has elapsed. In this backdrop, the Commission is of the view that a declaration regarding the availability of necessary infrastructure may be taken at the time of submission of the application itself. At the same time, it is clarified that the declaration submitted at the beginning would not bar the RLDC or SLDC to actually verify the infrastructure while issuing the standing clearance. In light of the above, clause (ii) has been added to the proposed amendments in Regulation 8 of the Draft Regulations as given below:

8. (1) *An online application, through the NOAR, shall be made by the short term open access applicant to the concerned RLDC or SLDC as the case may be, for issuance of a 'standing clearance' for availing short term open access in interstate transmission for a pre-specified quantum and time period in accordance with the detailed procedures along with the following declaration.*
- i. A declaration in the format prescribed in the detailed procedure shall be submitted along with the application declaring that there is no other contract for sale or purchase, as the case may be, of the same power for which standing clearance has been applied for.*
 - ii. A declaration that necessary infrastructure for the time block wise metering and accounting in accordance with the provisions of Grid code in force, is in place at the end of the applicant*

2.5.4. Application in excess of quantum specified under Standing Clearance (Regulation 8(6))

Comments Received:

- 2.5.4.1. GETCO submitted that the inherent design of NOAR software itself should prevent violation of quantum specified under the Standing Clearance. GETCO further submitted that the first time default should lead to debarring of the open access customer from NOAR for a period of one month and for second time the applicant may be debarred for six months while for the third time the debarring period may be extended up to 1 year.
- 2.5.4.2. MSEDCL submitted that NOAR must have provision to alert the open access customer that it is violating its standing clearance limit and the open access customer should not be allowed to apply for any open access transactions above the sanctioned standing clearance.

- 2.5.4.3. Multitudes Intellect submitted that clause 8(7) is redundant as such a situation would never arise with the implementation of the NOAR. If it does arise NOAR as the custodian should also be held responsible and accountable.

Analysis and Decision:

- 2.5.4.4. The Commission clarifies that the violation of the quantum specified in the standing clearance may happen due to the participation of the short term open access customer in the power exchange platform(s) which will be functioning outside of the NOAR software environment. It is envisaged that the RLDC/SLDC after taking into consideration the availability of surplus capacity in the transmission network, shall issue the standing clearance indicating the maximum quantity that can be availed by a short term open access customer for inter-state transactions. Accordingly, it is the responsibility of an open access customer to ensure that the bids submitted at the power exchange platform(s), at an aggregated level and bilateral if any, should not exceed the quantum available in the standing clearance in any of the time blocks. In case it is observed that the aggregate volume cleared across the power exchange(s) and in any other short term category has exceeded the quantum specified in the standing clearance in any of the time block, it would imply that the said customer has intentionally not complied with terms of the standing clearance. NLDC shall keep a track of such transactions through NOAR and debar such non-complying customers from participating in short term market for a period of 7 days under intimation to the concerned RLDC or SLDC. In light of the above discussion the Regulation 8(6) and 8(7) proposed in the Draft Regulations has been merged and revised as given below:

- (6) *The open access customer to whom the standing clearance has been issued or deemed to have been issued, shall ensure that aggregate quantum in each time block of 15 minutes for all the bid(s) under any of the categories of short term bilateral and collective transactions in OTC market and/ or Power Exchange(s) market shall not exceed the quantum of standing clearance or deemed standing clearance, as the case may be.*

Provided that if any short term open access customer exceeds the quantum of the standing clearance in any time block, NLDC shall debar the said customer from participating in short term market for a period of seven (7) days under intimation to concerned RLDC or SLDC.

Provided further that NOAR shall also display a list of such short term open access customers debarred in terms of the above proviso.

2.5.5. Utilization of Standing Clearance (Regulation 8(7))

Comments Received:

- 2.5.5.1. GETCO submitted that in case of underutilization of allowed standing clearance, the next month MW standing clearance should be restricted up to the maximum utilization of the approved MW in previous month. Further, in case of defaulting of availing approved quantum in advance category shall be liable to pay 300% of the transmission charge for the defaulting period of quantum.
- 2.5.5.2. MSEDCL submitted that NOAR should be able to track utilization of standing clearance on a daily basis and give alert to respective SLDC or RLDC. Further, SLDC or RLDC should seek reason for underutilization and if there is persistent underutilization without appropriate justification SLDC or RLDC may curtail quantum of standing clearance of said period and take strict action including imposing heavy penalty for the same. MSEDCL further submitted that while sanctioning the standing clearance past history of corridor utilization of applicant must be available and the same should be used as one of the criteria for approving the standing clearance.

Analysis and Decision:

- 2.5.5.3. The Commission is of the view that utilization/underutilization of transmission corridor in short term horizon is dynamic in nature and has to be seen in the context of several underlying factors viz. transmission constraints, system demand, prices in day ahead market etc. For instance in case a customer is not availing the allocated transmission network while there is no additional demand on the system then such underutilization may not be an appropriate case for revision of standing clearance. Similarly, it may also happen that the open access customer is bidding in the power exchanges but unable to get cleared due to competition in market resulting into underutilization of the allocated transmission corridor. In view of the above, the Commission has decided to remove the 'underutilization of transmission corridor' as one of the criteria for revising the standing clearance. RLDC and SLDC shall comprehensively review the situation and do a prudence check while issuing the standing clearance to the applicant. Accordingly, the clause 8(7) has been revised as given below:

(7) *The concerned RLDC or SLDC as the case may be, may revise the quantum (MW) or period of the standing clearance issued in respect of any open access customer in case of transmission constraint or in the interest of secure grid operation in accordance with the detailed procedure.”*

2.6. Payment gateway in NOAR (New Regulation in 18A)

Comments Received:

2.6.1. GETCO suggested revising the Regulation 18A as given below:

All charges payable under these Regulations shall be paid online through the payment gateway made available in the NOAR. It should not lead any additional liability on account of GST or any other levy/tax of any Govt. on application SLDC/RLDC but the same shall be borne by the applicant.

Analysis and Decision:

2.6.2. Regarding the suggestion of GETCO, the Commission clarifies that any additional liability on account of GST or any other levy/tax by Central or State Government are statutory in nature and it shall be the liability of the short term open access applicant to pay such taxes or levies if payable under as per the relevant Act. Therefore, it is not required to make specific provision to that effect in the Regulations.

2.7. Provision to Regulation 25A

Comments Received:

2.7.1. GETCO suggested revising the proviso to Regulation as given below:

Provided that if the default beyond due date of payment, the NLDC or RLDC or SLDC, as the case may be, may deny future transaction and/or terminate ongoing transaction, if any, without approaching the Commission for specific directions in this regard

2.7.2. MP Power suggested adding the following provision under Regulation 25 A:

Provided further that in case of non-payment of cross subsidy surcharge and additional surcharge within 15 days from due date of payment, the NLDC or RLDC or SLDC as the case may be, may revoke the open access permission and deny short term open access to the defaulting entity till the default is cured by the entity.

Analysis and Decision:

2.7.3. The Commission clarifies that the above proviso under Regulation 25A proposed in the Draft Regulations is as per the CERC Order dated 2.9.2015 pertaining to Petition No. 142/MP/2012 with I.A 7/2013 in which it has been specified that the trigger point for invocation of Regulation 25 A by the NLDC & RLDC for denying short term open access in case of any entity defaulting in payment for more than 90 days. Further, regarding the suggestion of GETCO and MP Power to include SLDC and provide for payment of cross subsidy surcharge/additional surcharge, it is clarified that default in payment of any charges including the cross subsidy surcharge and additional surcharge by the open access applicant to the concerned Discom is within the regulatory jurisdiction of the concerned SERC and it is not appropriate for the Commission to make such defaults in payment as condition precedent for grant of open access to inter-state transmission system. SLDCs may act as per the provisions of their respective Open Access Regulations and with the approval of the State Commission. In view of the above, no change is required to be made to the proviso under Regulations 25A of the Draft Regulation.

2.8. Additional Points

2.8.1. GETCO submitted that proviso to Regulation 7 may be retained as this facilitates contingency transactions.

The Commission is of the view that it is not required to retain the said proviso as post implementation of NOAR it would not be possible to process the application without the associated application fees.

2.8.2. OAUA sought clarification whether short term inter-state open access users are required to pay any fees to the SLDC for processing of the application for standing clearance.

The Commission reiterates that the SLDCs may follow the procedure including the amount to be collected for processing the application for standing clearance in accordance with their State specific open access regulations.

2.8.3. GETCO submitted that since there is no need of change in existing network/augmentation of network to grant MTOA, the SLDCs/RLDCs must be nodal agency for granting MTOA too.

The Commission observes that the above suggestion is beyond the scope of the current amendment proposed and has not been dealt with.

2.8.4. MSEDCL submitted that while issuing standing clearance priority shall be given to the beneficiaries having long term access to the inter-state transmission network as the LTA customers are paying the PoC charges.

The Commission observes that the above suggestion is beyond the scope of the current amendment proposed and has not been dealt with.

2.8.5.MSEDCL submitted that the provision for downward revision in STOA transaction in case of FCFS and Advanced Scheduling needs to be modified and brought in alignment with the IEGC, 2010.

The Commission observes that the above suggestion is beyond the scope of the current amendment proposed and has not been dealt with. However, the point has been noted.

2.8.6.Multitudes Intellect submitted that NOAR needs to be implemented and proven before implementing the auction based Real Time Market

The point has been noted.

Sd/-
(Dr. M.K.Iyer)
Member

Sd/-
(P.K.Pujari)
Chairperson