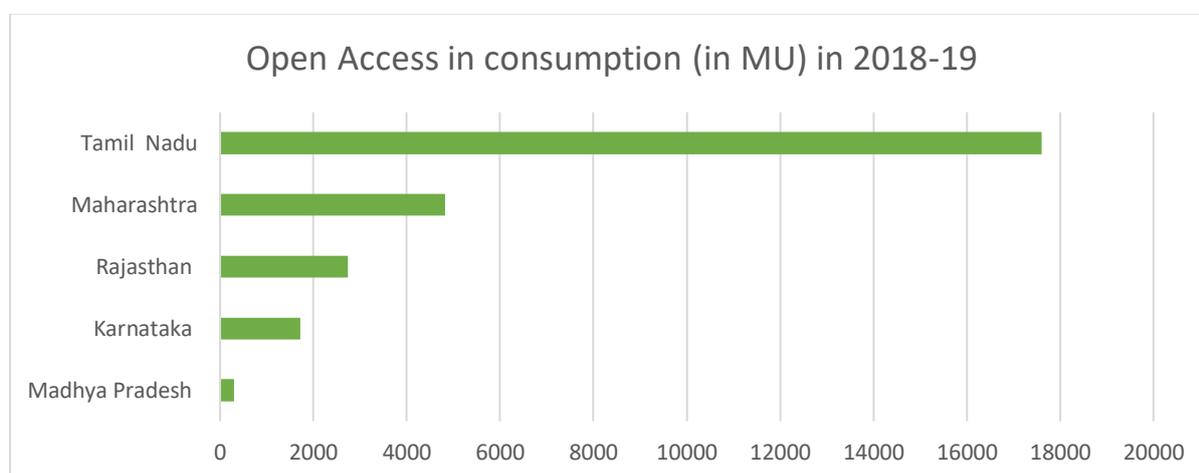


Comments and Suggestions on the Draft Madhya Pradesh Electricity Regulatory Commission (Terms and Conditions for Intra-State Open Access in Madhya Pradesh) Regulations, (Revision-I) 2021

Prayas (Energy Group), Pune
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Sales migration in India has steadily grown in the last five years, driven by open access and captive consumption. While states such as Maharashtra, Rajasthan, Karnataka and Tamil Nadu witnessed this steady growth, the open access consumption in Madhya Pradesh has remained considerably lesser in comparison. Despite this, it is important to note that rapidly falling prices of renewable energy-based generation sources will continue to incentivise consumers to migrate.



Source: Compiled by Prayas (Energy Group) from respective tariff orders and Additional Surcharge petitions

Therefore, with such a dynamic renewable energy sector, it is inevitable that states will observe an increasing trend of migrating consumers, sooner rather than later. In this context, the states will have to balance the dual objectives of promoting retail competition as well as protect the interests of the distribution companies. It is integral to ensure that procedural delays and uncertainty of the nature and level of open access charges do not impede market development. At the same time, it is imperative to acknowledge the impact of sales migration on the operations, planning and finances of the distribution company, and prepare for the same.

Given these undercurrents, the proposed draft of Madhya Pradesh Electricity Regulatory Commission (Terms and Conditions for Intra-State Open Access in Madhya Pradesh) Regulations, (Revision-I) 2021 is a very welcome initiative. Some positive proposals include a willingness to reduce the eligibility for open access consumers to less than 1 MW in the near future, detailed application procedure and a prescribed time schedule for processing the same, and maintaining a separate head of account for revenue earned from short-term open access consumers to be used for strengthening of the distribution system. Considering this, Prayas (Energy Group)'s or PEG's comments and suggestions in this matter highlight areas where more clarity is needed to

ensure smooth implementation and also suggests some additional changes that can be made to safeguard the interests of the DISCOM while broadening and deepening electricity markets.

1. Eligibility of Open Access

To widen the choice available to consumers, the Commission should consider lowering the eligibility barrier for the consumers in Regulation 3.3. Instead of altering this in the future, the Commission can consider lowering the eligible contract demand for open access to 500 kW *now* and thereafter to 100 kW after five years. Reducing this eligibility barrier in a stepwise manner will aid market development and allow more consumers to choose their supplier.

A clarification is needed with respect to Regulation 3.3 which states "Provided that when a person, who has established a captive generating plant, opts for open access for carrying the electricity to the destination of his own use, the limitation of 1 MW shall not be applicable." Is this for *all* captive or only when they *opt for open access* for carrying electricity to the destination of their own use? Can any person, including LT consumers, opt for Captive? If that is indeed the case, how does one differentiate between a captive generating plant, rooftop, and a behind-the-meter system? This clarification is important so that payment of respective open access charges do not remain ambiguous. It is suggested that captive and open access both are available to consumers with contracted demand > 100 kW in five years' time.

2. Application Procedure

a) Web portal for application and payment

The proposal to ensure that the nodal agencies (STU and SLDC) and licensees maintain an online system to carry out information exchange among themselves as per Regulation 19.3, is an excellent initiative. Apart from this, the nodal agency should have a *dedicated web portal* for the consumers to apply for open access and make the required payment online. This will ensure transparency, reduce procedural hassles, and streamline the application process. This web portal should:

- Have functionalities to ensure timelines and tracked and delays from prescribed timelines are flagged in the system.
- Ensure unique IDs for all open access consumers, generators, DISCOMs and SLDC and provide access to MPERC for the portal.
- Provide information of type of open access, duration of contract, generators supplying power and contracted demand for each open access consumer to be uploaded by the nodal agency.
- Report sale to open access consumers, payable charges, applicable penalties and revision in contracted demand if any for each consumer on a monthly basis as uploaded by the nodal agency.
- Ensure that each open access consumer has access to all uploaded information based on their unique IDs and can request for verification in case of discrepancy.

The regulations should stipulate that the dedicated web portal should be operationalised by the two nodal agencies within eight months of notification of the regulations.

Based on the information on the web-portal, the nodal agency should upload monthly status reports on the portal which can be publicly accessible in an easily downloadable spreadsheet format. These reports should also be submitted to the Commission for analysis. Some of the major parameters that should be captured in the report are mentioned in Table 1.

Table 1: Parameters to be reported in the portal

Consumer related parameters	Energy related parameters	Licensee revenue related parameters
<p>The portal should report:</p> <ul style="list-style-type: none"> • Number of open access connections <ul style="list-style-type: none"> ○ Based on duration of contract ○ Full or partial open access ○ Which have reduced contracted demand • Number of applications processes during the period • Number of pending applications • Average delay (in days) from prescribed timelines for various milestones 	<p>The portal should report open access sales:</p> <ul style="list-style-type: none"> • From generators within and outside the state • From RE and non-RE sources • To day-ahead, short-term (other than day-ahead), medium-term and long-term open access consumers • For captive consumption due to loss of captive status • Captive units wheeled 	<p>The portal should report revenue collected for:</p> <ul style="list-style-type: none"> • Wheeling • Additional surcharge • Cross-subsidy surcharge • Standby charges • Concessions provided, if any for each applicable charge • Transmission charges • SLDC charges, if any
Total number of open access consumers and captive consumers	Total open access sales and captive ¹ sales	Total revenue from open access and captive

b) Time Schedule and penalties

Regulation 9.1 prescribes a maximum time limit for each type of service when processing applications. In order to make sure this timeline is adhered to, the Commission must have explicit penalties for the nodal agency in case of any delay. This could be in form of a fine/compensation to be paid by the nodal agency to the applicant, on a per day basis. It could also be a penalty paid for non-compliance to these regulations under Section 142. The penalty amount can be deposited in a fund used by the nodal agency to manage, maintain and increase functionality of the data portal or invest in technologies for aid with power procurement planning challenges. The details of the fund and its utilisation can be detailed in the regulations.

3. Committee

¹ This refers to those captive units that use wheeling services.

The Committee to be known as the 'Open Access Monitoring, Dispute Resolution and Decision Review Committee' as per Regulation 8.8 is comprised of one representative each from the State Load Dispatch Centre, the State Transmission Utility, the Distribution Licensee and one person nominated by the Commission. This is no representation of interests of the open access consumers, the generators and the regulated consumers, who are among the key stakeholders. For the Committee to be seen as a credible entity for consensus building, it is imperative to have an *independent member*, who is either a sector expert or a consumer organisation or an industry representative.

Further, to strengthen the committee process, the regulations should explicitly require the committee to publish the minutes of its meetings along with detailed reports regarding the issues deliberated and remedial measures being proposed or considered. All the information regarding the committee, including its composition, minutes of the meetings, study reports and any other relevant documents should be available on the Commission's website.

Moreover, the nodal agency should submit a report to this Committee periodically. The Committee should publish this report on the Commission's website, along with their own comments and observations. The inputs from the Committee should be factored in the tariff processes, power procurement planning and revision of the open access regulations.

4. Charges for Open Access

DISCOMs do face an issue with respect to scheduling and power procurement planning due to opportunistic switching of open access consumers. Therefore, steps need to be taken to discourage short-term open access (STOA) and encourage consumers to avail open access for longer term durations. For such a market to develop, it is also essential to provide a reasonable amount of certainty and predictability regarding the surcharges applicable for open access.

One step to discourage STOA could be a progressive increase in STOA charges² for transmission and wheeling. In case of repeat short-term open access transactions during a financial year, the applicable charges should increase progressively till the third such transaction. For and after the 3rd transaction, the applicable charges should be two times the charges approved by the regulator.

Another step is to provide a medium-term (next 5 years) certainty in charges such as the additional surcharge (AS) and the cross-subsidy surcharge (CSS). These charges could be fixed for the entire duration of the next five to seven years. Alternatively, consumers availing open access for longer than three years can be provided with a progressively reducing CSS. Another way is to have a ceiling of 2.5 rupees per unit for total open access charges (CSS+AS) for medium-term and long-term consumers. Changes in the methodology and rationale for the estimation of CSS and AS is well within the domain the regulatory commission as the methodology in the National Tariff Policy is only meant to be guiding rather than binding. Such a step would provide

² A similar regulation has been approved by MERC in Maharashtra Electricity Regulatory Commission (Distribution Open Access) (First Amendment) Regulations, 2019, Section 9: Amendment to Regulation 14 of the Principal Regulations, 14.1 (v).

certainty to investors while ensuring reasonable recovery of charges for the DISCOM in the medium term.

5. Enabling provisions to aid participation in G-TAM and RTM

With the introduction of green term ahead markets and real time markets, renewable energy generators, open access and captive consumers in the state have significant options for using market instruments for transparent, competitive power trading. To enable consumers and generators to use these options, clarity in Commission regulations are required. For example:

- As G-TAM expects firm schedules with no deviation, treatment of over-injection in such instances especially when the open access/ captive project also qualify under banking provisions in the state, should be clarified.
- Timelines for submission of schedules in Clause 9.2 (iii) should be conducive for scheduling power for trade in the RTM. This will be relevant for trading un-requisitioned capacity on a real time basis in the state.

6. Treatment of over-injection/under-injection by deemed open access and captive consumers

Many open access and captive consumers are embedded within the distribution network and as such are not visible as a separate entity at the SLDC level. As the DISCOMs submit their schedule as well the schedule of the embedded consumers together to the SLDCs, the consequences of the deviation in schedule (either penalties for over-drawal or load shedding) are being borne by the DISCOM.

It is suggested that the applicable DSM charges on the DISCOM due to deviation in schedule must be equitably shared between the DISCOM and the open access consumers. Such sharing can be based on contribution of individual deviations to total deviation with the deviation from DISCOMs schedule being settled first. If the deviation in schedule is beyond 12% of the scheduled injection or if the deviation is higher than the prescribed limits in the applicable DSM regulations, penal charges should be applicable on the open access consumer on a pro-rata basis. Given the variable nature of renewable energy generation, higher deviation without penalties can be allowed for RE based open access and captive. It is suggested that such a mechanism be specified in the regulations for equitable sharing of costs.

7. Under-utilisation or non-utilisation of open access capacity

A long-term open access customer is defined as a customer availing open access for a period exceeding *five years*. Thus, the basis for providing a differential treatment (in Regulation 11.1) for 'long-term' customers availing access for more or less than *twelve years* is unclear. It is suggested that a long-term customer, who has availed access rights for *at least five years*, should also have an opportunity to submit an application to the State Transmission Utility at least one year prior to the date from which the said customer desires to relinquish the access rights, with no charges.

8. Revenue earned from STOA customers

The proposal to maintain a separate head of account for the revenue earned from STOA customers (in Regulation 13.1 ii. c. & d.)) and using the same for strengthening of the distribution system and making capital expenditure for development of the infrastructure (and not for meeting any revenue expenditure) is a novel and welcome step. To ensure clarity and smooth implementation, it is suggested that the regulations stipulate:

- That the funds be used for specific measures such as storage options, ToD meters etc which will aid optimise power procurement of the DISCOM.
- The nodal agencies report, magnitude of funds and status of works being funded every year to the ERC.
- Capital expenditure undertaken should be clearly mentioned in the ARR and Tariff petition filed by the Distribution Licensees, under an explicit head of 'STOA funds'. This will aid regulatory scrutiny and utilisation of such funds.

9. Stipulate five year validity for the regulations

The gap between the previous regulations and this draft has been that of more than fifteen years, which is not desirable, given the dynamic forces of technology and falling renewable energy prices. Therefore, it is essential that these regulations have a lifetime of only the next five years, after which the Commission can take stock of the future market conditions. Such a stipulation will ensure the Commission revises as the regulations as required on a medium-term basis. After these five years before revising the regulations, it is suggested that the Commission publish a consultation paper (on the basis of data, observations and trends reported by the nodal agencies and the Committee) to seek comments from a larger number of stakeholders.

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