

**HIMACHAL PRADESH ELECTRICITY REGULATORY COMMISSION
KEONTHAL COMMERCIAL COMPLEX, KHALINI, SHIMLA-171002.**

In the matter of draft regulations of First Amendment to the Himachal Pradesh Electricity Regulatory Commission (Grant of Connectivity, Long-term and Medium-term intra -State Open Access and Related Matters) Regulations, 2010.

**CORAM
SUBHASH C NEGI
CHAIRMAN**

ORDER

1. Introduction:-

The Commission issued on 09th October, 2012 the draft Himachal Pradesh Electricity Regulatory Commission (Grant of Connectivity), Long-term and Medium-term intra-State Open Access and Related Matters) (First Amendment) Regulations 2012 proposing to amend the Himachal Pradesh Electricity Regulatory Commission (Grant of Connectivity, Long-term and Medium-term intra-State Open Access and Related Matters) Regulations, 2010. The said draft regulations were published in the Rajpatra, Himachal Pradesh dated 10.10.2012 and insertion was also made on 12.10.2012 in daily news papers i.e. "The Tribune" and "Amar Ujala" as per the requirements of previous publication, inviting objections and suggestions, from persons likely to be affected by the proposed amendment, by 01.11.2012 which date was extended to 19.11.2012. The relevant principal regulations and the explanatory memorandum containing the background of the open access Regulations and objects and reasons for the proposed amendments to the Regulations were also uploaded on the website of Commission. The Commission received suggestions and objections from various stakeholders and has duly considered and discussed the said suggestions/objections in the succeeding paras of this order.

2. Background and Legal provisions:

The Electricity Act, 2003 provides for grant of non-discriminatory open access to any licensee or generating company or consumer. Open access in transmission system is permitted under the Act itself under sections 39 and 40 and therefore the concerned transmission utility/licensee is required to provide open access to any licensee or generator or also any consumer who has been permitted open access under section 42 (2) of the Act. Which casts duty upon the State Commission to introduce open access in phases, subject to such conditions as it may deem fit to impose, by regulations and while specifying phasing, all consumers requiring electricity supply exceeding 1 MW at any time were required to be provided such open access by January, 2009. The relevant provisions of the section 42 of the Act are as under:-

“42. Duties of Distribution Licensees and open Access.-

(1) xxxx xxxx xxxx xxxx

(2) 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 xxxx xxxx xxxx

Provided xxxx xxxx xxxx

Provided xxxx xxxx xxxx

Provided xxxx xxxx xxxx

Provided also that the State Commission shall, not later than five years from the date of commencement of the Electricity (Amendment) Act, 2003 (57 of 2003) by regulations, provide such open access to all consumers who require a supply of electricity where the maximum power to be made available at any time exceeds one megawatt. ”

3. Regulatory Provisions:

Accordingly, the Commission issued Himachal Pradesh Electricity Regulatory Commission (Terms and Conditions for Open Access) Regulations, 2005, which inter alia, provided for grant of open access to consumers in phases whereby consumers, requiring supply having contract demand exceeding 1 MVA, were permitted open access with effect from FY 2007-08. The said regulations were further reviewed and new regulations i.e. Himachal Pradesh Electricity Regulatory Commission (Grant of Connectivity, Long-term and Medium-term intra-State Open Access and Related Matters) Regulations, 2010 were remade..

4. Objects and reasons of the proposed amendments:-

4.1 While the Regulations of 2005 permitted open access to consumers requiring electricity above 1 MVA from 2007-08 onwards, the revised Regulations of 2010 do not lay down any threshold limit, implying that all the consumers are eligible for open access. There are more than 18 lakh consumers in the State and it may not be operationally possible to provide non-discriminatory open access in distribution system to such consumers at this stage. At the same time, the fifth proviso to section 42 (2) casts the duty upon the Commission to permit open access to all consumers requiring electricity above 1 MW by year 2009. Therefore, this amendment aims at providing open access to all the consumers requiring electricity above one MVA.

4.2 The Regulations of 2010 were framed when HPSEB was an integrated entity. Now since the HPSEB has been reorganised and separate entities for distribution, transmission and load despatch have been created, the amendments seek to assign appropriate responsibilities and duties to the relevant entities.

4.3 The amendments also seek to facilitate and encourage open access by simplifying operational procedures including for the existing consumers and also rationalize provisions for fees, bank guarantees etc. Therefore, the amendments aim at facilitating and encouraging open access by providing for its simple and smooth operationalisation.

5. Objections and Suggestions of the Stakeholders:-

The Commission received comments/suggestions on the aforesaid draft regulations from the following stakeholders:-

1. Himachal Pradesh State Electricity Board Ltd. (HPSEB Ltd.)
2. Himachal Pradesh Load Despatch Society, SLDC Complex, Totu, Shimla-171011
3. B.B.N. Industries Association (Regd.), C/o Single window Clearing Agency, Industrial Area, Baddi-173205
4. Kala Amb Chamber of Commerce & Industries, Triklokpur Road, Kala-Amb, Distt. Sirmaur-173030
5. Nalagarh Industries association, C/o O/o Member Secretary, S.W.C.A., Nalagarh-174101
6. M/s Ambuja Cement Ltd., P.O. Darlaghat, The. Arki, Distt Solan (H. P.)
7. M/s Leond Hydro Power Private Limited, Skipton Villa, Shimla-171001
8. M/s Manikaran Power Ltd., 3rd Floor, 'AASTHA', 460. Off E.M Bye Pass, Kolkata-700107.

6. Comments of the stakeholders and findings of the Commission:-

The Commission considered the objections and comments of each of these stakeholder and the views and findings of the Commission thereon are as under:-

General Comments:

6.1 All the three Industrial Associations i.e. B.B.N. Industries Association, Kala Amb Chamber of Commerce and Industries and Nalagarh Industries Association, have given by and large similar comments. Wherein they have opposed the very concept of mandatory open access and interpretation of deemed open access as provided for in the fifth proviso sub-section (2) of section 42 of the Electricity Act, 2003 namely:-

“Provided also that the State Commission shall, not later than five years from the date of commencement of the Electricity (Amendment) Act, 2003, by regulations, provide such open access to all consumers who require a supply of electricity where the maximum power to be made available at any time exceeds one megawatt.”

6.2 They have contended that:-

- (a) It could not have been the intention of the Legislature to unsettle the already settled position and status of the consumers with load of one MW and above and throw them to the mercies of monopoly of utilities where no competition exists.

- (b) Already the State Commission of Madhya Pradesh (Order dated 05.09.2012 in SMP No. 39/2012), has rejected the interpretation of 2003 amendment to section 42 of the 2003 Act and have refused to implement it as mandatory open access for all consumers requiring supply of 1 MW and above. *It has held that the consumers having loads in excess of 1 MW cannot be treated compulsorily as deemed open access consumers and forced to seek open access.* Other Commissions are also likely to follow suit.
- (c) The Associations' firm belief that if implemented in Himachal Pradesh, it is bound to paralyse and create anarchic situations which shall be impossible to retrieve thus dealing death blow to both the distribution licensee as well as the consumers of Himachal Pradesh.

The Associations, therefore, prayed that the draft amendment regulations should not be finalized and notified. The Associations suggested that the Commission may reject the mandatory interpretation of the Electricity (Amendment) Act, 2003 as given by Government of India vide their letter dated 30.11.2011 **that 1 MW and above consumers are deemed to be open access consumers and that the regulator has no jurisdiction over fixing the energy charges for them** and if considered appropriate, either take up the matter with the State as well as the Union Government to repeal this Amendment Act or challenge the same in the High Court or the Supreme Court of India.

- 6.3 The HPSEB Ltd. commented that operationalisation of Deemed Open Access as well as proposed amendments in open access Regulations may be deferred for atleast one year, so that implementation issues in other States can also be studied. Further, if the same is synchronized with 3rd MYT Control Period i.e. FY 2014-15 onwards, then all the tariff related issues as well as the loss trajectory can be addressed in a better way.
- 6.4 The distribution utility i.e. HPSEB Ltd. and the system operator i.e. HP State Load Despatch Centre have observed that:-
 - (a) The Himachal Pradesh State Electricity Board Ltd.(HPSEB Ltd.) is currently not in a position to operationalise "deemed open access" for 1 MW and above consumers in the distribution system, as per directives (No. 9.7 to 9.11) issued by Commission vide its 1st APR order dated 24th April 2012 for Second Control Period. In its support HPSEB Ltd. has cited various technical and operational issues being faced by it; and
 - (b) The Himachal Pradesh Load Despatch Society, the State entity for integrated operation of power system in Himachal Pradesh has also expressed its inability in operationalisation of open access on account of infrastructural bottlenecks.
- 6.5 Industrial Associations have commented that the draft amendment regulations are beyond the comprehension of even the practicing power engineers, not to speak of the gullible and ignorant consumers. These are not feasible of either being followed by the distribution licensee or by the consumers. These are packed with lot of impracticalities and are neither practical nor realistic.

Commission's View:

- 6.6 From the perusal of the general observations and comments of the Industrial Associations and the HPSEBL, it appears that they perceive that the sole objective of the proposed amendments is to ensure that the consumers, requiring power above 1 MW

load, are granted open access and is mandatory upon such consumers to move to open access in accordance with the communication of Ministry of Power, Govt. of India dated 30.11.2011.

- 6.7** In the Explanatory Memorandum to the draft amendment notification and also in para 4 above of this order, the objects and reasons of the proposed amendments have clearly been stated. The Electricity Act, 2003 has cast responsibility upon the State Commission to introduce open access and while doing so intermediate milestones have also been laid down requiring that the Commission shall permit open access by regulations for consumers requiring power above one MW by January, 2009. The Commission framed the regulations in 2005 and 2010 when the HPSEB was an integrated entity. After reorganization of the HPSEB, the Commission held number of meetings with the HPSEB Ltd. and the State Load Despatch Centre(SLDC). The Commission observed that on the one hand there are gaps in regulatory provisions and on the other hand there is lack of adequate preparedness on the part of the HPSEB Ltd. and the SLDC for smooth implementation of open access in distribution system.
- 6.8** The Commission is of the view that not only the rights to non-discriminatory use of the network of the transmission and distribution system in the State has to be conferred upon the consumers by the Commission, so that they have open access to any source of supply of electricity as per choice in the country, but the Commission is equally duty bound to make appropriate regulatory provision addressing transparent, objective, equitable, efficient, cost effective and risk neutral processes and procedures, so as to facilitate and encourage open access. Therefore, there is need for the proposed amendments. Some of the critical issues included are obligation of HPSEB Ltd. to supply standby power, instant grant of connectivity and open access approvals to existing consumers with zero fee for connectivity and 25% of the fee for open access approval, exemptions from intra-State Scheduling up to 5.5 MVA supply and the like.
- 6.9** Therefore, the issue of mandatory or deemed open access as per Ministry of Power letter dated 30.11.2011 has no bearing upon the proposed amendments or vice versa. Similarly whether the Commission will determine the tariff for consumers who have been granted open access under Section 42, is also not relevant to the context of proposed amendments under consideration. Issue of determination of tariff is corollary to the Ministry of Power letter dated 30.11.2011. The tariff issue has to be dealt under tariff regulations of the Commission and, therefore, the issues pertaining to tariff determination of consumers who are permitted open access by the Commission under Section 42 of the Act can duly be raised, during the tariff determination process, for consideration.
- 6.10** Industrial Associations have observed that the draft regulations are difficult to comprehend and are also impracticable. The Commission has re-examined the text of the draft regulations and made appropriate changes to bring in clarity and consistency. Accordingly, the provisions relating to 'entitled consumers' need to be deleted. In order to do the business with ease, the Commission had provided for deemed approvals for connectivity and open access to the existing consumers. However, to remove any misconception the words 'deemed open access' shall be suitably addressed. Lay out of

certain regulations be modified to establish consistent linkage. Therefore, draft regulation 33-B needs to be integrated with proposed Regulation 3-A.

- 6.11** The Commission is seized of the fundamentals that the generator should have non-discriminatory access to any licensee or consumer of his choice to supply power and existing regulations and the draft amendment regulations enshrine these fundamental principles. However, due to phasing of grant of open access, wherein only the consumers, requiring power exceeding 1 MVA, are presently being allowed open access, the generator has choice of supplying power to more than one consumer or vice a Versa. However, in case of small generators, particularly having installed capacity of less than one MW, which are mainly the renewables, grant of open access to above 1 MVA consumers may restrict level playing field. Therefore, the Commission decides to provide for grant to open access to consumers below 1 MVA load also to access renewable energy on the merit of each case.

Specific Comments:

7.1 Definition of Consumer (Regulation 2)

M/s Leond Hydro Power Private Limited has submitted that generating company should also be eligible for supplying power to the consumer. Therefore, word 'generating company' may be inserted after the word licensee in the 2nd para of the definition "(5-A)" consumer.

Commission's View:

The concern expressed by the objector is duly taken care under sub-regulation (17) of regulation 2 of the existing regulations and hence the definition of consumer proposed under sub-regulation (5-A) does not require any changes.

7.2 Eligibility for open access [Regulation 3(A)(3)]

M/s Leond Hydro Power Pvt. Ltd. has suggested that in para '4' sub-para (3) period of two month billing stipulated is less and should be four or six months. Also notice for termination of open access should be given before declaring the applicant ineligible.

Commissions View:

It is a prudent business practice that the dues are cleared expeditiously within the due dates. The Commission does not find any justification for increasing the limit of outstanding dues from 2 months to 4-6 months for the purpose of eligibility.

7.3 Grant of connectivity, criteria for long term and medium term open access and open access priority (Regulations 8, 9 & 10 of HPERC (Regulations dated 02/05/2012))

M/s Manikaran Power Ltd. has proposed to amend the existing provisions of the sub-regulations (6) of regulation 8, regulations 9 and 10 of Regulations, 2010 by inserting the provisions of short-term open access regulations in these Regulations as in the sub-regulation (6) of regulation 8 of the principal regulations short term open access is written but the regulation are for "Long Term & Medium Term Open access".

Commission's View:

The references to the words 'short term open access' in this sub-regulation referred to by the objectors are in order. It is, however, worth mentioning that the Commission has already notified on 02.05.2010 its short term open access regulations itself and as such the regulations 8, 9 and 10 do not require any amendment.

7.4 Application for long term access (Regulation 11(1) of HPERC regulation 02/05/2010):

M/s Manikaran Power Ltd. has suggested that in the 5th proviso of Clause No.11(1) (ii) of chapter-5, of original Regulation Dated 2.05.2010 "*in case of the distribution system is by more than 5 MW*" is suggested, in place of the distribution system is more than 1 MW.

Commission's View:

The marginal capacities in the distribution system are quite limited as compared to the transmission system. As such the Commission finds it appropriate to keep the limit unchanged.

7.5 Charges for long term and medium term open access in transmission (Regulation 27 of HPERC Regulations, dated 02.05.2010) Review of Regulation 27 of the original regulations:

M/s Ambuja Cement Ltd. and M/s Leond Hydro Power Private Limited have suggested to review the High Wheeling charges and High Cross subsidy charges under regulation 27, as the rate of power at delivery point will be very high and thus open access facility may not be availed of by the open access consumer. They have stated that the wheeling and cross subsidy charges levied by the other States is on much lower side and also requested to fix wheeling and other charges per unit per km for various voltage lines.

Commissions View:

The quantification of wheeling charges and cross subsidy charges is not a subject matter of Regulation 27 for which review has been proposed, for which there are separate regulations.

7.6 Provision for open access to consumers (Regulation 33-B)

The HPSEB Ltd. has submitted that since all the open access transactions i.e. scheduling, PPAs, and the like are in MWs only and as per section 42(2) of the Electricity Act, 2003 also provide such open access to all consumers who require supply of electricity where in maximum power to be made available at any time exceeds 1 MW. Accordingly, "all consumers with connected load of 1 MW and above should be eligible for Deemed Open Access".

Commission's View:

The contract demand and not the connected load shall define the maximum power to be made available to a consumer at any time. Accordingly, the cut off limit will have to be prescribed in terms of contract demand only. Since as per the existing practice, the contract demand is sanctioned in kVA/MVA, the eligibility limit has been stipulated as

1MVA. It is, however, worth mentioning that this limit does not, in anyway, stop the scheduling to be carried out in terms of MW.

7.7 Open Access to existing consumer (Regulation 33-C)

M/s Leond Hydro Power Private Limited has suggested that open access should not be restricted to the extent of sanctioned contract demand and the consumer should be allowed to modify the sanctioned contract demand for open access. They have also sought clarification about the energy losses to be borne in kind. The HPSEB Ltd. has suggested to simplify the 2nd proviso of regulation 33-C where intra-state transmissions system is involved.

Commission's View:

The consumer can obtain connectivity for open access for any higher contract demand by following the prescribed procedure. However, the quantum of power flows shall always have to be restricted to the contract demand for which he has actually obtained sanction from the competent entity.

The Energy losses are to be met by the consumer in kind to cover the energy losses in the systems involved in open access. Even though it is implied, the clause shall be amended suitably for sake of clarity. The applicable transmission and distribution losses are to be fixed as per regulation 31. Further, the 2nd proviso shall be rationalized in view of the comments of HPSEB Ltd.

7.8 Adjustment of existing security deposit and security deposit (Regulations 33-D & 33-F)

M/s Leond Hydro Power Private Limited and M/s Ambuja Cement Ltd. has sought clarification whether the security deposit is refundable and interest free, and has suggested that security deposit should be in the form of BG or Fix deposit pledged in favour of the distribution licensee.

Commission's View:

In accordance with the provisions of regulations, the provisions related to security mechanism are to be included in the detailed procedure under regulation 26. Accordingly regulation 33-D and 33-F of the draft regulation shall be deleted and these aspects shall be taken care of in the detailed procedure.

7.9 Connectivity and Open Access to prospective entitled consumers (Regulation 33-E)

The HPSEB Ltd. has stated that in case of prospective entitled consumers seeking connectivity and long/medium term open access from the distribution licensee for receiving electricity for their own use, the terms and conditions under the Himachal Pradesh Electricity Supply Code, Himachal Pradesh Electricity Regulatory Commission(Recovery of Expenditure of Supply of Electricity) Regulations,2012 and the Himachal Pradesh Electricity Regulatory Commission (Licensee's Duty for Supply of Electricity on Request) Regulations, 2004 shall be applicable. For existing entitled consumers seeking increase in the contract demand, the existing procedure for such approval shall be applicable.

Commission's View:

The draft regulation duly covers the existing consumers seeking increase in the contract demand and does not require a separate treatment for such cases. The said regulation shall however be rationalized for the sake of more clarity.

7.10 Arrangements for standby power (Regulation 33-H)

- (i) M/s Leond Hydro Power Private Limited has submitted that the regulation states for standby power but contract demand and sanctioned demand has been obtained from the Distribution Company, it is not clear whether it is additional to contract demand.
- (ii) M/s Ambuja Cement Ltd. has submitted that since already "**Contract Demand**" is maintained and minimum **fixed charges will remain** then why this **standby power agreement** is required by the open access consumer. They have further asked that why consumer should pay the fixed charges against both "**Contract Demand**" and "**Standby power charges**".

They have further submitted that provision for 125% rate at 60% load factor needs further clarification.

Commission's View:

The proposed provisions with regard to stand by power are applicable only for such requirements which in normal cases are to be met through open access mechanism. The ceiling tariff parameters for such stand by supply have been fixed to safeguard the interest of the consumers.

7.11 Violation in sanctioned contract demand (Regulation 33-I)

M/s Leond Hydro Power Private Limited and M/s Ambuja Cement Ltd. have sought clarification that the regulation specifies contract demand but does not clarify how frequently the same can be got modified by the consumer.

Commission's View:

There is no bar for increasing the contract demand under open access mechanism. Applications for increase in contract demand under open access mechanism are to be dealt with in accordance with regulation 33-E of the draft regulation and other relevant provisions. The issues regarding relinquishment/exit of long term and medium term access right, fully or partly, are to be dealt with as per regulation 14 and 23 of the open access regulations.

7.12 Scheduling (Regulation 33-J)

- (i) M/s Leond Hydro Power Private Limited has suggested that sub para 3 and 4 of the regulations needs more clarification so that financial implication can be worked out.
- (ii) M/s Ambuja Cement Ltd. sought clarification on the mutually agreed terms & conditions between SLDC & consumer having demand less than 5MW. They have further sought clarification whether this is applicable only in case if 5 MW and less consumers have part contract demand with SLDC only. They have further sought

clarification regarding mutually agreed terms and conditions in case where day ahead scheduling are not done in accordance with the sub-regulations (2) and (3).

Commission View:

These provisions are meant to adopt simplified procedures etc. for settlement of time differentiated energy accounts on the basis of weekly data instead of resorting to day ahead scheduling under which energy accounts are to be settled on the basis of data for 15 minutes time blocks. In order to avoid uncertainty in this regard, a new proviso shall be included to provide for adoption of uniform principles by the distribution licensee and inclusion of the same in the detailed procedure in accordance with regulation 26.

7.13 Metering (Regulation 33-L)

M/s Leond Hydro Power Private Limited has submitted that the regulation specifies metering but it is not clear where it will be done at generating station or open access consumer end.

Commission's View:

This specific provision is meant for metering at consumers end only. However, metering shall obviously be required at injection point also and the same shall be dealt as per general provision under regulation 32.

7.14 The HPSEB Ltd. has stated that there is no provision for imbalance charge. Secondly, such charge shall be provided for OA customer as well as Generator/Trader i.e. for Overdrawl/Underdrawl as well as for Over injection as well as under injection. This could be linked to UI Charges/Highest Tariff Category.

Commission's View:

Sub-regulation (3) of Regulation 27 takes this aspect into account. However, in case where day ahead scheduling is not to be done as per regulation 33-J of the draft regulation, the terms and conditions shall be mutually agreed.

Pursuant to the above discussions and findings necessary changes are to be carried out in the draft regulations and final regulations shall be issued accordingly.

Dated: 03-12-2012

Place: Shimla

**-Sd-
Chairman**