

Statement of Objects & Reasons

1. Introduction

- 1.1 The Electricity Act 2003 (EA 2003) enables eligible consumers to have non-discriminatory Open Access (OA) to the network of a Licensee (except that of a local authority engaged in the business of distribution of electricity before the appointed date) on payment of applicable charges. The EA 2003 and National Electricity Policy (NEP) formulated there under, mandates the State Electricity Regulatory Commissions to frame the terms and conditions and timeframe for introduction of OA in the State.
- 1.2 Section 2 (47) of the Electricity Act, 2003 defines Open Access, while Section 42 of the Electricity Act, 2003 mandates the Distribution Licensees to provide open access to eligible consumers subject to payment of cross-subsidy surcharge, additional surcharge and other applicable charges.
- 1.3 The Commission in exercise of the power vested in it under section 39, 42, 86 (1) (c) read with Section 181 of the Electricity Act, 2003 and all other powers enabling the Delhi Electricity Regulatory Commission (hereinafter referred to as Commission) in this behalf, notified the Delhi Electricity Regulatory Commission (terms and conditions for Open Access) Regulations, 2005 (hereinafter referred to as Open Access Regulations). In the aforesaid Regulations, notified in the official gazette on 03rd January, 2006, open access was allowed to the Intra State Transmission System in the State, immediately, subject to the satisfaction of the conditions contained in the Act or in these Regulations.
- 1.4 Regulation 12 and Regulation 17 of Open Access Regulations empowers the Commission to determine the applicable charges and issue of orders and practice directions time to time. Pursuant to these Regulations, the Commission had issued Orders dated 24.12.2013, 18.05.2015 and 09.12.2015, to decide Transmission and Wheeling Charges, Cross Subsidy Surcharge, Additional Surcharge and other applicable charges under Open Access and the procedure to be followed in various matters for implementation of Open Access Regulations. Ministry of Power, Government of India has issued the revised Tariff Policy changing surcharge formula which necessitates review of cross subsidy surcharge. Further, the Commission has received various proposals/ suggestions/ clarifications for revision of some of the provisions of existing Orders

- 1.5 Accordingly, the Commission has issued a draft proposal on 15.12.2016 on its website for determination of Open Access Charges and related matters, revising its earlier Orders dated 24.12.2013, 18.5.2015 and 9.12.2015 for seeking suggestions/objections/comments from stakeholders by 20.01.2017. The public notice was also issued in the following daily newspapers on 21.12.2016 for the information of the stakeholders to submit their suggestions/objections/comments:
- (i) Hindustan Times (English)
 - (ii) Indian Express (English)
 - (iii) Times of India (English)
 - (iv) Navbharat Times (Hindi)
 - (v) Dainik Jagran (Hindi)
 - (vi) Milap (Urdu)
 - (vii) Educator (Punjabi)

2. Views of Stakeholders

- 2.1 The Commission has considered the comments and suggestions of the stakeholders on the various provisions of the draft proposal in response to notice dated 15th December, 2016. The Commission has taken all written and oral submissions on record. The Commission has also considered the comments submitted by BRPL & BYPL in Appeal No. 164 of 2015 & IA No.264 of 2015 and Appeal No.165 of 2015 & IA No.267 of 2015 filed before the Hon'ble Appellate Tribunal for Electricity. As directed by Hon'ble Appellate Tribunal for Electricity in its daily Order dated 9.1.2017, a meeting was also convened with the distribution companies to deliberate the issues. A meeting with other stakeholders was also held on 20.2.2017 and 21.2.2017 alongwith State Load Despatch Centre, Delhi to discuss their comments. The final Order has been made by the Commission after due consideration of the responses of the stakeholders, the provisions of the Act, the National Electricity Policy, Tariff Policy, current scenario of the electricity industry. The issue-wise comments/suggestions of the stakeholders, the Commission's analysis of the issues, and findings of the Commission thereon have been discussed in the subsequent paragraphs.
- 2.2 The major comments and views expressed by the stakeholders through their written submissions and the Commission's views thereon have been summarized and discussed in the following paragraphs. It may be noted that all the responses on record given by the stakeholders have been considered, and the Commission has attempted to elaborate these responses/comments/suggestions, and arrived at a conclusion in this

“Statement of Objects and Reasons”. However, in case any suggestion is not specifically elaborated, it does not mean that the same has not been considered. Further, some stakeholders have suggested changes in regard to syntax/phrase/addition of word(s)/rewording related changes, which have been suitably incorporated, wherever found necessary.

3. Cross Subsidy Surcharge {Clause 10(1)}:

3.1 Clause on cross subsidy surcharge of the draft Order stipulates as under:

- i. The Cross Subsidy surcharge shall be calculated based on the surcharge formula laid-down in Para 8.5 of the National Tariff Policy issued by the Government of India from time to time with some assumptions taking into account some state specific issues, as specified in this order.
- ii. Since the tariff for each category of consumers is fixed by the Commission on year-to-year basis, the surcharge shall also be decided on a year-to-year basis.
- iii. For the calculation of the surcharge, the losses shall be considered based on average figures as projected in the respective Tariff Order and the Commission is not in favour of post-facto correction of the surcharges or the energy transactions based on the actual losses.
- iv. The Wheeling charges shall also be varying from year-to-year on account of investments being made in the sector for meeting the load growth, AT&C loss reduction and improving the performance standards.
- v. Keeping in view all the above points, it is felt that it shall be appropriate to determine the surcharge on a yearly basis. The nodal agency shall compute Cross Subsidy Surcharge and shall display it on its website within one month of issue of Tariff Orders.
- vi. Based on the data available in Tariff Order for the distribution Licensees issued by the Commission, the Commission has calculated the Cross Subsidy surcharge applicable to different consumers at different voltages/and different class of consumers along with certain assumptions which are indicated in **Annexure – 1**. Accordingly, the charges indicated in **Annexure – 2, 3 & 4** shall be payable by the Open Access consumers by way of Cross Subsidy surcharge in the TPDDL, BRPL & BYPL areas respectively. Wherever the cross subsidy surcharge worked out in Annexure 2, 3 & 4 is negative, no cross subsidy surcharge shall be payable by the OA consumer.
- vii. Cross subsidy surcharge determined on Per Unit basis shall be payable, by the open access customers based on the actual energy drawn through open access, limited to a maximum of scheduled open access energy during that time block.

Stakeholders' Comments/Suggestions

3.2 Stakeholders submitted that

- (i) Open access charges like cross subsidy surcharge, additional surcharge (determined on per unit basis) shall be levied on the actual energy drawn during the month through open access and not on the scheduled quantum.
- (ii) The Commission in exercise of its powers under National Tariff Policy may review the formula for determination of cross subsidy surcharge in National Tariff Policy as cross-subsidy surcharge shouldn't be more than the current level of cross subsidy, which is the difference between the cost of supply COS and ABR is the current level of subsidy.
- (iii) In the case of Delhi DISCOMs, the cross subsidy surcharge has taken a quantum jump as compared to that of 2015-16.
- (iv) In the formula, top 5% power purchase cost has been replaced with the weighted average power purchase cost, thereby increasing the cross subsidy surcharge across all categories. The new formula is so flawed that, if implemented, the subsidizing category like domestic will also pay CSS, if they opt for open access.
- (v) Not to increase the cross subsidy surcharge from the existing levels of cross subsidy for HT consumers as licensee is already getting its more than true compensation through the lower power procurement cost and the existing cross subsidy levels on HT consumers.

3.3 TPDDL submitted that

- (i) A proviso shall be added specifically mentioning that the Cross Subsidy Surcharge determined by the nodal agency shall be applicable from the date from which the Tariff Order is effective.
- (ii) To remove "R" (the per unit carrying cost towards regulatory assets) component from the surcharge formula laid-down in Para 8.5 of the National Tariff Policy issued by the Government of India as the Open Access Consumers have also contributed to creation of the said regulatory assets and that that past obligations of these consumers cannot be waived off at the cost of other consumers who will have to bear the burden of the same.
- (iii) The quantum to be considered while charging the Cross subsidy surcharge should be the Open Access quantum cleared by the Nodal Agency on daily basis.
- (iv) The cases which are exempted from payment of cross subsidy shall also be specified upfront.

3.4 BRPL & BYPL submitted that 20% capping on the cross subsidy surcharge would fail to compensate from the loss of cross subsidy that it would suffer by reason of the consumers taking Open Access. The loss of cross subsidy of

approximately Rs. 300 Crore will either have to be made good by recovery from the Open Access consumers or from an increase in the retail supply tariffs for the subsidized consumers.

Commission's Views

Modification in the formula for Cross Subsidy Surcharge and capping of 20% of tariff

- 3.5 As regards the modification in the formula for determination of cross subsidy surcharge in National Tariff Policy notified by Government of India, the Commission noted that distribution licensees has proposed to modify the formula such that it increases the cross subsidy surcharge and whereas the open access consumers has suggested for reduction in cross subsidy surcharge. The Commission further noted from National Tariff Policy that the formula prescribed may not work for all distribution licensees particularly for those having power deficit. Delhi being power surplus state, the above provision may not be applicable to Delhi.

Therefore, the Commission is of the view that the formula prescribed in National Tariff Policy for determination of cross subsidy surcharge does not require any revision. Capping of 20% of tariff applicable to the category of consumers seeking open access for determination of cross subsidy surcharge has also been maintained.

Date of Applicability of Cross subsidy surcharge

- 3.6 As regards the issue of date of applicability of cross subsidy surcharge determined subsequent to revision of Tariff Orders, the Commission felt that as the tariff is applicable to consumers from the date of applicability of tariff schedule, the same should also be applicable to the open access consumers.

Therefore, the Commission is of the view that cross subsidy surcharge should be applicable from the date of applicability of Tariff Schedule. Accordingly, the same has been incorporated.

Exemption Categories from Cross subsidy surcharge

- 3.7 As per sub-section (2) of Section 42 of the Electricity Act, 2003, cross subsidy surcharge is also not leviable on the person who has established a captive generating plant for carrying the electricity to the destination of his own use. Further as per National Tariff Policy, Railways, as defined in Indian railways Act, 1989 being a deemed licensee on electricity purchased for its own consumption has also been exempted from levy of cross subsidy charge. The Commission in its draft Order at clause 10 (8) (ii) has specified that no

cross subsidy surcharge shall be payable in cases specifically exempted under the Act and National Tariff Policy notified by Government of India.

The Commission received the suggestion that the cases which are exempted from payment of cross subsidy shall also be specified upfront. Accordingly, the Commission has specified these cases for exemption of cross subsidy surcharge.

Quantum on which cross subsidy surcharge to be levied

- 3.8 As regards the issue of charging the cross subsidy surcharge on the open access quantum cleared by the Nodal Agency on daily basis, the Commission felt that an embedded consumer of the distribution licensee is paying fixed charges and energy charges for its consumption. The fixed charges are payable corresponding to sanctioned load/contract demand and the energy charges are payable corresponding to actual energy consumed by the consumer.

The fixed charges are levied to recover the fixed cost element of the distribution business. In fact, the other component of tariff i.e energy charges is compensating for cross subsidy, which is levied on actual consumption of energy. If a consumer opts to purchase power through open access, the mode of purchase of power is changed. The open access consumer is liable to pay wheeling charges corresponding to its open access quantum reserved.

Therefore, in order to maintain the parity, the Commission is of the view that cross subsidy surcharge shall be levied on the actual energy drawn through open access, limited to a maximum of scheduled open access energy during that time block.

4. Transmission and Wheeling Charges {Clause 10(2)}:

- 4.1 Clause on transmission and wheeling charges of the draft Order stipulates as under:
- i. The transmission charge for Open Access consumers availing Open Access from the Delhi Transco Limited's transmission system shall be regulated in terms of the provisions of applicable MYT regulations.
 - ii. The Wheeling charges leviable by the distribution licensees shall be in accordance with the charges determined by the Commission in the respective Tariff Orders in paisa/KWhr. The Open Access consumers shall also be governed by the Scheduling Process being adopted by the distribution licensees as per the Intra-State ABT Order of the Commission and subsequent clarification thereof in the matter. The Open Access consumer

shall also be liable for payment of the SLDC charges, Reactive energy charges etc. as per the prevailing orders of the Commission, as amended from time-to-time.

- iii. The Transmission charges, wheeling charges shall be levied on open access quantum cleared by the nodal agency. The charges payable to the other States/PGCIL etc. for Open Access by using Inter-State or Inter-regional links shall be payable extra by the Open Access consumers in accordance with the applicable regulations, rules/orders in the matter.
- iv. Wherever system strengthening/augmentation of distribution system is involved, any associated cost for this purpose would have to be borne by the long term Open Access consumers.

Stakeholders' Comments/Suggestions

- 4.2 Some of the stakeholders have suggested that wheeling charges are to be levied on actual energy or the energy scheduled and not on the energy corresponding to full open access quantum accorded by nodal agency in its consent letter. The distribution licensees have suggested that transmission charges, wheeling charges shall be levied on open access quantum cleared by Nodal Agency and mentioned in the approval/conditional approval provided by it.

Commission's Views

- 4.3 The Commission noted that the wheeling charges are levied to meet the fixed cost of such distribution licensee arising out of his obligation to supply. If a consumer is taking direct supply from the distribution licensee, he is required to pay the fixed charges corresponding to sanctioned load/contract demand. If such consumer is taking supply through open access, the licensee is required to block such capacity in his network. The open access consumer is free to schedule the power corresponding to his allocated capacity. If the transmission and wheeling charges are levied corresponding to his daily schedule, the licensees may not be able to recover full wheeling charges.

Therefore, the Commission is of the view that transmission and wheeling charges shall be levied corresponding to open access quantum approved in conditional consent form ST-5B. Accordingly, the clause of the Order has been modified.

5. Additional Surcharge {Clause 10(3)}:

5.1 Clause on additional surcharge of the draft Order stipulates as under:

- (i) An open access consumer, receiving supply of electricity from a person other than the distribution licensee of his area of supply, shall pay to the distribution licensee an additional surcharge on the charges of wheeling, in addition to wheeling charges and cross-subsidy surcharge, to meet out the fixed cost of such distribution licensee arising out of his obligation to supply as provided under sub-section (4) of section 42 of the Act.
- (ii) This additional surcharge shall become applicable only if the obligation of the licensee in terms of power purchase commitments has been and continues to be stranded or there is an unavoidable obligation and incidence to bear fixed costs consequent to such a contract. However, the fixed costs related to network assets would be recovered through wheeling charges.
- (iii) Additional surcharge determined on Per Unit basis shall be payable, by the open access consumer based on actual energy drawn through open access, limited to a maximum of scheduled open access energy during that time block:

Provided that such additional surcharges shall not be levied in case open access is provided to a person who has established a captive generation plant for carrying the electricity to the destination of his own use.

- (iv) It is noted that the Licensees have surplus power during all months of the year. However, based on actual demand and availability, additional power is required to be purchased during some time blocks in all months of the year. It is noted that during the months of May to September, such additional power purchased is higher than other months. The embedded consumers of the Licensees are bearing the average fixed cost of power purchase as the allocation of power purchase is not linked with the tariff category of consumers. If a consumer is opting for open access, it means a liability corresponding to average fixed cost is to be borne. Accordingly the Commission has determined additional surcharge as average fixed cost per unit based on the projections given in the Tariff Order for the months from October-April. The additional surcharge during the months of May to September has been kept half of average fixed cost per unit.

(v) The additional surcharge shall be payable as per Annexure-5.

Stakeholders' Comments/Suggestions

5.2 Some of the stakeholders have stated that DISCOMs buy power across the year which clearly demonstrates that the generation capacity is not stranded. Hence, there is no rationale to impose additional surcharge.

5.3 TPDDL submitted that the Commission shall determine DISCOM specific additional surcharge as the demand supply scenario of DISCOMs vary. Further, the additional surcharge shall be levied on the open access quantum cleared by the Nodal Agency which is mentioned in NOC issued by the Nodal Agency.

5.4 BRPL & BYPL submitted that additional surcharge during the months of May to September be $2/3^{\text{rd}}$ of the average fixed cost per unit. The exemption of additional surcharge in case of captive generation plant for carrying the electricity to the destination of his own use would be ultra vires to the Electricity Act, 2003. BRPL & BYPL further submitted that transmission charges paid by the distribution licensee to DTL or PGCIL may also be included in the computation of additional surcharge as it is also the fixed cost liability of the distribution licensee.

Commission's Views

Quantum on which additional surcharge to be levied

5.5 The Commission has already explained the reason in its draft Order for charging the additional surcharge. As regards the issue for charging additional surcharge on the open access quantum cleared by Nodal Agency, the Commission is of the view that additional surcharge shall be levied on actual energy drawn on the premise for reasons as already explained above for cross subsidy surcharge.

Different additional surcharges for different DISCOMs

5.6 The Commission agrees to suggestion for having different additional surcharge specific to the DISCOMs as demand supply scenario of DISCOMs vary. Accordingly, the charges for additional surcharge are modified.

Exemption of additional surcharge for captive power plants

5.7 As per sub-section (4) of Section 42 of the Electricity Act, 2003, the levy of Additional Surcharge arises where the State Commission permits a consumer or class of consumers to receive supply of electricity from a person other than the Distribution Licensee of his area of supply. However, as per Section 9 of the Electricity Act, 2003, Captive Power Plants have been given the right to carry

electricity from the Generating Plants to the destination of their own use. The question of 'permit' and 'supply' does not arise to the extent of 'self-consumption' by Captive Users of the Captive Power Plants.

Thus, the Commission is of the view that Additional Surcharge is not applicable to the open access users of Captive Power Plants to the extent of their self-consumption from such Plants.

As per the second proviso to Section 9(1), the electricity generated from a Captive Power Plant may be supplied to any consumer subject to regulations made under sub section (2) of Section 42. Therefore, Additional Surcharge shall be applicable in case of such supply from a Captive Power Plant to Open Access Consumers.

Inclusion of transmission charges in additional surcharge

5.8 The Commission noted that the consumer who has availed open access is also liable to pay transmission charges to DTL for use of intra-state transmission system and to central transmission utility for use of inter-state transmission system. The charges collected by transmission utility are reduced from their annual revenue requirement as per the provisions of the Tariff Regulations. Inclusion of transmission charges in additional surcharge will make open access consumer to pay twice.

Therefore, the Commission is of the view that transmission charges should not be included in the computation of additional surcharge.

6. Imbalance Charges {Clause 10(4)}:

Stakeholders' Comments/Suggestions

6.1 BRPL & BYPL submitted that partial open access/intra-day variation allowed by the Commission is untenable because:

- a) It would not be correct in allowing partial drawl / partial Open Access/ intra-day variation in a deemed manner ignoring that Section 42 which mandates that Open Access is subject to being introduced in phases and subject to such conditions including operational constraints and without considering the practical difficulties, resulting in substantial adverse effect on the licensee and burden of the expensive power on the remaining consumers for meeting the partial load of the Open Access consumers.
- b) Any excess drawl above "scheduled Open Access Quantum" but limited to "Admissible Drawl of electricity by Open Access consumer" shall be billed at temporary tariffs.

- c) The Commission ought to introduce partial drawl / partial Open Access/ intra-day variation in phases but instead of the mandate of the statute, the draft Order has introduced and allowed partial Open Access in a deemed manner.

The stakeholder has further submitted that partial Open Access/ intra-day variation should not be allowed because of the following reasons:

- a) Partial Open Access/ intra-day variation enable Open Access consumers to involve in gaming,
- b) Difficulty in arranging Standby power if essential utilities opt for partial Open Access.
- c) Identification of energy supplied under contract demand from that supplied under Open Access is difficult as energy measurement is done through single meter.

6.2 TPDDL submitted to add following proviso after the clause 4.1 (B) for clarity:

“Provided that the slot wise open access schedule posted on Delhi SLDC website shall be used for preparation of slot wise bill.”

“Provided that the abovementioned clause on Imbalance Charges shall also be applicable to consumers procuring 100% power from Renewable Sources”.

Commission’s Views

Partial Open Access

6.3 The Commission vide its Delhi Electricity Regulatory Commission (Terms and Condition of Open Access) Regulations, 2005 has introduced the open access in phased manner in line with the provisions of Electricity Act, 2003. The relevant extract of the regulations is as under:

5(2) The Open Access to the Distribution System in the state shall be allowed in the Distribution system subject to the absence of operational constraints in the following phases:

S.No.	Particulars	Date of Introduction
a.	Delivery of electricity for use by the Consumers with the connected load of five MW and above	1 st July 2007
b.	Delivery of electricity for use by the consumers with the connected load of three MW and above	1 st January 2008
c.	Delivery of electricity for use by the consumers with the connected load of one MW and above	1 st July 2008

BRPL & BYPL are wrongly interpreting the Section 42 of Electricity Act, 2003 for implementation of open access in phased manner with implementation of partial drawl in phases.

6.4 The Commission noted that as per sub-section (2) of Section 42 of the Electricity Act, 2003, State Commission to facilitate the open access to the consumers who require a supply of electricity where maximum power to be made available at any time exceeds one megawatt. The provisions of the Act have not stipulated that the demand has to be above 1MW constantly. Further the consumption demand of the consumer may vary according to his requirement and may not have constant demand for any value.

The Commission is of the view that Open Access Consumer can maintain some demand with the Distribution Licensee in whose area of supply he is located in order to cater to his load requirement. Therefore, partial open access is allowed. Other states like Maharashtra Electricity Regulatory Commission have also introduced partial open access.

Therefore, the commission introduced a concept of "Admissible Drawl of electricity by Open Access consumer", which will allow the consumer to take partial open access.

Billing of excess drawl above "scheduled Open Access Quantum" but limited to "Admissible Drawl of electricity by Open Access consumer"

6.5 As regards the issue of any excess drawl above "scheduled Open Access Quantum" but limited to "Admissible Drawl of electricity by Open Access consumer" shall be billed at temporary tariffs, it may be noted that the distribution licensee is aware beforehand that the consumer will require some quantum of power from the distribution licensee. Therefore, this quantum is required to be charged at applicable energy charge rates.

Gaming

6.6 Under the imbalance charges, the Commission has described a methodology for settlement of energy, which will minimize/eliminate the chances of gaming. Further, the Commission has stipulated for violation of provisions of the Regulations/Orders which will also take care of gaming.

Applicability of Imbalance charges and uploading of schedule on website

6.7 The Commission agrees to the suggestion that the open access schedule may also be posted on the website of SLDC, Delhi. Further the Commission has not exempted any class of open access consumer from the settlement of energy. Therefore, the same is applicable to all type of consumers. Further, writing for applicability of these charges to one class of consumers may create confusion.

7. Standby Charges {Clause 10(5)}:

7.1 Clause on standby charges of the draft Order stipulates as under:

(i) In the event of non-availability of power supply due to any reason including outage of generator supplying the Open Access consumer, the distribution licensee shall provide the power to such Open Access consumers on payment of tariff for temporary connection to that category of consumers as specified in applicable tariff schedule:

Provided that open access consumers shall have the option to arrange standby power from any other source.

Provided further that standby power from any other source shall be scheduled from 00hrs. of the day, after giving the notice to the distribution licensee.

(ii) The arrangement for standby power supply by distribution licensee shall be subject to load shedding as is applicable to the embedded consumer of the distribution licensee.

Stakeholders' Comments/Suggestions

7.2 Some of the stakeholders have suggested that bid failure at power exchange may also be included in the category of non-availability of power which can be charged at temporary tariff by the licensee. It has also been suggested instead of scheduling standby power from 00 hrs. of the day, there should be a definite/fixed time, say 2 hours after giving notice to the distribution licensee, for scheduling of power from standby source.

7.3 BRPL and BYPL have submitted that the Commission has put a limit of 3% for UI drawls from the grid. In an event, when source of Open Access consumer fails, his drawl would be added to distribution licensee's over drawl. Therefore, a limit of 3% for UI drawls imposed upon distribution licensees should be waived off and any penalty imposed upon distribution licensee have to be paid by such Open Access

consumer to the extent it has drawn power from distribution licensee during such period.

Standby supply once commenced shall be applicable for all 96 time blocks for the day.

Commission's Views

7.4 The Commission agrees to the suggestion that bid failure at exchange may also be included in the event of non availability of power supply.

7.5 As regards the suggestion of scheduling of power within 2 hours of the intimation in case of contingency, it was discussed that State Load Despatch Centre, Delhi is not having sufficient infrastructure to incorporate such schedules. State Load Despatch Centre, Delhi is directed to develop necessary infrastructure including the manpower to incorporate such schedules in contingency within 6 months of issue of the Order. However, this suggestion to some extent has been incorporated that if the scheduling is requested on a working day in contingency, the State load dispatch Centre shall take necessary steps to incorporate as soon as possible latest by 00Hrs of the day.

7.6 As regards the issue of imposition of penalty on the open access consumer during the event of failure of power supply, the Commission has already imposed the drawl of power from the distribution licensee at temporary tariff. Therefore, additional penalty may not be imposed on the open access consumers.

8. Quantum of Renewable Purchase Obligation (RPO) {Clause 10 (7)}:

8.1 Clause on Quantum of Renewable Purchase Obligation (RPO) of the draft Order stipulates as under:

- (i) Open Access consumer shall fulfill its RPO as per Delhi Electricity Regulatory Commission (Renewable Purchase Obligation and Renewable Energy Certificate Framework Implementation) Regulations, 2012 as amended from time to time.
- (ii) Wheeling, transmission and additional surcharge shall not be applicable on open access consumers availing energy from all renewable energy sources. Open Access consumer receiving electricity from renewable energy sources shall be exempted from the cross subsidy surcharge to the extent of RPO. However, no banking facility shall be provided for supply of electricity from renewable energy sources through open access.

Stakeholders' Comments/Suggestions

8.2 Some of the stakeholders suggested that if an open access consumer intends to purchase electricity beyond RPO, some suitable rebate / exemption may be allowed on cross subsidy surcharge.

8.3 TPDDL submitted that no exemption towards payment of cross subsidy surcharge even to the extent of RPO should be provided to open access consumer who is procuring 100% of its power from renewable energy sources as they are getting exemption from payment of wheeling, transmission and additional surcharge. Further, Delhi Electricity Regulatory Commission (Renewable Purchase Obligation and Renewable Energy Certificate Framework Implementation) Regulations, 2012 are not applicable to open access consumers procuring 100% power from renewable energy sources.

8.4 BRPL and BYPL submitted that there is no provision in the Electricity Act for exemption of wheeling, transmission, additional surcharge and cross subsidy charges.

Commission's Views

8.5 The Commission in order to promote the open access from renewable energy sources has exempted these charges to be levied as specified. Further, as per sub-section (2) of Section 42 of the Act, the open access is allowed on payment of surcharge in addition to the charges for wheeling as determined by the State Commission. Therefore, the Commission is of the view that it has power to decide about imposition of the charges.

9. Compensation/Penalty {Clause 10 (9)}:

9.1 Clause on Quantum of Renewable Purchase Obligation (RPO) of the draft Order stipulates as under:

In case of failure of Transmission System/ Distribution System

- (i) In case open access customer is not able to draw power, due to failure of transmission /distribution system, the open access customer shall be compensated for scheduled open access quantum at lowest of, average rate at which power is procured by open access customer, charges for deviation corresponding to average frequency time block, and applicable tariff for that category. In such cases, open access consumer shall provide the details of procurement of power alongwith rates:

Provided that Open Access consumer shall file his claim before the distribution Licensee and the distribution licensee shall settle the matter within 30 days of receipt of claim:

Provided further that if open access consumer is not satisfied, he may approach the nodal agency.

- (ii) In case if the timelines specified for providing open access are not met by the distribution licensee, the applicant shall be paid a compensation of Rs. 1000 per day of default by the distribution licensee:

Provided that the applicant shall file his claim to Nodal Agency and the Nodal Agency after hearing the parties shall give a speaking order.

Stakeholders' Comments/Suggestions

9.2 Some of the stakeholders have suggested that a penalty of Rs.1Lac for each day of non-compliance be introduced. Further timelines and procedure shall also be specified for the Nodal Agency to deal such cases.

9.3 Distribution licensees suggested that the compensation may not be allowed in the case of failure in the system of open access consumer. The distribution licensee cannot be penalized for the fault in the system of the transmission licensees, as the same has also been exempted in the Delhi Electricity Supply Code and Performance Standards Regulations, 2007. Further, the Nodal Agency cannot be delegated the power to adjudicate on any dispute or claim raised by the Open Access consumer for compensation or any other matter concerning compensation/penalty. In this regard, stakeholder has referred to the Hon'ble APTEL's Judgment dated July 28, 2011 in Appeal No. 36 of 2011 [Reported in (2011) APTEL 117] and Section 32(2) of the Act.

Commission's Views

Redressal of Grievance by nodal agency

9.4 The Commission in its Delhi Electricity Regulatory Commission (Terms and Conditions for Open Access) Regulations, 2005 has specifically stated that all grievances and disputes relating to open access shall be made to the State Transmission Utility or State Load Despatch Centre as the case may be which may investigate and endeavour to resolve the grievance amicably. In case State Transmission Utility or State Load Despatch Centre is unable to redress the grievance or complaint or dispute, the matter may be referred to the Commission

for adjudication. Therefore, the Commission has already granted the powers to the Nodal Agency for redressal of grievances. The judgement referred above may not be relevant to the case as Maharashtra Electricity Regulatory Commission in its Open Access Regulations have stated that any dispute under these Regulations between a Distribution Licensee and a person availing open access shall be adjudicated upon by the Consumer Grievance Redressal Forum. Accordingly, the Commission is of the view that Nodal Agency has the power to decide on the cases of settlement of claims.

Penalty on failure of Transmission system

9.5 The Commission agrees to the suggestion that distribution licensees shall not be penalized for the failure of transmission system over which they do not have any control. The Commission has exempted the licensees for payment of compensation to its affected consumers, if such violation is caused due to State Transmission Utility and/or Central Transmission Utility, grid failure, a fault on the transmission licensee's network over which distribution licensees has no reasonable control.

Therefore, the Commission is of the view that distribution licensee shall not be penalized for failure of transmission system of DTL over which they have no control. Accordingly, the clause has been modified.

Timelines and procedure for settlement of grievances and claims

9.6 The Commission agrees to the suggestion for incorporating timelines and procedure for redressal of grievances / settlement of claims. As regards the issue of imposition of penalty of Rs.1 Lac for each day of delay in granting open access, the Commission is of the view that the compensation levied shall be in commensurate with the violation caused and shall not be disproportionate. Therefore, the Commission did not find any merit in imposition of such higher compensation.

10. Recovery of the principal amount of past regulatory assets/past revenue gap from open access consumers:

Stakeholders' Comments/Suggestions

10.1 DISCOMs have requested to allow levy of regulatory asset charges along with carrying cost thereon on Open Access consumers as they have contributed to its creation by consuming power in the past for which tariffs at that point were not cost reflective. If the Open Access consumer is not levied surcharge to recover past gaps, the burden of the same shall come on the remaining consumers with the

subsidized consumers being impacted the most. DISCOMs have further requested that Regulatory assets charge can be divided into power purchase related and wheeling related costs and merged with energy charges and wheeling charges, so that Open Access consumers can pay their share of regulatory asset charges through the cross subsidy surcharge and wheeling charges respectively.

10.2 Some of the stakeholders suggested that the computation of Average Billing Rate includes regulatory surcharge. If regulatory surcharge is levied separately, will make the open access unviable and will die its own death.

Commission's Views

10.3 The Commission in its Tariff Order has allowed to recover 8% regulatory surcharge over and above the tariff applicable to the relevant category of the consumers.

The Commission has already expressed its view in Open Access Order dated 24.12.2013, that surcharge amount on account of past regulatory asset should be recovered from all consumers including open access consumers.

Therefore the Commission has levied this surcharge on open access consumers also. For the purpose of computation of regulatory surcharge, the distribution licensee shall compute the regulatory surcharge treating the total power consumption of the open access consumer as if taken from the distribution licensee.

Accordingly, the clause has been included in the Order.

11. Payment of statutory levies/taxes by open access consumers:

Stakeholders' Comments/Suggestions

11.1 DISCOMs suggested to provide a provision to levy E-Tax, service tax/GST and all other statutory levies from open access consumers. Other consumers purchasing power through DISCOMs are supposed to pay 5% of the energy charges as E-Tax as per the MCD Bye Laws.

Commission's Views

11.2 As per DMC (Assessment and collection of Tax on the consumption, Sale or Supply of Electricity) Bye Laws 1962, electricity tax can be levied on consumption, Sale or supply of electricity and also levies a tax on electricity generated for own consumption.

Electricity tax is levied and collected by respective DISCOMs on the basis of DMC (Assessment and collection of Tax on the consumption, Sale or Supply of Electricity) Bye Laws 1962.

The Commission is of the view that if statutory levies/taxes are applicable to the open access consumer, the same shall be levied by the DISCOM on the bill raised as per its applicability.

12. Time frame for processing Open access applications and deemed consent:

Stakeholders' Comments/Suggestions

12.1 Some of the stakeholders have suggested to reduce the time frame for processing of open access application and in case of renewal of STOA NOC, if no response is received from the distribution licensee/SLDC, the same shall be considered as deemed consent. It was also suggested that the time frame for renewal of such application may be increased from 3 days to 15 days.

Commission's Views

12.2 The Commission has revisited the timelines for processing of open access applications and also agrees to the concept of deemed consent in case of renewal of applications as the required arrangement is in place.

Therefore, the Commission is of the view that if no comments are received from the distribution licensee within the stipulated time frame on grounds of non-existence of necessary infrastructure or unavailability of surplus capacity in the network, the application for renewal of consent may be treated as deemed consent subject to submission of affidavit by the applicant. Accordingly, the clauses are modified.

13. Arrangement for supply of electricity in case of fault in metering apparatus:

Stakeholders' Comments/Suggestions

13.1 Some of the stakeholders suggested that there shall be some arrangement for getting electricity from the distribution licensee in case of fault in metering system of the open access consumer. Disconnection of power supply in such case will be in contravention to the preamble of the Act.

Commission's Views

13.2 The Commission agrees to the suggestion of stakeholders that there shall be some arrangement for getting electricity from the distribution licensee in case of fault in metering system of the open access consumer. The licensee is required to provide the supply of electricity through temporary meter. In case supply cannot be restored through temporary meter or there is a fault in the other equipment, the licensee may restore the supply directly. In this case, the assessment of energy consumption shall be based as per the provisions contained in Delhi Electricity Supply Code and Performance Standards Regulations, 2007 and as amended from time to time. However, the settlement of energy shall be as per the methodology prescribed by the Commission under imbalance charges.

14. Metering guidelines:

Stakeholders' Comments/Suggestions

14.1 The stakeholder suggested that the main and check meter should be connected to same core of CT & PT in line with CEA Regulations. The Commission has specified that metering CT & PT are to be provided with minimum two metering cores, one core to be used for main ABT meter and second core to be used for check meter and TPT meter. Further, the clause regarding metering CT & PT to be used exclusively for metering purpose and not for protection purpose is also against the metering core specified by DTL where there is a provision to use the core of check meter for other purpose as long as there is no degradation of accuracy beyond the defined minutes.

Commission's Views

14.2 Central Electricity Authority (Installation and Operation of Meters) Regulations, 2006 where, the interface meters for the consumers connected to distribution system and permitted open access shall be as per the directions of the appropriate Commission. The Commission incorporated the provision for having two metering cores for reliability of the system. In case of any fault in the main meter core the billing can be done through check meter which is on the second CT & PT metering core.

15. Open Access in the area of New Delhi Municipal Council:

Stakeholders' Comments/Suggestions

15.1 The stakeholders have suggested to notify the detailed procedure for open access implementation for the consumers of New Delhi Municipal Council (NDMC).

Commission's Views

15.2 As per sub-section (3) of Section 42 of the Electricity Act, 2003, any person whose premises are situated within the area of supply of the distribution licensee (not being a local authority) engaged in the business of distribution of electricity before the appointed date are eligible for non-discriminatory open access. The word 'local authority' has also been defined in the Electricity Act which means any Nagar Panchayat, Municipal Council, municipal corporation, Panchayat constituted at the village, intermediate and district levels, body of port commissioners or other authority legally entitled to, or entrusted by the Union or any State Government with, the control or management of any area or local fund.

Further, Hon'ble Supreme Court in its judgement in Civil Appeal No.4223 OF 2012 Brihanmumbai Electric Supply & Transport Undertaking Vs. Maharashtra Electricity Regulatory Commission (MERC) & Ors has stated that *'when an application is made by a consumer to a distribution licensee for supply of electricity, such a distribution licensee for supply of electricity, such a distribution licensee can request other distribution licensee in the area to provide it network to make available for wheeling electricity to such consumers and this open access is to be given as per the provisions of section 42 (3) of the Act. It is here only that local authority is exempted from such an obligation and may refuse to provide makes it network available'*.

Therefore, the Commission is of the view that open access may not be made mandatory for the consumers of NDMC.

16. Computation of LC or BG:

Stakeholders' Comments/Suggestions

16.1 Some of the stakeholders suggested that the amount of payment security for LC or BG shall be based on past consumption pattern instead of whole open access quantum, as this data of past consumption is available with the DISCOM. Further, security deposit may also be added as an option for payment security mechanism as this option is a more secured one.

16.2 BRPL and BYPL have submitted that UI component should not be reduced while computing bank guarantee value.

Commission's Views

16.3 As per Delhi Electricity Regulatory Commission (Terms and Conditions for Open Access) Regulations, 2005, short term open access is allowed for a period of one year or less. When the open access is allowed, the applicant is required to submit a payment security corresponding to the demanded open access quantum. The applicant is having an option to take short term open access of any period from one day to one year.

Therefore, linking the payment security mechanism with the past consumption pattern may not be a viable solution.

16.4 The provisions of Central Electricity Regulatory Commission (Deviation Settlement Mechanism and related matters) Regulations, 2014 as amended from time to time are not applicable for settlement of energy at open access consumer meter. The excess energy above admissible drawal of electricity is settled at temporary tariff.

Therefore, the Commission is of the view that UI component should not be added for computation of bank guarantee value.

17. Applicability of Rostering on open access consumers availing power through dedicated feeder:

Stakeholders' Comments/Suggestions

17.1 BRPL & BYPL submitted that roosting shall also be allowed for open access consumers availing power through dedicated feeder.

Commission's Views

The Commission is of the view that in cases where all consumers are availing open access for full quantum of contract demand/ sanctioned load through mix load feeder or the consumer is availing open access through dedicated feeder from grid sub-station, roosting condition should not be imposed by distribution licensee. However, in case of mix feeder having consumers of open access category as well as consumers of licensee and the consumers availing partial open access through dedicated feeder, roosting should be applicable for open access consumers also.

18. Inconsistency with Open Access Regulations.

Stakeholders' Comments/Suggestions

18.1 BRPL and BYPL have submitted that there are inconsistencies between Delhi Electricity Regulatory Commission (Terms and conditions for Open Access) Regulations, 2005 and the present draft Order. However, the Act requires the Commission to determine the various charges applicable to open access and therefore, the present order has to be restricted to these matters only and all other matters are required to be 'specified' through Regulations.

Commission's Views

18.2 The Commission has dealt all the comments/issues raised by the stakeholder on the above paragraphs.

The Commission has already issued Delhi Electricity Regulatory Commission (Terms and conditions for Open Access) Regulations, 2005. Regulation 12 provides the following:

"12. Applicable Charges

(1) The Open Access Customers shall pay the transmission charges, wheeling charges, surcharges, additional surcharges, scheduling charges (payable to State Load Dispatch Centre), unscheduled inter-change (uI) charges, reactive energy charges and such other charges as the Commission may determine from time to time, as a part of the tariff under sections 61, 62 and 86 of the Act or otherwise decide or authorise the Nodal Agency to charge in exercise of its regulatory powers under the Act."

Regulation 17 provided that the Commission has the powers to issue Orders and Practice Directions. The relevant extract of Regulation 17 is as under:-

Issue of Orders and Practice Directions: *Subject to the provisions of the Act, and these regulations, the Commission may, from time to time, issue Orders and Practice Directions in regard to the implementation of these regulations and procedure to be followed on various matters, which the Commission has been empowered by these regulations to direct and matters incidental or ancillary thereto.*

Therefore, the Commission under Regulation 12 and Regulation 17 of Delhi Electricity Regulatory Commission (Terms and conditions for Open Access) Regulations, 2005 has the powers to issue the Order.

19. Registration of Open Access charges

Stakeholders' Comments/Suggestions

19.1 BRPL and BYPL submitted that the Open Access consumers shall also be liable to pay registration charges of Rs. 10,000 to DISCOMs in line with charges payable to SLDC Delhi.

Commission's Views

19.2 The Commission in its Delhi Electricity Regulatory Commission (Terms and conditions for Open Access) Regulations, 2005 has already specified non refundable processing fee for the applicants seeking long term and short term Distribution Open Access also.

20. Metering Requirement

Stakeholders' Comments/Suggestions

20.1 BRPL and BYPL submitted that metering should be the prime responsibility of an open access consumer as the same creates an alleged conflict repeatedly pointed out by the consumer in several cases.

Commission's Views

20.2 The Commission received various requests from the stakeholders regarding delay in installation of meters. Therefore, the Commission is of the view that in order to minimize delay in installation of meters and to have correct meters as per the specifications, the Licensee should install the meters. The Open Access consumer should remit the charges to the distribution licensee. In case the open access applicant wants to purchase his own meter, he may purchase as per the specifications.

21. Late Payment Surcharge

Stakeholders' Comments/Suggestions

21.1 BRPL and BYPL have submitted that late payment surcharge for delay in payment beyond due date should be levied @ 1.5% per month.

Commission's View

21.2 The Commission noted that the late payment surcharge imposed on the embedded consumers of the distribution licensee in the Tariff Order is 1.5% per month for delay in payment beyond due date. The Commission agrees to the suggestion of the stakeholders to levy late payment surcharge @1.5% per month.

Therefore, the late payment surcharge specified @ 1.25% per month or part thereof has been revised to 1.5% per month in line with late payment surcharge paid by the consumers of the licensee.

22. Open Access to be allowed from multiple sources

Stakeholders' Comments/Suggestions

22.1 The stakeholders have submitted that the applicant shall not be restricted to avail power from only one generating energy source. They may be allowed to take open access from multiple sources.

Commission's View

22.2 The Commission agrees to the suggestion of stakeholder that open access may be allowed from multiple generating energy sources.

Accordingly, the undertaking to be given by the applicant to get power from one energy source has been omitted from form ST-1.

23. Illustration for computation of charges

Stakeholders' Comments/Suggestions

23.1 The stakeholders have suggested that an illustration for computation of charges may also added with the Order for better understanding.

Commission's View

23.2 The Commission agrees to the suggestion of the stakeholders and accordingly added an illustration for computation of the charges.