

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Coram

1. Dr. Pramod Deo, Chairperson
2. Shri R. Krishnamoorthy, Member
3. Shri S. Jayaraman, Member
4. Shri V. S. Verma, Member

In the matter of

Central Electricity Regulatory Commission (Open Access in Inter-State Transmission) (Amendment) Regulations, 2009.

STATEMENT OF REASONS

Historical Background

In exercise of powers under Section 178 of the Electricity Act, 2003 (hereinafter referred to as “the Act”), the Commission had notified the Central Electricity Regulatory Commission (Open Access in inter-State Transmission) Regulations, 2004 (hereinafter referred to as “the 2004 regulations”), which were operationalized with effect from 6.5.2004. This facilitated trading of electricity at a reasonable transmission cost. The 2004 regulations were amended in February 2005, after gaining some operational experience. Subsequently, certain minor amendments were carried out in December 2006 to prevent blocking of the transmission capacity. Thereafter, the Commission issued guidelines for setting up of power exchanges in February 2007 and accordingly there was a need to revamp the open access regulations in order to accommodate collective transactions undertaken at the power exchanges. After considering the views of the stakeholders, the Central Electricity Regulatory Commission (Open Access in inter-State Transmission) Regulations, 2008 (hereinafter referred to as “the 2008 regulations”), were notified.

2. Based on sectoral and operational issues pertaining to the open access in inter-State transmission and after evaluation of the working experience of the aforesaid regulations, it was felt that certain amendments were required to be made to the 2008 regulations.

3. Accordingly, the draft containing the proposed amendments under the title of the Central Electricity Regulatory Commission (Open Access in inter-State Transmission) (Amendment) Regulations, 2009 (hereinafter referred to as “the draft amendment regulations”) to amend the 2008 regulations was published, inviting comments and suggestions from the stakeholders. The comments and suggestions were received from a number of stakeholders, including the State Electricity Regulatory Commissions, generating companies, System Operator, State utilities, electricity traders, power exchanges, and the experts in the field. A list of such persons who have responded to the draft amendment regulations is attached as Annexure. The draft amendments regulations were also discussed at the Central Advisory Committee meeting held on 18th March 2009. After detailed consideration and in the light of comments and suggestions of the stakeholders and members of Central Advisory Committee, the amendments have been notified. The views of the Commission on the comments and suggestions received are being conveyed in the subsequent paras.

Date of implementation of the Amended Regulations

4. The amendments were proposed to be effective from 1.4.2009. However, these amendments could not be finalized by that date. It was also felt that the Central Transmission Utility would require some time to amend the existing

detailed procedure after approval of the Commission and the Regional Load Despatch Centers and the State Load Dispatch Centers would also require some time to gear up for operationalising open access in accordance with the amended regulations. Considering all these aspects, the Commission decided that the amended regulations shall apply to all the applications for grant of open access received by the nodal agencies on or after 15.6.2009. Accordingly, the Central Transmission Utility submitted the detailed procedures for implementation of the open access in accordance with the amended regulations. Accordingly, date of commencement of the amended regulations has been revised.

Amendment to Regulation 2(1)(b)

5. Under sub-clause (b) of clause (1) of regulation 2 of the 2008 regulations, the term “bilateral transaction” was defined as a transaction for exchange of energy (MWh) between a specified buyer and a specified seller, directly or through a trading licensee, from a specified point of injection to a specified point of drawal for a fixed or varying quantum of power (MW) for any time period during a month.

6. As per the draft amendment regulations, in regulation 2(1) (b), the words, “or discovered at power exchange through anonymous bidding” were proposed to be inserted after the words “through a trading licensee”.

7. It was suggested by IEX that the word "discovered at" would restrict the power exchanges from providing scheduling and settlement services to the contracts taking place outside the power exchange. Therefore, IEX suggested

that in place of the words "discovered at power exchange" the words "discovered on power exchange" be inserted. It was suggested by PXIL that the existing matching system, as approved by the Commission, was through the anonymous bidding system. However, as the power market developed and longer tenure products were allowed by the Commission, the matching system may also need to be reviewed with prior approval of the Commission. In view of this, PXIL requested that the Commission should not qualify the transactions matched on the power exchange through the words "through anonymous bidding". PXIL suggested the definition as follows:

"bilateral transaction" means a transaction for exchange of energy (MWh) between a specified buyer and a specified seller, directly or through a trading licensee or discovered at power exchange.

8. PTC suggested that in a bilateral transaction, the buyer and seller were identified whereas in the power exchanges the buyers and sellers were not identified. Hence, it was suggested that the bidding through the power exchanges which had already been included in the 2008 regulations as collective transactions should not be included.

9. It was suggested by TPTCL that the words "or discovered at power exchange through anonymous bidding" should not be inserted because of the following reasons, namely:-

- (i) To take care of the transactions through power exchanges, a separate definition of collective transaction already existed.

(ii) If a “bilateral transaction” would include power exchange transaction, that would make many provisions in the 2008 regulations inconsistent or even worse, conflicting. For example, it was pointed out that clause (1) of the proposed regulation 14 A would mean that at the power exchange, the transactions could also be revised on the day of transaction or on the day-ahead basis. Similarly, it was pointed out, the provision of clause (1) of regulation 15 which provided that “bilateral transactions shall be cancelled or curtailed first followed by collective transactions” would be inconsistent. Even clause (1) of regulation 16 specifying the transmission charges separately for bilateral and collective transactions would become inconsistent, according to TPTCL.

(iii) In case of power exchanges, physical delivery contracts should be allowed only for day-ahead transactions and not for any longer period. Contracts of duration more than one day, if at all permitted, should be financial trades and not physical delivery contracts. This, according to TPTCL, would help in proper development of the power market with both power exchanges and electricity traders co-existing.

(iv) Power exchanges approved by the Commission were enrolling trading-cum-clearing members not belonging to categories of generating companies, distribution licensees or trading licensees. This enabled them to trade for physical day-

ahead power on power exchanges, without trading licence, even though trading is a licensed activity. The prerequisites of the power exchange members who could participate in collective transactions should be clearly defined.

10. We considered the above comments and suggestions. The definition of 'bilateral transaction' was proposed to be modified to include bilateral transactions discovered at the power exchanges. It needs to be appreciated that once there is a discovery of a transaction involving perspective buyers and sellers, their identities would be disclosed to each other after such discovery of transactions. This type of transactions needs to be scheduled as 'bilateral transactions'.

11. The collective transactions on the other hand are totally different from the 'bilateral transactions' discovered at power exchanges. In collective transactions, there is uniform price discovery on hourly basis scheduled on day-ahead basis and identities of the buyers and sellers are not known to each other even after the transactions are completed. Further, the 'bilateral transactions' discovered at the power exchanges shall be on the same footing as other 'bilateral transactions'. As such, there is no conflict between the provisions relating to collective transactions and provisions relating to bilateral transactions. Since, for the present, the Commission intends to allow 'bilateral transactions' discovered at the power exchanges through anonymous bidding, we felt that the proposed modification in the definition of 'bilateral transaction' was in order. Accordingly, the amendment proposed has been retained.

Amendment to Regulation 2(1)(f)

12. The definition of “detailed procedure” under sub-clause (f) of clause (1) of regulation 2 was proposed to be slightly revised. “Detailed procedure” was proposed to be defined as the procedure issued by the Central Transmission Utility, until Regional Load Despatch Centre is operated by a Government company or any authority or corporation referred to in sub-section (2) of Section 27 of the Act and thereafter by such Government company or authority or corporation as may be notified by the Central Government. The amendment has been notified in keeping with the provisions of the Act, linking the detailed procedure with regulation 4 as under:

“(f) “detailed procedure” means the procedure issued under regulation 4; “

Regulation 2(1)(i)

13. In the 2008 regulations, the term “long-term customer” was defined to mean as a person having a long-term lien over an inter-State transmission system by virtue of it paying the transmission charges proportionate to the lien.

14. In the draft amendment regulations, the term “long-term customer” was proposed to be defined as a person having a long-term contractual right to use an inter-State transmission system on payment of the transmission charges.

15. It was suggested by NTPC that the proposed amended definition apparently sought to take away any continuing right of the existing long-term customers after expiry of the period of long-term access, and hence the proposed

amendment should be dropped. Instead, if required, it was suggested, a provision to enable the long-term customer to exercise or exit its lien after expiry of the specified period be provided in the appropriate regulations relating to long-term access.

16. It was suggested by Shri V. S. Ailawadi that besides long-term customer, the term “customer” also needed to be defined in a broader sense to include different types of customers who may avail of inter-State open access. It was also suggested that the definition may include the following types of customers:

- (a) “Short term”: up to three (3) months.
- (b) “Intermediate term”: three (3) months to five (5) years.
- (c) “Medium term”: five (5) years to fifteen (15) years.
- (d) “Long term”: more than fifteen (15) years.

17. Shri Ailawadi further suggested that the terms given below may also be defined:

- (a) “Captive Power Generator” as defined in the Electricity Act of 2003 and or the rules thereunder,
- (b) “Co-generation entity”,
- (c) “Power Utility”, and
- (d) “Special Economic Zone” as defined in the SEZ Act.

18. The Commission considered the comments and suggestions received. The Commission is in the process of finalizing the long-term access and medium term open access regulations separately, wherein the relevant terms are proposed to be defined. The definition of “long-term customer” has been revised to read as under –

“(i) “long-term customer” means a person granted long-term access for use of the inter-State transmission system.”

19. Similarly, a new definition of “medium-term customer” has also been inserted as under:

“(i-a) “medium-term customer” means a person granted medium-term open access for use of the inter-State transmission system.”

Amendment to clause (l) of Regulation 2 of the 2008 Regulations

20. Whilst in the draft amendment regulations no modification was proposed, we felt that it was necessary to rename open access customer as short-term open access customer in order to maintain the clear distinction with long-term customer and medium-term customer. Therefore, the definition has been amended with reference to short-term open access and the two terms have been defined as given below-

“(n-a) “short-term open access” means open access for a period up to one (1) month at one time.”

“(n-b) “short-term customer” means a person who has availed or intends to avail short-term open access.”

21. It may be noticed that the words “*generating company (including captive generating plant) or a licensee or a consumer permitted by the State Commission*

to receive supply of electricity from a person other than distribution licensee of his area of supply, or a State Government entity authorized to sell or purchase electricity”, as appearing in the definition of “open access customer” given in the 2008 regulations have been deleted. This is because the definition of “short-term customer” employs the word “person”, which adequately covers the entities.

22. Clause (l) of regulation 2 has accordingly been omitted in the amended regulations already published. The expressions “open access” and “open access customer” wherever occurring in the principal regulations have been substituted by the expressions “short-term open access” and “short-term customer” respectively.

Substitution of Regulation 3

23. It was proposed by Shri. V. S. Ailawadi, that for clarity, the regulation on scope may be reworded as follows:

“These regulations shall apply for grant of connectivity, long term open access, intermediate term open access and medium term and short term open access.”

24. It is clarified that these regulations apply to grant of short-term open access only. Separately, the regulations for connectivity, long-term access and medium-term open access are under finalization. Therefore, the suggestion has not been acted upon.

25. Regulation 3 of the 2008 regulations provided that the long-term customers would have priority over the short-term customers over the inter-State transmission system for the designated use. As noted earlier, the Commission is

under the process of finalizing regulations for medium-term access also. To provide priority to long-term and medium-term customers over short-term customers, the regulation has been amended.

Substitution of regulation 4

26. In terms of regulation 4 of the 2008 regulations, the Central Transmission Utility was to issue a detailed procedure covering relevant and residual matters not detailed in these regulations. This was to be done with approval of the Commission. In the draft amendment regulations, this provision was proposed to be amended to bring it in tune with the provisions of the Act. Accordingly, detailed procedure is to be issued by the Central Transmission Utility until a Government company or authority or corporation referred to in sub-section (2) of Section 27 of the Act is notified by the Central Government.

27. While finalizing the aforesaid amendment, change in formulation proposed by PTC has been considered. In the final version regulation 4 has been substituted as under:

“Detailed Procedure

4. Subject to the provisions of these regulations, the Central Transmission Utility, till the Regional Load Despatch Centre is operated by it and thereafter the Government company or any authority or corporation notified by the Central Government under sub-section (2) of Section 27 of the Act: shall, after obtaining prior approval of the Commission, issue the detailed procedure to operationalise open access and on any residual matter not covered under these regulations.”

Substitution of sub-regulation (3) of regulation 8

28. Under clause (3) of regulation 8 of the 2008 regulations it was provided that in case the infrastructure required for energy metering and time-block-wise accounting already existed, and required transmission capacity in the State network was available, the State Load Despatch Centre, was to accord its concurrence or 'no objection' or standing clearance, as the case may be, within three (3) working days of receipt of the application.

29. In the draft amendment regulations, it was proposed to amend the above provision as under:

“(3) (a) While processing the application for concurrence or 'no objection' or standing clearance, as the case may be, the State Load Despatch Centre shall verify the following, namely-

- (i) existence of infrastructure necessary for time-block-wise energy metering and accounting, and
- (ii) availability of surplus transmission capacity in the State network.

(b) Where existence of necessary infrastructure and availability of surplus transmission capacity in the State network has been established, the State Load Despatch Centre shall convey its concurrence or 'no objection' or standing clearance, as the case may be, to the applicant by e-mail or fax, in addition to normal means of communication, within three (3) working days of receipt of the application:

:

Provided that when open access has been applied for the first time by any person, the buyer or the seller, the State Load Despatch Centre shall convey to the applicant its concurrence or 'no objection' or standing clearance, as the case may be, within seven (7) working days of receipt of the application by e-mail or fax, in addition to normal means of communication, in case existence of necessary infrastructure and availability of surplus transmission capacity in the State network has been established.”

30. OPTCL suggested that in addition to the above, SLDC should also verify the 'Technical Clearance' from the STU and Commercial Clearance from the State Utility designated for handling of State share of ISGS power.

31. It was suggested by Chhattisgarh ERC and Chhattisgarh SPTCL that a new provision be added as "(iii) existence of PPAs or bilateral agreement between generators and State utility/ licensee/ consumers". It was further suggested that if the distribution network was also involved in the bilateral transactions or collective transactions and there existed a bilateral agreement or PPA between generators and the State utility for sale of the same power "no objection" or consent or standing clearance was to be obtained by the SLDC from the Discom.

32. It was further pointed out by Chhattisgarh ERC that there were cases where the generators had entered into long-term PPAs with the State Discom and utilized these PPAs for financing their projects. But on account of power shortage situation in the country and high short-term power price in the market, the developers were inclined to breach the existing long-term contracts to sell power on short-term basis in the market. According to Chhattisgarh ERC, the State Utility considering the long-term contracts may have developed the necessary infrastructure for evacuation of such power and may have a power procurement plan as per the agreements. After getting grid connectivity and exposure to the market, the power developers should be permitted to use the power market situation to their advantage at the cost of optimum and planned development of transmission and distribution system. Hence, it was suggested

that while granting open access, a system operator should not only consider technical aspects but should also not overlook the legal obligations under any existing contractual agreement. Thus, SLDC, while processing the applications of open access for concurrence, or “no objection” should also verify that the seller (generator or CPP or licensee) was not seeking open access for the same power already contracted with any other buyer. Chhattisgarh ERC also suggested to add the suitable provision in the regulations such as, if SLDC found that the generator or CPP, applying for open access directly or through a trader, already had a subsisting agreement for sale of the same power with any other buyer or State Discom, SLDC should give ‘no objection’ or concurrence for open access only after receiving consent from the State Disom or buyer.

33. It was suggested by WBERC, WBSETCL and WBSEDCL that in clause 8 (3) (a) in the 3rd line after the words , "following " the words "in accordance with the relevant regulations on open access or State Grid Code, as the case may be" may be added.

34. It was suggested by Tata Power that in clause 8(3)(a)(i) the requirement of time-block-wise energy metering for grant of open access may be relaxed as ABT metering work was already in progress in most of the States.

35. It was pointed out by Shri V. S. Ailawadi that it may be desirable to have format of application, which may include necessary information to be furnished by the applicant to avoid delays caused in processing by the Load Despatch Centre.

Such application should also include provision of energy metering and of class as specified.

36. It was also suggested that the new clause (3) of regulation 8 would give undue authority to the Load Despatch Centre to say or decide whether necessary infrastructure for energy metering and accounting existed, since the required infrastructure for the energy metering and accounting had to be put by the concerned Central or State Transmission Utility. It was mentioned that this view had been expressed by the Commission in its orders against the decisions of the Load Despatch Centre which rejected the applications for open access on the ground that necessary infrastructure for energy metering did not exist and it had been held that this was the responsibility of the CTU or the STU concerned. Secondly, it was an accepted fact that accounting for supply of power under inter-State transmission would be done by the RLDCs concerned. It was also a fact that the accounting system had been functioning satisfactorily as per reports published by the RLDCs. Thirdly, if, however, it was felt that some special class energy metering would be required then such a requirement of energy metering types, may be specified in the application form.

37. We considered the comments received. In our view many of the issues raised were dealt with in the Statement of Reasons dated 4.3.2008 issued while finalizing the 2008 regulations. The proposed amendments explicitly specify that the concurrence of SLDC could be refused only on two grounds, namely, non-availability of necessary metering infrastructure or requisite transmission capacity. It has also been provided that the availability of metering infrastructure

has to be examined only at the first instance for which seven (7) days has been allowed. Further, if the application is incomplete, SLDC is being required to communicate the defects within 48 hours. The decision on application is also being required to be conveyed through e-mail or fax, in addition to other usual postal means or authorized written communication. Thus, the amendments are only procedural in nature. As such, the substantial issues that have been raised by the stakeholders, including the issue of format of applications are already settled. As regards the comments that the type of metering infrastructure required to be put in place needs to be specified, we are clear that the metering and accounting infrastructure has to be in accordance with the provisions of the Grid Code. Accordingly, a provision has been made in this regard in the final regulations already published.

38. Further, with regard to the suggestion of the Chhattisgarh ERC, we feel that the relationship of buyer and a seller is strictly contractual. If one party decides not to fulfil its contractual obligations, the aggrieved party may have recourse to appropriate legal remedies. Therefore, the suggestion made has not been incorporated in the amendments already published.

39. Taking into consideration the suggestion made by the stakeholders that a provision be made for the State Load Despatch Centre to issue an acknowledgement or receipt of application we have made a provision that the State Load Despatch Centre will issue an acknowledgement or receipt of application to the applicant by e-mail or fax in addition to other usual postal means within twenty-four (24) hours of receipt of such application. It has also

been provided that where the application has been submitted in person, the acknowledgement shall be provided at the time of submission.

40. In clause (3) of regulation 8 of the 2008 regulations, a new provision had been proposed in terms whereof, when open access is applied for the first time by any person, the buyer or the seller, the State Load Dispatch Centre shall convey to the applicant its concurrence or 'no objection' or standing clearance, as the case may be, within seven (7) working days of receipt of the application, by e-mail or fax in addition to normal means of communication, in case existence of necessary infrastructure and availability of surplus transmission capacity in the State network has been established.

41. It was suggested by SLDC, Jabalpur that the words "complete in all respects" may be added in the last line after the word "application". It was suggested by PTC that in some instances, SLDCs were reluctant to acknowledge receipt of applications if they were not inclined to give concurrence against any open access application. Therefore, PTC urged that a proper mechanism needed to be devised to streamline the process. For example, a web-based solution could be developed in a limited timeframe for generating automatic receipt of open access application. It was suggested by RRVPNL that following be added at the end of sub-clause (b) of clause (3) namely-

“In exceptional cases the period of (7) working days may be extendable for (3) more working days where additional information is required. Provided further that the application received after 17.00 hrs. of a day shall be treated as having been received on next day.”

42. It was suggested by WBSETCL and WBSEDCL that in the 2nd line after the word "established" the words "after verification as per clause (a)" be added.

43. We considered the above comments and suggestions. We felt that the proposed amendment as well as the mechanism developed thereunder, was self-contained, that would protect the interests of open access customers. We therefore did not feel any need to make any further change to it.

Insertion of Regulation 8(3A)

44. In the draft amendment regulations after clause (3) of regulation 8 of the 2008 regulations, a new clause (3A) was proposed to be inserted, as under:

“(3A) in case the State Load Despatch Centre finds an application for concurrence or ‘no objection’ or standing clearance, as the case may be, is incomplete or defective in any particular respect, it shall communicate the defect to the applicant by e-mail or fax within two (2) working days of receipt of the application.”

45. It was suggested by OPTCL that instead of two (2) working days time, three (3) working days time be allowed for SLDC to communicate the defects in the application, if noticed, as the proposed period (two days) was considered by it to be inadequate to examine the application. It was suggested by RRVPNL that addition of clause (3A) providing for communication of defect in the application within 2 working days may not be incorporated because 2 working days period was not adequate to communicate / check the application.

46. We considered the above suggestions. We are of the view that the examination of the applications received by SLDC is only formal, and therefore

the period of two days is sufficient. The provision has been included in the final amendments.

Substitution of clause (4) of regulation 8

47. Clause (4) of regulation 8 of 2008 regulations provided as under:

“(4) In case SLDC decides not to give concurrence or “no objection” or standing clearance as the case may be, the same shall be communicated to the applicant in writing, giving the reason for refusal within the above stipulated period of 3 days.”

48. In the draft amendment regulations, clause (4) of regulation 8 was proposed to be substituted as under:

“(4) In case the application has been found to be in order but the State Load Despatch Centre refuses to give concurrence or “no objection” or standing clearance as the case may be, on the grounds of non-existence of necessary infrastructure or unavailability of surplus transmission capacity in State network, refusal shall be communicated to the applicant by e-mail or fax, within the period of three (3) working days or seven (7) working days, as the case may be, of receipt of the application, specified under clause (3), giving reasons for such refusal:

Provided that where the State Load Despatch Centre has not refused concurrence or ‘no objection’ or standing clearance, as the case may be, within the specified period of three (3) working days or seven (7) working days, as the case may be, of receipt of the application, concurrence or ‘no objection’ or standing clearance, as the case may be, shall be deemed to have been granted.”

49. It was suggested by OPTCL that the proposed amendment may lead to serious technical consequences as non-receipt of application due to communication lapses/technical flaws or willful suppression of facts, information and documents etc., could also be interpreted as lack of communication on the part of the concerned SLDC. It was opined that allowing open access in such cases may prove to be disastrous for the system.

50. It was suggested by PSEB that if grant of concurrence, no objection or standing clearance or scheduling of power by open access customer was deemed to have been granted after the specified period, it could lead to many complications for metering, billing and settlement of unscheduled interchange charge bills between the STU and unbundled open access customers. As such, PSEB sought review of the proposal in case of embedded open access customer.

51. It was suggested by SLDC, Jabalpur, that by considering deemed concurrence of SLDC, in case of non-receipt of refusal of concurrence or no objection or standing clearance during the specified period, had the effect of diverting responsibility of the applicant and the applicant may not remain serious to complete the formalities required for availing open access. Moreover, it was expressed, in the absence of proper concurrence of SLDC, it may not be possible for the concerned RLDC to approve the scheduling. Hence, it was suggested that the proposal of deemed concurrence may be deleted.

52. RRVPNL also objected to the insertion of proviso to clause (4). In its view if the concurrence was not given within 3 or 7 working days as the case may be, the action may be taken against the defaulting agency rather than allowing “deemed concurrence”.

53. It was suggested by NLDC that the proposed amendment could lead to dispute in implementation of the open access regulations as SLDC's consent was necessary for the following reasons, namely:

- (i) SLDC is the apex body for system operation in the State
- (ii) SLDC is to be empowered and not to be bypassed
- (iii) SLDC has to check for availability of adequate transmission margin so that there are no network constraints in real time operation
- (iv) Energy transactions have to be accounted for and SLDC has to ensure that necessary infrastructure for energy accounting is available

Therefore, it was suggested that the proposed proviso be omitted.

54. It was also suggested by RRVPNL that words "or extendable days" be added after the words "(7) working days". Chhattisgarh ERC suggested that after the word "network" the words "or because of non-consent or objections raised by the Discom" be inserted. JSW PTCL welcomed the proposed amendments of regulation 8. However, it was pointed out that the concerned RLDC must be kept aware if the open access is demanded from a SLDC for inter-State transfer of power, which may prevent denial of receipt of application by SLDC.

55. It was suggested by PTC that any refusal of open access by SLDC should be in a transparent manner and refusal should contain all the information specifying reasons such as transmission constraints or lack of infrastructure in the State transmission system for which the open access is denied. It was suggested by Chhattisgarh SPTCL that it was necessary for open access

customers to produce an authentic record of first application acknowledged by Load Despatch Section, then after non-receipt of information either for concurrence or for refusal after 3 days, the open access customer should give this information in writing to SLDC of non-receipt of decision and get acknowledgement. Then only, no information should be construed to be the deemed concurrence. TPTCL hailed the proposal as very progressive and proactive, as it put clear responsibility on SLDCs to act in a timely manner.

56. We considered the above comments. The rationale for proposing “deemed” concurrence or ‘no objection’ or standing clearance has a background. A number of petitions were filed before the Commission in which the communication of concurrence was delayed by SLDC or it was not given despite the facts that there were no transmission constraints and necessary infrastructure was in place. Since the spirit of open access provisions in the Act is to provide non-discriminatory access, the concept of deemed concurrence was proposed. However, to operationalise open access by RLDC/NLDC certain conditions are to be met. We feel that SLDC as the apex body should ensure integrated operation of the power system in the State. For the overall benefit of the sector, it is necessary to operationalize open access and in that regard amongst various mechanisms that have been proposed in the amendment regulations, an intrinsic need is to also provide for deemed concurrence or ‘no objection’ or standing clearance.

57. As regards the contention of non-receipt of application due to communication lapses/technical flaws or willful suppression of facts, information

and documents etc., we have provided for adequate mechanism of giving of acknowledgement or receipt of the application thereby eliminating any possibility of communication lapses. Moreover, deemed concurrence or 'no objection' or standing clearance is subject to submission, by the applicant, of a duly notarized affidavit with the nodal agency declaring that - (a) the State Load Despatch Centre has failed to convey any deficiency or defect in the application or its refusal or its concurrence or 'no objection' or standing clearance, as sought by the applicant, (b) the necessary infrastructure for time-block-wise energy metering and accounting in line with the provisions of grid code as in force, is in place, and enclosing with the affidavit - (i) the copy of the application (proper application after removal of defects, if any) as made to the State Load Despatch Centre seeking concurrence or 'no objection' or standing clearance, as the case may be, (ii) copy of the acknowledgement or receipt, if any, issues by the State Load Despatch Centre, or (iii) otherwise, the proof of delivery of the application.

58. While notifying the above amendment, the phrase "clause (1) of regulation 9" was inadvertently included in the second proviso. A corrigendum has been issued to omit the above phrase.

Amendment of Regulation 13

59. . No amendment was proposed to this regulation. In the evolving situation we felt there was a need to provide flexibility to the buyer to locate a source of power either on its own or through a trader. It has been provided that power exchanges may also offer their platform to locate a source of power to meet

short-term contingency requirements. Accordingly, regulation 13 has been substituted as under, namely-

“Procedure for Scheduling a Transaction in a Contingency

13. In the event of a contingency, the buyer or on its behalf, a trader may locate, and the power exchange may offer its platform to locate, a source of power to meet short-term contingency requirements even after the cut-off time of 1500 hrs of the preceding day and apply to the nodal agency for short-term open access and scheduling and in that event, the nodal agency shall endeavour to accommodate the request as soon as may be and to the extent practically feasible, in accordance with the detailed procedure.”

Substitution of Regulation 14

60. Regulation 14 of the 2008 regulations provided as under:-

“Revision of Schedule 14. (1) The open access schedules accepted by the nodal agency in advance and on first-come-first-served basis may be cancelled or revised downwards by the applicant by giving a minimum five (5) days’ notice, excluding the day on which notice is served and the day from which revised schedules are to be implemented.

(2) The applicant shall continue to be liable to pay transmission charges as per the schedule originally approved, if the period of revision or cancellation is up to five (5) days.

(3) If the period of revision or cancellation exceeds five (5) days, transmission charges for the period beyond five (5) days shall be payable in accordance with the revised schedule and for the first five days (5) in accordance with the original schedule.

(4) In case of cancellation, operating charges shall be payable for five (5) days or the period of cancellation in days, which ever is less.”

61. In the draft amendment regulations, regulation 14 was proposed to be substituted as under:

“Revision of Schedule

14. (1) The open access schedules accepted by the nodal agency in advance or on first-come-first-served basis may be cancelled or curtailed

on an application made by the person granted or deemed to have been granted open access under regulation 8 by giving at least two (2) days' notice the nodal agency:

Provided that the day on which notice for cancellation or curtailment is served on the nodal agency and the day from which such cancellation or curtailment is to be implemented, shall be excluded for computing the notice period of two (2) days.

(2) The person seeking cancellation or curtailment of open access shall pay the transmission charges for the notice period of two (2) days in accordance with the schedule originally approved by the nodal agency.

(3) If the period of cancellation or curtailment exceeds two (2) days, the transmission charges for the period beyond the notice period of two (2) days shall be payable in accordance with the revised schedule prepared by the nodal agency.”

62. It was suggested by NRLDC, WBERC, and SLDC, Jabalpur, that the word, "to" may be added in the last line after the word, "notice". It was suggested by RRVPNL that words “or deemed to have been granted” appearing in 3rd line of clause (1) may be deleted.

63. TPTCL welcomed the reduction of notice period for cancellation or curtailment of open access from five days to two days. WBSEDCL suggested that if buyers and sellers had mutually agreed that the revision of schedule should be allowed within the six time blocks, all the clauses may be modified accordingly. It was suggested by NVVN that a new para after 14 (1) be added to restrict the frequent revision:

"Provided not more than 2 changes in revision of open access schedules shall be accepted for a particular transaction"

64. It was suggested by NRLDC that the exit option must have some charge/cost, its quantum would depend on the degree of seriousness required or

the impact such exit would have on either party. The 2008 regulations had specified minimum 5 days charges, which were proposed to be reduced to 2 days. In order to have clarity on the issue it was proposed that clause (2) and clause (3) of the regulation should be replaced with the following (similar to clause (2), (3) and (4) of regulation 14 of the 2008 regulations):

“(2) The applicant shall continue to be liable to pay transmission charges as per the schedules originally approved, if the period of curtailment or cancellation is up to two (2) days.

(3) If the period of curtailment or cancellation exceeds two (2) days, transmission charges for the period beyond two (2) days shall be payable in accordance with the curtailed schedule and for the first two (2) days in accordance with the original schedule.

(4) In case of cancellation, operating charges shall be payable for two (2) days or the period of cancellation in days, whichever is less.”

65. RRVPNL suggested that Clause (4) may be amended as under:-

“(4) In case of cancellation, operating charges shall be payable for two days.”

66. We have taken a note of the above comments and suggestions. We feel that the comments and suggestions made by the stakeholders largely support the proposed amendments, which have factored the practical issues faced by open access users. The notice period for the revision of schedules has been reduced from 5 days to 2 days and in case of cancellation and downward revision, the transmission charges and operational charges are to be paid in accordance to original schedule, the duration of which has been reduced from 5 days to 2 days. The amended regulations have been made effective from 15.6.2009 for all the applications to be received on or after that date. For some period there would be open access customers who will be governed by the 2008 regulations wherein

the provision for revision was for a notice period of 5 days. In order to minimize the operational difficulty in applying the provisions of revision of schedule, it was proposed that this provision of revision of schedules in case of cancellation or downward revision shall be applicable to the existing open access customers also who have been granted open access prior to 15.06.2009. Accordingly the regulation has been notified as under:

“Revision of Schedule

14. (1) The short-term open access schedules accepted by the nodal agency in advance or on first-come-first-served basis may be cancelled or revised downwards on an application to that effect made to the nodal agency by the short-term customer:

Provided that such cancellation or downward revision of the short-term open access schedules shall not be effective before expiry of a minimum period of two (2) days:

Provided further that the day on which notice for cancellation or downward revision of schedule is served on the nodal agency and the day from which such cancellation or downward revision is to be implemented, shall be excluded for computing the period of two (2) days.

(2) The person seeking cancellation or downward revision of short-term open access schedule shall pay the transmission charges for the first two (2) days of the period for which the cancellation or downward revision of schedule, as the case may be, has been sought, in accordance with the schedule originally approved by the nodal agency, and thereafter in accordance with the revised schedule prepared by the nodal agency during the period of such cancellation or downward revision.

(3) In case of cancellation, operating charges specified under regulation 17 shall be payable for two (2) days or the period of cancellation in days, whichever is less.

Note: The provisions of this regulation shall also be applicable to the short-term customers granted short-term open access prior to 15.6.2009.

Insertion of a Regulation 14A

67. In the draft amendment regulations a new regulation 14A had been proposed for insertion as under:

“Revision of Daily Schedule

14A. (1) In case of bilateral transactions, cancellation or curtailment of the schedules for a day may be revised either on the day on which the transaction is scheduled or on the day-ahead basis by giving advance notice to the Regional Load Despatch Centre concerned:

Provided that in case of transactions other than those involving wind generation power plants as the identified source of supply of electricity, the schedules for a day may be curtailed only once.

(2) If the schedule for a day is sought to be cancelled or curtailed on the same day, the cancellation or curtailment, as the case may be, shall become effective from the 6th time-block, taking the time-block in which notice for revision is received by the Regional Load Despatch Centre as the first time-block.

(3) The cancellation or curtailment of schedule of a day shall be implemented so that quantum of cancellation or curtailment shall not be less than 10% of the schedule applicable when cancellation or curtailment is to be implemented:

Provided that in case of transactions involving wind generation power plants as the identified source of supply of electricity, curtailment or enhancement of schedule of a day shall be implemented so that curtailment or enhancement of schedule shall not be less than 10% of the schedule applicable when curtailment or enhancement is to be implemented.”

68. It was pointed out by NRLDC that the proposed insertion of regulation 14A would accord flexibility to cancel/curtail the scheduled bilateral transactions, and revision of schedules on daily basis could be a cause for concern. NRLDC has opined, provision for revision of schedule on daily basis will be a retrograde step knowing in advance the pitfalls involved. In its opinion, the proposed amendment would seriously hamper the development of short-term electricity market in India for the following reasons, namely-

(i) Seriousness of contracts or firmness of delivery would be lost. With easy exit options, volumes might shift to advance bilateral contracts with possibility of inflated requests for transmission capacity and frequent revisions.

(ii) A similar provision in the 2004 regulations for daily scheduling of bilateral transactions was being misused as the market players used to reserve/block the transmission corridors in advance as exit option was very easy. This resulted in under-utilization of the transmission corridors and many a time pseudo-congestion was observed. According to NRLDC, the anomaly was rectified in the 2008 regulations, after considering views of all stakeholders and experience gained over the years.

(iii) Allowing cancellation/curtailment of schedule on daily basis would mean that day-ahead schedules were not financially binding, in which case there could be a possibility of inter-play between the bilateral market and the real-time balancing market. The option of revision of bilateral contracts would provide an opportunity for gaming, besides bringing bilateral contracts at par with long-term contracts by defective market design.

(iv) Based on its operational experience, Powergrid (System Operations) observed that a few of the short-term open customers were under-utilizing the transmission capacity, resulting in blocking of

transmission capacity which could have been utilized by other needy customers. The amendment issued in December 2006 to the 2004 regulations provided for release of any transmission capacity available after catering to the requirements of long-term and short-term customers, as advised by the eligible entities by 3:00 PM of the day preceding the day for which schedules were prepared, for use of other perspective users. The utilization of transmission capacity increased significantly after the amendment.

(v) While assessing the transfer capability for day-ahead transactions, counter-trades are accounted for optimum utilization of the transmission corridors. The collective transactions through the power exchange are scheduled based on the available margin after considering the net scheduled transactions. Cancellation / curtailment of scheduled bilateral transaction on day of operation or on day-ahead basis will be known only after the power exchange transactions are cleared at 1400 hours. This would lead to the following scenarios:

(a) Sub-optimal utilization of transfer capability – more margin could have been allocated to the power exchange if the revision was known in advance.

(b) Congestion in real time and grid security may get endangered—if the wrong set of transactions gets revised.

VI. The cancellation/curtailment of the schedule for bilateral transactions on daily basis will create a ripple effect in the market.

VII. Implementation of the proposal for revision in schedules, may open the doors for innumerable disputes.

69. On the above basis, it was suggested by RLDCs that the Commission should not insert any clause to accommodate any request for revision of schedules.

70. It was pointed out by RRVPNL that the proposed regulation 14A providing for revision of daily schedules, might be in line with the revision permitted to the ISGS and the State utilities, but open access customers did not deserve to be treated at par with the ISGS and the State utilities because of the large number and small quantum of the open access transactions. It was argued that the corridor vacated consequent to this revision would not be optimally utilized. In addition, it was urged, revision of schedules could complicate the energy accounting. Therefore, a suggestion was made to delete regulation 14A proposed for insertion under the draft amendment regulations.

71. IEX suggested that the facility of daily revision (with sixth-time blocks) could have the effect of wiping off of the day-ahead market on the power exchange. The argument made was that properly executed contracts would lose sanctity if schedules were allowed to be revised daily. According to IEX, transmission capacity blocking, and gaming therein, could restart. Thus, IEX

strongly opposed revision of daily schedules. However, the reduction of notice period from 5 days to 2 days was welcomed.

72. PXIL suggested that the purpose of scheduling was to bring discipline among the participants so as to minimize the uncertainty of load fluctuations and was intended to impress upon the utilities the need for proper load-forecasting, so that demand profile was balanced by proper assessment of availability and requisition from ISGS, as well as market. Allowing revision in schedules committed by the participants would defeat the purpose of planning and could lead to indiscipline. Moreover, rescheduling would create serious problems when the counterparty in bilateral transactions is not ready to reschedule on its front. According to PXIL, the situation, of rescheduling with a short notice, would lead to certain developments, as under, which would not augur well for the power sector:

- (a) Excessive one-sided buy or sell bids on power exchanges, resulting in huge fluctuations in hourly prices;
- (b) Congestion in case of counter trades even if revision is allowed in cancellation or curtailment only;
- (c) Increase in injection / drawal under UI mechanism.

73. PXIL opined that the proposed amendment providing for revision of schedule should be omitted on last minute changes, if so desired by the participants, should be taken care by UI mechanism only. However, in case the

Commission decided to retain this clause, the Commission could consider to extend flexibility of revision of schedule to participants of collective transaction also.

74. Since majority of the stakeholders opposed the proposal, the proposed amendment was dropped.

Substitution of clause (1) of Regulation 15

75. Clause (1) of regulation 15 of the 2008 regulations provided as under:-

“Curtailement in case of transmission constraints 15. (1) When for the reason of transmission constraints or to maintain grid security, it becomes necessary to curtail power flow on a transmission corridor, the transactions already scheduled may be curtailed in the manner decided by the Regional Load Despatch Centre, if in its opinion such curtailment is likely to relieve the transmission constraint or is likely to improve grid security.”

76. In the draft amendment regulations, this clause was proposed to be substituted as under:

“(1) The Regional Load Despatch Centre may curtail power flow on any transmission corridor, by cancelling or re-scheduling any transaction, if in its opinion cancellation or curtailment of any such transaction is likely to relieve the transmission constraint or improve grid security:

Provided that while cancelling or curtailing any such transaction, as far as possible, bilateral transactions shall be cancelled or curtailed first followed by collective transactions.”

77. Chattisgarh PTCL raised an issue that deviation in such cases would not be construed as UI. PTC submitted that the direct bilateral transaction between a buyer and a seller were in general, more structured and the contracts were of

longer duration as compared to the day-ahead transactions through the power exchange. In view of this, and also for effective utilisation of resources, PTC proposed that the collective transactions of shorter duration, should be cancelled or curtailed first, followed by bilateral transactions of longer duration and having prior commitment. TPTCL suggested that in case of cancellation or curtailment of approved transactions by NRLDC for any reason, the open access charges should be fully refunded or proportionately reduced. WBSETCL suggested that after the word "transaction," the words "with written reasoning for such decisions" may be added. It was suggested by Himachal Small Hydro Power Association that the proviso to clause (1) of the proposed amendment should be substituted as below:-

“Provided that while canceling or curtailing any such transaction, as far as possible, bilateral transactions shall be cancelled or curtailed first followed by collective transactions. The transaction from renewable sources shall be cancelled or curtailed as a last priority.”

78. It was suggested by WBERC that after the proviso, another proviso be inserted as:

"Provided that a written reasoning for all such curtailment shall be provided to the affected party".

79. According to NVVN, priority of curtailment amongst bilateral transactions should also be identified.

80. We considered the views of the stakeholders. Many of the issues raised now were dealt with in the Statement of Reasons dated 4.3.2008 published in support of the 2008 regulations. Keeping in view the need to bring more clarity

regarding the priority of long-term and medium-term transactions, over short-term transactions in case of curtailment and taking into account the suggestions received and the provisions of in the existing detailed procedures, the regulation has been amended.

81. A suggestion to the effect that transactions of renewable sources should be cancelled or curtailed as a last priority has not been considered, since a separate dispensation is being considered for which draft regulations have been separately published and these aspects will be examined accordingly.

Substitution of Regulation 16

82. In the draft amendment regulations, it was proposed to revise the rates of transmission charges for short- term open access. Accordingly, clauses (1), (2) and (3) of regulation 16 of the 2008 regulations were proposed to be substituted as under:

“Transmission Charges

16. (1) In case of bilateral transactions, the transmission charges at the rate specified hereunder shall be payable by the applicant for the electricity approved for transmission at the point or points of injection:

<u>Type of Transaction</u>	<u>Transmission charges(Total)</u> <u>(Rs./MWh)</u>
(a) Bilateral, intra-regional	80
(b) Bilateral, between adjacent regions	160
(c) Bilateral, wheeling through one or more intervening regions	240

(2) In case of the collective transaction, the transmission charges at the rate of Rs. 100/MWh for energy approved for transmission separately for each point of injection and for each point of drawal, shall be payable.

(3) The intra-State entities shall pay the transmission charges for use of the State network as fixed by the respective State Commission in addition to the charges specified under clauses (1) and (2)

:

Provided that in case the State Commission has not determined the transmission charges, these charges for use of respective State network shall be payable at the rate of Rs.80/MWh for the electricity transmitted:

Provided further that non-fixation of the transmission charges by the State Commission for use of the State network shall not be a ground for refusal of open access:

Provided also that the transmission charges payable for use of the State network shall be conveyed to the Regional Load Despatch Centre concerned who shall display these rates on its web site:

Provided also that the transmission charges shall not be revised with retrospective effect.”

83. IEX suggested that the transmission charges for short-term open access were based on utilisation of left-over transmission capacities and propagated a view to continue present charges, if they could not be reduced in the interest of market development. IEX suggested that when short-term market was sufficiently developed, the Commission could re-visit the matter. PXIL suggested that the proposal to increase the transmission charges was contrary to the general understanding that value of transmission infrastructure depreciated with time. It called upon the Commission to have a relook at the proposal to increase the transmission charges. Spice Energy also opposed the increase in transmission charges, since, in its view, the proposal would adversely affect the trading activity.

84. Tata Power pointed out that the increase proposed in the transmission charges was almost 2.6 times, which had the propensity to cause further increase in the power purchase cost for the distribution utilities. It was urged that the rationale to support the exorbitant increase in the transmission charges be given with proper calculations. MPPTCL opined that the existing transmission charges had been in force since 1.4.2008, for less than a year and, therefore, there was no apparent reason to increase the charges to the extent proposed, particularly when no reason for such abrupt increase had been made public. PTC also argued that the transmission charges proposed were unreasonably high, without any corresponding increase in the responsibilities of CTU, RLDC and SLDC. According to PTC, any increase in charges should be linked to the appropriate indices as done in case of other sectors. WBSEDCL and WBERC suggested that in the Central Electricity Regulatory Commission (Unscheduled Inter-change Charges and related matters) Regulations, 2009, UI charges had been reduced and the over- drawal of power below 49.5 Hz. was being legalised in the name of limiting the volume, which coupled with the proposal of increase in the transmission charges for open access transactions would give impetus to undesirable and undisciplined activity of unscheduled inter-change of power at the cost of statutorily permissive lawful activity of power flow under the bilateral trading mechanism. The transmission charges proposed were stated to be insensitive to distance, direction and quantum of flow, making the proposal inconsistent with paragraph 7.1(2) and 7.1(3) of the tariff policy. It suggested that the transmission charges should be on MW basis as capacity blocking for the transmission corridor during open access period of a customer was based on MW. In its view, open access charges given on MWh basis would be difficult to

assess the power-loading of the transmission line and scope of availability of spare capacity.

85. BSES suggested that the Commission could consider rolling back of the proposal of substantial rise in open access charges to the existing level and also stipulate suitable directive for incorporation of retail tariff component namely, transmission price adjustment for adjustment of open access charges on near real time basis for the distribution utilities so that it was financially sustainable. Further, it was suggested that there should not be any transmission charges for power banking or swapping for the reason of non-commercial nature of the transactions. According to BSES, since long-term transmission beneficiaries of CTU/STU were already paying for their long-term allocated capacity, there should not be any transmission charges for this category, if the total quantum of power (both long-term and short-term) did not exceed the total long-term transmission capacity already allocated to the beneficiaries which they were paying for. Similarly, JSW PTCL did not favour hike in the transmission charges and suggested revision of intra-regional transmission charges to Rs. 40/MWh. Himachal Small Hydro Power Association opined that in order to make open access economically viable for renewable energy sources, they should be exempted from payment of the transmission charges of CTU. In its view, this would have negligible impact on the revenue of CTU as transactions from these sources would be just 0.5% to 1% of total transactions and could be accommodated in the existing capacities of the Grid. It was proposed by NRLDC that in the first sentence after “ In case of the bilateral transactions” , the words “for use of the inter-State transmission system,” should be inserted. Chhattisgarh

SPTCL suggested that the transmission charges of Rs.150/MWh, Rs.300/MWh and Rs.450/MWh be considered for intra-regional, between the adjacent regions and wheeling through one or more intervening regions respectively. The power was sold in the market @ Rs.8 to Rs.10 per unit. Under such condition the transmission charges were hardly 5% of the energy charges which the generator or the open access customer should bear comfortably. This could stimulate the transmission companies to build spare transmission capacity.

86. In relation to clause (2) of regulation 16, a suggestion came from IEX that it may also be specified that in case the transmission charges were made applicable by the State Commission on Rs./MW/day basis, then the same may be converted into Rs./MWhr basis (by dividing by 24) for the purpose of inter-State transmission of power to which such State transmission network was incidental. PXIL pointed out that the charges of Rs. 100/MWh, proposed to be levied for the collective transactions were levied on all the parties. In such cases, each complete transaction entailed fee of at least Rs. 200/MWh as there would be minimum of two parties to a transaction. In quite a few cases, such parties could be within the same region as well as in the adjoining regions. In both the cases, the transmission charges proposed to be levied for each transaction far exceeded those levied for bilateral transactions. Since collective transactions anyway account for a miniscule part of the power market, it was submitted that the charges for collective transactions may be suitably reduced for participants to get a commercial incentive to use the platform of power exchanges to manage their immediate power requirements.

87. It was suggested by TPTCL that in case the State Commission had not determined the transmission charges for the current year, the transmission charges for use of the State network should be lesser of the two, namely- charges in any previous year as fixed by the respective State Commission or at the rate of Rs.80/MWh for the electricity transmitted, whichever was lower. Spice Energy sought a clarification that in case any generating station or captive power plant was connected to the CTU substation through a radial transmission line owned by STU whether the total STU transmission charges would be levied or only the transmission charges of radial transmission line owned by STU would be levied. Further, it sought that the applicable transmission losses should also be clearly given. It was suggested by WBSSEDCL and WBETCL that at the end of proposed clause (3) , after the phrase, "clauses(1) and (2)" the phrase "but shall not required to pay any transmission charges as per clause (1) and (2) above for the portion of the State network." may be added. They added that in the third proviso to the above clause, the phrase "as given by SLDC" may be added after the words "web site"

88. It had been proposed by Shri V. S. Ailawadi that the Commission should specify charges for use of "intervening facilities/systems in the intra-State entities, which should be based on principles laid down in sections 36 and 61 of the Act. In order to prevent pancaking of transmission charges, the charges for intermediate and intervening transmission systems, should be fixed by the Commission. Also, in the interest of uniform and reasonable charges, the fees proposed for different purposes should be minimized and unjustified levy of fees by RLDCs may be disallowed. It was further proposed that for preventing

unreasonable charges for open access customers, the first proviso under clause (3) should be deleted, because, as far as the charges for the use of intervening facilities were concerned, it was within the jurisdiction of the Commission alone to fix as per the Act and the Commission alone was mandated to fix reasonable charges as per provisions of section 36 of the Act.

89. We have reviewed the comments received from different stakeholders and it is clear that most of the stakeholders urged against the increase proposed in transmission charges. It needs to be appreciated that the transmission capacity planning has become complex with the opening up of the power sector, providing for open access under the Act. Huge merchant capacity has lined up whose buyers are yet not identified. The low transmission charges for the short-term open access do not induce these generators to commit long-term use of the networks. This may not only lead to congestion and higher losses in the existing transmission network but may also add considerable uncertainty in transmission capacity expansion whereas transmission system augmentation would be necessary to take into account these capacities. It is necessary to ensure that the transmission licensee recovers its transmission charges and at the same time long-term customers do not get burdened unnecessarily. Therefore, in the long run the transmission charges for the short-term customers and long-term customers have to converge. Further, the proposed transmission charges are about 50 % of the existing average transmission charges of the inter-State transmission system on all India basis and still a small fraction of the traded prices in open access (bilateral or at power exchange) and in unscheduled interchange charges. In view of this, we have retained the proposed amendment.

Amendment of Regulation 17

90. After clause (4) of regulation 17 of the 2008 regulations, new clauses (5) and (6) were proposed for insertion, as under:

“(5) An additional fee equal to the operating charges specified under clause (1) shall be payable for each revision in schedule sought under regulation 14A”

(6) The fee for revision of schedule shall be deposited within 3 (three) days of the day on which revision was sought.”

91. It has been suggested by MPPTCL that the insertion of clauses (5) and (6) would have implication of additional fees on account of revision of schedule payable to the nodal agency. However, in order to bring schedules to a realistic level, regulation 25B provides for schedules to be realistic and the opportunities for revision of schedule were proposed in the draft amendment regulations. It was submitted that the proposed amendment of regulation 17 be reviewed. It was suggested by TPTCL that these clauses were not required as they would increase the already very high open access charges being paid by applicants on multiple counts and would also increase the paper work/ logistics and reconciliation issues. According to Spice Energy, in case of revision of schedule no fees should be charged since otherwise, the proposal would increase the trading cost. To boost the trading of power, the charges should be minimum. In case of normal long-term transactions between the generating company and the licensee, no additional fees should be charged for revision of schedule. It was been pointed out by NRLDC that these clauses should become ineffective if the proposal for deleting Regulation 14A is accepted.

92. The aforesaid proposed clauses (5) and (6) of regulation 17 provided for levy of operating charges in terms of the new proposed regulation 14A. Since the Commission has decided not to give effect to the proposed regulation 14A, the proposed clauses (5) and (6) have been dropped.

Substitution of clause (6) of Regulation 20

93. Clause (6) of regulation 20 of the 2008 regulations provided as under:

“(6) In an interconnection (integrated A.C. grid), since MW deviations from schedule of an entity are met from the entire grid, and the local utility is not solely responsible for absorbing these deviations, restrictions regarding magnitude of deviations (except on account of over-stressing of concerned transmission or distribution system), and charges other than those applicable in accordance with these regulation (such as standby charges, grid support charges, parallel operation charges) shall not be imposed by the State Utilities on the customers of inter-State open access.”

94. In the draft amendment regulations clause (6) of regulation 20 was proposed to be substituted as under:

“(6) No charges, other than those specified under regulation 16 and regulation 17 shall be payable by any person granted open access under these regulations.”

95. TPTCL commented in the favour of the proposal as it was very specific and would deter different agencies involved from levying ad-hoc charges on various grounds. It was suggested by WBERC, WBSETCL and WBSSEDCL that after the word "regulations" the words "for the use of inter-State transmission asset only" should be inserted. However, according to them, for the use of State network, the charges be payable as per the regulations of the State Commission.

NRLDC suggested that in order to have clarity on the issue the clause be modified as below:

“(6) Charges, other than those specified under regulation 16 and regulation 17 (such as standby charges, grid support charges, parallel operation charges) shall not be imposed by the State Utilities on the customers of inter-State open access.”

96. We considered the suggestions received. We are of the view that the intention required to be conveyed has been adequately conveyed in the proposed amendment regulations. No further change is required. Accordingly, the proposed amendment has been notified with some editorial changes.

Substitution of clauses (2), (3) and (5) of Regulation 25

97. The proposed draft amendment did not provide for amendment of regulation 25, dealing with sharing of transmission charges collected from open access customers amongst long-term customers. The 2008 regulations provide for the collection and disbursement of the transmission and operating charges in the following manner:

“25. (1) The transmission charges and the operating charges payable by the persons allowed open access shall be collected and disbursed by the nodal agency, except for transmission charges for State network and operating charges for State Load Despatch Centre in the case of the collective transaction.

(2) The transmission charges collected for use of the transmission system other than the State network for a bilateral transaction in accordance with these regulations, shall be utilized for reduction in monthly transmission charges payable by long-term customers of the region concerned in the following manner after allowing 25% of the transmission charges to be retained by the Central Transmission Utility.

(a) In case of intra-regional bilateral transaction: 75% of the transmission charges to the region concerned.

(b) In case of bilateral transaction between adjacent regions: 37.5% of the transmission charges for each region.

(c) In case of bilateral transaction through one or more intervening regions: 25% of the transmission charges for each of importing and exporting each region and remaining 25% of the transmission charges to be allocated equally among intervening regions.

(3) The transmission charges collected for use of the transmission system other than the State network for a collective transaction shall be disbursed in the following manner, namely-

(a) 25% of the transmission charges payable for each point of injection and each point of drawal shall be retained by the Central Transmission Utility

(b) 75% of the transmission charges payable for each point of injection and each point of drawal shall be used for reduction in transmission charges payable by long-term customers of the region in which point of injection or point of drawal, as the case may be, is situated.

(4) The transmission charges for use of State network shall be disbursed to the State Transmission Utility concerned.

(5) In case a State utility is the open access customer, the operating charges and the transmission charges to be collected by the nodal agency shall not include the charges for the State network and operating charges for the State Load Despatch Centre.”

98. The Commission had, while finalizing the terms and conditions of tariff for the years 2009-2014, decided that 75% of the transmission charges collected from the open access customers (from bilateral transactions and collective transactions), for use of the transmission system other than the State network should be directly disbursed among the long-term customers instead of utilizing those charges for reducing monthly transmission charges. In line with the above decision, it has become necessary to carry out modification in the existing

provisions. Accordingly, regulation 25 of the 2008 regulations have been finalised and notified, as under: :

“Collection and Disbursement of Transmission Charges and Operating Charges 25. (1) The transmission charges and the operating charges payable by the persons allowed short-term open access shall be collected and disbursed by the nodal agency, except for transmission charges for State network and operating charges for State Load Despatch Centre in the case of the collective transaction.

(2) The transmission charges collected by the nodal agency for use of the transmission system other than State network, for a bilateral transaction shall be directly disbursed to the long-term customers after disbursing 25% of such transmission charges to the Central Transmission Utility in the following manner -

(a) In case of intra-regional bilateral transaction: 75% of the transmission charges to the region concerned.

(b) In case of bilateral transaction between adjacent regions: 37.5% of the transmission charges for each region.

(c) In case of bilateral transaction through one or more intervening regions: 25% of the transmission charges for each of importing and exporting each region and remaining 25% of the transmission charges to be allocated equally among all intervening regions.

(3) The transmission charges collected for use of the transmission system other than State network for a collective transaction for each point of injection and each point of drawal shall be disbursed by the nodal agency in the following manner, namely-

(a) Central Transmission Utility: 25%

(b) Long-term customers of the region of point of injection or drawal, as the case may be, is situate: 75%

(4) The transmission charges shall be disbursed to the long-term customers in proportion to the monthly transmission charges payable by them.

(5) The transmission charges for use of State network shall be disbursed to the State Transmission Utility concerned.

(6) In case an intra-State entity is the short-term customer, the operating charges and the transmission charges collected by the nodal agency shall

not include the charges for use of the State network and operating charges for the State Load Despatch Centre.”

99 While doing so, clause (6) of the amended version corresponding to clause (5) of the 2008 regulations had been inadvertently modified by substitution of the phrase “In case a State utility is the open access customer” by “in case an intra-State entity is the short-term customer”. A corrigendum to rectify the above inadvertent error has been separately issued.

Insertion of New Regulation 25A

100. In the proposed regulation after regulation 25 of the 2008 regulations, new regulations 25A was proposed to be inserted as under:

Regulation 25A

“When Open Access Be Not Granted

25A. The National Load Despatch Centre or a Regional Load Despatch Centre, as the case may be, shall not grant open access for sale of electricity from entities and associates of such entities, defaulting in payment of Unscheduled Interchange charges, transmission charges, reactive energy charges, congestion charges and fee and charges for National Load Despatch Centre or Regional Load Despatch Centre including the Unified Load Despatch and Communication Schemes, when so advised by the Commission,.”

101. It was pointed out by MPPTCL that in the State of MP, the peak demand varied from 6500 MW in winter to 3000 MW during rainy season and the deficit during rabi season was met through bilateral purchase, limited overdrawal and by way of load-shedding. The liability on account of UI payment was to be liquidated within the prescribed timeline and in case of delay, interest of 15% as prescribed under the regulations was applicable. Under such circumstances, according to MPPTCL, it would be unfair and inequitable to impose any such restrictions on

granting of open access by RLDC or SLDC. Denial of open access to defaulting utilities could also deprive them of possibility of squaring of their liabilities by selling surplus power during slack season. It was therefore suggested that proposal to insert regulation 25A be dropped.

102. It was suggested by PTC that the direction that NLDC or RLDC should not grant open access for sale of electricity from entities and associates of such entity defaulting in payment of various charges, may act as a barrier for growth of power market. Trading licensees had hardly any control over the system; thus, they could not be barred from dealing with entities defaulting in payment. This would not only have a negative impact on development of power market but also create contractual disputes in cases of on-going contracts. For addressing payment default the Commission should explore other options. NTPC suggested that since these regulations pertained to open access related transactions, the proposed clause may be reworded to limit the scope of denial to payment defaults of charges for open access only. It had been suggested by Chhatisgarh SERC that a provision be incorporated for SLDCs for refusal to grant open access to intra-State entities as:

“The SLDC while processing the application of open access for concurrence or “no objection” or standing clearance, as the case may be, shall not grant open access for sale or purchase of electricity from entities and associates of entities, which have defaulted in payment of UI charges, transmission charges, reactive energy charges, fees and charges for SLDC, charges of State Discom (if any) and because of objections raised by the Discom”.

103. JSWPTCL viewed the proposal as progressive step by the Commission.

104. Regulation 25A was proposed to be introduced to debar, on specific direction of the Commission, open access to such entity(ies), in default of UI charges, RLDC charges etc..

105. In our opinion, the transmission system of a region is an integrated system and non-payment of any of these charges would effect the operation of the entire transmission system and may lead to collapse of commercial arrangements. As such, non-payment of any charge relating to transmission system needs to be discouraged. Therefore, we have not accepted the argument of MPPTCL. The services availed of have to be paid for. We are also not inclined to accept the PTC's argument that such denial of open access in the event of payment default shall act as a barrier for market development. Whereas we appreciate the concern of the Chhattisgarh SERC for extending such power of denial of open access by SLDC in granting concurrence, no-objection or standing clearance but would like to impress that in case of such payment default by any of the regional/ intra-state entity of relevant charges to STU and SLDC etc., such agencies may approach the Commission if deemed necessary. Accordingly, we have retained the proposed insertion of clause 25A.

Insertion of New Regulation 25B

106. Regulation 25B was proposed to be inserted as under:

“Monitoring

25B. (1) The quantum of power to be scheduled shall be declared according to the best assessment.

(2) Misuse of the transmission corridor booked for open access or repeated non-utilization of opportunities available to revise the schedules to bring them at realistic level or any other deliberate attempt to generate over or under the schedules for undue financial gains shall be considered as gaming which may disqualify a person for seeking open access in future under the directions of the Commission.

(3) The Regional Load Despatch Centre in case of regional entity and the State Load Despatch Centre in case of intra-State entity shall monitor any deviations from the schedules to verify the possibility of gaming by any person and on suspecting any gaming it shall report to the Commission.

(4) The Commission may after consideration of the report may pass such order as considered appropriate.”

107. The aforesaid proposed regulation 25B was provided to keep a check on gaming consequent to the proposed insertion of regulation 14A providing for daily revision of schedules. Since the Commission has decided not to effect the new regulation 14A, the aforesaid proposed Regulation 25B has also been dropped.

Substitution of regulation 26

108. Regulation 26 of the 2008 regulations provided that unless a dispute involved the State Load Despatch Centre and the intra-State entities of the concerned State and was within the jurisdiction of the State Commission, all disputes arising under these regulations be decided by the Commission based on an application made by the person aggrieved. In the draft amendment regulations regulation 26 was proposed as under:

“Redressal Mechanism

26. All disputes arising under these regulations shall be decided by the Commission based on an application made by the person aggrieved.”

109. It was suggested by RRVPNL that the disputes involving SLDC and the intra-State entities of a State were within the jurisdiction of the State Commission and therefore, may be resolved by respective State Commission, who should be otherwise guided by the Commission's regulations. It proposed that Regulation 26 may not be amended. It was suggested by WBERC, WBSETCL and WBSEDCL that the proposed regulation was inconsistent with the Act as the dispute arising on account of usage of intra-State transmission network under inter-State transmission should be redressed by the State Commissions only since those will be guided by clause (2) of sub-section 32 of Act. Moreover, as per sections 39 and 40 of Act for intra-State transmission or STU related activity the regulatory jurisdiction specifically lies with the State Commission.

110. We have considered the comments made. We are aware of the jurisdiction vested in the Commission in terms of the Act. Accordingly, the disputes relating to inter-State transmission of electricity will be adjudicated by the Commission, in accordance with the jurisdiction vested under the law. Accordingly, the amendment has been notified.

Insertion of new Regulation 27A

111. In the draft amendment regulations a new regulation 27A was proposed to be inserted as under:

“ 27A. Each State Load Despatch Centre, shall within 60 days of coming into force of these regulations, develop its website and post the following information on separate web-page titled “information on Inter-State Open Access”:

(a) List of bilateral transactions for which concurrence has been granted and list of entities to whom concurrence or “no objection” or standing clearance, as the case may be, has been granted up to the day of each month in which transactions are scheduled, indicating:

- (i) Name of customer;
- (ii) Period of concurrence or “no objection” or standing clearance, as the case may be, (start date and end date);
- (iii) Point or points of injection and drawal, and
- (iv) Accepted schedule (MW).

Note

The status report shall be updated daily.

(b) Average transmission losses for the State network for the immediately preceding 52 weeks;

(c) Applicable transmission charges and transmission losses for the State network;

(d) List of applications where concurrence or “no objection” or standing clearance, as the case may be, was not granted, along with reasons for refusal, to be displayed till one month after the scheduling period given in the application; and

(e) A list of applications pending for decision.”

112. It was pointed out by RRVPNL that in terms of clause ‘e’ of the proposed regulation 27A, SLDC was to upload the “List of application pending for decision”. The time allowed for giving concurrence was 3 or 7 working days only and the information would automatically be categorized in concurrence or non-concurrence under clause (a) or (c). RRVPNL therefore proposed that clause (e) of the proposed regulation 27A may be deleted.

113. It was suggested by WBERC, WBSETCL and WBSEDCL that the proposal related to publishing of certain information on the website by SLDCs. However, as a matter of principle since SLDC was not under the jurisdiction of this Commission, such a regulation is not applicable on any State Commission. In this context, it is requested that on getting a copy of such information those may be hosted on the website of RLDC. A view has been expressed by Shri. V. S. Ailawadi, that this new provision will have more salutary effect in creating confidence in effective regulation if the Commission also seeks or lays down some kind of reporting system to review the progress, pendency and decisions taken by Load Despatch Centers on applications for granting open access. In this regard he suggested, the international practices may be considered for being enforced by the Commission.

114. It was suggested by NRLDC that the title might read only 'Information System' and the term Regional Load Despatch Centre and State Load Despatch Centre be removed. It was suggested by NVVN that SLDCs should post Available Transmission Capability (ATC) of their system on their website and update it.

115. We have considered the suggestions of the stakeholders. The amendment of the regulation was proposed to bring transparency and ensure availability of information regarding State transmission charges and State transmission losses to facilitate open access in inter-State transmission. The provision is similar to that applicable in case of NLDC and RLDC. SLDC as an apex body for the intra-State transmission should not preclude itself from divulging relevant information

designed to facilitate the objective of the Act. Therefore, we have retained the proposed Regulation 27A.

Sd/= [V.S.Verma] Member	Sd/= [S. Jayaraman] Member	Sd/= [R. Krishnamoorthy] Member	Sd/= [Dr. Pramod Deo] Chairperson
--	--	--	--

New Delhi, dated the 1st July 2009

Annexure

- 1 Andhra Power Co-ordination Committee
- 2 BSES
Chhattisgarh State Power Transmission Company Ltd
- 3 (Chhattisgarh SPTCL)
Chhattisgarh State Electricity Regulatory Commission
- 4 (Chhattisgarh SERC)
- 5 Himachal Small Hydro Power Association
- 6 Indian Energy Exchange (IEX)
- 7 Madhya Pradesh Power Trading Company Ltd (MPPTCL)
- 8 Power Exchange of India Limited (PXIL)
- 9 PGCIL
- 10 Punjab State Electricity Board (PSEB)
- 11 PTC India Limited (PTC)
- 12 Himachal Small Hydro Power Association
- 13 RVPN, Advisor(LD)
- 14 Spice Energy Pvt.Ltd.
- 15 Tata Power
- 16 Tata Power Trading Company Limited (TPTCL)
West Bengal State Electricity Transmission Company Ltd.
- 17 (WBSETCL)
- 18 West Bengal Electricity Regulatory Commission (WBSERC)
West Bengal State Electricity Distribution Company Ltd
- 19 (WBSEDCL)
- 20 Rajasthan Rajya Vidyut Prasaran Nigam Ltd
- 21 Himachal Pradesh State Electricity Board (HPSEB)
- 22 JSW Power
- 23 NTPC VVNL
- 24 NTPC Ltd
- 25 OPTCL
- 26 Reliance Energy
- 27 Shri V.S. Ailawadi