Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
World Trade Centre, Centre No.1, 13th Floor, Cuffe Parade, Mumbai 400005
Tel. 022 22163964/65/69 Fax 22163976
Email: mercindia@merc.gov.in
Website: www.merc.gov.in

Case No. 6 of 2020

Case of Hindustan Petroleum Corporation Limited highlighting certain issues in respect of MERC (Distribution Open Access) (First Amendment) Regulations, 2019 and suggesting changes thereof

Coram

I. M. Bohari, Member
Mukesh Khullar, Member

Hindustan Petroleum Corporation Ltd. .....Petitioner

V/s

Maharashtra State Electricity Distribution Co. Ltd. (MSEDCL) …. Respondent

Adani Electricity Mumbai Ltd. – Distribution Business (AEML-D) ……Respondent

Tata Power Co. Ltd. -Distribution Business (TPC-D) …… Respondent

Appearance:

For the Petitioner : Shri Varun Pathak (Adv.)

For MSEDCL : Shri Ashish Singh (Adv.)

For AEML-D : Shri Abaji Nararkar (Rep.)

For TPC-D : Shri Prashant Kumar (Rep.)

ORDER

Dated: 17 September, 2020

1. Hindustan Petroleum Corporation Ltd. (**HPCL**) has filed a Case on 7 January 2020, under Section 42(2), 61(b), 61(c), 61(d), 61(f), 66, 86(3) of Electricity Act, 2003 (**EA**) highlighting certain issues in respect of the MERC (Distribution Open Access) (First Amendment) Regulations, 2019 (**DOA Amendment Regulations**) and seeking necessary changes thereof.

2. **Petitioner's main prayer is as follows:**

i. To take suitable steps for bringing about the necessary changes in the Open Access Regulations and the open access regime within the State of Maharashtra in light of the issues raised in the present petition; and/or

ii. Pass any other or such further order(s), which this Hon'ble Commission may deem fit and proper in favour of the Petitioner and against the Respondents in the interest of justice.

3. HPCL, in present Petition has raised some issues in respect of DOA Amendment Regulations notified on 8 June 2019. According to HPCL, some of the provisions (particularly those related to Short Term Open Access) introduced through these amended Regulations are restrictive and not in accordance with the provisions of EA. HPCL has raised mainly the following issues:

i. Revision in contract demand;

ii. Incremental Transmission Charges for repeated STOA Transactions;

iii. Mandate of minimum 8 hour duration and minimum 75% scheduling for Day ahead STOA.

4. MSEDCL, TPC-D and AEML-D (Respondents in the matter) filed their respective replies on 15 February, 28 April and 27 April 2020 respectively. In its replies, MSEDCL has pointed out that the DOA Amendment Regulations are already under challenge before the Hon'ble Bombay High Court vide WP/2565/2019 and WP/2594/2019 on various similar issues. Hence, HPCL is free to either join the said Petitioners before the Hon'ble Bombay High Court or file a separate Petition challenging the same. On 13 August 2020, HPCL filed its rejoinder on the replies filed by MSEDCL. All these submissions have been taken on record by Commission for deciding the present Petition.

5. **At the e-hearing held on 14 August 2020:**

5.1 The advocate for HPCL briefly explained the issues raised in the Petition and stated that:

i. The Commission has powers to regulate the electricity sector in the State. The stakeholders can approach the Commission raising their issues /difficulties and the Commission can consider the same for improving the related Regulations.

ii. In the past, MSEDCL, in its Petition in Case No. 8 of 2017 had raised some issues in respect of MERC (Distribution Open Access) Regulations, 2016 (**DOA Regulations 2016**) and the Commission thought it appropriate to initiate the amendment of these Regulations.

iii. Though MSEDCL and TPC-D are objecting the present Petition, it is important to note that AEML-D has supported the Petition.

iv. Although some of the issues in DOA Amendment Regulations are under challenge before the Hon'ble High Court, the Writ Petitions are qua of different jurisdiction. The Hon'ble High Court can quash the Regulations, if found to be

illegal. However, the present proceeding is independent of these Writ Petitions through which HPCL is highlighting certain issues/difficulties in the DOA Amendment Regulations which the Commission may consider for improvement purpose.

5.2 The Advocate for MSEDCL re-iterated the submissions as made out in its replies.

5.3 Representative of TPC-D and AEML-D stated that they have already filed their respective replies and same may be considered by the Commission while deciding the Petition.

6. After taking on record the submissions (both written and oral) made by the Parties, the Commission now deals with the issues as under:

7. **Issue 1:- Revision in contract demand**

HPCL's submission

7.1 The Hon'ble Supreme Court of India in the matter of PTC India Ltd. vs. CERC, 2010 (**PTC Case**), held that Section 66 of the EA confers substantial powers on the Appropriate Commission to develop the relevant market in accordance with the principles of competition, fair participation as well as protection of consumers' interests. The Hon'ble Court further held that both decision making and regulation making functions have been assigned under the EA to the Appropriate Commissions. The Hon'ble Court was of the view that law comes into existence from both regulation and litigation. Between legislative functions and administrative functions lie the regulatory functions. Further, the Hon'ble Court held that a rule or regulation emanates from the exercise of delegated legislative power which is part of the administrative process resembling enactment of law by the legislature whereas a quasi-judicial order comes from adjudication which is also a part of the administrative process resembling a judicial decision by a court of law whereas the power to regulate is an exercise which is different from making of a regulation.

7.2 In light of the above, present Petition has been filed under Sections 42(2), 61(b), 61(c), 61(d), 61(f), 66 and 86 (3) of the EA in order to highlight certain issues with respect to the DOA Amendment Regulations affecting the Open Access (**OA**) consumers within the State of Maharashtra.

7.3 To promote competition and development of the market and also to ensure timely investments in the sector, the Commission should ensure certainty and continuity in implementation of regulatory measures. This is required for promoting investments within the sector which is already plagued with various issues. The Hon'ble Supreme Court of India, in its judgement dated 9 May 2017 in Civil Appeal No. 5040 of 2014 (*Shivashakti Sugars Limited v. Shree Renuka Sugar Limited & Ors*.) held that the Courts should be sensitive to the economic realities of the Country.

7.4 MSEDCL, in its replies, has raised the issue of maintainability of the Petition. However, the present Petition is maintainable in terms of the provisions laid down under the DOA Regulations. Further, the pending Writ Petition Nos. 2565 of 2019 and 2594 of 2019 before the Hon'ble High Court of Bombay are qua of different

jurisdiction and the present proceedings are independent of them. Also, there is no stay to the present Petition, therefore there is no merit in MSEDCL's objections.

7.5 HPCL had filed its objection on the draft Amendment to DOA Regulations and the present Petition is a continuation of the regulatory process under EA.

7.6 Mandate of EA is to promote OA. The entire process of ARR determination is based on allocation of revenue and expenses upon the entire consumer base, hence someone or the other will always pay for certain aspects attributable to the other. The high cost of electricity makes the Indian Industry uncompetitive and the cost of the power gets passed on to consumers of industrial products in the form of high input cost. Thus, high cost of power from OA consumers gets passed on to consumers in some form or other. The arguments of the Distribution Licensees in this regard i.e. passing on burden, are devoid of merit and do not take into consideration the economic reality.

7.7 The mandate of the Commission is to create conditions which help OA consumers and the larger economy and not the Distribution Licensees. Hence, the Commission is requested to consider the issues raised in the Petition and bring suitable changes in the Open Access Regulations.

7.8 The Commission has already determined standby charges on a higher side. Further, the demand charges and additional surcharge also cover the stranded costs of assets and power for the discoms. Also, the mismatch in power procurement and demand of the Distribution Licensees is admittedly due to faulty planning and can be addressed on the basis of past consumption and data. Hence, reduction of contract demand is not warranted as the remedy is worse than the problem itself. This condition has an adverse impact on the economy and makes the industry un-competitive as there are many large consumers for whom electricity is a critical requirement.

7.9 In the event where the consumers are not able to get electricity through OA and fulfil their requirements through their incumbent Distribution Licensee, then their power drawal shall exceed the permissible maximum demand and the penalties shall be imposed in the form of penal demand charges and energy charges above the reduced Contract Demand. The Penal Demand Charges are approximately 1.5 times the normal demand charges. This creates an extra burden over the consumers and discourages procurement under OA. The Commission ought not to restrict the quantum of power to be sourced through OA and may only make it subject to availability of the necessary infrastructure and capacity of the distribution system.

TPC-D's submissions

7.10 The reliefs sought by HPCL cannot be granted at the cost of causing burden on rest of the consumers (consumers who are not on OA or cannot take OA) in the form of additional cost and grid instability.

7.11 Contrary to the submission of HPCL, the strain, if any, is incidentally on the incumbent Distribution Licensee and in turn the non-OA consumers of the Distribution Licensee. As rightly pointed out by the Commission in its Statement of Reasons (**SOR**) dated 3 June, 2019, that while retaining the choice for revision in contract demand with eligible OA consumers, it has the implications for the other non-eligible OA consumers of the

Distribution Licensee, as it affects the power purchase and load-generation planning of the Distribution Licensee. Further, the Commission has encouraged planned revision in contract demand and sourcing of power which would be in the interest of the OA consumers as well as Distribution Licensee, rather than only opportunistic frequent switching between different sources.

7.12 As regards the contention that the demand charges and additional surcharge completely cover the stranding of assets and power for the Distribution Licensees, it is submitted that various Orders of the Commission have established and acknowledged the fact that there is only a partial recovery of fixed costs associated with power procurement by the Distribution Licensees through the demand charges paid for the contract demand maintained by the consumer with the licensee. Hence, HPCL's submission in this regard, is incorrect. In any case, the additional surcharge is not applicable to consumers seeking OA on the network of TPC-D. Therefore, the above contention of HPCL is liable to be disregarded during adjudication of this petition.

7.13 Further, HPCL's contention that mismatch in power procurement and demand of the licensees is due to faulty planning by the Distribution Licensees is incorrect. The Distribution Licensee does a meticulous planning of its power procurement such that there is no mismatch between the demand and the power procured and the consumers are ensured 24x7 power supply. However, it is the consumers exploiting the previous OA Regulations regarding contract demand who caused the Distribution Licensees undue strain as they had to arrange power at short notice or no notice for these consumers who suddenly fell back on the Distribution Licensee for power after intimating that they would be on OA purely from commercial considerations. It not only created a situation of grid instability but increased the cost of power purchase of the Distribution Licensee who had to arrange power at short notice to meet the demand of such consumers.

7.14 The above actions by OA consumers has a direct impact on TPC-D's other consumers (i.e., non-OA consumers) who were made to suffer by increased power purchase cost. In addition, such actions of the OA consumers had a serious impact on the grid security and stability.

7.15 It is pertinent to note that HPCL was an example of such OA consumers who on several occasions in the months of October 2018 (25 days), November 2018 (16 times), December 2018 (7 times) and January 2019 (9 times) did not schedule its OA power on account of unsuccessful/unsatisfactory bids outcome and ended up drawing power from TPC-D with whom it maintained its Contract Demand. Such conduct of the Petitioner needed to be discouraged.

7.16 The Commission recognized how the OA consumers were getting the undue advantages of previous DOA Regulations regarding contract demand and accordingly, amended the same to avoid any future misfeasance by OA consumers.

7.17 Further, going forward, grid discipline has been made more stringent through the MERC (Deviation Settlement Mechanism and Related Matters) Regulations, 2019 and

in addition to increased power purchase cost, there would be liabilities on the Distribution Licensees for deviating from the drawal schedule.

7.18 Accordingly, the Commission, in all fairness, has amended the Regulations to discourage the misuse of the DOA Regulations 2016. Further, the Commission was cognizant of the fact that if such transactions increase and are allowed to continue, this will have a serious impact on the grid security and stability.

7.19 The Commission while issuing the DOA Amendment Regulations, has proceeded on the premise and objective to maintain the grid discipline and grid security as envisaged in the Grid Code through the commercial mechanism for deviation settlement through drawal and injection of electricity by the users of the grid.

AEML-D' submission

7.20 It is submitted that while the Commission has adopted different principles for some of the above issues in the recent Multi Year Tariff (**MYT**) Orders, it calls for certain reliefs to OA consumers in fourth control period. Hence, based on the merits of the issues raised, AEML-D prays that the Commission may grant relief through a judicial Order on the instant Petition, instead of undertaking an exercise for amending the Regulations, which would be time consuming when the issues can be resolved through such an Order.

7.21 Without prejudice to the above and without going into the details of submissions made by HPCL, considering subsequent developments in the Regulatory/Tariff approach adopted by the Commission on these issues, AEML-D has made its submissions.

7.22 Through the DOA Amendment Regulations, the Commission introduced the concept of the Notional Demand where, in case of non-RE based OA consumers, the contract demand of the consumer gets reduced automatically to a level termed as Notional Demand and demand charges at the rate of 125% are applicable for any demand recorded above such Notional Demand. The Notional Demand charge was not proposed under draft but was introduced later, on which the stakeholders did not get opportunity to comment.

7.23 Without prejudice to the above, it is submitted that as per the 2nd proviso of Regulation 4.2 of the DOA Amendment Regulations, a consumer becomes liable to payment of an Incremental Demand charge for recorded demand above Notional Demand. On the contrary if contract demand reduction is opted then it will attract contract demand penalty even if generator is not available for 15 min. The contract demand charges are demand penalty which will be applicable as determined in the MYT Order dated 30 March 2020 passed in Case No. 325 of 2019.

7.24 In this context, it is submitted that the above may be reviewed on the grounds that a regular consumer of the Distribution Licensee (not availing OA) would not have been subjected to the same. Hence, the above differential treatment for consumers not-availing OA, with the consumers availing OA, runs contrary to the non-discriminatory philosophy of Section 42(3) of the EA. Further, even if an OA consumer does not reduce its Contract Demand, it is still subject to Minimum Demand Charges as per the aforesaid Tariff Order.

7.25 In view of the above and considering the fact that adequate safeguards in terms of ensuring minimum fixed charges payment to the Distribution Licensee are already built in the Tariff, the Commission may review the existing provisions of the OA Regulations and make appropriate changes to balance the interests of all stakeholders.

MSEDCL's submission

7.26 Through present Petition, HPCL has sought to challenge the DOA Amendment Regulations. HPCL has tried to camouflage the Petition by filing it under various provisions of the EA but in effect is seeking an amendment to the notified Regulations.

7.27 The DOA Amendment Regulations were notified by the Commission after following the due public consultation process. However, HPCL chose not to participate in the public consultation process and now at a belated stage seeks to file the present Petition which is nothing but an attempt to agitate an already decided issue.

7.28 The "Statement of Reasons" records the suggestions, objections and final consideration of the issues as agitated by HPCL in the present Petition and hence there is no need for another relook at the Petition.

7.29 The DOA Amendment Regulations are already under challenge before the Hon'ble Bombay High Court vide WP/2565/2019 and WP/2594/2019 on various similar issues. Hence, HPCL is free to either join the said Petitioners before the Hon'ble Bombay High Court or file a separate Petition challenging the same.

7.30 It is undeniable that the Commission has unfettered powers, however the provisions under which the present Petition has been filed does not entitle the same for admission as the Commission has no power to review its own Regulations under the provisions invoked in the present Petition. Hence, the Petition ought to be dismissed by the Commission.

7.31 Further, the Commission has taken a view in another matter (Case No. 229 of 2019) filed under identical provisions of the EA wherein the Commission vide its Order dated 31 December 2019 has held as under:

> *" 14. In view of the above, the Commission notes that it would not be fair to have two parallel proceeding on the same issue and no useful purpose would be served by continuing with this proceeding when Hon'ble the Bombay High Court is already seized of the issues raised by Petitioner in the instant Case. The Commission therefore thinks it fit dispose the present Case, with liberty to the Petitioner to approach afresh, if it so desires depending on the outcome of the Writ Petition Nos. 2565 of 2019 and 2594 of 2019."*

7.32 Hence, the Commission is requested to take a similar view in the present matter and direct HPCL to approach the Hon'ble Bombay High Court for redressal of its grievances.

7.33 The past Orders passed by the Commission including the Orders referred to by HPCL prove that the Commission, through the DOA Amendment Regulations, has tried to balance the interest of all stakeholders by curtailing profiteering by OA consumers at the behest of common consumers.

7.34 In view of the above, the Commission is requested to dismiss the present Petition as non-maintainable. MSEDCL is not responding to the issues raised by HPCL in its Petition at this stage and craves leave to rely upon the Statement of Reasons notified by the Commission. However, MSEDCL craves leave of the Commission to file its substantive reply in case need arises or if directed by the Commission.

Commission's Analysis and Ruling

7.35 Although HPCL has not specifically mentioned Regulation Nos. in present Petition, from submissions made by it on aforesaid issue, it seems that it is referring to first proviso to Regulation 3.2 of DOA Amendment Regulations. The said Regulation reads as under:

> *" "3.2 Subject to the provisions of these Regulations, a Consumer having Contract Demand of 1 MVA and above with a Distribution Licensee shall be eligible for Open Access for obtaining supply of electricity from one or more*
>
> *(a) Generating Plants or Stations, including Captive Generating Plants;*
>
> *(b) Trading Licensees*
>
> *(c) Power Exchanges*
>
> *(d) Other Distribution Licensees*
>
> *(e) any other sources,*
>
> *or a combination thereof, and all collectively called 'Sources':*
>
> *Provided further that Partial Open Access Consumer shall be permitted to avail Open Access for the capacity not exceeding its existing Contract Demand with the Distribution Licensee on the date of application,……"*

7.36 The Commission has given its rational for the aforesaid amendment in its Explanatory Memorandum. The relevant part of the Explanatory Memorandum is reproduced below:

> *" 6.4.Linking eligible Open Access capacity to Contract Demand (Issue b):*
>
> *6.4.1. Various instances have been observed where the Open Access consumer seeks Open Access capacity much higher than the contracted capacity leading to curtailment of OA capacity by Utilities to avoid issue of Resultant power flow. Several disputes have come to the Commission regarding this matter. …….*
>
> *6.5.Analysis and Observations*
>
> *6.5.1. In order to understand the actual trends of OA utilisation vis-à-vis the maximum recorded demand and the CD with the respective DISCOMs of the OA consumers, the Commission has sought the said transactions from all the distribution licensees. Upon analysis of the submitted data, there are plenty of cases of resultant power flow cases observed with all the distribution licensees.*
>
> *6.5.2. Hence, in view of the foregoing facts and analysis, the revision is necessary to address the technical difficulties arising in several cases (particularly, for Renewable Energy Open Access wheeling transactions) that came before the*

Commission in recent past. Capacity for OA will have to be guided by transmission/distribution network capacity from Injection Point to Drawl Point.

6.5.3. Further, Capacity at Injection Point, if more than the capacity at Drawal Point it reflects that, the network capacity will have to be augmented in order to accommodate such flows. In no case, Consumer can draw more than its Contract Demand such that it is detrimental to safe grid/distribution system operations. This flexibility of higher capacity at Injection End (& hence Open Access capacity) leads to banking of surplus power into grid for utilization at drawal end in future. This poses additional risk/complexities for Load Generation Balance/Power procurement planning by DISCOM. The regulation does not intend that an excessive capacity should be built by consumer over and above its contract demand so as to use banking facility to adjust over generation due to over-sized generation plant against the total contract demand with the Distribution Licensee. Hence, the Commission has decided to make suitable revisions in the existing provisions under the Distribution OA Regulations."

7.37 Accordingly, the draft DOA Amendment Regulations proposed that Partial OA consumers shall be permitted to avail OA for the capacity not exceeding its existing Contract Demand. Few objections were received on the draft Regulations. HPCL, too, had submitted its objection on this issue. However, the Commission addressed these objections in the Statement of Reason (SOR) as under:

" In the draft Regulations, it was proposed to limit the eligible OA capacity to the contracted demand to address the issues arising due to technical considerations, several cases of operationalising resultant power flow aspects and associated technical issues, implications on power purchase and load-generation planning for utility while enabling consumer choice for open access. Capacity of OA will have to be guided by the available transmission/distribution network capacity from injection point to drawl point. Commission is of the view that for conventional OA consumers, there is no case made out for banking and the capacity of the injection source could very well be limited to the capacity requirement at the drawl end without adversely affecting the economics of the transactions. Further, since the PLF/CUF for such sources are relatively higher as against that of non-firm RE generating sources, energy requirement of the consumer can fairly be met even though the OA capacity is limited to the contracted capacity in case of conventional open access transactions."

7.38 In light of the above observations, the Commission did not consider any need to amend the above Regulation for firm OA transaction although appropriate revision has been for RE based OA transactions. In light of the above, the Commission is of the view that there is no need to take a different view on this Regulation which has been finalized after following a due public consultation process which includes considered view on HPCL objection on this issue.

7.39 Further, as per HPCL, the amendment in the provision qua reduction in contract demand for non-RE based OA puts strain on the OA consumers by making OA power onerous leads to curbing of competition. HPCL is referring to the amendment in

Regulation 4.2. As per the draft published for amendment, it was mandated that the OA Applicant shall reduce the contract demand to the extent of quantum of electricity sought to be transferred through OA.

7.40 Various objections were received on this Regulation including the objection from HPCL and accordingly the Commission deemed it appropriate to decide that OA consumers will continue to have the choice for reducing or retaining the contract demand subject to provisions as per Supply Code and Standard of Performance Regulations. However, the Commission observed that while retaining the choice for revision in contract demand with eligible OA consumers, it had the implications for the other non-OA consumers of the Utility, as it affects the power purchase and load-generation planning of the Distribution Licensee.

7.41 The Commission further observes that the revenue recovery through Demand Charges was only around 16%-18% of total revenue of distribution licensee whereas fixed cost constitute around 55%-60% of the ARR of the Utility and hence if consumer chooses to maintain contract demand with Distribution Licensee, it will have to bear some part of power purchase cost which cannot be passed on to non-OA consumers. In light of the above, the Regulation 4.2 has been amended to specify that for non-RE based STOA, MTOA and LTOA, who do not opt for reduction in Contract Demand, the demand charges at approved demand charge rate shall be applicable for recorded demand upto Notional Contract Demand and Incremental Demand Charges at the rate of 1.25 times the approved demand charge rate shall be applicable for demand beyond Notional Contract Demand. Thus, HPCL's objection on the reduction of contract demand has already been addressed in the SOR appropriately.

7.42 HPCL, in the present Petition, has stated that the demand charges and additional surcharge cover the stranding of assets and power for the discoms. Hence, reduction of contract demand is not warranted. The Commission does not agree with this contention because it is a matter of fact that the demand charges do not cover the fixed charge requirement of the Distribution Licensee. This fact has also been recorded in the SOR for DOA Amendment Regulations as mentioned in para. 7.41 of this Order.

7.43 HPCL has further stated that the Commission should ensure certainty and continuity in implementation of regulatory measures to promote competition and development of the market and also to ensure timely investments in the sector. While such argument is appealing, at the same time, it cannot be denied that the Regulations need to be flexible enough to adapt to the changing scenarios and developments taking place in the sector, apart from correcting any anomaly that gets manifested.

7.44 AEML-D, in support of HPCL's prayers, has stated that the incremental demand charges and additional liability towards contract demand penalty on account of reduction in contract demand should be reviewed as non-OA consumers are not subjected to such conditions and hence there is a differential treatment for OA consumers vis-à-vis non-OA consumers. On this contention, the Commission is of the view that there exists a choice for OA consumers (which is not available to non-OA consumers) to avail a different source for its power requirement and this condition has been stipulated to ensure that while exercising its freedom to get electricity from

another source, the impact on load generation balancing and the impact of power purchase costs of the Distribution Licensee is minimized. Hence, the Commission does not find any merit in AEML-D's aforesaid submission.

8. **Issue 2:- Incremental Transmission Charges for repeated Short Term Open Access Transactions**

HPCL's submission

8.1 Instead of disincentivizing the Short Term Open Access (**STOA)** transactions under the OA Regulations, the Commission may incentivize Medium Term Open Access (**MTOA**) and Long Terms Open Access (**LTOA**) transactions. Also, the Commission may appreciate that the energy exchanges have not developed an appropriate MTOA and LTOA market and there is still a long way to go for the development of trading at the MTOA and LTOA level. Incentivization shall be one of the enablers to develop such a market. To penalize STOA transactions this way, hampers OA and the same may be reconsidered by the Commission.

8.2 The issue of continued roll over of STOA transactions was raised by MSEDCL in Case No. 8 of 2017 and Case No. 98 of 2017 that certain OA consumers, despite having a Medium Term/Long Term requirement, do repeated STOA transactions for availing the benefit of lower STOA charges denominated in per unit energy terms. While disposing of these cases, the Commission observed that considering the intent and purpose of the provisions for different OA durations, it was worth revisiting them in terms of introducing some limitations, or for transition of STOA to MTOA after some consecutive periods.

8.3 In view of the above, the Commission proposed to increase transmission charges by 1.25, 1.5 and 2.0 times respectively for every 2nd, 3rd and 4th STOA transaction during financial year. These changes have been duly incorporated under the DOA Amendment Regulations.

8.4 The basis for including the enhanced charges is irrational and arbitrary. The transmission charges for STOA are determined in accordance with the MYT Regulations of the Commission. The formula provided for determination of STOA charges considers ratio of total input energy or available energy and total ARR of the STU. The basis for the Commission to make the changes in the OA Regulations is incorrect as the Commission had determined transmission charges for STOA in its Order for 3rd MYT Control Period (FY 2016-17 to FY 2019-20) as under:

Table 10: Transmission Tariff for FY 2016-17 to FY 2019-20 considering TTSC

TSU - Distribution Licensees	Units	FY 2016-17	FY 2017-18	FY 2018-19	FY 2019-20
		Approved in this Order	Approved in this Order	Approved in this Order	Approved in this Order
TTSC (approved)	Rs. Crore	4,596.26	5,805.51	6,519.27	6,599.91
Base TCR (approved)	MW	18,757	20,168	21,404	22,719
Transmission Tariff (long term/ medium term)	Rs./kW/ month	**204.24**	**239.88**	**253.82**	**242.08**
Transmission Tariff (short term/ short term collective/ renewable energy)	Rs./kWh	**0.28**	**0.32**	**0.34**	**0.32**

8.5 For arriving at STOA charges, the Commission had considered energy available for MSEDCL which is extracted below from MYT Order of MSEDCL:

Table 5-43: Surplus Energy Availability in3rdControl Period, as estimated by Commission

Particulars	Units	FY 2016-17	FY 2017-18	FY 2018-19	FY 2019-20
Energy Available	MU	140,985	166,090	168,768	171,683
Energy Procured	MU	115,380	119,533	124,116	129,101
Surplus Energy/Backed Down	MU	25,605	46,558	44,653	42,582

8.6 Now while claiming issues with regard to transmission charges, MSEDCL had represented following data in its Case No. 98 of 2017.

f) Following Charges are payable by the Long Term consumers and STOA consumers as per the MSEDCL MYT Order No. 48 dated 3 November, 2016 and MSETCL MYT Tariff Order dated 22nd July, 2016 as under for the control period:

Particulars	Units	2016-17	2017-18	2018-19	2019-20
Sales of MSEDCL approved in the Order	MUs	91,733	96,701	102,076	107,890
Intra State Transmission Charges	Rs. Crore	4,611	5,824	6,539	6,619
Transmission Charges (For MSEDCL consumers)	Rs. kWh	0.50	0.60	0.64	0.61
Transmission Tariff (short term/ short term	Rs./kWh	0.28	0.32	0.34	0.32

8.7 From the above tables, it can be inferred that while calculating transmission charges for MSEDCL consumers, MSEDCL is considering 'Energy Sales' (107 BUs) instead of 'Energy Available' (~172 BU). The logic behind considering 'available energy' is that the transmission capacity is being designed considering 'input energy' rather than 'output energy'. If MSEDCL had utilized its total available energy, there would have been be no difference between charges paid by MSEDCL consumers and STOA consumers. Therefore, the data shown by MSEDCL that it had incurred losses on

account of roll over of STOA transactions is misplaced and therefore proposal to increase charges for STOA consumers was based on a wrong premise.

8.8 While dealing with the issue raised by MSEDCL regarding roll over of STOA transactions in Case No. 8 of 2017, the Commission had recognized the risk exposure in case consumer opts for the STOA transaction. Para 8.6 of the Order in Case No. 8 of 2017 is extracted below for ready reference:

> *"8.6 Thus, Open Access applicants can apply for STOA, MTOA or LTOA as per their requirement or choice. STOA being the last priority in scheduling, the STOA applicant has to face the risk of being rejected, by which time it would be too late to apply for a longer period instead. LTOA and MTOA consumers avail power through Open Access after securing the Transmission or Distribution Capacity Rights, whereas that is not the case with STOA. Moreover, STOA enables utilization of spare capacity in the system, which is an added advantage to the Licensees in terms of the STOA Charges."*

8.9 Further, the major difference between STOA and MTOA/LTOA transaction is that the former has no reservation and could be denied anytime if capacity is not available after serving MTOA/LTOA transaction. On the other hand, MTOA/LTOA transactions have prior reservation and which makes these transactions almost risk free. Further, the restrictive conditions under the OA Regulations for uniform energy drawal and restriction in variation of drawal to 25% of maximum schedule which further enhances the risk associated with the STOA transactions. In general parlance of economics, it is established practice that if there is a higher risk in a transaction then the reward would also be higher. The STOA consumers are taking this informed risk and comparing these transactions with MTOA or LTOA is illogical. Further, as observed by the Commission in above mentioned case, STOA transaction leads to better utilization of spare capacity in the system and thereby improves overall efficiency of the system. Also, STOA transactions are scheduled transaction unlike large consumers of Distribution Licensees which are not liable for providing schedule. Rather than incentivizing STOA transactions for improving efficiency of the system, the DOA Amendment Regulations penalize them. This is arbitrary as STOA transactions are being made onerous compared to taking power from the discoms. In view of the above, since STOA transactions bears very high risk and also improve transmission capacity utilization, these transactions should not be discouraged by levying increased transmission charges.

TPC-D's submission

8.10 The amendment in the Regulations is quite the contrary of being arbitrary and irrational. In fact, the intent of the said amendment is to ensure that OA consumers do not exploit the letter and spirit of the Regulations just to evade certain charges.

8.11 The DOA Regulations provides for three forms of Open Access, namely LTOA, MTOA an STOA. These are distinguished on the basis of duration of use of a transmission or distribution system for an OA transaction. Ideally, when a consumer seeks supply of power under OA, the form of OA applied for (i.e. whether LTOA,

MTOA and/ or STOA) ought to be aligned with the duration for which the consumer wishes to be under OA.

8.12 Repeated and continuous requirement of OA should be addressed through proper strengthening of the transmission system so that such permanent power flows are always accommodated. Else, the margins available for meeting grid exigencies gets curtailed and may put the grid operations at risk. Hence, it becomes very important to re-classify such repeated and continuous power flow as medium term or long term power flow so that transmission planning studies factor in such demand.

8.13 The primary intent of the Petitioner to seek continuous STOA is the lower charges as compared to LTOA or MTOA charges. As per the DOA Regulations 2016 read with the MERC (Multi Year Tariff Regulations), 2015, for supply/ consumption of power under STOA, the OA consumers would generally have to pay lesser transmission charges on the basis of energy drawn, as compared to that for supply/ consumption under MTOA which becomes payable on the transmission capacity booked for the OA transaction. Being aware of the said comparative advantage in transmission charges for transactions undertaken under STOA as compared to MTOA, consumers were deliberately seeking continuous STOA for transactions that would otherwise fall under MTOA / LTOA. Even when consumers had entered into power procurement arrangements equivalent to terms applicable for seeking MTOA or LTOA, they were applying for consecutive STOA to receive such supply of power instead of applying for MTOA or LTOA. Resultantly, the consumers are paying significantly less transmission charges than that applicable for a comparative MTOA or LTOA transaction wherein the transmission charges would have been payable based on the capacity contracted for.

8.14 The Petitioner has also been seeking STOA from TPC-D since November 2015, while the power purchase arrangement with its source generator was for more than one month thereby making it a medium-term power purchase arrangement. Despite that, the Petitioner has sought repeated STOA solely for the purpose of making commercial gains in as much as lower transmission charges. The Petitioner, till date, continues to seek repeated STOA even though its requirement is evidently that of a MTOA.

8.15 In light of the above, the Commission has rightly amended the Regulations to make available STOA charges only to genuine short-term users and to prevent commercial exploitation of the OA Regulations. Therefore, the Commission is requested to dismiss the prayer of the Petitioner.

8.16 Further, it is the contention of the Petitioner that the STOA Applicants run the risk of being rejected, being the last on priority in scheduling. On the other hand, MTOA/LTOA transactions have prior reservation which makes their transactions almost risk free. Therefore, the Commission instead of incentivizing the STOA consumers for improving the efficiency of the system, is penalizing them.

8.17 In this context, it is submitted that in a State where currently there is no transmission constraint, the question of high risk or any risk for that matter, is out of question. The Petitioner is aware of the fact based on its past experience, that it runs no risk of curtailment of power. As per TPC-D's records, there has never been any curtailment of

power for HPCL and it is evident from the Petitioner's submissions that it is making these futile contentions only for the purpose of seeking some commercial gain. The Petitioner's above contention is liable to rejected.

8.18 Furthermore, it is submitted that the design of the STOA charges is such that they continue to incentivize genuine short-term users and the charges only increase for continued STOA which ideally should have been MTOA / LTOA.

8.19 While it is agreed that short term users increase the efficiency of the grid by utilizing the spare capacity, it is pertinent to note that basically the spare capacity arises out of capacity created for MTOA and LTOA. If all entities start thinking in the direction of the Petitioner for commercial gains, there would be a serious issue with respect to grid design and stability.

8.20 Hence, it is imperative that the right charges are paid by all entities. Therefore, in view of the above, the contention of the Petitioner is liable to be disregarded and dismissed.

AEML-D's submission

8.21 In earlier InSTS Transmission Tariff Orders, the Commission used to derive the Transmission charges applicable to STOA from the monthly Transmission charges in terms of Rs/kW/Month, without giving any effect of the Load factor. Hence all the Long / Medium term users, including Distribution Licensees, were paying higher Transmission charges; whereas STOA Consumers were paying less (For example for FY 19-20 Transmission charges for AEML-D was ~ Rs. 0.42 /kWh, whereas for STOA, it was derived as Rs 0.29/kWh).

8.22 To address this anomaly now, the Commission has changed the methodology in the InSTS Transmission Tariff Order dated 30 March 2020, passed in Case No. 327 of 2019, issued for the MYT Fourth Control period, and the STOA charges are now determined on the basis of the energy transfer projected/ estimated. Hence, the charges for STOA now work out to be similar to LTOA/MTOA. This takes away the inherent incentive in opting for repeated STOA, that the OA consumers earlier had, instead of opting for LTOA / MTOA.

8.23 The Commission has adopted the recorded demand based on the Transmission pricing framework for InSTS of Maharashtra, wherein the pricing of Transmission capacity and addition of Transmission capacity is linked to the Base Transmission Capacity Right (TCR), where base TCR includes power procurement from LT/MT/ST sources, and hence there is no discrimination for Short Term transactions from planning and pricing perspective under Transmission pricing framework and the same philosophy needs to be adopted while deciding charges for the STOA transactions undertaken by OA Consumers.

8.24 Further, STOA transactions have least priority in terms of allotment of capacity (Regulation 13) and in case of constraints, the STOA transactions of OA Consumers are curtailed first (Regulation 29) as per the provisions of DOA Regulations. Hence, STOA transactions carry highest risk, and in addition to this, as per the second proviso of Regulation 14.1(v) of the DOA Amendment Regulations, the Transmission charges are levied up to 200% for the STOA transactions of OA Consumer beyond 4th month,

which is not reasonable and is discriminatory. The Commission ought to look into the aforesaid issue and resolve the same.

8.25 In view of the above, AEML-D submits that there may no longer be a need for any multiplying factor in transmission charges to discourage repeated STOA transactions, as mentioned in Regulation 14.1(v) of the DOA Regulations. In this context, reference may be made to Section 42(3), which provides that a Distribution Licensee ought to act as a common carrier providing non-discriminatory OA. However, the aforesaid restrictions imposing increasing/ multiplying transmission charges for repeated STOA transactions amounts to discouraging OA, thereby going contrary to the mandate of the EA which is to encourage competition. The Commission is requested to consider the above submissions, while deciding on the prayers made by the Petitioner.

MSEDCL's submission

8.26 MSEDCL has not responded to the issues raised by HPCL in its Petition and relied upon the Statement of Reasons notified by the Commission.

Commission's Analysis and Ruling

8.27 HPCL is raising the issues related to Regulation 14.1(v) of DOA Amendment Regulations. In order to discourage repeated roll over of STOA transactions, the draft Amendment Regulations proposed that, the applicable STOA charges in case of such repeated STOA transactions of OA consumers shall be increased by a multiplication factor of 1.25, 1.5 and 2.0 respectively for every 2nd, 3rd and 4th STOA transaction during financial year.

8.28 It is observed that the identical submissions (as made out in present Petition) had also been made by HPCL while submitting its objections on the draft of the DOA Amendment Regulations. Many other Parties had also submitted their comments on this issue. Similar objection raised by Retailers Association of India has been recorded in the SOR. Retailers Association of India had submitted that STOA transaction helps maximum utilization of transmission capacity and hence it is incorrect to state that STOA transactions tend to create disturbance to the system. It had further contended that while Commission had envisaged applying multiplication factor for STOA transactions, the Commission had not provided any motivation to opt for MTOA transaction. However, the Commission observed that tendency of repeated STOA transactions by OA consumers was a matter of fact, inspite of availability of option of MTOA/LTOA. In order to check the tendency of taking undue advantage of DOA Regulations, the Commission, while finalizing the draft amendment Regulations, deemed it appropriate to retain the condition to put these restrictions on repetitive STOA transactions subject to certain conditions.

8.29 HPCL, in the present Petition, has also stated that the incremental Transmission Charges for rollover of STOA transactions have been based on wrong premise, as MSEDCL in its Petition in Case No. 98 of 2017 had represented the incorrect calculations while making comparison of Transmission Charges payable by MSEDCL's consumers and those payable by STOA consumers. The Commission does not find any merit in aforesaid submission as there was no infirmity in the aforesaid

comparison made by MSEDCL and hence, the Commission had accepted the said submission while passing the Order dated 19 June 2018. If HPCL was of the view that there was any error in the Order, it ought to have appealed against that Order.

8.30 In light of the above, the Commission, at this point in time, does not find it necessary to take a different view on this Regulation.

8.31 The Commission further notes that Captive Power Producers Association has filed a Writ Petition (Writ Petition No. 481 of 2020) before Hon'ble Bombay High Court challenging the Regulation 3.2, 4.2 and 14.1(v) of the DOA Amendment Regulations and raised various issues such as eligibility to seek OA, contract demand of OA consumers, Transmission charges for repeated STOA transactions. Main prayer in the Writ Petition is as under:

*"That this Hon'ble Court be pleased to declare the **Regulation 3.2, 4.2 and 14.1 (v)** of the Maharashtra Electricity Regulatory Commission (Distribution Open Access) Regulations, 2016 as amended by notification dated 8th June, 2019 (First Amendment), 2019 as unconstitutional, ultra-Ares the Electricity Act, 2003 and violative of the provisions of the Constitution of India;"*

8.32 It is observed that the Writ Petition was listed on 17 February 2020 before the Hon'ble Bombay High Court and same is at pre-admission stage. Thus, the issues pertaining to contract demand reduction and the restriction on OA capacity limited to contract demand and levy of transmission charges for repeated STOA transactions are pending before the Hon'ble Bombay High Court.

8.33 Further, the Commission notes that Green Energy Association (GEA) and Indian Wind Power Association (IWPA) have filed Writ Petitions (Writ Petition No. 2565 of 2019 - GEA and 2594 of 2019-IWPA) before Hon'ble the Bombay High Court challenging the DOA First Amendment Regulations, 2019 on various issues such as monthly banking for RE power, levy of Higher Transmission Charges to RE power, installation of Special Energy Meters (SEM) to individual Generator end etc. and these matter are listed for hearing on 28 September 2020. Main prayers of these Writs are as under:

i. The main relief / prayers of GEA in Writ Petition No. 2565 of 2019 are as below:

*"(a) Issue a Writ, direction or Order in the nature of Certiorari or any other Writ, Order or Direction quashing and setting aside **Regulations 9, 11 and 14** of the Maharashtra Electricity Regulatory Commission (Distribution Open Access) (First Amendment) Regulations, 2019 and Regulation 8 and 12 of the Maharashtra Electricity Regulatory Commission (Transmission Open Access) (First Amendment) Regulations, 2019 issued by the Respondent;…"*

ii. The main relief /prayer/ of IWPA in Writ Petition No. 2594 of 2019 are as follows:

*(a) That this Hon'ble Court be pleased to issue under Article 226 of the Constitution of India a writ in the nature of certiorari or any other appropriate writ order direction to quash Regulations **2(39), 14.1(v), 20.3** and provisos to Regulation 38.3 of the Impugned Regulations in the interest of justice and equity.*

……

8.34 Hence, notwithstanding the discussions made in earlier part of the Order, the Commission is of the opinion that it would not be fair to take any different view on the DOA Amendment Regulations through the present Petition.

9. Issue 3:- Mandate of minimum 8 hour duration and minimum 75% scheduling for Day ahead STOA

HPCL's submission

9.1 The provisions mandating at least a minimum duration of 8 hours and minimum schedule being limited to 75% of maximum schedule for the day in Day Ahead Open Access is restrictive. This provision has been introduced by the Commission by referring to the Consultation Paper of Ministry of Power (MoP) circulated in August 2017 on issues related to Open Access. However, no evidence of hardship faced by the discoms has been given in the explanatory memorandum or even in the said MoP Paper. The Commission had proposed these amendments in wake of the issue raised in the MoP paper regarding frequent switching by OA consumers in case of non-clearance of power at the Power Exchange.

9.2 This issue was raised as the Distribution Licensees were being used as fallback arrangement by OA consumers. However, the Commission in the DOA Amendment Regulations has proposed automatic reduction of contract demand of the OA consumers which essentially means that OA consumers cannot use Distribution Licensees as a fallback option for the quantum and period of the no-objection. Therefore, with the automatic contract demand reduction, there is no reason to introduce conditions of OA quantum uniformly for at least a minimum duration of 8 hours and minimum schedule being limited to 75% of maximum schedule for the day.

TPC-D's submission

9.3 There is no co-relation between with the two provisions i.e., reduction in contract demand and restriction for minimum duration. The Commission has not introduced any provision with respect to automatic reduction of contract demand in the DOA Amendment Regulations. The Commission has stated that OA consumers who do not opt for reduction in contract demand upto OA Capacity, the demand charges at approved demand charge rate shall be applicable for recorded demand upto Notional Contract Demand and Incremental Demand Charges at the rate of 1.25 times the approved demand charge rate shall be applicable for demand beyond Notional Contract Demand.

9.4 Further, the condition for minimum duration of 8 hours and minimum schedule limited to 75% of maximum schedule for the day was introduced by the Commission because the STOA consumers frequently fluctuated their demand with the Distribution Licensees which significantly affected their power purchase planning. The generating stations contracted by the Distribution Licensees have a specific ramp rate for increase/decrease the power generation in the generating units. Any unrealistic increase/decrease in demand by the Distribution Licensee to cater to the fluctuating demand schedule of the OA consumers may lead to grid disturbance. Hence, it becomes important to have some discipline in the buying behavior of the OA

consumers. In addition, it is a known phenomenon that power purchased on "Round the Clock" basis is cheaper than the "block-wise" bilateral transactions. Therefore, if the OA consumers act responsibly and not fluctuate their schedule frequently, the Distribution Licensees can procure power at more competitive rates and also have an effective deviation management. However, due to actions/inactions by certain OA consumers, the Commission has rightly introduced the said provision restricting the minimum duration and minimum schedule. The Commission has tried to restrain the constant shifting by the OA consumers so that the Distribution Licensees can plan the power purchase more efficiently. Therefore, HPCL's contention in this regard is liable to be disregarded and dismissed.

AEML-D's submission

9.5 AEML-D has not made specific submission on this issue.

MSEDCL's submission

9.6 MSEDCL has not responded to the issues raised by HPCL in its Petition and relied upon the Statement of Reasons notified by the Commission.

Commission's Analysis and Ruling

9.7 The draft for DOA Amendment Regulations proposed that the application for grant of Day-Ahead OA shall be made for continuous period of minimum duration of 8 hours or such other specified duration. It was also proposed that the schedule given against the day ahead OA sought, shall be uniform at least for a period of eight hours and the minimum schedule during the day shall at any time not be less than 75% of the maximum schedule of the day.

9.8 HPCL, in its objections to the draft Regulations, had stated that such condition will create difficulty for OA consumers in procuring power from Power Exchange. It also mentioned that such condition is not imposed on Distribution Licensees and hence such condition is discriminatory. IEX and Captive Power Producers Association had submitted identical objection as is raised by HPCL in present Petition and had submitted that the issue of switching would be resolved by the proposed amendment regarding automatic reduction of Contract Demand and therefore, there was no reason to introduce the condition of uniform 8 hours schedule and minimum schedule being limited to 75% of maximum schedule for the day.

9.9 After taking into consideration all the objections received, the Commission in the statement of reasons has observed that this provision had been proposed to avoid frequent switching between OA source and Distribution Licensees leading to difficulties in power procurement planning and deviation management by distribution licensees. The Commission deemed it appropriate to retain the provision as such conditions would help Distribution Licensees to plan power purchase in a better manner through day ahead quantum and manage its load-generation balance /deviation in proper manner. In light of the above, the Commission does not find any reason for taking any step for amendment of the aforesaid provision as prayed by HPCL.

9.10 In view of the issue-wise discussions in preceding part of the Order, the Commission does not find it necessary to grant the prayers of HPCL.

10. Hence the following Order:

ORDER

Case No. 6 of 2020 is dismissed.

Sd/-	**Sd/-**
(Mukesh Khullar)	**(I. M. Bohari)**
Member	**Member**

(Abhijit Deshpande)
Secretary