

ORISSA ELECTRICITY REGULATORY COMMISSION
BIDYUT NIYAMAK BHAWAN
UNIT-VIII, BHUBANESWAR-751 012

NOTIFICATION

Dated, the 6th June, 2005

No.OERC-JD(EA)-233/2004 – In exercise of the powers conferred under sub-sections (2), (3), and (4) of Section 42 read with Sections 39, 40, 86 and 181 of the Electricity Act, 2003 (36 of 2003) and all other powers enabling it in that behalf, the Orissa Electricity Regulatory Commission hereby makes the following Regulations for the introduction of open access to the intra-state transmission and distribution systems and terms and conditions thereof:

1. Short Title, Commencement and Interpretation :-

- (i) These Regulations shall be called the Orissa Electricity Regulatory Commission (Terms and Conditions for Open Access) Regulation, 2005.
- (ii) These Regulations extend to the whole of the State of Orissa.
- (iii) These Regulations shall come into force on the date of their publication in the Official Gazette.

2. Definitions:-

In these Regulations, unless the context otherwise requires –

- a) "**Act**" means the Electricity Act, 2003 (36 of 2003)
- b) "**Allotted Transmission / Distribution Capacity**" means the power transfer in MW between the fixed point(s) of injection and point(s) of drawal allowed to a long-term customer on the intra-state transmission or distribution system under normal circumstances and the expression "allotment of transmission or distribution capacity" shall be construed accordingly;
- c) "**Applicant**" means a person who makes an application to the Nodal Agency for open access and includes any person engaged in generation, a licensee or any consumer eligible for open access under these Regulations;
- d) "**Commission**" means the Orissa Electricity Regulatory Commission being the Commission for the State of Orissa in terms of the first proviso to sub-section (1) of Section 82 of the Act.
- e) "**Reserved Transmission / Distribution Capacity**" means the power transfer in MW between the specified point(s) of injection and point(s) of drawal allowed to a short-term customer on the transmission / distribution system(s) depending on availability

of respective capacity and the expression "reservation of transmission or distribution capacity" shall be construed accordingly;

- f) **“State”** means the state of Orissa.

Words and expressions used and not defined in these Regulations but defined in the Act shall have the meanings as assigned to them in the Act, or in absence thereof, shall have the same meaning as commonly understood in the electricity supply industry.

3. Extent of Application:-

These Regulations shall apply to open access for use of intra-state transmission and distribution systems in the state within the meaning of the term defined in clause (37) & (19) respectively of Section 2 of the Act.

4. Eligibility for Open Access and Conditions to be Satisfied:-

- (1) The licensees and the generating companies including the persons who have established a captive generating plant and the consumers shall be eligible for non-discriminatory open access to the intra-state transmission system of the State Transmission Utility (STU) or any transmission licensee subject, however, to the availability of adequate transmission facility in such intra-state transmission system and further subject to the payment of the transmission charges as may be determined by the Commission from time to time:

Provided that in the event such open access is for the use by a consumer including the transmission or for otherwise conveyance or wheeling of electricity as required by any person for delivery to such consumer in the area of supply of a distribution licensee in the State, the open access to the intra-state transmission system shall be subject to payment of a surcharge as may be determined by the Commission from time to time under sub-section (2) of Section 42 of the Act.

- (2) The Licensees and the generating companies including the persons who have established a captive generating plant and the consumer shall be eligible for open access to distribution system of the distribution licensee in accordance with the phasing for introduction of open access as provided under clause 11 herein and further subject to the absence of operational constraints in the distribution system and also the payment of the wheeling charges as may be determined by the Commission from time to time.

Provided that in the event such open access is for the use by a consumer including the conveyance or wheeling of electricity as required by any person for delivery to such consumer in the area of supply of a distribution licensee in the State, the open access to the distribution system shall be subject to payment of a surcharge as may be specified by the Commission under sub-section (2) of Section 42 of the Act.

Explanation: For the purpose of the open access under these Regulations the operational constraints in the distribution system shall include availability of adequate capacity in the distribution system, appropriate metering and energy accounting system where the electricity to be wheeled can be correctly measured and accounted for, and such other things which may have an impact on the distribution licensee's business of supplying electricity to consumers in the area of supply.

5. Categorisation of Open Access Customers:-

- (i) The transmission / distribution customers shall be divided into two categories, namely: -
 - (a) Long-term customers, and
 - (b) Short-term customers.
- (ii) The persons availing or intending to avail access to the intra-state transmission or distribution system for a period of twenty-five years or more shall be long-term customers:

Provided that the existing beneficiaries of the State transmission and distribution systems owned or operated by the State Transmission Utility(STU) and existing distribution licensee shall be deemed to be long-term customers of the particular system.

- (iii) The customers other than the long-term customers shall be the short-term customers:

Provided that the maximum duration for which the short-term access allowed at a time shall not exceed one year:

Provided further that short-term customers shall be eligible and re-eligible to obtain fresh reservation after expiry of their terms.

6. Special Provision for Existing Open Access Customers:-

The persons availing open access to the intra-state transmission and distribution systems in the State under an existing agreement or arrangement shall be entitled to continue to avail the open access on the terms and conditions applicable to them as before for the period of the existing agreement or arrangement subject to the payment of the transmission charges, the wheeling charges and the applicable surcharges as may be determined by the Commission from time to time.

7. Nodal Agency

- (1) The nodal agency for arranging long-term open access shall be the STU if the transmission system is used; otherwise the nodal agency shall be the respective distribution licensee within whose area the point of drawl is situated.
- (2) For short-term open access transactions, the nodal agency for receiving and processing applications shall be the State Load Despatch Centre (SLDC). The SLDC

shall, however, allow short-term open access transactions only after consulting the concerned transmission and/or distribution licensee(s) whose network(s) would be used for such transactions:

Provided that for short-term open access transactions involving only intra-state transmission with duration of less than one week, the SLDC may not consult the concerned transmission licensee for permitting such transactions.

The SLDC and licensees shall devise procedures for co-ordination among themselves for allowing such short-term transactions.

8. Criteria for Allowing Open Access to Intra-state Transmission and/or Distribution Systems:-

- (1) Long-term access shall be allowed in accordance with the transmission and distribution planning capacity criteria stipulated in the Orissa Grid Code and/or the Orissa Distribution (Planning and Operation) Code, as the case may be.
- (2) Short-term access shall be allowed if the request can be accommodated by utilizing:
 - (a) Inherent design margins;
 - (b) Margins available due to variation in power flows and unutilised capacity, if any; and
 - (c) Margins available due to in-built spare capacity in transmission and/or distribution systems created to cater to future load growth.

9. Criteria for Allotment/Reservation of Transmission/Distribution Capacity:-

- (1) The priority for allowing open access shall be decided generally on the criteria that long-term open access customers shall be given priority over short-term open access customers.
- (2) Open access shall be allowed only after determining the capacity available in the intra-state transmission system, and the operational constraints, if any, including the capacity available in the distribution system, the utilisation thereof by the existing customers and the capacity already committed for transmission, distribution and retail supply of electricity to the consumers of the distribution licensees in the State.
- (3) Subject to the above, the decision to allow open access shall be made on first come first serve basis.
- (4) Allotment of Capacity in case of Congestion:-
 - (a) Long-term Applicants:
In the event of insufficient spare capacity/congestion in the network hindering accommodation of all long-term open access applications, the nodal agency

shall inform the applicants of the same and shall advise the concerned licensee(s) to carry out an assessment of works required to create additional capacity to strengthen the system to accommodate such applicant(s). After completion of such works, the nodal agency shall carry out the allotment of capacity to such applicant(s). As regards capital expenditure incurred by the licensee(s) for strengthening the system, the licensee(s) may require a capital contribution from the applicant(s) subject to the provisions of clause 13(1) (v) of these Regulations.

(b) Short-term Applicants:

In case of applicants for short-term access with transactions required to be accommodated through congested corridors of the network, the nodal agency shall invite bids by fax/e-mail with floor price equal to the un-congested price for the short-term customers. The bidders shall quote percentage points above the floor price. The reservation of capacity shall be done in decreasing order of the price quoted. In case of quotes involving equal prices, the reservation of capacity shall be done, if required, pro rata to the capacity sought. The customer getting reservation of capacity less than the capacity sought by him shall pay charges as per the price quoted by him. All other applicants getting capacity reservation equal to the capacity sought by them shall pay charges as per the price quoted by the last applicant getting full reservation of the capacity sought.

Explanation: For the purpose of clause 9(4)(b) above, the term “un-congested price” means the transmission or wheeling charges required to be paid by the short-term customers as per the rates approved by the Commission and published by the nodal agency from time to time.

10. Determination of Available Capacity of Transmission & Distribution:-

- (1) The availability of capacity in the intra-state transmission system for open access shall be determined from time to time by the STU after considering the representation of the licensees and the persons seeking open access:

Provided that the STU shall continue to publish and update on annual basis such available spare capacity for each of the five succeeding financial years, and the methodology adopted for arriving at such determination, in the form of a Statement of Opportunity in terms of its Licence Condition.

- (2) The availability of capacity in the distribution system including the existence or absence of operational constraints affecting the open access being allowed shall be determined by the STU after considering the representation of the distribution licensee and the persons seeking open access:

Provided that a standard methodology for such determination shall be evolved within a period of 30 days from the date of publication of these regulations by the STU in consultation with the distribution licensees. This shall be consistent with the

provisions of the Orissa Distribution (Planning and Operation) Code and the Orissa Grid Code and shall be approved by the Commission.

- (3) The licensees shall carry out load flow studies, system impact studies, etc. taking into account the existing capacity commitments and future projections of capacity requirements for open access customers, load growth as projected by distribution licensees, growth of generation, network topology and consumption pattern, network investments and repairs & maintenance programs, etc. to determine the capacity available to accommodate open access transactions. While so determining the capacity available for open access transactions, capacity commitments to all existing customers of the network and the system reliability margin shall be deducted.
- (4) The licensees shall keep updating the data on available capacity, taking into account the contracts with open access customers, the impact of such transactions on the capacity of system elements, the increase/decrease in native load, changes in consumption pattern, network strengthening programs actually carried out and those projected, etc.
- (5) In order to decide the availability of sufficient spare capacity in the transmission & distribution (T&D) networks so as to permit an open access transaction applied for, the nodal agency as applicable may also carry out load flow studies to simulate the impact of power flows associated with such open access transaction on the network and thus determine whether capacity is available to permit such transaction [within the limits set by technical standards as per the norms of CEA as approved by the Commission and the Indian Electricity Grid Code or the Orissa Grid Code or the Orissa Distribution (Planning and Operation) Code or Indian Electricity Rules till such time the Regulations under Section 53 of the Act are made by the Central Electricity Authority, as the case may be) or there is a need to carry out system-strengthening works to ensure availability of sufficient capacity. The nodal agency may have to carry out this exercise on a case-to-case basis as and when an open access application is received.
- (6) In the event of any dispute on the capacity of the transmission system available or the existence or absence of operational constraints and capacity in the distribution system on the determination by the STU, the same shall be referred to the Commission for decision.
- (7) (a) The Commission may while deciding on the dispute under clause (6) above or otherwise by a general or special order made from time to time lay down the conditions to be complied by the persons seeking open access to the distribution system in regard to operational constraints and the open access shall be allowed only subject to due satisfaction of such conditions.

(b) The conditions to be satisfied may include construction, operation or maintenance of dedicated electric line or works from the sub-stations or feeder line or undertaking such other works as the Commission may decide as necessary to allow open access without operational constraints.

11. Phasing of Open Access:-

- (1) The open access in the intra-state transmission system in the State which is already in force under the provisions of Orissa Electricity Reform Act, 1995 and the existing Licence Conditions of the STU, shall continue subject to the satisfaction of the conditions contained in the Act or in these Regulations.
- (2) For consumers seeking open access to the distribution and/or intra-state transmission systems to avail supply of electricity from a generating company, the nodal agency shall permit open access strictly in accordance with the following phases:

Phase	Eligibility criteria	Commencement date
1	Requiring power exceeding 5 MW	April 1, 2008
2	Requiring power exceeding 2 MW	October 1, 2008
3.	Requiring power exceeding 1 MW	January 1, 2009

Provided further that for consumers seeking open access to the distribution and/or intra-state transmission systems to avail supply of electricity from any licensee other than the distribution licensee of their respective area of supply, the nodal agency shall permit open access strictly in accordance with the following phases:

Phase	Eligibility criteria	Commencement date
1	Requiring power exceeding 5 MW	August 1, 2005
2	Requiring power exceeding 2 MW	April 1, 2006
3.	Requiring power exceeding 1 MW	April 1, 2008

Provided that the Commission shall allow open access to consumers with power requirement not exceeding 1 MW in due course at such time and in such phases as it may consider feasible having due regard to operational constraints and other factors:

- (3) The licensees shall make all reasonable endeavours to ensure that operational constraints in the transmission and/or distribution systems, including metering, communication systems, capacity determination, etc. are removed. This shall ensure that every eligible distribution consumer avails of open access facility as per the phasing plan indicated above.

12. Procedure for Seeking and Grant of Open Access:-

- (1) Procedure for Long-term Customer
 - (a) (i) An application for long-term access shall be submitted to the nodal agency;

- (ii) The application shall contain the details, such as capacity needed, point(s) of injection, point(s) of drawal, duration of availing open access, peak load, average load and such other additional information that may be laid down by the nodal agency:

Provided that the STU shall issue necessary guidelines, procedure and application forms, transmission/distribution access agreement formats within 30 days of publication of these regulations in the Official Gazette, after due consultation with all the distribution licensees operating within the State and necessary approval of the Commission.

- (iii) The application shall be accompanied by a non-refundable application fee of rupees one lakh for transmission access and rupees fifty thousand for distribution access payable in the name and in the manner to be decided by the nodal agency;
- (iv) Based on system studies conducted in consultation with other agencies involved including other transmission and distribution licensees, the nodal agency shall, within 30 days of receipt of the application, intimate to the applicant whether or not the long-term access can be allowed without further system strengthening:

Provided that where the long-term access can be allowed without further system strengthening, this shall be allowed immediately after entering into commercial agreements.

- (v) If, in the opinion of the nodal agency, further system strengthening is essential before providing the long-term access, the applicant may request the nodal agency to carry out the system studies and preliminary investigation for the purpose of cost estimates and completion schedule for system strengthening;
- (vi) The nodal agency shall carry out the studies immediately on receipt of request from the applicant under clause (v) and intimate results of the studies within 90 days of receipt of request from the applicant;
- (vii) The applicant shall reimburse the actual expenditure incurred by the nodal agency for system/ strengthening studies:

Provided that the fee of rupees one lakh paid for transmission access and rupees fifty thousand for distribution access paid by the applicants shall be adjusted against the actual expenditure to be reimbursed by them.

- (b) The allotment of capacity to a long-term customer may be relinquished or transferred to any other long-term customer in accordance with Regulation 12(c)(ii) of these Regulations.

- (c) Transmission/Distribution Capacity Access Agreement
 - (i) A long-term customer shall enter into Transmission/Distribution Capacity access agreement with the transmission / distribution license. An open access customer shall enter into commercial agreements with the transmission and distribution licensees for use of their transmission and distribution systems;
 - (ii) The agreement shall provide, amongst other things, for the eventuality of premature termination of agreement and its consequences on the contracting parties;
 - (iii) After agreements have been entered into and copies furnished to SLDC, the SLDC shall inform the open access customer the date from which open access will be available which will not be later than seven days from the date of furnishing of agreements.
- (d) Exit Option for Long-term Customer
 - (i) A long-term customer shall not relinquish or transfer his rights and obligations laid down in the Transmission / Distribution capacity access agreement, without prior approval of the Commission.
 - (ii) The relinquishment or transfer of right and obligations by a long-term customer shall be subject to payment of compensation as may be determined by the Commission.
- (2) Procedure for Short-term Customer
 - (a) (i) A short-term customer shall submit an application for transmission/distribution access to the SLDC;
 - (ii) The application shall contain the details such as capacity needed, point of injection, point of drawal, duration of availing open access, peak load, average load and such other additional information that may be laid down by the SLDC;
Provided that the SLDC shall issue necessary guidelines, procedure and application forms, within 30 days of publication of these regulations in the Official Gazette, after due consultation with all the transmission/distribution licensees operating within the State and necessary approval of the Commission.
 - (iii) State load dispatch centre, in consultation with the State Transmission Utility and distribution licensee, as the case may be, shall take a decision on the application based on the following schedule:

Sl. No.	Tenure of the contract	Maximum Processing Time (from end of the calendar month of submission)
1.	Up to one day	12 hours
2.	Up to one week	Three days
3.	Up to one month	Seven days
4.	Up to one year	Thirty days

- (iv) The application shall be accompanied by a non-refundable application fee of rupees five thousand payable in the name and in the manner to be decided by the SLDC;
- (v) The reserved capacity shall not be transferred by a short-term customer to any other customer.

(b) Non-Utilisation of Reserved Transmission Capacity by Short-term Customer

- (i) In case a short-term customer is unable to utilise full or substantial part of the reserved capacity reserved, he shall inform the SLDC along with reasons for his inability to utilise the reserved capacity and may surrender the reserved capacity;
- (ii) The SLDC may reduce or cancel the reserved capacity of a short-term customer when such a customer frequently under-utilises the reserved capacity;
- (iii) The short-term customer who has surrendered the reserved capacity or whose reserved capacity has been reduced or cancelled, shall bear full transmission or distribution charges as the case may be in addition to the scheduling and system operation charges based on original reserved capacity and the period for which the capacity was reserved;
- (iv) The capacity available as a result of surrender or reduction or cancellation of the reserved capacity by the SLDC under clause (i) or (ii) above, may be reserved for any other short-term open access customer in accordance with these regulations.

13. Open Access Charges:-

- (1) The charges for the use of the transmission/distribution system by an open access customer shall be regulated as under:
 - (i) Open access customers connected to the transmission/distribution system shall pay the transmission charges, wheeling charges and any other charges including reactive energy charges, service charges, unscheduled use charges, and penal charges for wrongful use of the transmission or the distribution system(s), as the Commission may determine from time to time, as a part of the tariff under Sections 61, 62 and 86 of the Act or otherwise decide or

authorise the SLDC/Licensee to charge in exercise of its regulatory powers under the Act.

- (ii) Surcharge to be levied on open access customers under Section 42(2) of the Act, shall be determined by the Commission keeping in view the loss of cross-subsidy from these customers opting to take supply from a person other than the incumbent distribution licensee.
- (iii) The Commission may adopt requisite principle for computing surcharge which shall compensate for the entire loss of cross subsidy for any given category of open access customers to whom supply is given.
- (iv) Where an electrical plant or electrical line has been constructed by the licensee in order to extend power supply to an open access customer, the licensee may seek to recover such expenditure as may be determined by the Commission under Section 46 of the Act.
- (v) If network augmentation is required for providing access to an applicant, the licensee shall carry out such augmentation either by investing own funds which shall be recovered along with the required return within reasonable time or by requiring the open access customer(s) to make a capital contribution towards such network augmentation.
- (vi) The open access customer shall also be liable to pay additional surcharge on charges of wheeling as may be specified by the Commission from time to time under Section 42(4) of the Act, in case open access is sought for receiving supply from a source other than the distribution licensee of such consumer's area of supply, to meet the fixed cost of the distribution licensee arising out of his obligation to supply.
- (vii) Scheduling and system operation charges shall be payable by all open access customers to SLDC. Such charges shall be governed by the relevant regulations framed by the Commission.
- (viii) The transmission/distribution customers shall bear average energy losses in the transmission/distribution systems respectively as estimated by the SLDC. The energy losses in the transmission/distribution systems shall be compensated by additional injection at the injection point(s). The information regarding average energy losses for the previous 52 weeks shall be posted on the website of the SLDC.

14. Payment Terms and Conditions:-

- (1) In case of long-term customers, the concerned distribution licensee may invoice a customer in respect of the open access charges as set out in these Regulations and the open access customer must pay those charges in accordance with the procedures set out in the access agreement between the licensees and the customer:

Provided that the distribution licensee shall have appropriate back-to-back arrangements in place with the transmission licensee(s) in order to pass on the transmission charges so collected from the customer to the concerned transmission licensee.

- (2) In case of short-term customers, the SLDC shall invoice the customer on behalf of the concerned licensee(s) and the customer shall pay the charges to the concerned licensee(s) directly.
- (3) All open access customers shall pay the charges payable from the date of commencement of open access regardless of whether or not such open access is used on and from that date, except if the failure to use such access services is due to the default of the concerned licensee(s) whose networks are being used.
- (4) All open access customers shall institute an appropriate security mechanism in the agreement to cover charges for a maximum period of one month.

15. Right of Refusal:-

The current open access customer shall have the first right of refusal to the capacity being used by him. Such an open access customer shall be given preference in allotment if he is willing to match the duration of service being sought by potential customers.

16. Curtailment Priority:-

When because of transmission constraints or otherwise, it becomes necessary to curtail the transmission service, the short-term open access customers shall be curtailed first followed by the long-term open access customers:

Provided that within a category, the open access customers shall have equal curtailment priority and shall be curtailed on pro-rata basis.

17. Other Conditions:-

- (1) The open access customers shall meet the metering and communication requirements as the Commission may direct from time to time. The meters shall always be maintained in good condition and shall be open for inspection by any person authorised by the concerned licensee/SLDC.
- (2) The open access customers shall abide by the applicable provisions of the Indian Electricity Grid Code, the Orissa Grid Code and instructions given by STU, SLDC and other authorities from time to time.
- (3) The open access customers shall abide by all applicable regulations, directions, guidelines and orders of the Commission made from time to time.

- (4) The open access customers shall comply with the metering and other requirements of ABT. Metering arrangement both at consumer end and at the point of injection of power by the open access supplier and integration of the two metering points determining online mismatches in drawal and supply including losses, shall have to be complied with.

18. Issue of Orders and Practice Directions:-

Subject to the provisions of the Electricity Act, 2003 and these Regulations, the Commission may from time to time issue orders and practice directions in regard to the implementation of these Regulations and procedure to be followed on various matters, which the Commission has been empowered by these Regulations to specify and direct, and matters incidental or ancillary thereto.

19. Powers to Remove Difficulties:-

In case of any difficulty in giving effect to any of the provisions of these Regulations, the Commission may, by general or special order, direct the open access customers, generators, the STU, the SLDC and the licensees to take suitable action, not being inconsistent with the provisions of Electricity Act, 2003, which appears to the Commission to be necessary or expedient for the purpose of removing the difficulty. The open access customers, generators, the STU, the SLDC and the licensees may make an application to the Commission and seek suitable orders to remove any difficulty that may arise in implementation of these Regulations.

20. Power to Amend:-

The Commission may, at any time, add, vary, alter, modify or amend any of the provisions of these Regulations.

By order of the Commission

(M.R. HAZRA)
SECRETARY