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# Report of the Second Task Force Measures for Operationalising Open Access in the Power Sector







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**Report of the Second Task Force on**  
**Measures for Operationalising**  
**Open Access in the Power Sector**

Published by  
**Secretariat for Infrastructure**  
Planning Commission, Government of India  
Yojana Bhawan, Parliament Street  
New Delhi - 110 001

[www.infrastructure.gov.in](http://www.infrastructure.gov.in)

April 2012

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## Foreword

One of the important objectives of the Electricity Act (2003) is the introduction of competition in the supply of electricity. This is to be achieved by enabling individual consumers to buy electricity from competing suppliers while using the existing distribution lines of the area distribution licensee on payment of a regulated wheeling charge. The National Electricity Policy 2005 and Tariff Policy 2006 have reinforced these provisions and also specified the principles for determination of surcharge on open access with a view to cross-subsidising agricultural and household consumers. In the developed world, such competition has been introduced in phases, beginning with the bulk consumers and gradually moving to the comparatively smaller consumers. Typically, the price of electricity purchased by such consumers is determined by competition, since the buyers can choose from among multiple suppliers. The present market structure compels producers to sell to monopoly distribution companies. The introduction of open access would enable producers to access credit worthy consumers and in that sense would incentivize investment and help reduce shortage.

Despite the mandatory provisions of law, non-discriminatory open access to distribution networks has not materialised so far. An inter-Ministerial Task Force was constituted in 2008 for making recommendations on measures for operationalisation of these provisions, but there was little progress in adoption of its recommendations. Therefore, the Second Task Force was constituted under the chairmanship of Member (Power), Planning Commission in 2010 to examine the progress made in implementation of the recommendations made by the previous Task Force and to recommend the further course of action for operationalising open access.

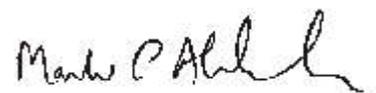
After consultations with various State Governments, Electricity Regulatory Commissions, state utilities, power producers, bulk consumers, and other stakeholders, the Task Force has concluded that open access for bulk consumers is an important aspect of the Electricity Act and enabling conditions for it must be established early. It has recommended that the State Electricity Regulatory Commissions should be advised by the respective state governments to immediately cease to regulate the tariffs of all consumers of 1 MW and above in accordance with the Electricity Act. They should only fix the wheeling charges and open access surcharge in respect of such consumers. Under this new arrangement, bulk consumers will be free to buy electricity from their area distribution licensees, but the electricity tariffs for such consumers will have to be mutually agreed upon as they can no longer be regulated by the State Electricity Regulatory Commissions.

The Task Force has also recommended earmarking a specified proportion of the Centre's discretionary allocation of 15 per cent of the generating capacity of Central PSUs for direct sale to open access

consumers. This would help accelerate the evolution of open access and competitive supplies for bulk consumers which, in turn, would create a robust and sustainable market that would spur the flow of private investment in creation of new capacity.

The Report of the Task Force also brings out that intra-State trading is being used for selling electricity to deficit states at unregulated wholesale prices ranging upwards of Rs. 5 per unit, which are very high by any standards. In fact, during 2009-10, trading of high cost power accounted for over 15% of the total cost of power purchased by the distribution utilities. Such unregulated prices would have serious consequences for the financial viability of distribution utilities as well as the orderly development of the power sector. The Report suggests that there would be little adverse impact on the finances of the distribution companies in case the bulk consumers are moved from regulated prices to market prices as required under the Electricity Act. While shifting bulk consumers to market-based supplies, the distribution utilities should gradually move away from purchasing high-cost unregulated power that their regulated consumers cannot afford to bear. To the extent they buy such high cost power, they could sell it primarily to open access consumers who should gradually move to market-based pricing.

I commend the recommendations of the Task Force for consideration and adoption by the Central Government, State Governments, regulatory commissions and distribution utilities.



**(Montek Singh Ahluwalia)**

Deputy Chairman  
Planning Commission

April 14, 2012

## List of Abbreviations

APDRP	Accelerated Power Development and Reform Programme
CERC	Central Electricity Regulatory Commission
CPSU (s)	Central Public Sector Unit (s)
DISCOM(s)	Distribution Company (ies)
ERC(s)	Electricity Regulatory Commission(s)
GERC	Gujarat Electricity Regulatory Commission
HERC	Haryana Electricity Regulatory Commission
HP	Horse Power
HT	High Tension
IIT	Indian Institute of Technology
IPP(s)	Independent Power Producer(s)
LT	Low Tension
MDB(s)	Multilateral Development Banks
MoP	Ministry of Power
MSEDCL	Maharashtra State Electricity Distribution Company Limited
MU	Million Units
MVA	Million Volt Amperes
MW	Mega Watt
NOC	No Objection Certificate
NTPC	National Thermal Power Corporation
NVVNL	NTPC Vidyut Vyapar Nigam Limited
PFC	Power Finance Corporation

PSU(s)	Public Sector Undertaking(s)
PTC	Power Trading Corporation
REC	Rural Electrification Corporation Limited
RLDC(s)	Regional Load Dispatch Centre(s)
SEB(s)	State Electricity Board
SERC(s)	State Electricity Regulatory Commission(s)
SLDC(s)	State Load Despatch Centre (s)
UI	Unscheduled Interchange

# Report of the Second Task Force on Measures for Operationalising Open Access in the Power Sector

## 1. Introduction

1.1 An inter-Ministerial Task Force on Measures for Operationalising Open Access in the Power Sector was reconstituted on 4 February 2010 under the chairmanship of Shri B. K. Chaturvedi, Member (Energy), Planning Commission to examine the progress made in implementation of the recommendations made by the previous Task Force and to recommend further course of action on issues pertaining to operationalising open access listed in the recommendations of the previous Task Force. The composition and order constituting the Task Force is at **Annex 1**. The constitution of the Task Force was as follows:

- (i) Shri B. K. Chaturvedi, Member, Planning Commission  
Chairman
- (ii) Secretary, Ministry of Power  
Member
- (iii) Secretary, Department of Economic Affairs, Ministry of Finance  
Member
- (iv) Adviser to Deputy Chairman, Planning Commission  
Member
- (v) Chairman, Central Electricity Authority  
Member

1.2 The Task Force met with the representatives of the State Governments of Andhra Pradesh, Gujarat, Haryana, Karnataka, Maharashtra, Orissa, Punjab and West Bengal, in order to elicit their points of view on the difficulties faced by them in operationalising open access in the states and on the issues of cross subsidy surcharge, availability of power, establishment of independent SLDCs and

shifting of HT consumers to unregulated tariff.

1.3 The Task Force also held discussions with a select group of representatives of other stakeholders, notably regulatory commissions, PSUs, state utilities, MDBs, industry associations, power exchanges, power producers and bulk consumers. The stakeholders who participated in the discussions are listed in **Annex 2**.

## 2. Background

2.1 An inter-Ministerial Task Force on Measures for Operationalising Open Access in the Power Sector was constituted on 8 February 2008 under the chairmanship of Shri B. K. Chaturvedi, Member, Planning Commission (the “First Task Force”) to examine the status and make recommendations on the measures for operationalising the provisions of the Electricity Act, 2003 in respect of open access. The members of Task Force included Secretary, Ministry of Finance, Secretary, Ministry of Power, Chairman, Central Electricity Authority and Adviser to Deputy Chairman, Planning Commission. The recommendations of the First Task Force are at **Annex 3**.

2.2 The Task Force made three recommendations in respect of the Central Government. These were as follows:-

- a) Power sold by CPSUs to States should not be resold to other States at a price exceeding the regulated tariff plus a trading margin of four paisa per unit fixed by CERC;
- b) 25% of the discretionary allocation of CPSU generating capacity may be made available for direct sale by CPSUs to open access consumers. This would be raised to 50% for new generation capacity; and
- c) Scheme of UI charges should be reviewed and revised for ensuring that UI is not used as a vehicle for trading and that gaming in scheduling should be checked.

### Views of Ministry of Power

2.3 The Ministry of Power (MoP) has not accepted any of the above recommendations. In respect of the recommendation at (a) above relating to excessive trading margins for resale of CPSU power, MoP has conveyed the response of CERC indicating that this proposal is not feasible as it is not possible to distinguish in a portfolio which electricity is being sold. In response to recommendation (b) above, instead of agreeing to allocate 25% for direct sale to open access consumers, MoP has suggested that 15% could be allocated to the States in order to incentivize the States that facilitate open access. On recommendation (c) above, relating to UI charges, the Ministry has stated that CERC has reviewed the scheme and revised the regulations on 30 March 2009.

### Views of Planning Commission

2.4 When the above recommendation of the Task Force was formulated, it was believed that trading of high-cost power was restricted to a small proportion of the total transactions. Subsequent information suggests that during 2009-10, the total transactions of high-cost traded power (Rs. 5 per unit) have been about Rs. 33,000 crore. If this is not checked through introduction of open access and other measures, a large number of distribution utilities would become financially sick and the consumer tariffs may also have to be raised significantly.

2.5 In response to the third recommendation that UI should not be used as a vehicle for

trading or gaming in scheduling, it has been indicated that the CERC has issued revised guidelines. However, the situation on the ground has not changed and UI continues to be used for high-cost trading.

2.6 In view of the above, Planning Commission recommended as follows:

(a) Little progress on open access seems to have been made by the States in pursuance of the Electricity Act 2003, which provides for enabling open access to bulk consumers under section 42 thereof. It is necessary to make a beginning by allocating part of the CPSU power directly for sale to bulk consumers in accordance with the recommendations of the Task Force and as per the provisions of the Electricity Act.

(b) The remaining matters may be deliberated by the new Task Force mentioned above and further course of action may be determined thereafter.

2.7 Accordingly, a Task Force (the “Second Task Force”) was set up under the chairmanship of Shri. B.K Chaturvedi, Member, Planning Commission on 4 February, 2010. Its constitution is given in the paragraph 1.1.

### 3. Meetings of the Task Force

3.1 The first meeting of the Task Force was held on 22 February, 2010. The discussions included issues of trading of high cost power leading to financial unviability of a large number of distribution utilities and the distortion caused by the recipient utilities due to re-sale of CPSU power to deficit States at excessive margins. In the second meeting of the Task Force, CERC made a presentation on behalf of MoP when it named 44 open access consumers buying through India Energy Exchange and highlighted that major issues relating to operationalisation of open access are the lack of independence of SLDCs, problems due to persistence of the 'Single Buyer Model', high surcharge on open access and the lack of availability of additional power at reasonable prices.

3.2 In the presentation made by the representative of the MoP in the third meeting of the Task Force, barriers to open access were identified including lack of serious efforts by states, lack of rationalization of charges for open access by SERCs, absence of independence of SLDCs and lack of surplus power. As a way forward, in the fourth meeting of the Task Force, Adviser to Deputy Chairman, Planning Commission suggested the need to shift bulk consumers (0.5 MW and above) from the regime of regulated prices to market determined prices in a phased manner as has been practiced in many developed countries.

3.3 In this context, a simulation exercise was done by India Energy Exchange to examine the impact on finances of Discoms in case the

bulk consumers are shifted from regulated prices to market prices. The analysis showed that shifting of one-third of HT consumers from regulated prices to open access regime may create additional revenues for the Discoms. It was demonstrated that providing open access to HT consumers would not be disadvantageous to the Discoms.

Representative of the India Energy Exchange stated that IIT, Delhi has done a study on the "Impact of Migration of The HT Consumers from the State Utility Owned DISCOM to Market Purchase Mode". According to the report, migration of HT consumers from DISCOMs to open access purchase will create additional revenue for the seven states considered in this study namely Maharashtra, Gujarat, Haryana, Andhra Pradesh, Tamil Nadu, Punjab and Rajasthan. This can be attributed to the costly power purchased by DISCOMs. However, MoP highlighted the issue of cross subsidy surcharge.

3.4 In the subsequent meetings, the Task Force noted that at the macro level, introduction of Open Access will help in reducing shortages and accelerating capacity addition, besides introduction of competition. Moreover, consumers cannot be deprived of their right to choose from among competing suppliers of electricity under Section 42 of the Electricity Act, 2003. A combined reading of Sections 42, 49 and 86 suggests that regulators cannot fix tariffs for consumers above 1 MW, who must buy at market determined prices after January 2009. The matter was referred to the Attorney General and after detailed deliberations, he has opined that the State

Electricity Regulatory Commissions (SERCs) cannot fix the tariff for supply of electricity to consumers of 1 MW and above who must buy from competing suppliers, including the area distribution company, at market determined prices. The wheeling charge and the open access surcharge (for cross subsidy) would continue to be determined by the respective SERCs.

### **Meeting with States**

3.5 To discuss the difficulties faced by the States in operationalising open access, the Task Force convened a meeting with States on 21 September, 2010. In this meeting, representatives of the State Utilities of Andhra Pradesh, Gujarat, Haryana, Karnataka, Maharashtra, Orissa, Punjab, Uttar Pradesh and West Bengal were invited to present their points of view regarding the implementation of the relevant provisions of Electricity Act, 2003 in case of open access. The sixth meeting of the Task Force was held on 30 September, 2010 in which States of Gujarat, Haryana, Karnataka, Maharashtra, and Punjab were invited. The views expressed by the representatives of the States are summarised at Annex-4.

### **Meeting with Stakeholders**

3.6 A meeting under the chairmanship of Deputy Chairman, Planning Commission was also convened on 5 May, 2010 with a select group of representatives of other stakeholders, notably regulatory commissions, PSUs, state utilities, MDBs, industry associations, power

exchanges, power producers and bulk consumers to deliberate on measures for operationalising open access in the power sector. It was concluded that the issue of incentivizing and disincentivising States for operationalising open access will be addressed in the Twelfth Plan. If required, suitable amendments in Electricity Act, 2003 should also be considered to give effect to the economic logic of open access. Deputy Chairman suggested that the Ministry of Power should set up a Working Group comprising representatives from MoP, Planning Commission and the States to operationalise open access.

## 4. Legal Opinion on Open Access

4.1 In the fifth meeting of the Task Force held on 10 August, 2010, it was decided that MoP, in consultation with Ministry of Finance and Planning Commission should send a note to the Ministry of Law seeking clarity on Sections 42, 43 and 86 (1)(a) of the Electricity Act, 2003 as to whether State regulators can fix tariff for open access consumers.

4.2 On a reference from the Ministry of Power and the Planning Commission, the Ministry of Law & Justice in consultation with the Learned Attorney General of India has advised that Section 42(2) read with the first and fifth proviso is a self-contained code with regard to consumers who require the supply of 1 MW and above, and accordingly the State Electricity Regulatory Commissions cannot continue to regulate the tariff for supply of electricity to any consumer of 1 MW and above.

4.3 The Ministry of Law and Justice has further opined that if the aforesaid bulk consumers intend to use the network of the Discoms, they have to give notice to their respective Discom, and upon receipt of such notice, the Discom is duty bound to provide non-discriminatory open access to its network. Section 42(3) cannot be construed to mean that giving of a notice is a pre-condition for the implementation of open access.

4.4 A copy of the MoP letter communicating the aforesaid advice of the Ministry of Law and Justice on provision of open access to bulk consumers may be seen at **Annex-5**.

## 5. Observations of the Task Force:

5.1 The Task Force observed that the recommendations of the Inter-Ministerial Task Force which was constituted in February 2008 for operationalising open access have not been adopted and that on ground, no worthwhile progress has been made despite provision of open access being mandated by the Electricity Act, 2003. It was noted that open access in inter-state transmission was operational for a long time, though there were some recent concerns. It was noted, however, that the concern of this Task Force was primarily in respect of the distribution segment dealing with intra-state open access for bulk consumers.

5.2 In view of the foregoing, the Task Force observed the following:

- During 2009-10, trading of high-cost power accounted for over 15% of the total cost of power purchased by the distribution utilities.
- In 2009-10, 6,590 crore units were purchased by distribution utilities for a sum of about Rs.33,000 crore which meant a bulk power rate of about Rs.5 per unit. This led to excessive profiteering of over Rs.15,000 crore in 2009-10, thus adding to the financial distress of a large number of distribution utilities.
- In UK and other developed countries, with the operationalising of open access, the bulk consumers were weaned away from regulated tariffs and enabled to participate in the market.
- A brief simulation exercise was done by India Energy Exchange by selecting two states to analyse the impact of shifting of bulk consumers from regulated regime to open market which highlighted that shifting of one-third of HT consumers from regulated prices of Discoms to open access purchase from the market will create additional revenues for the Discoms. It was suggested in the report that providing of open access to HT Consumers would not be disadvantageous to Discoms. The details of the exercise done for Maharashtra Discom is at **Annex-6**.
- The Task Force noted that IIT, Delhi has done a study on the “Impact of Migration of the HT Consumers from the State Utility Owned DISCOM to Market Purchase Mode”. According to the study, migration of HT consumers from DISCOMs to Open Access purchase will create additional revenue for 7 states considered in the study namely Maharashtra, Gujarat, Haryana, Andhra Pradesh, Tamil Nadu, Punjab and Rajasthan. This can be attributed to costly power purchased by DISCOMs. The details of the study may be seen at **Annex-7**.
- Formula for calculating cross subsidy surcharge as defined in the Tariff Policy

notified by the Ministry of Power is generally not being adhered to by the State Regulators which disincentivises operationalising of open access.

- Provisions under Section 62 of the Electricity Act, 2003 which provide for a separate determination of wheeling charges and retail tariffs by the appropriate commissions are not being complied with.
- Section 42(2) of the Act makes a mandatory provision for non-discriminatory open access to consumers of 1 MW and above not later than 5 years from the amendment to the Act in January 2004, which has not been followed.
- Further, the above provision read with Section 86 of the Act states that the State Commission shall determine only the wheeling charges and surcharge thereon, if any, for the said category of open access consumers. After January, 2009 it is beyond the jurisdiction of the State Commissions to fix tariff for consumers of 1 MW and above. Their tariff can only be determined by negotiation between the buyers and sellers.
- Ministry of Law & Justice in consultation with the Learned Attorney General of India has opined that Section 42(2) read with the first and fifth proviso is a self-contained code with regard to consumers

who require the supply of 1 MW and above, and accordingly the State Electricity Regulatory Commissions cannot continue to regulate the tariff for supply of electricity to any consumer of 1 MW and above.

## 6. Recommendations

Following deliberations in the Task Force, the following recommendations are being made for consideration of the Government.

### (i) Regulatory and System Changes

(a) Pursuant to the communication of the Ministry of Power dated Nov. 30, 2011 (Annex-5), the SERCs should be advised by the respective state governments to comply with the statutory requirements relating to open access and immediately cease to regulate the tariffs of all consumers of 1 MW and above in accordance with the provisions of Sections 42, 49 and 86 of the Act. They should only fix the wheeling charges and open access surcharge in respect of such consumers.

(b) The SERCs should be advised by the State Governments to specify wheeling charges separately in conformity with section 42 read with section 62 of the Act.

(c) The tariff to be charged by the Discoms for providing standby supply should not exceed the maximum UI rate for the applicable hours plus a 5 per cent administrative charge thereon. Alternatively, the bulk consumers may directly handle the UI supplies with the respective SLDCs. The Tariff Policy should also be modified to give effect to this arrangement.

(d) State Governments should be advised to set up SLDCs as independent entities with financial and operational autonomy. Timelines should be provided for the same.

(e) The separation of RLDCs as independent entities may be expedited by the Ministry of Power.

(f) SLDCs should be upgraded in a time-bound manner to enable open access under section 42. Timelines should be provided for the same.

(g) SERCs should ensure other enabling arrangements such as metering and settlement. Timelines should be provided for the same.

(h) Regulators should meet with the bulk consumers and take pro-active action for encouraging open access. Timelines should be provided for the same.

### (ii) Central Government

(a) The Task Force felt that 25% of the Centre's discretionary allocation of 15% of CPSU generating capacity may be made available for direct sale by CPSUs to open access consumers. As for new and upcoming capacity of CPSUs, 75% of the discretionary quota may be reserved for sale to open access consumers. Prices for sale to open access consumers may be determined by bidding. 75% of the profits made by the CPSUs on this account may be transferred to the respective states where open access consumers are located. However, the Ministry of Power felt that this shift can only be undertaken in a phased manner after meeting the contingent obligations of the pool of unallocated power. The Task Force, therefore, recommends that at

least 1,000 MW should be allocated for open access in 2012-13, out of the total estimated CPSU capacity of about 55,000 MW. The actual allocation of power should be from different power stations across states.

(b) Scheme of UI charges should be reviewed so as to ensure that UI does not become a vehicle for gaming in scheduling. A mechanism should be evolved to facilitate corrective measures against gaming including stiff penalties.

(c) Commencing from the 12th Five Year Plan, the Central Government should release APDRP assistance only to States that comply with the above and enable consumers to exercise their statutory right to open access. The States should demonstrate this by an actual increase in open access supplies under section 42 of the Act. A package of incentives and disincentives should also be formulated by PFC and REC for States to operationalise open access.

### **(iii) Issues which need further discussion**

It was felt that the following regulatory and statutory issues are important and need to be resolved. However, these issues do not directly relate to open access and may, therefore, be addressed separately. It is understood that the Working Group on the Twelfth Plan is also deliberating on these issues and their recommendations are awaited. It is suggested that a separate Task Force should be constituted after considering the Working Group recommendations for the

following issues which require further deliberation.

### **Regulatory Issues**

(a) Some SERCs have fixed trading margins for intra-State transactions relating to electricity that is ultimately consumed within the State. However, no such margin is being fixed where the ultimate consumer is outside the State. Such discrimination is untenable and violates the provisions of the Constitution of India that prohibit restrictions on inter-State trade. The Tariff Policy should be suitably amended to address this issue.

(b) The trading margin fixed by the CERC should apply in a seamless manner in any one transaction emanating from a generating company and terminating with a Discom through multiple traders. The total trading margin to be recovered by all the traders should not exceed the maximum margin allowed to a single trader.

(c) In respect of traded power, the number of intermediary traders should not exceed one in order to make the regulation of trading effective with a view to protecting consumer interests and for restricting profiteering.

### **Statutory Issues**

(d) Section 62(1)(a) should be amended to make it explicit that supply of electricity by a generating company to a distribution licensee includes supply through an electricity trader. This would ensure the benefit of regulated

prices for all regulated consumers buying electricity from their distribution companies. Suppliers of surplus power would be free to sell directly to consumers who wish to avail of open access at mutually determined prices.

(e) Amendment to the Act could take time. In the meanwhile, the Ministry of Power, in consultation with CERC, may evolve suitable policies and measures to check unregulated and exploitative prices in inter-State sale of electricity. This may include capping of prices by CERC under the provisions of Section 62(1)(a) of the Act.

7. For ready reference, the relevant provisions of the Electricity Act, 2003 in respect of open access are placed at **Annex-8**.

*Annex-1*

F. No. N-14026/2/2008-Infra (Vol.-VI)  
Government of India  
Planning Commission  
(Secretariat for Infrastructure)

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Yojana Bhavan, New Delhi  
Dated, 4th February, 2010

**OFFICE MEMORANDUM**

**Subject:** Reconstitution of the Task Force on Measures for Operationalising Open Access in the Power Sector.

An inter-Ministerial Task Force on Measures for Operationalising Open Access in the Power Sector is hereby reconstituted as below:

- |   |          |
|---|----------|
| i. Shri B. K. Chaturvedi, Member, Planning Commission                     | Chairman |
| ii. Shri Harishankar Brahma, Secretary, Ministry of Power                 | Member   |
| iii. Shri Ashok Chawla, Finance Secretary, Ministry of Finance            | Member   |
| iv. Shri Gajendra Haldea, Adviser to Deputy Chairman, Planning Commission | Member   |
| v. Shri Rakesh Nath, Chairman, Central Electricity Authority              | Member   |

2. The Task Force will examine the progress made in implementation of the recommendations made by the previous Task Force for operationalising open access in Power Sector. Its recommendation may cover, inter-alia, the following:-

- Measures for implementation of the recommendations made by the previous Task Force for operationalising open access in Power sector.
- Further course of action on issues pertaining to operationalising open access, listed in Part (B) of the recommendation of the previous Task Force.

3. The Task Force would submit its report within two months.

Sd/-  
**(Rakesh Ranjan)**  
Director (Infra)  
Tele: 2309 6588  
Fax.: 2309 6587

1. Shri B. K. Chaturvedi, Member, Planning Commission, Yojana Bhavan, New Delhi
2. Shri Ashok Chawla, Finance Secretary, Ministry of Finance, North Block, New Delhi
3. Shri Harishankar Brahma, Secretary, Ministry of Power, Shram Shakti Bhawan, New Delhi
4. Shri Rakesh Nath, Chairman, Central Electricity Authority, Sewa Bhawan, R. K. Puram, New Delhi
5. Shri Gajendra Haldea, Principal Adviser to Deputy Chairman, Planning Commission, Yojana Bhavan, New Delhi

Copy to:

1. PPS to Deputy Chairman, Planning Commission.
2. PPS to Secretary, Planning Commission.

### **Stakeholders invited for Consultations**

1. Principal Secretary, Energy Department, Govt of Karnataka
2. Principal Secretary, Energy Department, Government of Maharashtra
3. Principal Secretary, Energy Department, Govt of Andhra Pradesh
4. Secretary, Power and Non-Conventional Energy Sources, Govt of West Bengal
5. Secretary, Department of Energy, Govt of Uttar Pradesh
6. Commissioner-cum-Secretary, Energy Department, Govt of Orissa
7. Principal Secretary, Department of Power, Government of Punjab
8. Secretary, Rajasthan Electricity Regulatory Commission
9. CMD, Punjab State Power Corporation Limited (PSPCL)
10. Principal Secretary, Department of Power, Government of Haryana
11. Managing Director, Haryana Vidyut Prasaran Nigam Limited (HVPNL)
12. MD, Karnataka Power Transmission Corporation Limited (KPTCL)
13. MD, Maharashtra State Electricity Distribution Company Limited (MSEDCL)
14. MD, Andhra Pradesh Central Power Distribution Company Limited (APCPDCL)
15. Chairman & MD, West Bengal State Electricity Distribution Company Limited (WBSEDCL)
16. MD, Uttar Pradesh Power Corporation Limited (UPPCL)
17. Chairman, Central Electricity Supply Utility of Orissa (CESU)
18. Shri Satnam Singh, MD, Power Finance Corporation
19. Shri Naveen Jindal, Chairman, Jindal Power Ltd.
20. Shri T.V.S.N. Prasad, New Delhi
21. Shri Jayant Deo, MD & CEO, India Energy Exchange (IEX)
22. Shri Rajiv Lall, Managing Director, MD & CEO, Infrastructure Development Finance Company (IDFC)
23. Shri Rakesh Mohan, Chairman, NTDPC
24. Shri B.M. Verma, Advisor, Essar Ltd.
25. Shri P. K. Bishnoi, CMD, Vizag Steel Ltd.

26. Dr. J. K. Soni, AVP, Vedanta Aluminium Ltd.
27. Shri Pramod Suri, Sterlite Energy Ltd.
28. Shri Lalit Tondon, Vedanta Aluminum Ltd.
29. Shri Sunil Wadhwa, CEO, NDPL
30. Shri Satish Jindal, AVP, JSWPTC
31. Shri Ashok Khurana, J.P. Group
32. Shri Raaj Kumar, CEO, GMR Energy Ltd.
33. Shri Ashwani Kumar, Reliance Power Ltd.
34. Shri Ajit Kar, Tata Steel Ltd.
35. Shri Chanakya Chaudhary, Tata Steel Ltd.
36. Shri R. K. Sharma, Deputy Chief Engineer (Open Access), Punjab State Transco Ltd., Patiala
37. Shri I. J. Kapoor, Director, NTPC Ltd.
38. Shri I. S. Jha, Powergrid Corporation of India Ltd.
39. Smt. Rupa Devi Singh, MD & CEO, Power Exchange of India Ltd.
40. Shri Nain Singh, Executive Director, NHPC Ltd.
41. Shri R. P. Singh, Ex. Vice Chairman, Jindal Power Ltd.
42. Shri Rajeev Kumar, NHPC Ltd.
43. Shri Yogendra K. Khunduja, NHPC Ltd.
44. Shri R. K. Jain, Chief Engineer, NHPC Ltd.
45. Shri Prabhajit Kumar Sarkar, AVP, Power Exchange of India Ltd.
46. Shri S. K. Soonee, NLDC, Powergrid Corporation of India
47. Shri Y. K. Raizada, RVPN, Jaipur
48. Shri K. K. Agarwal, ED (Commercial), NTPC Ltd.
49. Shri A. Basu Roy, NTPC Ltd.
50. Shri V. Jayaraman, Hindustan Zinc Ltd.
51. Shri Amulya Charan, Tata Power Ltd.
52. Shri Kwawl Mewsan Gaba, World Bank

## **Recommendations of the First Task Force**

### **(i) Regulatory and System Changes**

- (a) Central and States' ERCs should be advised by the appropriate governments to comply with the statutory requirements relating to open access in a time bound manner. In particular, they must prescribe the open access surcharge in accordance with the provisions of the Tariff Policy notified by the Central Government under Section 3 of the Act.
- (b) The State Governments should be advised to advise the States' ERCs to specify the temporary connection charges to be charged by the Discom for providing standby supply in accordance with paragraph 8.5.6 of the Tariff Policy.
- (c) The States' ERCs should conform to the provisions of Section 42(2) of the Act which requires them to provide open access to all consumers of 1 MW and above within a period of five years from the coming into effect of the amendment of the Act in January 2004.
- (d) The state authorities should be advised to permit free sale of electricity and not compel generators to sell electricity to the SEB/Discom in the state except where a power purchase agreement exists.
- (e) State Governments and States' ERCs should be suitably advised to enable operationalisation of open access to promote a healthy development of the market where private investment can be attracted. Where the State Governments or the respective SERCs do not conform to the Act or the Tariff Policy thereunder, the State Governments be advised and matter discussed in the appropriate inter- and intra-State forum of Power Secretaries/Ministers.
- (f) To enable competing suppliers to use the distribution network on a level playing field, the tariff for distribution companies should clearly specify the energy charges and wheeling charges separately. It is, therefore, recommended that the SERCs should be advised to specify wheeling charges and energy charges separately in conformity with section 42 read with section 62 of the Act.
- (g) Segregation of transmission and trading should be undertaken by all States in accordance with the letter and spirit of the Act and in a time-bound manner.
- (h) State Governments should be advised to set up SLDCs as independent entities with financial and operational autonomy.
- (i) SLDCs should be upgraded in a time-bound manner to enable open access under section 42.
- (j) SERCs should ensure other enabling arrangements such as standby supplies at affordable prices, metering and settlement.

- (k) IPPs, captive and small generators should be allowed to bring power into the market without any hindrance in grant of open access.
- (l) Regulators should meet with the bulk consumers and other stakeholders to address their concerns with a view to operationalising the scheme of open access as provided in the Act. Consumer education and pro-active action by Regulators, both at the Centre and in the States, was considered vital for encouraging open access to consumers.

## **(ii) Central Government**

- (a) The Central Government should not permit supplies from the unallocated central quota of CPSUs to be sold by a recipient state and/or its utilities outside the recipient state either directly or through an intra-State trader to deficit states at prices exceeding the regulated tariff and a margin of 4 paise per unit which is the permissible trading margin. States would, however, be free to use CPSU power and sell their comparatively expensive generation to other States so long as the trading margin is restricted as per regulations of CERC. States that do not conform to the above should not be allocated any power from the unallocated quota and the electricity thus saved could be diverted to other States/utilities.
- (b) 25% of the Centre's discretionary allocation of 15% of CPSU generating capacity may be made available for direct sale by CPSUs to open access consumers. As for new capacity of CPSUs, 50% of the unallocated quota may be reserved for sale to open access consumers. Prices for sale to open access consumers may be determined by bidding. The profits made by the CPSUs may be shared equally with the respective states where open access consumers are located. (Reservation by Ministry of Power).
- (c) The scheme of UI charges should be reviewed so as to ensure that UI does not become a vehicle for trading by default and gaming in scheduling is checked. A mechanism should be evolved to facilitate grid constituents and off-takers to verify and take corrective measures against gaming by anyone. Any grid disturbances attributable to such indiscipline by any utility should invite penalty that may include suspension/termination of the license and appropriate regulation of their errant behavior.

## **(iii) Issues which Need Further Discussion**

### **Statutory changes**

- (a) Section 62(1)(a) should be amended to make it explicit that supply of electricity by a generating company to a distribution licensee includes supply through an electricity trader. This would ensure the benefit of regulated prices for all consumers buying electricity from their distribution companies. Suppliers of surplus power would be free to sell directly to

consumers who wish to avail of open access at mutually determined prices.

- (b) Amendment to the Act could take time. In the meanwhile, the Ministry of Power, in consultation with CERC, may evolve suitable policies and measures to check unregulated and exploitative prices in inter-State sales of electricity. This may include capping of prices by CERC under the provisions of Section 62(1)(a) of the Act.

### **Regulatory and System changes**

- (a) Section 62(1)(a) empowers the appropriate commission to cap electricity prices to deal with price rise in scarcity conditions. The provisions of this Section are sufficiently attracted because of widespread shortages in peak and energy demand. The appropriate commissions should, therefore, be advised to exercise their powers and perform their duties under the aforesaid Section. If necessary, the Tariff Policy should also be suitably amended to reflect the above.
- (b) Some SERCs have fixed trading margins for intra-State transactions relating to electricity that is ultimately consumed within the State. However, no such margin is being fixed where the ultimate consumer is outside the State. Such discrimination is untenable and violates the provisions of the Constitution of India that prohibit restrictions on inter-State trade. The Tariff Policy should be suitably amended to address this issue.
- (c) The trading margin fixed by the CERC should apply in a seamless manner in any one transaction emanating from a generating company and terminating with a Discom through multiple traders. The total trading margin to be recovered by all the traders should not exceed the maximum margin allowed to a single trader.

### **Central Government**

- (a) The Central Government should release APRDP assistance to States that comply with the above and enable consumers to exercise their statutory right to open access. The States should demonstrate this by an actual increase in open access supplies under section 42 of the Act. An additional allocation of Rs. 1,000 crore over and above the present approved funding may be made under APDRP to incentivise the States that actually enable open access. An agreed incentive per unit of open access supplies may be disbursed to the States under APDRP.

## **Views of the State Governments**

### **1. Andhra Pradesh**

1.1 The Government of Andhra Pradesh informed that open access in generation and transmission is operational in the State. There is seasonal demand for open access in the State and 36 consumers have been allowed open access in distribution under Section 42 of the Act. For instance, India Cement, Sagar Cement etc. have purchased power from PTC, NVVNL etc. from the month of April to June, 2010. The industrial tariff in the State of Andhra Pradesh is competitive. SLDC in the State is not an independent company. The cross subsidy surcharge is fixed by the State Electricity Regulatory Commission and it is currently Rs 1.32 per unit.

1.2 The Central Power Distribution Company of Andhra Pradesh caters to 40% of the power requirement of the State which is overall energy deficient round the year. The government reimburses Discoms for the expensive power purchased by them and a subsidy of Rs. 6,500 crore is paid out of which 4,000 crore is agriculture subsidy provided by the State Government and Rs. 2,500 crore is cross subsidy from among different categories of consumers. It has been informed that not a single application is pending with the Discoms for granting open access and NOC has been granted to all. However, operationalising open access by merely fixing the wheeling charge will have an adverse impact on the financial health of the Discoms.

### **2. West Bengal**

2.1 West Bengal State Electricity Distribution Company Ltd. stated that the cross subsidy surcharge is fixed by the regulator in the State. Tariff is fixed at Rs. 2.75 per unit which includes T&D charges, cross subsidy and wheeling charges. The average cost of supply is Rs. 4.71 per unit. There are occasional shortages in the system but overall it is energy surplus annually. The SLDCs are independently run in the State and intra-state Availability Based Tariff is followed. Cross subsidy surcharge is not calculated as per the tariff policy but is fixed by the regulator and if it is to be determined by the Tariff Policy, the recovery of cross subsidy will be less than actual. Moreover, the technical issue of load shedding schedule and supply of power to open access consumers needs consideration.

### **3. Uttar Pradesh**

3.1 The Government of Uttar Pradesh stated that ideally consumer should be given the right to choose from competing suppliers but three important issues need to be addressed for operationalising open access. First, the recovery of losses to the Discoms needs to be looked into; second, high cost of service of only using network for the supply of electricity will get burdened on to the consumers and the problem of congestion in the transmission corridors will lead to discrimination among consumers and the controller of the network will exercise his power to allow flow of electricity. Third, it was stated that the economics and financial

viability of the Discoms is the major concern in implementing the recommendations for operationalising open access.

#### **4. Karnataka**

4.1 Representative of the Karnataka Power Transmission Corporation Ltd. stated that no application is pending for availing open access under Section 42 of the Act. The regulator has fixed the wheeling charges. Only one firm has availed of open access under Section 42 of the Act which is buying power from NTPC. However, he stated that 18 per cent of the HT consumers in the State contribute towards 40 per cent revenues of the Discoms and if these consumers are shifted to the market regime, it will affect the financial health of the Discoms. He stated that the government is working towards independence of SLDC.

#### **5. Orissa**

5.1 Chairman, Central Electricity Supply Utility of Orissa stated that there are huge T&D losses to the tune of around 30% and shortages persist. The sector needs heavy investment to address the problem of technical and commercial losses. He also stated that providing open access to consumers under Section 42 will have serious impact on the Discoms because high price charged for supply to HT consumers is being used to subsidise LT consumers. There are 317 consumers availing open access in the State. The state is also contemplating to make SLDCs independent on the lines of Power Grid.

#### **6. Haryana**

6.1 MD, Haryana Vidyut Parsaran Nigam Ltd. stated that in the State of Haryana, electricity tariff have been revised up to 20% after a period of 10 years. She informed that subsidy was provided timely and regularly, segregation of agriculture feeders has been successfully completed, 5,000 MW of generation capacity was being added and in few years the State will become self-sufficient in power. Regarding open access, she stated that the Haryana is the first state to provide open access to its consumers and open access regulation were notified in 2005. Till date, 74 transactions have been completed and till 2011, cross subsidy surcharge has been waived off to facilitate open access. She stated that she supported the idea of providing day-to-day open access to consumers, providing level playing field to the private players, and encouraging competition in the sector but gaming needs to be checked.

#### **7. Gujarat**

7.1 Representative of Gujarat Urja Vikas Nigam Ltd. submitted written comments stating that as the distribution companies are under universal service obligation for supply of power to all categories of consumers including the subsidised category, it is appropriate to levy adequate cross subsidy surcharge on open access customers so that the Discoms can sustain their operations and also ensure supply of power to subsidised category of consumers. It was mentioned that, at present, power supply to HT consumers is

provided at tariff determined by SERC. At this stage, it was not feasible to supply power to HT consumers at mutually negotiated unregulated tariff since it may lead to financial irregularities and there would be difficulties in negotiating and agreeing upon the tariff with large number of consumers. Therefore, it would be appropriate that distribution companies continue to supply power to HT consumers at regulated tariff. However, if any HT consumer wants to buy power from any other source, other than the distribution utility, they were free to arrange such power under open access. Further it was stated that the state government was in the process of making the SLDC an independent company to ensure ring fencing with complete functional and financial autonomy.

No. 23/1/2008-R&R (Vol-IV)

Government of India

Ministry of Power

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Shram Shakti Bhawan, Rafi Marg,  
New Delhi, 30th November, 2011

To

1. Chairperson, Central Electricity Authority, New Delhi.
2. Principal Secretary/Secretary(Energy) of State Governments/UTs.
3. Registrar, Appellate Tribunal for Electricity, New Delhi.
4. Secretary, Central Electricity Regulatory Commission, New Delhi.
5. Secretary, State Electricity Regulatory Commissions/JERCs.
6. Chairmen, State Power Utilities/SEBs.
7. Chairmen, CPSUs under Ministry of Power.
8. Adviser to Dy. Chairman, Planning Commission, New Delhi.
9. CEO, POSOCO, New Delhi.
10. DG, BEE, New Delhi.

**Subject:** Opinion from Ministry of Law & Justice on the Operationalization of Open Access in Power Sector.

Sir,

The concept of open access in the electricity sector was introduced in the Electricity Act, 2003 with a view to promoting competition and providing the consumers a choice and was clearly perceived as a critical feature of power market development and competition.

2. An issue arose regarding the interpretation of several clauses pertaining to Open Access, such as section 42, 45, 49, 62 & 86 of the Electricity Act, 2003. The question was whether as per the provisions of the Electricity Act, bulk consumers (above 1 MW) shall be deemed to be open access consumers w.e.f. January 2009 in terms of the proviso of section 42(2) or whether the Act provides that Open Access shall be given to consumers who exercise a choice. It is quite clear that once a consumer becomes an Open Access consumer, the State Commission shall no longer fix the energy charges to be paid by him but will continue to fix the wheeling charges and surcharges in accordance with the provisions of the Act. Due to ambiguity in the interpretation of these provisions, the matter was referred to the Ministry of Law & Justice by the Ministry of Power.

3. Ministry of Law & Justice in consultation with Ld. Attorney General of India on 13.4.2011 opined that Section 42(ii) read with the first and fifth proviso is a self-contained code with regard to consumers who required the supply of electricity of 1MW and above and accordingly the State Electricity Regulatory Commissions cannot continue to regulate the tariff for supply of electricity to any consumer of 1 MW and above.

4. Further, on the issue of Universal Service Obligation (USO) of distribution licensee as per the provisions of Section 43(1) of the Act and on the issue of serving of notice under section 42(3) of the Act, the M/o Law & Justice in consultation with the Ld. Attorney General of India vide note dated 4.11.2011 has clarified that “The provisions of section 42 need to be analyzed in relation to the duties of the distribution licensees and open access. While sub-section (2) requires the State Commission to introduce open access within one year of the appointed date the fifth proviso makes it mandatory for the State Commission to provide open access to all consumers who require supply of electricity where the maximum power to be made available at any time exceeds 1MW. The fifth proviso was introduced by Act 57 of 2003 with effect from 27th January, 2004. The first issue is if open access is made obligatory whether the distribution licensees will continue to have the responsibility of universal service obligations with regard to consumers whose requirements are in excess of 1MW. An analysis of the various provisions (particularly section 49 of the Act) shows that if certain consumers want to have the benefit of the option to buy power from competing sources, then it is logical that DISCOMS do not have an obligation to compulsorily supply power to such consumers. If such consumers want power from the DISCOM then the terms and conditions of the supply would be determined in terms of section 49 of DISCOM also, Such an interpretation is logical and is in conformity with the Statement of Objects and Reasons of the Electricity Act, which encourages open access. Para 3 of the Statement of Objects and Reasons states that the Act recognizes the need to provide newer concepts like power trading and open access”.

5. Ministry of Law & Justice has further opined that “There is no conflict between the aforesaid conclusion and the provisions of section 42(3) of the Act which provides that a person requiring supply of electricity has to give notice in respect thereof. If the consumer intends to use the network of the DISCOMS, he has to give notice and upon such notice to DISCOM (it) is duty bound to provide non-discriminatory open access to its network. Section 42(3) cannot be construed to mean that giving of a notice is a pre-condition for the implementation of open access.” It would thus mean that the requirement of notice is only to communicate the open access consumer's intention of using the DISCOM's network as per the relevant regulations and not to seek its permission for the same.

6. In view of the above stated opinion of Ministry of Law & Justice in consultation with Ld. Attorney General of India, all concerned may note that all 1 MW and above consumers are deemed to be open access consumers and that the regulator has no jurisdiction over fixing the energy charges for them. It is requested that necessary steps for immediately implementing the provisions relating to open access in the Electricity Act, 2003 may be taken in the light of the above opinion.

Yours faithfully,

sd/-  
**(Pranay Kumar)**  
Director  
Tel: 2371 5250

## Simulation Exercise by India Energy Exchange

### Maharashtra Discom (MSEDCL)

1. Total Energy Sale (LT+HT Consumer) for year (2009-10) is 62,696 MU and Average billing rate is Rs. 4.32 per kWh. Total revenue from sale of Energy is Rs. 27,124 crore.
2. Total Power purchase for year (2009-10) is Rs. 84,641 MU at average purchase rate of Rs. 2.35 per kWh and total power purchase cost is Rs. 19,898 crore.
3. Total losses (Transmission + Distribution) are 21,945 MU which is 35% of Energy Sales (or 26% of Energy Purchase).
4. Total Transmission and SLDC charges for year 2009-10 are Rs. 1,494 crore.
5. Cross Subsidy Surcharge and Additional surcharges are zero.
6. Categories of HT consumer removed for Open Access are Industrial, Commercial, Railways and Bulk Supply. Other HT categories like agriculture and public water works has not been considered.
7. Since MVA / HP ratings of HT consumers are not available, energy units of HT consumers have been removed for OA. Category-wise billing rate and station-wise purchase rate have been used.
8. Calculations have been done for 5%, 10%, 15%, 20% & 1/3rd of HT consumers.
9. Conclusion: MSEDCL will get additional revenue when HT Consumers go for open access.

Sector	For 5 %	For 10 %	For 15 %	For 20 %	For 1/3rd
Profit / Loss(-) (Rs in Cr)	438.59	547.25	515.29	483.34	397.76
Profit / Loss(-) (in % of Sale Revenue of 27124 Cr)	1.62%	2.02%	1.90%	1.78%	1.47%

## Results of the Study by IIT, Delhi

This report deals with an assessment study of the impact of the migration of eligible HT consumers from State government owned distribution licensees to open access. As per National Electricity Policy, State Commission will decide the cross subsidy surcharge & additional surcharge to be levied by Distribution licensee from consumers who are opting for open access. This surcharge part should be there only to protect the benefit of host distribution licensee. This study will help us substantiate if cross subsidy surcharge need to be provided to Discoms or not. This study has been carried out for Discoms of seven states (Maharashtra, Haryana, Gujarat, Andhra Pradesh, Punjab, Tamil Nadu and Rajasthan).

In this study, calculations have been done for the different cases like 5%, 10%, 15%, 20% and 1/3rd of the eligible HT consumers opting for market purchase mode. HT categories which have been subsidized by Commission are not considered. Category wise consumption and Category wise billing rates have been used for calculations. Overall technical losses at 15% (Transmission + Distribution) have been considered for all cases. Station wise purchase rates have been used to set the merit order of stations and the stations or sources which have higher purchase rates have been removed. Total transmission and SLDC charges have been considered as given in tariff orders and on pro rata basis it has been removed. Now after subtracting this reduction in Expenses and reduction in Revenue from Energy Sale, we will have less/ additional Revenue of Distribution licensees for each case and from this analysis has been done whether surcharge is required or not.

In following paragraphs, results and analysis of this study have been discussed in very brief manner.

### MAHARASHTRA

**Table 1.1** Additional revenue for different cases

Category	For 5 %	For 10 %	For 15 %	For 20 %	For 1/3rd
Additional Revenue (% of Sale Revenue of 27,124 Cr)	2.43%	4.86%	6.09%	6.30%	5.03%

Additional revenue for Maharashtra state for different cases is given in Table 1.1. From this result, it is clear that distribution licensee will get additional revenue when eligible HT consumers will opt for open access therefore cross subsidy surcharge should be zero.

## HARYANA

**Table 1.2** Additional revenue for different cases

Category	For 5 %	For 10 %	For 15 %	For 20 %	For 1/3rd
Additional Revenue (% of Sale Revenue of 5,270 Cr)	0.93%	1.35%	1.20%	1.03%	0.46%

From above result, it is clear that distribution licensee will get additional revenue when eligible HT consumers will opt for open access therefore cross subsidy surcharge should be zero. But HERC has approved cross subsidy surcharge for respective consumer categories which will generate additional revenue for Discoms from this surcharge and on other side it will be extra burden on HT consumers who want to migrate to open access.

## GUJARAT

**Table 1.3** Additional revenue for different cases

Category	For 5 %	For 10 %	For 15 %	For 20 %	For 1/3rd
Additional Revenue (% of Sale Revenue of 13,203 Cr)	1.95%	2.61%	2.97%	3.26%	3.43%

From above result, it is clear that distribution licensee will get additional revenue when eligible HT consumers will opt for open access therefore cross subsidy surcharge should be zero. But GERC has approved cross subsidy surcharge of Rs. 0.51 per kWh for HT consumers which will generate additional revenue for Discoms from this surcharge and on other side it will be extra burden on HT consumers who want to migrate to open access.

## ANDHRA PRADESH

**Table 1.4** Additional revenue for different cases

Category	For 5 %	For 10 %	For 15 %	For 20 %	For 1/3rd
Additional Revenue (% of Sale Revenue of 18,860 Cr)	0.60%	1.20%	1.71%	2.15%	3.32%

From above result, it is clear that distribution licensee will get additional revenue when eligible HT consumers will opt for open access therefore cross subsidy surcharge should be zero.

## PUNJAB

**Table 1.5** Additional revenue for different cases

Category	For 5 %	For 10 %	For 15 %	For 20 %	For 1/3rd
Additional Revenue (% of Sale Revenue of 14,140 Cr)	0.87%	0.82%	0.52%	0.08%	(-)1.40%

From above result, it is clear that distribution licensee will get additional revenue when up to 20% of eligible HT consumers will opt for open access therefore cross subsidy surcharge should be zero.

## TAMIL NADU

**Table 1.6** Additional revenue for different cases

Category	For 5 %	For 10 %	For 15 %	For 20 %	For 1/3rd
Additional Revenue (% of Sale Revenue of 17,927 Cr)	2.86%	5.42%	7.91%	10.25%	15.56%

From above result, it is clear that distribution licensee will get additional revenue when eligible HT consumers will opt for open access therefore cross subsidy surcharge should be zero.

## RAJASTHAN

**Table 1.7** Additional revenue for different cases

Category	For 5 %	For 10 %	For 15 %	For 20 %	For 1/3rd
Additional Revenue (% of Sale Revenue of 9,242 Cr)	1.61%	2.81%	3.01%	3.03%	2.93%

From above result, it is clear that distribution licensee will get additional revenue when eligible HT consumers will opt for open access therefore cross subsidy surcharge should be zero.

## **Provisions of the Electricity Act, 2003 related to Open Access**

### **Section 2(47):**

#### Definitions

2. In this Act, unless the context otherwise requires,

...

(47) “open access” means the non-discriminatory provision for the use of transmission lines or distribution system or associated facilities with such lines or system by any licensee or consumer or a person engaged in generation in accordance with the regulations specified by the Appropriate Commission;

### **Section 9(2):**

9. Captive Generation

...

(2) Every person, who has constructed a captive generating plant and maintains and operates such plant, shall have the right to open access for the purposes of carrying electricity from his captive generating plant to the destination of his use: Provided that such open access shall be subject to availability of adequate transmission facility and such availability of transmission facility shall be determined by the Central Transmission Utility or the State Transmission Utility, as the case may be: Provided further that any dispute regarding the availability of transmission facility shall be adjudicated upon by the Appropriate Commission.

### **Section 30:**

#### Transmission within a State

30. The State Commission shall facilitate and promote transmission, wheeling and inter-connection arrangements within its territorial jurisdiction for the transmission and supply of electricity by economical and efficient utilisation of the electricity.

### **Section 31:**

31. Constitution of State Load Despatch Centres

(1) The State Government shall establish a Centre to be known as the State Load Despatch Centre for the purposes of exercising the powers and discharging the functions under this Part.

(2) The State Load Despatch Centre shall be operated by a Government company or any authority or corporation established or constituted Government company or any authority or corporation established or constituted by or under any State Act, as may be notified by the State Government.

Provided that until a Government company or any authority or corporation is notified by the State Government, the State Transmission Utility shall operate the State Load Despatch Centre:

Provided further that no State Load Despatch Centre shall engage in the business of trading in electricity.

**Section 32:**

32. Functions of State Load Despatch Centres

(1) The State Load Despatch Centre shall be the apex body to ensure integrated operation of the power system in a State.

(2) The State Load Despatch Centre shall

(a) be responsible for optimum scheduling and despatch of electricity within a State, in accordance with the contracts entered into with the licensees or the generating companies operating in that State;

(b) monitor grid operations;

(c) keep accounts of the quantity of electricity transmitted through the State grid;

(d) exercise supervision and control over the intra-state transmission system; and

(e) be responsible for carrying out real time operations for grid control and despatch of electricity within the State through secure and economic operation of the State grid in accordance with the Grid Standards and the State Grid Code.

(3) The State Load Despatch Centre may levy and collect such fee and charges from the generating companies and licensees engaged in intra-State transmission of electricity as may be specified by the State Commission.

**Section 38(2)(d):**

38. Central Transmission Utility and functions

...

(2) The functions of the Central Transmission Utility shall be -

...

(d) to provide non-discriminatory open access to its transmission system for use by -

(i) any licensee or generating company on payment of the transmission charges; or (ii) any consumer as and when such open access is provided by the State Commission under sub-section

(2) of section 42, on payment of the transmission charges and a surcharge thereon, as may be specified by the Central Commission:

Provided that such surcharge shall be utilized for the purpose of meeting the requirement of current level cross-subsidy:

Provided further that such surcharge and cross-subsidies shall be progressively reduced and eliminated in the manner as may be specified by the Central Commission:

Provided also that such surcharge may be levied till such time the cross subsidies are not eliminated:

Provided also that the manner of payment and utilisation of the surcharge shall be specified by the Central Commission:

Provided also that such surcharge shall not be leviable in case open access is provided to a person who has established a captive generating plant for carrying the electricity to the destination of his own use.

**Section 39(2)(d):**

39. State Transmission Utility and functions

...

(2) The functions of the State Transmission Utility shall be -

...

(d) to provide non-discriminatory open access to its transmission system for use by -

(i) any licensee or generating company on payment of the transmission charges; or

(ii) any consumer as and when such open access is provided by the State Commission under subsection (2) of section 42, on payment of the transmission charges and a surcharge thereon, as may be specified by the State Commission:

Provided that such surcharge shall be utilized for the purpose of meeting the requirement of current level cross-subsidy:

Provided further that such surcharge and cross-subsidies shall be progressively reduced and eliminated in the manner as may be specified by the State Commission:

Provided also that such surcharge may be levied till such time the cross subsidies are not eliminated:

Provided also that the manner of payment and utilisation of the surcharge shall be specified by the State Commission:

Provided also that such surcharge shall not be leviable in case open access is provided to a person who has established a captive generating plant for carrying the electricity to the destination of his own use.

**Section 40(c):**

Duties of Transmission licensees

40. It shall be the duty of a transmission licensee -

...

(c) to provide non-discriminatory open access to its transmission system for use by -

(i) any licensee or generating company on payment of the transmission charges; or

(ii) any consumer as and when such open access is provided by the State Commission under subsection (2) of section 42, on payment of the transmission charges and a surcharge thereon, as may be specified by the State Commission:

Provided that such surcharge shall be utilized for the purpose of meeting the requirement of current level cross-subsidy:

Provided further that such surcharge and cross-subsidies shall be progressively reduced and eliminated in the manner as may be specified by the Appropriate Commission: 52

Provided also that such surcharge may be levied till such time the cross subsidies are not eliminated:

Provided also that the manner of payment and utilisation of the surcharge shall be specified by the Appropriate Commission:

Provided also that such surcharge shall not be leviable in case open access is provided to a person who has established a captive generating plant for carrying the electricity to the destination of his own use.

**Sections 42(2) to 42(4):**

42. Duties of distribution licensee and open access

...

(2) The State Commission shall introduce open access in such phases and subject to such conditions, (including the cross subsidies, and other operational constraints) as may be specified within one year of the appointed date by it and in specifying the extent of open access in successive phases and in determining the charges for wheeling, it shall have due regard to all relevant factors including such cross subsidies, and other operational constraints:

Provided that such open access may be allowed before the cross subsidies are eliminated on payment of a surcharge in addition to the charges for wheeling as may be determined by the State Commission:

Provided further that such surcharge shall be utilised to meet the requirements of current level of cross subsidy within the area of supply of the distribution licensee:

Provided also that such surcharge and cross subsidies shall be progressively reduced in the manner as may be specified by the State Commission:

Provided also that such surcharge shall not be leviable in case open access is provided to a person who has established a captive generating plant for carrying the electricity to the destination of his own use:

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

(3) Where any person, whose premises are situated within the area of supply of a distribution licensee, (not being a local authority engaged in the business of distribution of electricity before the appointed date) requires a supply of electricity from a generating company or any licensee other than such distribution licensee, such person may, by notice, require the distribution licensee for wheeling such electricity in accordance with regulations made by the State Commission and the duties of the distribution licensee with respect to such supply shall be of a common carrier providing non-discriminatory open access.

(4) Where the State Commission permits a consumer or class of consumers to receive supply of electricity from a person other than the distribution licensee of his area of supply, such consumer shall be liable to pay an additional surcharge on the charges of wheeling, as may be specified by the State Commission, to meet the fixed cost of such distribution licensee arising out of his obligation to supply.

## **Section 52:**

### **52. Provisions with respect to electricity trader**

(1) Without prejudice to the provisions contained in clause (c) of section 12, the Appropriate Commission may, specify the technical requirement, capital adequacy requirement and credit worthiness for being an electricity trader.

(2) Every electricity trader shall discharge such duties, in relation to supply and trading in electricity, as may be specified by the Appropriate Commission.

**Section 62(1)(a):**

62. Determination of Tariff.

(1) The Appropriate Commission shall determine the tariff in accordance with provisions of this Act for

(a) supply of electricity by a generating company to a distribution licensee: Provided that the Appropriate Commission may, in case of shortage of supply of electricity, fix the minimum and maximum ceiling of tariff for sale or purchase of electricity in pursuance of an agreement, entered into between a generating company and a licensee or between licensees, for a period not exceeding one year to ensure reasonable prices of electricity;

**Section 79:**

79. Functions of Central Commission

(1) The Central Commission shall discharge the following functions, namely:-

(a) to regulate the tariff of generating companies owned or controlled by the Central Government;

(b) to regulate the tariff of generating companies other than those owned or controlled by the Central Government specified in clause (a), if such generating companies enter into or otherwise have a composite scheme for generation and sale of electricity in more than one State;

(c) to regulate the inter-State transmission of electricity;

(d) to determine tariff for inter-State transmission of electricity;

(e) to issue licenses to persons to function as transmission licensee and electricity trader with respect to their inter-State operations;

(f) to adjudicate upon disputes involving generating companies or transmission licensee in regard to matters connected with clauses (a) to (d) above and to refer any dispute for arbitration;

(g) to levy fees for the purposes of this Act;

(h) to specify Grid Code having regard to Grid Standards;

(i) to specify and enforce the standards with respect to quality, continuity and reliability of service by licensees.

(j) to fix the trading margin in the inter-State trading of electricity, if considered, necessary;

(k) to discharge such other functions as may be assigned under this Act.

(2) The Central Commission shall advise the Central Government on all or any of the following matters, namely:- (i) formulation of National electricity Policy and tariff policy; (ii) promotion of competition, efficiency and economy in activities of the electricity industry; (iii) promotion of investment in electricity industry; (iv) any other matter referred to the Central Commission by that Government.

(3) The Central Commission shall ensure transparency while exercising its powers and discharging its functions.

(4) In discharge of its functions, the Central Commission shall be guided by the National Electricity Policy, National Electricity Plan and tariff policy published under section 3.

**Section 86(1)(a) and (b):**

**86. Functions of State Commission**

(1) The State Commission shall discharge the following functions, namely:

(a) determine the tariff for generation, supply, transmission and wheeling of electricity, wholesale, bulk or retail, as the case may be, within the State: Providing that where open access has been permitted to a category of consumers under section 42, the State Commission shall determine only the wheeling charges and surcharge thereon, if any, for the said category of consumers;

(b) regulate electricity purchase and procurement process of distribution licensees including the price at which electricity shall be procured from the generating companies or licensees or from other sources through agreements for purchase of power for distribution and supply within the State;



Published by  
**Secretariat for Infrastructure**  
Planning Commission, Government of India  
Yojana Bhawan, Parliament Street  
New Delhi - 110001

