

## **Note on the developments in different States**

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The Ministry of Power has circulated a letter to all the stakeholders conveying opinion of Ministry of Law and Justice on the matter of Operationalization of Open Access in Power Sector. M/o Law and Justice have opined that all 1 MW and above consumers are deemed to be Open Access consumers and the Regulator has no jurisdiction over fixing energy charges for them.

### **Rajasthan**

Considering this clarification, all the Discom's in Rajasthan simultaneously came out with circulars with terms and conditions to deal with the Open Access consumers with demand 1 MW & above. The consumers were given to opt for one of the following three categories within 7 days from the date of issuing the circular:

1. Consumers drawing energy from Discom exclusively (Dedicated Consumers of Discom)
2. Consumers who draw energy exclusively from sources other than Discom and draw energy from Discom only in emergency.
3. Consumers who purchase energy partially from sources other than Discom except Renewable Energy Sources and partially from Discom

The key highlights of the circular are:

- Those consumers that draw power from the Discoms only in an emergency will be levied temporary tariff (50% higher than the normal applicable tariff). They will have to inform the Discom 48 hours in advance of the intent to draw such power. However, the Discom will have no obligation to supply power to them.
- Those consumers that draw power from both the Discom and other sources will also have the 48 hour prior intimation requirement. Also, once they decide to draw power from a source other than the discom, they will have to do so for the entire 24 hour period. They will also have additional surcharges during peak hours.

### **Action taken by RERC**

On the petition filed by stakeholders, Rajasthan Electricity Regulatory Commission issued a stay order on this matter. The Discoms have sought number of extensions since the first hearing date given by the Commission.

### **Action taken by PSERC**

Punjab State Electricity Regulatory Commission has issued a public notice referring to the Ministry of Power's letter. The notice also refers that earlier APTEL in its Judgement in Appeal No.1 of 2006 dated 11th July, 2006 (Annexure 'B'), held as under:

- Neither Sec. 38 (2) (d) nor Sec. 39 (2) (d) nor Sec. 42 (2) which provides for Open Access warrants or stipulates that an existing consumers who seek an open access shall cease to be a consumer of a area Discom.
- In law and as per statutory provisions so long as Appellant desires to continue its relationship with area distribution licensee and agrees to abide by the stipulation, there can be no direction or compulsion to sever its contractual relationship as a consumer.

PSERC requested the Open Access consumers and others, if any, to furnish their views/comments on the interpretation of Open Access provisions by Ministry of Law & Justice and the aforesaid Judgement of the APTEL, to the Commission within a period of 30 days so as to enable the Commission to take further action in the matter.

### **Gujarat**

The Commission has received a letter from Gujarat Urja Vikas Nigam Ltd. (GUVNL) interpreting the opinion of M/o Law and Justice that if bulk consumers avail Open Access power from Discoms then the State Regulatory Commission shall not determine retail tariff for them. The Terms and Conditions of supply to such consumers would be determined in terms of Section 49 of the Electricity Act, 2003. It is further interpreted by the GUVNL that Discoms are not obliged to supply power to bulk consumers (1 MW and above), as consumers are already exercising option to buy power from competing sources. It is mentioned in the letter that if Discoms have to supply power to such open access consumers, then tariff for supply of power to them shall be mutually agreed as per provision of Section 49 of the Electricity Act, 2003 i.e. supply of power not at the retail tariff determined by the GERC.

## **Action taken by GERC**

The Gujarat Electricity Regulatory Commission (GERC) has initiated a Suo Motu proceeding to obtain views from various stakeholders about Commission's Jurisdiction for Determination of Tariff of the Consumers of 1 MW and above, in light of consideration of such Consumers as Deemed Open Access Consumers.