

## Competition Commission of India

### A Synopsis

#### Brief Note:

Open Access Users Association (OAUA) has filed a petition u/s 19(1)(a) of Competition Commission of India, 2002 as an informant against TATA Power Delhi Distribution Ltd, BSES Rajdhani Power Ltd, Delhi, BSES Yamuna Power Ltd, Delhi, Punjab State Power Corporation Ltd, Punjab, Uttar Haryana Bijli Vitran Nigam Ltd, Haryana, Dakshin Haryana Bijli Vitran Nigam Ltd, Haryana and Himachal Pradesh State Electricity Board, Himachal Pradesh and u/s 21A of Competition Act, 2002 challenging the increase in open access charges by the State Electricity Regulatory Commission of Delhi, Punjab, Haryana and Himachal Pradesh which has resulted in denial of open access, creation of entry barriers, foreclosure of competition and limited consumer choice in the market.

After observance made by the Hon'ble Commission dated on 03.02.2015, the petition has been numbered as 91/2014. The Commission observes and gave a period of 60 days within which the Respondent needs to furnish their opinion.

#### Facts of the Case:

The respective State Electricity Regulatory Commission in its Tariff Order determined the various applicable open access charges. The open access charges determined in the various states are as follows:

1. Open Access Charges in Haryana:

FY	2010-11	2011-12	2012-13	2013-14	2014-15
STU Charges	28	23	23	17	29
Wheeling charge	46	49	51	70	74
CSS	72	58	92	53	202
Additional Surcharge	0	0	0	0	50
Total OA Charges	146	130	166	140	355

2. Open Access charges in Punjab:

FY	2010-11	2011-12 (LTOA)	2012-13	2013-14	2014-15
STU Charges	9.4	11	19	27	0.28
Wheeling charge	56	116	124	119	121
CSS	61	73.5	88.08	107	95
Additional Surcharge	0	0	0	0	0
Total OA Charges	126.4	200.5	231.08	253	216.28

3. Open Access Charges in Himachal Pradesh:

For 66 kV and above	FY	2011-12	2012-13	2013-14	2014-15
	STU Charges	2.12	2.15	2	2
	Wheeling charge	38	47	44	46
	CSS	237	237	185	243
	Additional Surcharge	0	0	0	0
	Total OA Charges	277.12	286.15	231	291

#### 4. Open Access charges in Delhi:

Year	Discom	Voltage Level	STU Charge (paise /kwh)	Wheeling Charge (paise /kwh)	Cross Subsidy (paise /kwh)	Additional Surcharge (paise/kwh)
2008-09, 2009-10, 2010-11, 2011-12, 2012-13	NDPL	LT level	-	80.66	-	April-July Time Slots 0-3 – 30 paise/unit 3-9 – 130 paise/unit 9-12 – 30 paise/unit 12-18 – 30 paise/unit 18-24 – 30 paise/unit August- November Time slots 0-6 – 300 paise/unit
		11 kV		45.33	-	
		33/66 kV		10.55	72.98	
		Above 66 kV		NA	97.03	
	BRPL	LT level	-	70.82	-	
		11 kV		38.07	20.93	
		33/66 kV		9.03	92.76	
		Above 66 kV		NA	119.79	
	BYPL	LT level	-	87.52	-	
		11 kV		43.89	2.48	
		33/66 kV		10.40	78.76	
		Above 66 kV		NA	107.16	
2013-14	TPDDL	LT level	Rs. 219/ MWh	77	-	
		11 kV		71	26.37	

		33/66 kV		68	46.23	6-12 – 300 paise/unit 12-18 – 300 paise/unit 18-24 – 300 paise/unit December- March Time slots 0-6 – 300 paise/unit 6-12 – 100 paise/unit 12-18 – 100 paise/unit 18-24 – 100 paise/unit	
		Above 66 kV		67	-		
	BRPL	LT level		72	-		
		11 kV		63	49.38		
		33/66 kV		61	57.35		
		Above 66 kV		-	-		
	BYPL	LT level		81	-		
		11 kV		69	56.56		
		33/66 kV		68	64.4		
		Above 66 kV					

Grounds of the Case:

1. The Respondents have violated the provision of Section 4 of Competition Act, 2002 by their unilateral, abusive and discriminatory conduct. The Respondents have used their “dominant position” (Section 4) in the power sector in their respective states by imposing unfair and discriminatory barriers. This establishes that the discoms are exercising their monopoly over the power market by giving proposals to the concerned SERCs for raising open access charges.

2. The Respondents have unduly influenced and made unreasonable suggestions to the respective commissions for increasing the applicable open access charges. As a result, consumers are forced to procure power through Discoms only at high prices. In this way, the Discoms abuse their dominant position which leads to foreclosure of competition. The same has the effect of creation of barriers to new entrants and limiting competition and choice to the consumers.
3. Open Access was brought in a phased manner with an objective to provide freedom of choice to all consumers to procure power from third party sources. The Respondents have huge inefficiencies in their operation and are not presently in a position to compete with other sources of supply due to their own acts or omission.
4. It is submitted that the SERCs have not provided for adequate and relevant computation methodology nor proper reasoning and raising open access charges. The conduct of the Respondents implies significant non-disclosure of important information and misuse of power by purporting unfair, discretionary and discriminatory price in purchase or sale (including predatory price) of goods (electricity) and services (wheeling). Such non-disclosure considerably affects the market and promote inefficiencies in the market.
5. It is submitted that Section 42 (2) of Electricity Act, 2003 states that CSS shall be progressively reduced. The respective SERCs have failed to not only reduce CSS but continuously increasing the CSS. Therefore, the concerned SERCs have acted in violation of Electricity Act, 2003.
6. It is submitted that the Respondents have also acted in violation of NTP which states that the Cross subsidy shall not be more that 20% of the

Average Cost of supply. Moreover, para 8.5.1 of NTP provides a clear mandate on the SERCs that the calculation of CSS needs to be done in a manner that when it compensates the distribution licensee, it does not constrain competition through open access.

Prayer:

1. Institute an inquiry against the Respondents and pass an order directing the Director General of Investigations to carry out an investigation into violation of Section 4 of Competition Act, 2002.
2. Direct the Respondents to refrain from indulging in similar abusive conduct in future.
3. Impose such penalty/cost on the Respondents as may be deemed fit and proper.
4. Pass such other orders as may be necessary in the interest of justice.