

**MAHARASHTRA ELECTRICITY REGULATORY COMMISSION  
(DISTRIBUTION OPEN ACCESS) REGULATIONS, 2004**

ELECTRICITY ACT, 2003

No. MERC/Legal/111/2004/1088 - In exercise of the powers conferred by clauses (p), (q) and (zp) of sub-section (2) of section 181 read with sub-section (47) of Section 2 and sub-sections (2), (3) and (4) of Section 42 of the Electricity Act, 2003 (36 of 2003), the Maharashtra Electricity Regulatory Commission hereby makes the following regulations for the introduction of open access in the distribution system of the State, namely:-

**1. Short Title, extent and commencement**

- (1) These Regulations may be called the Maharashtra Electricity Regulatory Commission (Distribution Open Access) Regulations, 2004.
- (2) These Regulations shall extend to the whole of the State of Maharashtra.
- (3) These Regulations shall come into force on the date of their publication in the Official Gazette.

**2. Definitions**

- (1) In these Regulations unless the context otherwise requires:
  - (a) “**Act**” means the Electricity Act, 2003 (36 of 2003);
  - (b) “**Commission**” means the Maharashtra Electricity Regulatory Commission;
  - (c) “**Contract demand**” means demand in kilovolt ampere (KVA) or megavolt ampere (MVA) mutually agreed between the Distribution Licensee and the consumer as entered into in the agreement for supply of electricity;
  - (d) “**Current level of cross subsidy**” means the aggregate, over all approved tariff categories of the Distribution Licensee, and for each tariff slab within each such tariff category, of:-
    - (i) the difference between the tariff for each approved tariff category and for each such tariff slab, as at March 31, 2004, and the cost of supply of electricity to such tariff category/ tariff slab, where such difference is a positive value; multiplied by
    - (ii) the consumption of electricity by each such tariff category and for each such tariff slab, for the financial year ended March 31, 2004;

(e) “**Special Energy Meters**” means such meters, of not less than 0.2 class accuracy, as are capable of:-

- (i) recording time-differentiated measurements of active energy and voltage differentiated measurement of reactive energy, at intervals of fifteen (15) minutes;
- (ii) storing such measurements for not less than sixty (60) days; and
- (iii) online communication of such measurements on a real-time basis.

(2) Words or expressions used herein and not defined shall have the meanings assigned to them in the Act.

### **3. Conditions for open access**

3.1 A Distribution Licensee shall provide open access to a licensee or consumer or person engaged in generation or a person whose premises are situated within the area of supply of such Distribution Licensee in accordance with the conditions specified in these Regulations:

Provided that the Commission may specify additional conditions for availing of open access, from time to time, to apply to a licensee or consumer or person engaged in generation or a person whose premises are situated within the area of supply of a Distribution Licensee, or categories thereof, having regard to all relevant factors, including cross subsidies and other operational constraints.

#### **3.2 Eligibility condition**

3.2.1 The Commission shall allow open access to the distribution system to a consumer and to a person, other than a consumer, whose premises are situated within the area of supply of a Distribution Licensee for availing the supply of electricity from a generating company or from a licensee other than such Distribution Licensee, in accordance with the following eligibility conditions, subject to capacity and operational constraints which may apply in individual cases:-

<b>Contract demand of consumer/ person whose premises are situated within the area of supply of Distribution Licensee</b>	<b>Date on which open access will be allowed under sub-section (2) of Section 42 of the Act</b>
Not less than 5 MVA	April 1, 2005
Not less than 2 MVA but less than 5 MVA	April 1, 2006

3.2.2 The Commission shall allow open access to the distribution system to a generating company or a licensee, other than the Distribution Licensee of the area of supply, to give supply of electricity to a consumer or to a person, other than a consumer, whose premises are situated within such area of supply, from the date on which such consumer or such other person to whom such supply is to be given is eligible for open access in accordance with Regulation 3.2.1 above.

3.2.3 The Commission may review and modify the aforesaid eligibility conditions based on the experience gained through the introduction of open access and/ or upon a consideration of all relevant factors.

### 3.3 Cross-subsidy surcharge

3.3.1 Every person who has been granted open access in accordance with these Regulations shall be liable to pay a cross-subsidy surcharge as may be specified, as a condition for availing of open access:

Provided 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 a destination of his own use.

3.3.2 Every Distribution Licensee shall, within three (3) months from the date of notification of these Regulations, submit to the Commission the methodology that he proposes to adopt to calculate the current level of cross subsidy within his area of supply:

Provided that the Distribution Licensee shall provide to the Commission, full details of all relevant aspects relating to such calculation, including sources of information proposed to be used, proposed sample size and agency through whom the Distribution Licensee proposes to undertake the calculation.

3.3.3 The Commission shall, after due scrutiny of the proposed methodology for calculating the current level of cross subsidy, either-

- (a) approve such methodology with such changes as it may deem appropriate; or
- (b) reject such methodology for reasons recorded in writing and direct the Distribution Licensee to submit a revised methodology within such time period and taking into consideration such factors as may be contained in the said direction:

Provided that the Commission may share the details of such proposed methodology with any person and/ or place it on the internet website of the Commission for comments/ suggestions, as it deems appropriate:

Provided further that the Distribution Licensee shall be given a reasonable opportunity of being heard before rejecting his proposed methodology:

Provided also that where the Commission has rejected the proposed methodology of the Distribution Licensee for reasons to be recorded in writing, the Commission may specify an alternative methodology to be adopted by the Distribution Licensee.

3.3.4 The Distribution Licensee shall, within a period of three (3) months from the date on which the methodology for calculating the current level of cross subsidy is approved or specified, as the case may be, by the Commission, calculate the current level of cross subsidy within the area of supply of the Distribution Licensee and submit full details of such calculation to the Commission:

Provided that the Commission may share the details of such calculation with any person and/ or place it on the internet website of the Commission for comments/ suggestions, as it deems appropriate.

3.3.5 The Commission shall, after due scrutiny of the calculation submitted by the Distribution Licensee, either-

- (a) approve the current level of cross subsidy within the area of supply of the Distribution Licensee; or
- (b) reject the calculation for reasons recorded in writing if such calculation is not in accordance with the methodology previously approved by the Commission or is not in accordance with the provisions of the Act or rules and regulations framed thereunder and either direct the Distribution Licensee to re-submit his calculation or specify such amount as it deems appropriate as the current level of cross subsidy within the area of supply of such Distribution Licensee:

Provided that the Distribution Licensee shall be given a reasonable opportunity of being heard before rejecting his calculation.

3.3.6 Where the Distribution Licensee fails to calculate the current level of cross subsidy in accordance with these Regulations, the Commission may, where the Distribution Licensee is unable to show adequate cause for such failure, specify such amount as it deems appropriate as the current level of cross subsidy within the area of supply of such Distribution Licensee.

3.3.7 The Commission shall, based on the approved current level of cross subsidy, specify the cross subsidy surcharge for each approved tariff category and for each tariff slab within each such tariff category, of the Distribution Licensee:

Provided that such surcharge shall be specified for each financial year based on the expected consumption of electricity of each tariff category, until such time as the surcharge and the cross subsidies are eliminated:

Provided further that the cross subsidy surcharge shall be levied and paid in such manner as may be specified by the Commission:

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

### 3.4 Additional surcharge

3.4.1 Where the 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 Commission, to meet the fixed cost of such Distribution Licensee arising out of his obligation to supply.

### 3.5 Special Energy Meters

Every person who has been granted open access in accordance with these Regulations shall install a Special Energy Meter and shall maintain the same in a suitable and adequately maintained protective enclosure.

## **4. Disputes**

Any dispute under these Regulations shall be determined by arbitration in accordance with the provisions of Section 158 of the Act.

## **5. Exemption**

Nothing contained in these Regulations shall apply to a local authority engaged in the business of distribution of electricity before the appointed date and to any person whose premises are situated within the area of supply of such local authority.

## **6. Power to amend**

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

## **7. Power to remove difficulties**

If any difficulty arises in giving effect to the provisions of these Regulations, the Commission may, by general or specific order, make such provisions not inconsistent with the provisions of the Act, as may appear to be necessary for removing the difficulty.

## **8. Savings**

8.1 Nothing contained in these Regulations shall invalidate the Commission's powers to exempt any licensee or consumer or person engaged in generation or a person whose premises are situated within the area of supply of a Distribution Licensee from any or all of the conditions for availing open access, whether before or after the notification of these Regulations:

Provided that the Commission shall, as far as practicable, give reasonable opportunity to any interested or affected party to make representations before granting such exemption.

8.2 Nothing in these Regulations shall be deemed to limit or otherwise affect the inherent power of the Commission to make such orders as may be necessary to meet the ends of justice or to prevent abuses of the process of the Commission.

8.3 Nothing in these Regulations shall bar the Commission from adopting in conformity with the provisions of the Act a procedure, which is at variance with any of the provisions of these Regulations, if the Commission, in view of the special circumstances of a matter or class of matters and for reasons to be recorded in writing, deems it necessary or expedient for dealing with such a matter or class of matters.

8.4 Nothing in these Regulations shall, expressly or impliedly, bar the Commission dealing with any matter or exercising any power under the Act for which no Regulations have been framed, and the Commission may deal with such matters, powers and functions in a manner it thinks fit.

A.M. Khan,  
Secretary,  
Maharashtra Electricity Regulatory Commission,  
Mumbai.

Mumbai, 10<sup>th</sup> June, 2004