

TAMIL NADU ELECTRICITY REGULATORY COMMISSION

**Draft Notification No. TNERC/ISOA/11/2-.... dated -2022.
(Comments invited by 15-4-2022)**

The following draft of the amendments to the Tamil Nadu Electricity Commission (Grid Connectivity and Intra-State Open Access) Regulations 2014, which it is proposed to make in exercise of the powers conferred by section 181 of the Electricity Act, 2003 (Central Act 36 of 2003) and all other powers enabling it in this behalf, is hereby published for information of all persons likely to be affected thereby, as required by sub section(3) of section 181 of the said Act.

2. Notice is hereby given that the draft amendment will be taken into consideration after expiry of thirty days from the date of publication of this Notification in the TNERC website and that any objection or suggestion, which may be received from any person before the expiry of the aforesaid period will be considered by the Commission.

3. Objection or suggestion, if any, should be addressed in duplicate to the Secretary, Tamil Nadu Electricity Regulatory Commission, 4th Floor, SIDCO Corporate Office Building, Thiru Vi Ka Industrial Estate, Guindy, Chennai-600 032.

AMENDMENT

In the said Regulations,-

(1) In regulation 9, in sub-regulation (6), the following sub-regulation shall be substituted, namely:-

“(6) 1. Open Access shall be allowed to the intra state transmission system subject to the satisfaction of the conditions contained in the Act and in these Regulations. Having regard to operational constraints and other relevant factors, open access shall be allowed to all EHT & HT consumers who require a supply of electricity where the

maximum power made available at any point of time exceeds one mega watt;

Provided further that open access shall be allowed to all EHT & HT consumers within their contracted demand subject to the terms and conditions of supply.

Provided further that when a person opts for open access from a wind generating plant or solar generating plant, the contracted demand for open access shall be reckoned as a per cent of its Capacity Utilisation Factor (CUF) as illustrated below. CUF for Wind Energy Generators(WEGs) and Solar Power Generators(SPGs) shall be the applicable CUF on the date of commissioning of the WEGs and SPGs notified in the tariff orders of the Commission. A CUF of 29.15% for the WEGs commissioned from 7.10.2020 and a CUF of 21% for the SPGs commissioned from 16.10.2020 shall be considered.

Illustration:

For a 2 MW WEG commissioned in 2021, the contracted demand shall be :

*29.15/100 *2=0.583 MW.*

For a 2 MW SPG commissioned in 2021, the contracted demand shall be :

*21/100*2=0.42 MW.*

(By order of the Tamil Nadu Electricity Regulatory Commission)

(S.Chinnarajalu)
Secretary

Explanatory Statement

1. The Government of Tamil Nadu has issued a Policy directive under section 108 of the Electricity Act, 2003 vide G.O (Ms) No.37 Energy(D1) Department dt.17.04.2018 to the Commission to amend the sub-regulation (6) of Regulation 9 of the Electricity Act, 2003 duly allowing open access to the consumers availing maximum load of 1 MW and above at any point of time in line with the 5th proviso to sub-section (2) of section 42 of the Electricity Act, 2003 based on the representation of the Chairman and Managing Director/TANGEDCO.

2. The Government of Tamil Nadu passed the G.O (Ms.) No.37 dt.17.4.2018 accepting the proposal of the Chairman and Managing Director/TANGEDCO setting out reasons for issuance of the same.

3. Para 4,5,6 of the G.O Ms.no.37 dt.17.4.2018 are extracted below:

“4. The Chairman and Managing Director, TANGEDCO, Chennai has also stated that section 42(2) of the said Electricity Act, 2003 mandates open access only to the consumers with demand above 1 MW, and that none of the States, except Tamilnadu offer open access to the consumers with less than 1 MW demand. A miscellaneous petition in this regard has already been filed in TNERC with the prayer to amend regulation 9(6) of the Tamilnadu Electricity Regulatory Commission (Grid Connectivity and Intra-State Open Access) Regulations, 2014 duly allowing open access to the consumers with a load of 1 MW and above in line with section 42(2) of the said Electricity Act, 2003, which is yet to be admitted. The Chairman and Managing Director, TANGEDCO has, therefore, requested the Government to issue a policy directive under sub section (1) of section 108 of the said Electricity Act, 2003 to amend regulation 9(6) of the Tamilnadu Electricity

Regulatory Commission (Grid Connectivity and Intra-State Open Access) Regulations, 2014 duly allowing open access to the consumers with a load of 1 MW and above in line with Section 42(2) of the said Electricity Act, 2003.

5. The Government have examined the proposal carefully, with reference to the following implications in allowing open access to consumers with demand less than one MW:

- (i) The consumers are moving from third party sale to captive wheeling to avoid paying cross subsidy surcharge, leading to huge loss of revenue to Tamilnadu Generation and Distribution Corporation Limited, which is increasing tremendously year by year;*
- (ii) The Tamilnadu Generation and Distribution Corporation Limited has to spend on fixed charges to the open access consumers by high cost power purchase and also to compensate the wind CPP consumers for their banked power;*
- (iii) Loss of revenue to Tamilnadu Generation and District Corporation Limited indirectly affects low end consumers by tariff revision, and*
- (iv) Prevents future developments to supply quality and cheaper power to the public.*

Further, it is considered that in view of the improved power situation prevailing at present and withdrawal of R&C measures in 2015 itself, there is no justification or reason to continue the existing regulations since the earlier directive was given in the public interest and when there was extraordinary deficit in the power situation, and hence it is now inevitable to revert to the situation prior to 2009."

6. The Government after careful examination have therefore decided to accept the proposal of the Chairman and Managing Director, Tamilnadu Generation and Distribution Corporation Limited and issue a policy directive under sub-section(1) of section 108 of the said Electricity Act, 2003 to amend the existing regulation 9(6) of the Tamil Nadu Electricity Regulatory Commission (Grid Connectivity and Intra-State Open Access) Regulations, 2014 duly allowing open access to the consumers with a load of 1

MW and above in line with 5th proviso to sub-section(2) of section 42 of the said Electricity Act, 2003 to the TNERC and hereby issue orders accordingly.

4. Stakeholders preferred writ petitions W.P.Nos.11134 and 11135 of 2018 and writ appeals No.3254, 3255 & 3163 of 2019 against the said G.O dt. 17.4.2018 before the Hon'ble High Court of Madras. The Hon'ble High Court in W.A.No.3254, 3255 & 3163 of 2019 dt.19.8.2021 directed that '*the Tamil Nadu Electricity Regulatory Commission, to take up the matter for hearing, issue notice and proceed with the matter for deciding the policy directive issued by the Government. The Commission shall take into consideration the directions issued by the State Government and the submissions that are going to be made on the side of the appellants herein, analyse it and complete the proceedings as per the directions of the learned Single Judge*'. .

5. The petitioners and TANGEDCO have been heard by the Commission. Commission on 21.12.2021 directed the Registry to go for public consultation.

6. Commission after examination of the policy direction finds that there is an element of public interest in the direction.

7. Initially the total limit for availing open access stood at 1 MW before the amendment was issued vide notification dt.9.2.2010 to the Commission's Open Access regulations 2005. It was only upon the need expressed by TANGEDCO to reduce the open access limit in view of the R & C measures then in force to tide over the power shortage, the Commission decided to extend open access to

all HT consumers irrespective of the contracted load. It is to be noted here that the earlier amendment was a sequel to the public interest warranting reduction of open access limit below 1 MW due to power deficit situation prevailing then.

8. Now that the Government of Tamil Nadu have stated that there is no power shortage at present and public interest demands that the original position be restored to avoid any burden of increase in retail tariff to the non open access consumers, to protect the interest of consumers under section 61(d) of the Electricity Act 2003 it is necessary that open access should be allowed only to consumers availing maximum load of 1 MW and above, more so, when the matter concerned involves public interest, the decision of the State government will have to be given serious consideration under section 108 of the Electricity Act 2003.

9. Also, the reduction of open access limit below 1 MW can be seen only as an one time relief as a measure of concession to tide over a temporary shortage of power and it cannot be seen as a permanent provision in view of the express language in 5th proviso of section 42. It is a settled position of law that concessions or relief can be withdrawn after the accomplishment of the object and the Hon'ble High Court of Madras has also upheld the reintroduction of cross subsidy surcharge which was waived by TANGEDCO during the R&C period.

10. Even on the reasonableness of the need to restore the limit of open access to original position, considering the fact barring a few states in India no State

allowed open access below 1MW, the Commission finds that the G.O issued by the GoTN satisfies the test of reasonableness as well. Further, considerable variations in schedules, frequent fluctuations in drawal of power through open access create operational constraints to the grid, uncertainty in load forecasting and power procurement for SLDC and the DISCOM.

This amendment seeks to fulfil the objects of public interest and reasonableness expressed in the G.O and in order to give effect to the same, the restoring of the open access limit above 1 MW in the light of changed circumstances has become necessary.

(By order of the Tamil Nadu Electricity Regulatory Commission)

(S.Chinnarajalu)
Secretary

STATEMENT SHOWING EXISTING PROVISION AND PROVISION AS AMENDED

Tamil Nadu Electricity Regulatory Commission (Grid Connectivity and Intra-State Open Access) Regulations, 2014

Existing provision	Provision embodying the amendment
<p>9. Eligibility for Open Access and conditions to be satisfied. –</p> <p>(1) xxx</p> <p>(2) xxx</p> <p>(3) xxx</p> <p>(4) xxx</p> <p>(5) xxx</p> <p>(6) <i>Open Access shall be allowed to the intra state transmission system subject to the satisfaction of the conditions contained in the Act and in these Regulations. Having regard to operational constraints and other relevant factors, open access shall be allowed to all EHT & HT consumers within their contracted demand subject to the terms and conditions of supply. In case of generation of electricity from new and renewable sources, open access shall be allowed as specifically permitted by the Commission in its relevant regulations/orders in force.</i></p>	<p>9. Eligibility for Open Access and conditions to be satisfied. –</p> <p>(1) xxx</p> <p>(2) xxx</p> <p>(3) xxx</p> <p>(4) xxx</p> <p>(5) xxx</p> <p>(6) <i>1.Open Access shall be allowed to the intra state transmission system subject to the satisfaction of the conditions contained in the Act and in these Regulations. Having regard to operational constraints and other relevant factors, open access shall be allowed to all EHT & HT consumers who require a supply of electricity where the maximum power made available at any point of time exceeds one mega watt;</i></p> <p><i>Provided further that open access shall be allowed to all EHT & HT consumers within their contracted demand subject to the</i></p>

	<p><i>terms and conditions of supply.</i></p> <p><i>Provided further that when a person opts for open access from a wind generating plant or solar generating plant, the contracted demand for open access shall be reckoned as a per cent of its Capacity Utilisation Factor (CUF) as illustrated below. CUF for Wind Energy Generators(WEGs) and Solar Power Generators(SPGs) shall be the applicable CUF on the date of commissioning of the WEGs and SPGs notified in the tariff orders of the Commission. A CUF of 29.15% for the WEGs commissioned from 7.10.2020 and a CUF of 21% for the SPGs commissioned from 16.10.2020 shall be considered.</i></p> <p><i>Illustration:</i></p> <p><i>For a 2 MW WEG commissioned in 2021, the contracted demand shall be :</i></p> <p><i>29.15/100 *2=0.583 MW.</i></p> <p><i>For a 2 MW SPG commissioned in 2021, the contracted demand shall be :</i></p> <p><i>21/100*2=0.42 MW.</i></p>
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