

**BEFORE THE GUJARAT ELECTRICITY REGULATORY COMMISSION
GANDHINAGAR**

**Gujarat Electricity Regulatory Commission (Terms and Conditions for
Green Energy Open Access) Regulations, 2024.**

CORAM:

**Anil Mukim, Chairman
Mehul M. Gandhi, Member
S. R. Pandey, Member**

STATEMENT OF REASONS

1. Backgrounds

- 1.1. In exercise of the powers conferred under Section 181 of the Electricity Act, 2003 (36 of 2003), read with Sections 39, 40, 42, 61 and 86 thereof and all other powers enabling it in this behalf, and after previous publication, the Gujarat Electricity Regulatory Commission hereby makes the following Regulations, namely Gujarat Electricity Regulatory Commission (Terms and Conditions for Green Energy Open Access) Regulations, 2024, herein referred as GEOA Regulations.
- 1.2. That the Ministry of Power, Government of India, has notified on 06th June 2022, the Electricity (Promoting Renewable Energy through Green Energy Open Access) Rules, 2022, (herein referred as GEOA Rules) applicable for generation, purchase and consumption of green energy as defined therein including Waste-to-energy Power Plants. Subsequently, Ministry of Power also issued amendments there to vide Notification dated 27.01.2023 and 23.05.2023.

- 1.3. Consequent to the notification of the Green Energy Open Access Rules, 2022, the Central Government on 08.07.2022, notified the Power System Operation Corporation Limited (POSOCO) now known as Grid Controller of India Ltd. (Grid - India), as the Central Nodal Agency to set up and operate a single window green energy open access system for renewable energy.
- 1.4. As per Rule 7 of GEOA Rules, the Central Nodal Agency has to prepare a common format for GEOA in consultation with Forum of Regulators and application for Green Energy Open Access to be made in this format. Accordingly, POSOCO has framed the procedure of Green Energy Open Access and submitted to Forum of Regulators (FOR) on 17.11.2022.
- 1.5. Further, as per Rule 12 (1) of the GEOA Rules, 2022, Forum of Regulators was required to prepare a model regulation on methodology for calculation of open access charges, as well as banking charges in order to have a common methodology for calculation of open access charges across the country. The same was prepared and approved by the Forum of Regulators in its 82nd Meeting held on 16.09.2022.
- 1.6. The Government of India has set a target of non-fossil energy capacity of 500 GW by 2030, out of which 280 GW is expected to be the share from solar power. India has a target of 5 million tonne a year of green hydrogen capacity by 2030. By the year 2070, India has a target to achieve Net Zero Carbon Emissions i.e. Carbon Neutral.
- 1.7. The Commission in order to broadly align its Regulations with the aforesaid goals, in order to achieve the national objectives and 'GEOA Rules', issued a Draft Gujarat Electricity Regulatory Commission (Green Energy Open Access) Regulations, 2023 for discussions and invited comments/suggestions/ objections from the stakeholders for finalization of the Draft Regulations.

2. Consultation process:

- 2.1. The Draft Regulations was published on 23.06.2023 and Public Notices in daily newspapers, Indian Express and Gujarat Samachar were issued by the Commission seeking suggestions/objections from the stakeholders up to 26.07.2023. Further, the Draft Regulations was also uploaded on website of the Commission with public notices inviting comments and suggestions from the stakeholders.
- 2.2. In response to the aforesaid public notices, the Commission received comments/suggestions from various stakeholders. List of the stakeholders who submitted written comments / objections / suggestions is kept at **'Annexure-I'**.
- 2.3. Thereafter, the Commission conducted a public hearing on the Draft Regulations on 28.08.2023. The list of the stakeholders who remained present and made representations during the public hearing is kept at **'Annexure - II'**.
- 2.4. After detailed analysis and due consideration of the suggestions/objections provided by the stakeholders as detailed in the succeeding paragraphs and incorporating certain modifications for giving seamless and better understanding including correction of typographical error/omission observed in the Draft Regulations the Commission hereby finalize the Gujarat Electricity Regulatory Commission (Terms and Conditions of Green Energy Open Access) Regulations, 2024.

3. Objections to the Draft Regulations and findings of the Commission thereto:

The Commission hereunder deal with suggestions/objections received on various Regulations of the draft regulations as under:

4. Regulation 3, Definitions

In these Regulations, unless the context otherwise requires,

.....

(d) “Banking” means the surplus green energy injected in the grid and credited with the distribution licensee by the Green Energy Open Access consumers and that shall be drawn along with charges to compensate additional costs; if any;

Comments/Suggestions of the Stakeholders:

- 4.1. Some of the objectors have suggested that the banking facility be provided to inter-state transactions as well as intra-state green energy open access transactions since the banking charges are recovered for providing the banking facility to aforesaid both the transactions.
- 4.2. Some of the objectors have suggested that the definition of banking may be modified stating that ‘Banking, in case of net metering, means green energy which is not consumed by green open access consumers in the same time block of generation and injected into the grid and in other cases, quantum of wheeled Green energy which is not consumed by Green Open Access Consumers in the same time block of generation and allowed to be consumed from Grid at later stage during banking period along with charges to compensate towards additional costs’.

Commission’s decision:

The definition of “banking” provided in Regulation 3(d) of these Regulations is with an intent that the word “Banking” referred to in these Regulations shall mean to give effect to as per the explanation of the word ‘Banking’ stipulated in the GEOA Rules. As per the explanation, the expression ‘Banking’ means the surplus energy injected in the grid and credited with the distribution licensee energy by GEOA consumers and that shall be drawn in a manner specified under these Regulations along with charges to compensate additional costs, if

any. Accordingly, green open access energy received at consumption point is to be first utilized for consumption during same 15 minute time block (as stipulated in GERC OA Regulations, 2011 and GERC ABT Order No. 03 of 2010 dated 01.04.2010) and after such consumption if there is any green open access energy is pending to be utilized, this energy is to be considered as surplus energy eligible for banking with the Grid that can be drawn during the banking period with payment of banking charges. There is no ambiguity which may lead to construe that banking of green energy is to be considered as injection of green energy at point of injection. The said definition is in accordance with the provisions of the Electricity (Promoting Renewable Energy through Green Energy Open Access) Rules, 2022 notified by Ministry of Power, Government of India and its subsequent amendments therein.

However, after correcting typographical error the definition of 'Banking' is modified as under:

(d) "Banking" means the surplus green energy injected in the grid and credited with the distribution licensee energy by the Green Energy Open Access consumers and that shall be drawn along with charges to compensate additional costs; if any.

So far as comments regarding the recovery of banking charges and applicability of the same is concerned, it is part of the other Regulations, and have been dealt in later part of this SoR.

We also note that the GERC Net Metering Regulations operates in different and distinct field than the proposed GERC (GEOA) Regulations. Hence, the contentions raised by the objectors are not accepted.

5. Regulation 3, Definitions

(e) "Captive Generating Plant" means power plant set up under Section 9 of the Electricity Act, 2003 by any person to generate the electricity primarily for

its own use and includes power plant set by any co-operative society or association of person for generating electricity primarily for use of members of such co-operative society or association, and fulfill the conditions.”

Comments/Suggestions of the Stakeholders:

- 5.1. Definition should also include the provision of Electricity Rule 2005. For better clarity it should be redefined as per Hybrid Policy 2018 Amendment (notified in April 2023) - Captive Generating Plant means power plant set up by any individual, company or body corporate or association or body of individuals, whether incorporated or not, or artificial juridical person, either for the purpose of captive use in accordance with the Electricity Act, 2003 and Electricity Rules, 2005 as amended from time to time and/or for selling of electricity to third party.
- 5.2. For Captive consumers, while stored energy is to be treated as renewable energy, we request GERC to clarify the treatment of the storage asset as a captive asset or as a third party asset as long as the energy is generated in a captive renewable energy generating station. As such the cost of storage system shouldn't be considered towards the cost of the generating asset as it's purely used for service of storage and discharge but not for generation.

Commission's decision:

The definition of Captive Generating Plant provided in the Draft Regulation is in accordance with the provisions of Electricity Act, 2003, wherein the words “.....under Section 9 of the Electricity Act, 2003.....and fulfill the conditions” are added to emphasis that the green energy captive plants shall also be required to comply with the provisions of Section 9 of the Electricity Act 2003 and Electricity Rules, 2005. However, we decide to keep the definition of ‘Captive Generating Plant’ as provided in Sub-Section (8) of Section 2 of the Act as stated below:

“(e).Captive Generating Plant” (CGP) means a power plant set up by any person to generate electricity primarily for his own use and includes a power plant set up by any co-operative society or association of persons for generating electricity primarily for use of members of such co-operative society or association.”

So far as the objection/suggestion with regard to treatment of storage facility/asset and treatment of such asset for captive generating plant is concerned, it is to state that the categorization of storage asset is to be treated as per the clarification in this regard issued by Ministry of Power vide letter No. 23/26/2021-R&R dated 29.01.2022.

6. Regulation 3, Definitions

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(J) “Entity” means any consumer who has contracted demand or sanctioned load of Hundred kW or more either through single connection or through multiple connections aggregating Hundred kW or more located in the same electricity division of a distribution licensee, except for captive consumers.

Provided that there shall be no capacity restriction for setting up of RE projects for captive use with respect to the consumer's contract demand/sanctioned load (kW/KVA/MVA) with Discoms

Comments/Suggestions of the Stakeholders:

6.1. Some of the objectors have suggested as under:

- (i) “Entity” means any consumer who has load requirement of Hundred kW or more either through single connection or through multiple connections aggregating Hundred kW or more located in the same electricity division of a distribution licensee, except for captive consumers. However, in case of captive consumers, there shall not be any load limitation.

- (ii) “Entity” means any consumer who has contracted demand or sanctioned load of Hundred kW or more either through single connection or through multiple connections aggregating Hundred kW or more located in the same electricity division of a distribution licensee, except for captive consumers. However, in case of captive consumers, there shall ~~not~~ be ~~any~~ load limitation **up to sanctioned load / contract demand**.

Commission’s decision:

The definition of “entity” stated in the Regulation is in accordance with the provisions of Electricity Rules, 2022 notified under the Electricity Act, 2003. The objections/suggestions of the stakeholders against the said definition are not accepted and the same are rejected. However, to impart better clarity about no capacity restriction in regard to captive usage of renewable energy, the definition of ‘Entity’ is modified as under:

“Entity” means any consumer who has contracted demand or sanctioned load of Hundred (100) KW or more either through single connection or through multiple connections aggregating Hundred (100) KW or more located in the same electricity division of a distribution licensee, except for captive consumers.

Provided that there shall be no capacity restriction for setting up of RE projects for captive use with respect to the consumer's contract demand/sanctioned load (kW/MW, KVA/MVA) with Discoms.

7. Regulation 3 (k), Definitions

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“Existing Open Access Consumer / Customer” means a person already availing open access for sourcing / supplying renewable (green) energy from / to the transmission system and / or distribution system of the licensees in the State under an existing agreement or Commission’s Regulations / orders on the date of coming into force of this Regulations;

Comments/Suggestions of the Stakeholders:

- 7.1. Some of the objectors have suggested to modify the definition of “Existing Open Access Consumer/Customer” as under:

(k) “Existing Open Access Consumer/Customer” means a person already availing open access for sourcing/supplying renewable (green) energy from/to the transmission system and/or distribution system of the licensees in the State under an existing agreement or Commission’s Regulations/orders on the date of coming into force of this Regulations;

Commission’s decision:

The definition of “Existing Open Access Consumer/Customer” provided in the Regulations is with consideration that any person who is availing open access on the date of notification of these Regulations by use of transmission and/or distribution system of the licensee in the State for sourcing/supplying green energy shall be governed as per the agreement between the parties or Commission’s Regulations/Orders i.e. CERC or GERC as applicable on the date of enforcement of these Regulations.

In regard to suggestion to add the words ‘as per various RE policy issued by Government of Gujarat’ in the definition, it is to state that the agreements existing as on the date of notification of these Regulations are governed by Regulations/Orders issued by the Commission and applicable on date of commissioning of RE project.

8. Regulation 3, Definitions

.....

(o) “Green Energy/Renewable Energy” means the electrical energy from renewable sources of energy including hydro, pumped Storages Hydro generation, energy storage system and storage (if the storage uses only renewable energy), Municipal Solid Waste-to-Energy based generation,

biomass and bagasse based co-generation plants or any other technology as may be notified by the Commission from time to time and shall also include any mechanism that utilizes renewable energy to replace fossil fuels including production of green hydrogen or green ammonia;

Comments/Suggestions of the Stakeholders:

The objections/suggestions of the stakeholders are as under:

- 8.1. To add the word hybrid renewable energy technologies also in the same.
- 8.2. It seems that the word “generated” is missing between the words “electrical energy” and “from”. Therefore, the word “generated” may be inserted between the word “electrical energy” in the definition of Green Energy / Renewable Energy.

Commission’s decision:

We have considered the objections/suggestions made by the stakeholders and decided to align the definition of Green Energy/Renewable Energy in accordance with the definition provided in the Electricity Green Energy Open Access Rules 2022 notified under the provision of Electricity Act, 2003 and amendment made in it to avoid any ambiguity and interpretation in the definition. Hence, the definition of Green Energy/Renewable Energy is decided to specify in the Regulations as per the Electricity Rules 2022 as under:

Green energy means the electrical energy from renewable sources of energy including hydro and storage (if the storage uses renewable energy) or any other technology as may be notified by the Government of India from time to time and shall also include any mechanism that utilizes green energy to replace fossil fuels including production of green hydrogen or green ammonia and any other sources as may be determined by the Central Government as per the provision

of Clause G of sub-rule (2) of rule 4 of Electricity (Promoting Renewable Energy Through Green Energy Open Access), Rules 2022.

9. Regulation 3, Definitions

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(p) "Green Energy Open Access Consumer" means any person who has contract demand or sanctioned load of 100 kW or more, either through single connection or through multiple connections aggregating Hundred (100) kW or more located in same electricity division of a distribution licensee, shall be eligible to avail Green Energy through Open Access or such other limit as may be specified by Commission from time to time, who is supplied with electricity from green energy sources for his own use by a licensee or the Government or from its own Captive Generation Plant or by any other person engaged in the business of supplying electricity to the public under the Electricity Act, 2003 or any other law for the time being in force and includes any person whose premises are for the time being connected for the purpose of receiving green energy with the works of a licensee, the Government or such person, as the case may be.

Provided that there shall be no capacity restriction for setting up of RE projects for captive use with respect to the consumer's contract demand/sanctioned load (kW/KVA/MVA) with Discoms availing power under Green Energy Open Access.

Comments/Suggestions of the Stakeholders:

The objections/suggestions of the stakeholders are as under:

- 9.1. There will not be any restriction regarding load limit for captive users taking power from Wind-Solar Hybrid Projects under Green Energy Open Access.

9.2. There will not be any restriction on the installed capacity of the generating station such as installed capacity to be restricted up to 50% of the contract demand/sanctioned load of the consumer.

9.3. The definition may please be modified as under:

“Green Energy Open Access Consumer” means any person who has contract demand or sanctioned load of 100 kW or more, either through single connection or through multiple connections aggregating Hundred (100) kW or more located in same electricity division of a distribution licensee, shall be eligible to take Green Energy through Open Access (**including** captive consumers ~~shall not have any load limit~~) or such other limit as may be specified by Commission from time to time, who are supplied with electricity from green energy sources for their own use by a licensee ~~or the Government~~ or from its own Captive Generation Plant ~~or by any other person engaged in the business of supplying electricity to the public~~ including captive under the Electricity Act, 2003 or any other law for the time being in force and includes any person whose premises are for the time being connected for the purpose of receiving green energy with the works of a licensee, ~~the Government~~ or such person, as the case may be. There shall be no limit of supply of power for the captive consumers taking power under Green Energy Open Access”

9.4. Currently consumer can procure electricity up to 50% of contract demand from RE source under open access. So, this condition will become void after the notification of GEOA Regulations.

Commission’s decision:

Considered the objections/suggestions of the stakeholders. The aforesaid definition consists of two words, (i) ‘Green Energy Open Access’ and (ii) ‘Consumer’. The definition of word ‘Green Energy Open Access’ is incorporated with consideration of the provisions of Electricity Rules, 2022

notified under the provisions of Electricity Act, 2003 by the Ministry of Power, Government of India and the definition of word 'Consumer' is incorporated in accordance with the provisions of the Electricity Act, 2003 in order to avoid ambiguity and interpretation in the definition of Green Energy Open Access Consumer. Accordingly, it is decided to incorporate the definition of 'Green Energy Open Access Consumer' in the Regulations as under:

(p) "Green Energy Open Access Consumer" means any person who has contract demand or sanctioned load of Hundred (100) kW or more, either through single connection or through multiple connections aggregating Hundred (100) kW or more located in same electricity division of a distribution licensee, shall be eligible to avail Green Energy through Open Access, who is supplied with electricity from green energy sources for his own use by a licensee or the Government or from its own Captive Generation Plant or by any other person engaged in the business of supplying electricity to the public under the Electricity Act, 2003 or any other law for the time being in force and includes any person whose premises are for the time being connected for the purpose of receiving green energy with the works of a licensee, the Government or such person, as the case may be.

Provided that there shall be no capacity restriction for setting up of RE projects for captive use with respect to the consumer's contract demand/sanctioned load (kW/MW, KVA/MVA) with Discoms.

10. Regulation 3, Definitions

"Installation" means the whole of electric wires, fittings, motors, and apparatus installed and wired by or on behalf of the consumer of one or same premise starting from the point of the commencement of supply;

Comments/Suggestions of the Stakeholders:

10.1. The objector has suggested to modify the definition in line with a definition of installation provided in the GERC Supply Code as under:

Installation means “any composite portable or stationary electrical unit including electric wires, fittings, motors and apparatus erected and wired by or on behalf of the consumer at the consumer’s premises starting from the point of supply and includes apparatus that is available on his premises for being connected or envisaged to be connected to the installation but is for the time being not connected”.

Commission’s decision:

Considered the objection/suggestion of the stakeholder. The aforesaid definition pertains to “installation” is defined in the GERC (Electricity Supply Code and Related Matters) Regulations. It is necessary to keep the definition align with the aforesaid Regulations. Hence, we decide to keep the definition of “installation” in the present Regulations as under:

Installation means “any composite portable or stationary electrical unit including electric wires, fittings, motors and apparatus erected and wired by or on behalf of the consumer at the consumer’s premises starting from the point of supply and includes apparatus that is available on his premises for being connected or envisaged to be connected to the installation but is for the time being not connected”.

11. Regulation 3, Definitions

Comments/Suggestions of the Stakeholders:

11.1. Some of the objector has suggested that the definition of Month stated below be incorporated:

Month- means a calendar month as per the Gregorian calendar.

Commission's decision:

The proposed suggestion to incorporate the definition of 'month' in the Regulations seems to be valid. Hence, we decide to incorporate the definition of 'month' in Regulation 3(r) as under:

"3.....

r. Month- means a calendar month as per the Gregorian calendar;

12. Regulation 3, Definitions

In order to provide clarity for processing of application wherein inter-se points of injection and drawl fall on the distribution network of same Distribution Licensee, the Commission has decided to modify the definition of "State Nodal Agency" in the final Regulations, as under:

"(y) "State Nodal Agency" means the Nodal Agency for grant of open access in the State of Gujarat.

Gujarat State Load Dispatch Centre shall operate as the State Nodal Agency for grant of Short-Term Open Access to Intra-State Transmission System in conjunction with or without Distribution Network of Distribution Licensee of the State. The State Transmission Utility (STU) shall operate as a State Nodal Agency for grant of Medium-Term and Long-Term Open Access to the Intra-State Transmission Network in conjunction with or without Distribution Network of Distribution Licensee of the State.

The Distribution Licensee shall operate as a Nodal Agency in co-ordination with the SNA for grant of Open Access for the cases wherein the inter-se location of drawl and injection points falls on the Distribution Network of the concerned Distribution Licensee. "

13. Regulation 4, Interpretation of Regulations

In the interpretation of these Regulations, unless the context otherwise requires:

- (i) *Words and expressions used and not defined in these regulations but defined in the Act or the IEGC or the State Grid Code or State Distribution Code or the State Electricity Supply Code shall have the meaning assigned to them under the Act or the IEGC or the State Grid Code, or State Distribution Code or the State Electricity Supply Code or any other Regulations notified by the Commission as the case may be.*

Comments/Suggestions of the Stakeholders:

The following objections/suggestions made by the objectors:

13.1. The word "Rules" should also be added to the said clause.

Commission's decision:

The suggestion of the stakeholders/objectors seems to be valid and therefore, we decide to add word 'Rules' in the aforesaid Regulations and accordingly Regulation 4 (i) is modified as under:

"Regulation 4, Interpretation of Regulations

In the interpretation of these Regulations, unless the context otherwise requires:

- (i) *Words and expressions used and not defined in these regulations but defined in the Act or Rules, the IEGC or the State Grid Code or State Distribution Code or the State Electricity Supply Code shall have the meaning assigned to them under the Act or Rules, the IEGC or any other Regulations notified by the Commission as the case may be.*

14. Regulation 5, Scope

These Regulations shall be applicable for allowing Open Access to electricity generated from green energy sources as defined hereinabove in Regulation 3

of these Regulations, including the energy from non-fossil fuel based Municipal Solid Waste-to-Energy plant for use of Intra-State Transmission System (InSTS) or distribution system or both, which are incidental to Inter- State Transmission of electricity.

Comments/Suggestions of the Stakeholders:

The objection/suggestion raised by the objectors are as under:

14.1. Hybrid Renewable Energy Technologies with or without storage should also be incorporated in above Regulations to further the objectives sought to be achieved by the Regulations.

Commission's Decision:

The suggestions of the Objectors to incorporate Hybrid Renewable Energy Technologies with or without storage should also be made part of the aforesaid Regulations is concerned, we note that the 'Green Energy' is already defined in the definition part of these Regulations. It is important to note that for applicability of present Regulations, it is imperative that the electrical energy, for which this Regulations sought to be made applicable, must be generated utilising green/renewable sources of energy. It is not required to mention the mode or technologies utilised for generation of green/renewable electrical energy. Hence, no modification in Regulation 5 is required.

15. Regulation 6, Criteria for Allowing Green Energy Open Access

- I. The long-term Green Energy Open Access shall be allowed in accordance with the transmission planning criteria and distribution planning code stipulated in the State Grid Code.*
- II. The Short-Term/Medium Term Green Energy Open Access shall be allowed, if the request can be accommodated, by utilizing:*
 - a. Inherent design margins*
 - b. Margins available due to variation in power flows and*

- c. Margins available due to in-built spare transmission system capacity and/or distribution system capacity created to cater to future load growth;*

Comments/Suggestions of the Stakeholders:

15.1. The stakeholders have requested to add the following proviso:

Provided further while granting new LTOA, MTOA and STOA to Green Energy Open Access Consumers under this clause, LTOA, MTOA and STOA already granted to existing RE Open Access Consumers (i.e. who are buying power from RE Power Plants who have commissioned under various RE Policies issued by Government of Gujarat or under various Orders of the Commission shall be considered deemed for

- a) Transmission planning criteria and distribution planning code and
- b) Inherent design margins
- c) Margins available due to variation in power flows and

Margins available due to in-built spare transmission system capacity and/or distribution system capacity created to cater to future load growth.

Commission's decision:

The objection/suggestion of the objectors to add proviso in Regulation 6 stating that while granting LTOA, MTOA and STOA the existing RE Open Access consumer shall be considered as deemed open access consumers is concerned, the same is already dealt in the Regulation 11 of the proposed Green Energy Open Access Regulations which provides for treatment for existing Green Energy (RE) Open Access consumers. Hence, there is no requirement to make any changes in the aforesaid Regulations.

However, the requirement of availability of appropriate metering infrastructure and to ensure 'No Dues' being important conditions for allowing Open Access, the same has been incorporated. Accordingly, the

Regulation 6 is modified as under:

6. Criteria for Allowing Green Energy Open Access

- I. The Long-Term Green Energy Open Access shall be allowed in accordance with the transmission planning criteria and distribution planning code stipulated in the State Grid Code.*
- II. The Short-Term/Medium-Term Green Energy Open Access shall be allowed, if the request can be accommodated, by utilizing:*
 - a. Inherent design margins;*
 - b. Margins available due to variation in power flows and;*
 - c. Margins available due to in-built spare transmission system capacity and/or distribution system capacity created to cater to future load growth;*
- III. Installation of energy meter i.e., ABT complaint meter at generator end as well as at consumer end seeking open access for 1 MW and above. While in case of consumer seeking open access below 1 MW, installation of Special Energy Meter capable of energy recording on 15 time block basis.*
- IV. No dues of concerned licensee and /or SNA.*

16. Regulation 7, Categorization of Green Energy Open Access:

The Green Energy Open Access consumers shall be classified into the following categories based on the duration of use of the intra- state transmission and/or distribution system:

- I. “Long-term Green Energy Open Access” means the right to use the intra-State transmission system and/or distribution system for a period exceeding 12 years but not exceeding 25 years.*
- II. “Medium-term Green Energy Open Access” means the right to use the intra-State transmission system and/or distribution system for a period exceeding three months but not exceeding three years.*
- III. “Short-term Green Energy Open Access” means open access for a period up to one month at a time.*

Provided that on expiry of granted short term Green Open Access, if such consumer/customer desires to avail the short-term Green Energy Open Access consumer for further period it shall require to file application for such period and such application shall be considered as fresh application and priority shall be fixed on basis of date of such application.

Comments/Suggestions of the Stakeholders:

The following suggestions are made by the stakeholders:

- 16.1. Some of the objectors have suggested to reduce the minimum period for Long Term Open Access from 12 years to 5/7 years.
- 16.2. It is requested to the Commission to reduce the minimum period of 12 years to 7 years for grant of Long-term Green Energy Open Access in line with the Clause 5.1 of CERC's (Grant of Connectivity, Long-term Access and Medium-term Open Access in inter-State Transmission and related matters) (Sixth Regulations, Amendment) 2017. The Central Commission while considering 7 years' time has taking into consideration the alignment with long term contracts as provided in Tariff Policy i.e., "Guidelines For Determination of Tariff by Bidding Process for Procurement of Power by Distribution Licensees dated 19th January, 2005 (as amended from time to time). Additionally, as per the latest CERC's (Connectivity and General Network Access to the inter-State Transmission System) Regulations, 2022, the period for use of transmission line is further reduced for General Network Access and which is being allowed for the period of more than eleven months and below which T-GNA would be granted for which the available margins in the transmission network would be utilized.
- 16.3. Since, in the portal designed by Central Nodal Agency (GOAR portal) there is a provision to apply for STOA up to fourth month, the same may be provided in these Regulations.

16.4. In Regulation 7 (III) the "month" words to be replaced by "calendar month".

16.5. It is proposed that the proviso in Regulation 7 (III) be modify as under:

Provided that on expiry of granted short term Green Open Access, Medium-term Green Energy Open Access, Long-term Green Energy Open Access if such consumer/customer desires to avail the short-term Green Energy Open Access, Medium-term Green Energy Open Access, Long-term Green Energy Open Access consumer for further period, it shall require to file application for such period and such application shall be considered as fresh application and priority shall be fixed on basis of date of such application.

Commission's decision:

The objectors/stakeholders have stated that period of long-term open access defined in the Regulations needs to be revised from 'exceeding 12 years but not exceeding 25 years' to the 'period exceeding 5 years but not exceeding 25 years'. Some of the objectors have stated that the period for LTOA, MTOA be aligned with CERC (Grant of Connectivity, Long-Term, Medium-Term Inter-State Transmission related matters) Regulations, 2017 and CERC (connectivity and general network access to inter-state transmission system) Regulations, 2022.

Some of the objectors have suggested that the medium term open access should be for the period exceeding 3 months but not exceeding 5 years. Some of the objectors have stated that as per the portal of Central Nodal Agency, short term open access can be applied for the period upto 4 months and hence, the same should be provided in these Regulations.

Some of the objectors have stated that the word "month" shall be replaced by "calendar month".

Some of the objectors have stated that in the proviso the words "short-

term green energy open access, medium- term green energy open access and long- term green energy open access”.....be incorporated.

In regard to the above suggestions, it is to be noted that the period for long-term, medium-term and short-term open access as specified in Regulation 7 of the present Regulations is in accordance with the GERC (Terms and Conditions of Intra-state Open Access) Regulations, 2011. Further, the open access is granted on transmission and/or distribution system by the licensee is irrespective of the energy/electricity generated from conventional energy source or green energy source and transmitted or distributed on the existing networks of the transmission/distribution licensee to the place of consumption. Hence, it is not proper to keep different time period for LTOA, MTOA and STOA in two different Regulations for grant of open access. Further, it is to mention that the provisions of CERC Regulations are applicable to grant of open access to the Inter-State Transmission networks only, while the Regulations of SERC are applicable for grant of open access to transmission and/or distribution system for utilization of Intra-State network. Thus, CERC and SERCs Regulations regulate open access for Inter-State and Intra-State network respectively for the purpose and scope provided in respective Regulations.

Some of the objectors have stated that the word “month” be replaced by “calendar month”. The aforesaid objections are not acceptable on a ground that the short-term open access which is granted for period of one month at a time to the open access customer be start on any date of the calendar month and the same is end on subsequent month on any date with consideration of 1 month period. Hence, the above objection is not accepted and rejected.

Some of the objectors have submitted that the words“short-term green energy open access, medium- term green energy open access and long- term green energy open access”.....be incorporated in the proviso of the

Regulations is concerned, we note that the aforesaid contention is not valid as the proviso referred in Draft Regulations is with reference to Regulation 7 (III) pertaining to short term open access only. Hence, the said objections are not accepted.

17. Regulation 8, Application procedure for Green Energy Open Access

1. All applications for Green Energy Open Access shall be made in the prescribed Form and submitted to the Nodal agency in accordance with these Regulations.

Comments/Suggestions of the Stakeholders:

- 17.1. The objector has suggested to clarify that in case there are multiple consumers having aggregate contract demand or sanctioned load of 100 kW or more through multiple connections located in the same electricity division of a distribution licensee and intending to seek GEOA, whether all such consumers would be required to submit separate applications, or a single application can be made on behalf of all such consumers to the nodal agency.

Commission's decision:

The Objection raised by the Objectors seeking clarification when there are multiple connections having aggregate contract demand or sanctioned load of 100 kW or more through such multiple connection located in the same electricity division or multiple divisions of distribution licensees and intending green energy open access shall required to submit separate application or single application on behalf of all such connections is concerned, it is clarified that a green energy open access is to be granted with consideration of Electricity Rules, 2022 notified by MoP, GoI. Further, the provisions incorporated in these Regulations is to give effect to the aforesaid provisions for grant of green energy open access. It is further clarified that while granting the open access the network of the licensee between point of injection and drawl is required to be considered. The drawl point of

consumer for different connections may be having different premises with different load and contract demand with the licensee and/or agreement with seller i.e. generator or licensee as case may be. Hence, the Application for open access be required to submit in terms of these Regulations with consideration of transmission and/or distribution network involved in such transactions. Hence, the application in prescribed form is to be submitted to the nodal agency accordingly.

18. Regulation 8, Application procedure for Green Energy Open Access

2. All applicants seeking Green Energy Open Access shall submit an undertaking of not having entered into Power Purchase Agreement (PPA) or any other bilateral agreement with more than one person for the capacity (quantum of power) for which Green Energy Open Access is sought.

Comments/Suggestions of the Stakeholders:

The following suggestions are made by the stakeholders:

18.1. The wording of the abovementioned clause creates an ambiguity in as much the language apparently intends to restrict the consumer to avail green energy open access ("GEOA") from more than one source and/or from more than one seller cumulatively such that it would not exceed the maximum limits through varied applications to source power from more than one seller and/or sources.

18.2. The clarification be provided with regard to proposed Regulation is restricting to consumer to avail green energy open access from two or more sources and vendors cumulatively not exceeding the maximum permissible limits through different applications to source power from different entities or not?.

18.3. It is submitted that a generator undergoes multiple/ single PPA with its

consumer well in advance and then starts developing the generating station (Almost Equal to the quantum of PPA). In the proposed clause the generator can't apply for open access if he has an PPA/ bilateral agreement. So the clause is restricting the grant of Open Access to the generator. Hence, to remove the proposed clause.

18.4. Some of the objectors have requested to modify the Regulation 8 (2) as under:

Applicants seeking Green Energy Open Access shall submit an undertaking to respective nodal agency of not having entered into Power Purchase Agreement (PPA) or any other bilateral agreement with more than one person for the capacity (quantum of power) for which Green Energy Open Access is sought while submitting the application at central portal.

18.5. Regulation 8(2) provides for undertaking to be provided by an 'Applicant'. The term 'Applicant' is defined under Regulation 3(b) which also includes a 'captive user'. The clause would have to be amended such that the undertaking is only given by the generating company. Alternatively, it may be clarified that the consumers shall be allowed to procure green energy from multiple generators [by obtaining separate Green Energy Open Access]. This aforesaid flexibility is required as a single generator may not be able to fulfil the complete requirement of consumers. Further, the Commission may also permit RE generators to sell RE power to a third party under exigent circumstances. This will ensure that valuable green energy is not wasted. Furthermore, the Open Access Regulations should also permit the consumer to provide multiple drawl points at the time of making the application. In the case the same is not permissible for medium term open access consumer and long-term open access consumer, the Regulation ought to permit change of drawl point once in a year.

18.6. Definition of "Applicant" includes distribution licensee as well as those who

have multiple PPAs and therefore, providing such undertaking from the distribution licensee seems practically difficult. Further, by reading this clause it appears to be applicable for the generating company to prevent sale of the same capacity with another buyer against the existing PPA.

Commission's decision:

The Objections raised by the Objectors stating that the language of the Regulation create ambiguity and restrictive in nature for availing Green Energy Open Access by the consumer/customer/licensee/generator. It is also contended that in case of failure of consumer to avail the open access and procure power from RE generator an option may be given to the generator to sell RE power to any other third party in case of exigent circumstances. It is also stated that the generator/consumer may be permitted to change drawl point/injection point once in a year. It is also stated that the distribution licensee is having multiple PPAs for procurement of power. Hence, it is difficult for the licensee to give undertaking.

We note the objection/suggestion of the stakeholder seeking clarification of the aforesaid Regulation to avoid the ambiguity in interpretation of the Regulation. We clarify that the provisions provided in the Regulations is with an intent that for the same quantum of power from the same RE generator, who seek Green Energy Open Access shall not enter into agreement by way of Power Purchase Agreement or bilateral arrangement or agreement with the licensees for wheeling/transmission of energy for the same RE capacity. Thus, the Regulation provides specifically that the quantum for which Green Energy Open Access is availed by the consumer/customer/licensee or generator, shall not be eligible to book the transmission/distribution network by the way of signing of agreement with generator or licensee and restrict the Green Energy Open Access, if any, available as a margin in the transmission or distribution system for the other person. The illustration to clarify the intent of the Regulation is given below:

Illustration:

- 1) A consumer having contract demand of 500 kW with the distribution licensee. If such consumer desire Green Energy Open Access from different sources, say (i) its own Captive Generating Plant for 100 kW, (ii) procure energy from the generator under third party sale for 200 kW and (iii) procurement of power from the energy exchange for 100 kW. In such situation, the consumer is eligible to avail Green Energy Open Access from the aforesaid sources as per the desired quantum.
- 2) A consumer having contract demand of 500 kW with the distribution licensee. If such consumer desire Green Energy Open Access from different sources, say (i) its own Captive Generating Plant for 600 kW, (ii) procure energy from the generator under third party sale for 200 kW and (iii) procurement of power from the energy exchange for 300 kW. In such situation, the consumer ensures that the drawl of power in any situation is such that it should meet out its consumption requirement.
- 3) A generator having capacity of 1000 kW and selling power to different entities like (i) the distribution licensee 500 kW, (ii) Consumer A of the distribution licensee 200 kW, (iii) Consumer B of distribution licensee 300 kW, (iv) Power Exchange 200 kW. In such cases, the generator desires to avail the open access to sell its power for different quantum to different entity which is over and above the generator capacity of 1000 kW. It is a selling of 100 kW power to multiple entities by way of agreement. As the generation capacity of the plant is 1000 kW, while the agreement for sale of power is 1100 kW, hence, excess sale of power of 100 kW by way of multiple agreement is not permissible.

Some of the objectors have contended that in case of consumer failed to procure the renewable energy from the generator/licensee for which it has

entered into an agreement/contract and availed the open access for such quantum be permitted to sell such RE power in case of exigent circumstances is concerned, we note that in the aforesaid situations the generator is eligible to sell power by obtaining new Green Energy Open Access by keeping same injection point of the generator and specified new drawl point of consumer and avail Green Energy Open Access for selling power to new consumer/customer, however, at the same time it is incumbent upon the generator/consumer/customer that they shall follow the provisions of Regulations by approaching the Nodal Agency (either surrender or cancel its granted Green Energy Open Access by the nodal agency) so that such capacity be available to the new consumer/customer of Green Energy Open Access and avoid the blocking of transmission/distribution system for other consumer/customers and efficient utilization of transmission/distribution system which promote competition as per the provisions of the Act.

The objection of the stakeholder is that the Open Access Regulations should also permit the consumer to provide multiple drawl points at the time of making the application. Further, in the case the same is not permissible for medium term open access consumer and long-term open access consumer, the Regulation ought to permit change of drawl point once in a year is concerned, we note that the Open Access is granted on transmission/distribution network between point of injection and drawal. Thus, the consumer is eligible to apply for Open Access as per the provisions of the Regulations, at multiple drawl points, i.e., premises where it consumes the energy. So far as a change in drawl point of open access is concerned, it is permissible following the provisions of other Regulations of the Open Access.

The objections/suggestions raised by the stakeholders that it is difficult for distribution licensee to give undertaking as specified in the Regulation is

concerned, we note that so far as the purpose of this Regulation, the provision is with an intent to ensure that any open access customer irrespective of its status i.e. licensee, generator and/or consumer may not block the transmission/distribution network by way of availing the Green Energy Open Access and deprive other entities by such blocking of network which is against the spirit of the competition and efficient utilization of network.

However, in order to impart more clarity, the Regulation 8 is modified in the final Regulations as under:

“

8. Application procedure for Green Energy Open Access

- (1) *All applications for Green Energy Open Access shall be made in the prescribed Form along with necessary documents, details, and fee if any, to be submitted to the Nodal agency in accordance with these Regulations.*
- (2) *All applicants seeking Green Energy Open Access shall submit an undertaking of not having entered into Power Purchase Agreement (PPA) or any other bilateral agreement with more than one person for the capacity (quantum of power) for which Green Energy Open Access is sought.*

Notwithstanding anything contained in Regulation 8(2) above, a drawee entity (consumer /distribution licensee) shall be eligible to enter into Power Purchase Agreement (PPA) or any other bilateral agreement with more than one person within the quantum of Green Energy Open Access granted or sought by it.”

19. Regulation 9, Eligibility Criteria for applying Green Energy Open Access

- I. *Subject to the provisions of these Regulations and system availability, consumers, licensees and/or generating company shall be eligible for Green Energy Open Access to the intra-state transmission system of the State Transmission utility or any transmission licensee/s and/or distribution system/s of the distribution Licensee/s within the State.*

Provided that notwithstanding anything contained in these Regulations, any Green Energy (RE) generating company having subsisting Power Purchase Agreement (PPA) with the Distribution Licensee, shall not be entitled to Green Energy Open Access for the Green Energy (RE) capacity, for which PPA is entered into as well as for any capacity (quantum of power) for which Open Access is already granted, except in accordance with the terms of such PPA.

Provided further that, such Green Energy Open Access shall be available on payment of such charges as may be determined by the Commission from time to time.

- II. *Every person, who has constructed a Captive Generating Plant (CGP) shall have the right to open access as per the provisions of Section 9 of the Act read with rules and Regulations framed under the Act and Order(s) of the Commission on the subject matter.*
- III. *The person(s) who claim that it is having Captive Generating Plant and utilize Green Energy for own use (captive use) through Green Energy Open Access shall requires to provide the details of equity owned by it/them in the captive generating plant and utilization of energy generated from such captive generating plant for their own (captive) use as captive consumption on annual basis, i.e. financial year basis to the distribution licensee in whose area of distribution of electricity, such captive consumer(s) is situated and obtained green open access for transmission/wheeling of energy from its captive generating plant for own use and desire to obtain the benefit granted*

for captive use of energy for self-utilization (consumption of energy for own purpose) at the place of consumer(s).

Provided that the consumers who are having Rooftop Solar Power Project upto 1 MW at its premises under net-metering by setting up its Captive Generating Plant shall be exempted from providing the details of equity holding and consumption of energy for fulfillment of CGP with the distribution licensee. However, they shall require to provide undertaking stating that Rooftop project owned by them.

- IV. *The details of documents require to submit by the captive consumer(s) to the distribution licensee for verification and commission for compliance of its captive consumption on financial year basis latest by 30th April of the ensuing year after completion of financial year.*

Explanation: *As for example on completion of financial year 2023-24 (i.e. from 1.04.2023 to 31.03.2024), the details for proving captive status of generator and captive consumer(s) require to submit to the distribution licensee on or before latest by 30th April, 2024 as per Schedule I of these Regulations.*

- V. *Failure to provide the above details to the distribution licensee within aforesaid time limit, the distribution licensee shall inform to the State Nodal Agency for non-compliance of provision of Regulations and take action according to provision of Regulations which includes the removal of captive status of such consumer and withdrawal of benefit of captive status like exemption from cross-subsidy surcharge, additional surcharge etc.*
- VI. *On receipt of necessary documents/evidences from captive consumer/generator the distribution licensee and the Commission shall verify about captive status of generator and captive consumption of the consumer as the case may be within three (3) months and take necessary*

action, if any, required with regard to failure of captive status of either generator or consumer(s) as per provision of Act, Rules and Regulations and/or Order(s) of the Commission. On verification of documents/evidences if the distribution licensee found that either generator or consumer fail to prove the captive generating plant status and/or captive consumer status or found sale of surplus energy from the captive generating plant which qualify under third party sale in that case the distribution licensee shall approach to the Commission (GERC) to take action in accordance with law against captive generating plant and/or captive consumer.

- VII. *On submission of documents/evidence to the distribution licensee by the captive consumer the distribution licensee shall verify the compliance of provisions of Act, Rules and Regulations for captive status of the generator and the consumer and raise the issue with regard to non-compliance of captive status by the generator/captive consumer and also approach to the Commission (GERC) to decide captive status of the generator or consumer and claim the recovery of charges payable by such consumer on account of not fulfilling of captive generating plant status by the generator or captive consumer status by the consumer which includes recovery of cross subsidy surcharge, additional surcharge and other charges benefits, if any availed by the person as captive generator and/or consumer under the provision of these regulations or orders of the Commission. Failure of proving captive status by the consumer or generator on completion of financial year they are treated as normal open access consumers, and they shall be liable to pay all charges as payable by the normal open access consumer and the benefits which are granted for captive use of energy shall be withdrawn during that year. Energy supplied from the generator and consumed by the consumer shall be considered as supply of electricity as normal consumer and not as captive consumer.*

Provided that consumers (except captive consumers), who have contracted demand or sanctioned load of one hundred (100) kW and above shall be eligible for Open Access for sourcing Green Energy (RE) under these Regulations.

Provided further that there shall be no limit with respect to contracted load or sanctioned load for the captive use of energy by the consumer opting under Green Energy Open Access.

Provided further that minimum number of time blocks, which shall not be more than 12 time-blocks, for which the consumer shall not change the quantum of power consumed through Green Energy Open Access so as to avoid high variations in demand to be met by the distribution licensee.

Comments/Suggestions of the Stakeholders:

The following suggestions are made by the stakeholders:

19.1. Some of the objector suggested that in first para of the Regulation 9(I), i.e., prior to first proviso of the said Regulation, following sentence be added:

.....on payment of transmission, wheeling charges and other charges as may be determined by the Commission. The open access customer of 1 MW and above shall have to install Intra-state ABT Compliant meters at their place for energy accounting and Remote Terminal Unit (RTU) to facilitate SLDC in real time monitoring, which shall be duly certified by the licensee concerned.....

19.2. Some of the objector suggested that where the projects are already commissioned and selling power to the State Discoms under PPA and would require selling power under Open Access (OA) once the PPA is expired or terminated, these projects have to initiate Open Access procedures before the PPA expiry / termination. In such situation, when these projects would near their PPA expiry or the PPA is terminated for any reason, these projects

should be given deemed Open Access for seamlessly sell power under Open Access.

Commission's decision:

The objectors have raised the following objections on this Regulations:

- i. Payment of transmission, wheeling charges and other charges decided by the Commission.
- ii. Open Access customer above 1 MW have to install ABT Compliant meter at their place for energy accounting and Remote Terminal Unit (RTU) to facilitate SLDC in real time monitoring duly certified by the licensee concerned.
- iii. The generator having PPA with State Discoms desire to sell power under Open Access once PPA is expired or terminated in such cases it will be considered that the project should be given deemed open access on such eventuality.
- iv. The projects which are already commissioned and selling power to the State Discoms under PPA, once the PPA is expired or terminated, these projects should be given deemed Open Access for seamlessly sell power under Open Access.

We note that so far as objections/suggestions stated in (i) and (ii) above are concerned, the same are already covered under the Regulations 17, 20 and other relevant Regulations. However, to give more clarity, the above suggestions (i) & (ii) are accepted and accordingly, Regulation 9 (I) is modified.

So far as the Objections that the generator who is having PPA with the distribution licensee is either expired or terminated in that event the open access granted should be given deemed open access so that once the PPA with the distribution licensee is terminated/expired this project can sale power seamlessly under open access is concerned, we clarify that the open

access is granted having certain conditions which include the application by the applicant specifying the period of open access, quantum, point of injection and drawl, to ensure non-default on part of the applicant, priority for granting open access etc. The proposed objections/suggestions circumvent the aforesaid provision of this Green Energy Open Access where the nodal agency who is required to verify the aforesaid aspects while granting the open access for ensuring transparency and to see that there is no discrimination amongst the same category of open access customer. Further, this will lead to introduction of “*Deemed Open Access*” concept in these Regulations which is not accepted.

Comments/Suggestions of the Stakeholders:

The following suggestions are made by the stakeholders:

- 19.3. Some of the objectors have suggested that Chief Electrical Inspector is an appropriate authority for verification of captive status for Captive generating plants and users.
- 19.4. It is further suggested that Regulation 9 (III) The person(s) who claim that it is having Captive Generating Plant and utilize Green Energy for own use (captive use) through Green Energy Open Access shall require to provide the details of equity owned by it/them in the captive generating plant and utilization of energy generated from such captive generating plant for their own (captive) use as captive consumption on annual basis, i.e. financial year basis to the Chief Electrical Inspector and obtained green open access for transmission/wheeling of energy from its captive generating plant for own use and desire to obtain the benefit granted for captive use of energy for self-utilization (consumption of energy for own purpose) at the place of consumer(s).
- 19.5. Distribution Licensee is the entity who is getting the benefit of cross subsidy surcharge and additional surcharge, hence there is clear and direct conflict

of interest if distribution licensee is also made authority to verify and certify captive status. The Commission may identify the authority who is third party and has no vested interest in the matter.

19.6. It is suggested to modify Regulation 9 (iii) as under –

Provided that the consumers who are having Rooftop Solar Power Project upto 1 MW at its premises under net-metering by setting up its Captive Generating Plant shall be exempted from providing the details of equity holding and consumption of energy for fulfillment of CGP with the distribution licensee. However, they shall be required to provide undertaking stating that Rooftop project is owned by them in accordance with Section 2(8) of the Electricity Act, 2003 read with Rule 3 of Electricity Rules, 2005.

19.7. New Clause to be added (for more than 1 MW Capacity) –

Captive Consumer should allow to set up RE projects within their premises of more than 1 MW capacity, in accordance with Section 2(8) of the Electricity Act, 2003 read with Rule 3 of Electricity Rule, 2005.

19.8. Some of the objectors have suggested that Regulation 9 (IV) in respect of the details of documents required to submit by the captive consumer(s) to the Chief Electrical Inspector for verification and the Commission for compliance of its captive consumption on financial year basis latest by 30th April of the ensuing year after completion of financial year.

19.9. Some of the objectors have stated that some of the project developers are profiteering through investment activities by entering into power sale/purchase agreement with users (consumers) for supply of power at a specified tariff and also claiming captive status just to avail concessional benefits applicable to captive users. The power sale/purchase agreement is only relevant for supply of power to third party consumers and not in case of captive consumers in real sense. Thus, under the guise of captive power

projects, the developers are undertaking third party sale activities and at the same time also claiming the benefits available to captive power projects. Hence, it is suggested to incorporate specific provision in the Regulations providing that the transaction of power under Power Purchase/Sale Agreement executed amongst the equity holder in the generating plant shall be treated as consumption of power by third party consumers and not eligible for benefits of captive users.

- 19.10. Some of the objectors have suggested that the annual audited accounts are not necessarily prepared by 30th April of year. The said details be submitted after 31st December of the financial year and not 30th April.
- 19.11. Some of the objectors have suggested that the details of documents specified in Regulation 9 (IV) are required to submit by the captive consumer(s) to the State Nodal Agency or State Load Dispatch Centre for verification and the Commission for compliance of its captive consumption on financial year basis latest by either 30th June or 30th September of the ensuing year after completion of the financial year.

Explanation: As for example

On completion of financial year 2023-24 (i.e. from 01.04.2023 to 31.03.2024), the details for proving captive status of generator and captive consumers) require to submit to the distribution licensee on or before latest by 30th September 2024 as per Schedule I of this Regulations.

- 19.12. Some of the objectors have suggested that Regulation 9 (V) provide at least three months 'time for preparation and submission of such information and accordingly fix the timeline for submission and generation/consumption data at the end of financial year by 30th June.
- 19.13. Some of the Objectors have suggested that in case of failure of captive status of either generating plant and/or consumption by its user(s) attract

surcharge i.e. Cross Subsidy Surcharge and other charges. Further, any delay in payment of such surcharge and other charges by Captive Generating Plant and/or consumer(s) / user(s), in that case they are liable to pay late payment surcharge on it may be incorporated.

19.14. Some of the Objectors have suggested that the Green Energy Generator (RE Generator) registered under REC Mechanism clarity may be provided in these Regulations.

19.15. It is further suggested that minimum 51% of the power from the total generated power is required to be consumed by the captive consumer in order to qualify for captive status and is eligible to sell the remaining balance amount of power in open market or to a 3rd Party. Resultantly, the sale of balance power should be clarified to not be treated as non-compliance of the captive status.

19.16. Some of the objectors have stated that the 'status captive' is dynamic and require to verify on financial year basis. Hence, the word "for that financial year" be added at the end of the Clause 9.1 (V).

19.17. Some of the objectors have suggested to modify the Regulation 9 (V) as under:

Failure to provide the above details to the distribution licensee within aforesaid time limit, the distribution licensee shall take action according to provisions of Regulations which includes the removal of captive status of and withdrawal of benefit of captive status like exemption from cross-subsidy surcharge, additional surcharge etc. and inform the same to State Nodal Agency.

19.18. Some of the objectors have suggested that Regulation 9 (VI) provides that the captive generator/consumer is required to consume minimum 51% of power generated to qualify for captive status and eligible to sell the balance

power over and above in open market or any third party under 3rd Party transaction. It is proposed to clarify that any sale of power over and above 51% of the generation under third party sale is not be treated as non-compliance of the captive status of the captive consumer as it consumes minimum 51% power.

19.19. Some of the objectors have suggested that the Commission may clarify that Regulation 9 (VII) be applicable to all green energy open access from renewable energy including third party. Further, it is also requested to clarify that in case of third-party sale the restriction of minimum contract demand of 100 KW is not applicable as the same is allowed for captive consumption.

19.20. Some of the objectors have stated that the proviso provided in Regulation 9 (VII) that consumers must not make any changes in the amount/quantum of power they consume through Open Access for a minimum of 12 time-blocks, seems ambiguous and could potentially lead to conflicts in the future. Hence, it is to be clarified the same to avoid any uncertainties and ensure a clear understanding of the requirement.

19.21. Some of the objectors have suggested that the second proviso of Regulation 9 (VII) be modified as under:

Provided further that open access shall be permitted ~~there shall be no limit~~ with respect to 100% of contracted load ~~demand~~ or sanctioned load for the captive use of energy by the consumer opting under Green Energy Open Access.

19.22. Some of the objectors have stated that as per the proposed draft GERC (Terms and Conditions for Green Energy Open Access) Regulation, 2023, on one hand, a generator is liable for DSM charges but on the other hand it has flexibility of scheduling different quantum for each 15 minutes time block and allowed to revise the quantum. The constant quantum requirement for

12-time blocks, coupled with DSM penalty under DSM Regulations is a highly discouraging step because Renewable Energy generation is intermittent in nature. Therefore, the Commission may not introduce such provision in the Regulations.

- 19.23. Some of the objectors have suggested that in third proviso of Regulation 9 (VII) the word 'not and more than 12' be deleted and replace with the word '96 time-blocks'. Alternatively, it is suggested that the aforesaid provisions be modified as under:

Provided that green energy open access consumers shall provide advance schedule, 4 hours before Discoms finalizes its schedule on day ahead basis, and for any deviation attributable to such green OA consumers, implication is to be borne by such open access consumers only.

- 19.24. Some of the Objectors have suggested for revision in schedule be allowed to Green Energy Open Access consumers in accordance with the provisions of the GERC's (Forecasting, Scheduling, Deviation Settlement and Related Matters of Solar and Wind Generation Sources) Regulations, 2019 wherein it is provided that in case of Wind energy generation and Solar energy generation which are infirm in nature the revision in schedule wind energy case is allowed for 16 time in a day while in case of Solar energy generation the same is allowed for 9 times in a day. Further, the change in schedule is allowed to be effective from 4th time block from the proposed revisions by the beneficiaries. Moreover, Objectors have also referred the CERC's Grid Code dated 29th May 23, and submitted that for the ISTS transactions, any revision in schedule made in odd time blocks shall become effective from 7th time block and any revision in schedule made in even time blocks shall become effective from 8th time block, counting the time block in which the request for revision has been received by RLDCs to be the first one. Accordingly, the changes in the Regulations be incorporated. Some of the objectors have suggested that 8% banking charge proposed in these

Regulations which is to protect the interest of licensees towards any financial loss if occurred to it. Considering the same, the objectors have suggested that 16 time revisions in schedule is allowed to GEOA including Wind Solar Hybrid Projects.

- 19.25. Some of the objectors have stated that in case the establishment of a captive status, post verification is not successful, the charges for "normal green energy open access charges for that particular technology "may be applicable in place of normal open access. The aspect of whether additional surcharge would be exempted for GEOA or not, should be clarified.

Some of the objectors suggested that in case of third-party sale GEOA if any, avail by the consumers, there should not be any restriction on contracting capacity for open access since the GEOA Regulations states minimum contract demand of 100KW.

- 19.26. Some of the objectors have suggested that on submissions of documents/evidence of captive status of plants and consumers by the concerned person, the following third proviso to Regulation 9 (VII) may not be applicable to such consumers and the same should be deleted.

"Provided further that minimum number of time blocks, which shall not be more than 12 time-blocks, for which the consumer shall not change the quantum of power consumed through Green Energy Open Access so as to avoid high variations in demand to be met by the distribution licensee."

- 19.27. Some of the Objectors have suggested that at present, consumer can procure electricity up to 50% of contract demand from RE source under open access. Hence, this condition will become void after notification of these Regulations.

- 19.28. Some of the Objectors have suggested that the third proviso to Regulation 9 (VII) may be interpreted in such way that Consumer has to provide consumption schedule at his end. Further, not changing the quantum for 12

blocks may be construed as 'Schedule', as finalized in day ahead basis, should not be revised for 12-time blocks (as per forecasting and scheduling regulation where each 15 minutes time block could have different quantum corresponding to the generation) rather than 'constant quantum for 12 time blocks'.

- 19.29. Some of the Objectors have suggested that there shall be no restriction of capacity installation upto 50% of contract Demand/Sanctioned load as per the condition stated in GERC Order No. 04 of 2021. It is requested to clarify the above to avoid any ambiguity.
- 19.30. Some of the Objectors have suggested that specific RE capacities Wind or Solar in MW to be allotted to each consumer as per prevalent practice in Gujarat.
- 19.31. Some of the objectors suggested that in third proviso of Regulation 9 (VII), that the minimum time block which shall not be more than 12 times blocks for which the consumers shall not change the quantum of power consumed through GEOA, the 12 number of time block may be replaced by 6-time blocks.
- 19.32. Some of the objector has suggested to modify the provision related to the minimum time block which shall not be more than 12 time blocks for which the consumer shall not change the quantum of power consumed through Green Energy Open Access. The Green Energy Open Access consumer should be asked to have constant schedule at least for 12 hours.
- 19.33. Some of the Objectors have suggested to modify the first and second proviso to Regulation 9 (VII) as under:

Provided that only consumers (~~except captive consumers~~) who have contracted demand or sanctioned load of 100 kW & above, either through single connection or multiple connections aggregating 100 kW or more located in same electricity division of a distribution licensee, shall be eligible

to take power through Green Energy Open Access and there shall be no limit of supply of power for the captive consumers taking power under Green Energy Open Access.

19.34. Some of the objector has submitted that the Regulation allowing open access to the consumer with multiple services having collective load 100 kW and above is contrary to the provision of supply code and Electricity Act which clearly defines consumer end premises.

19.35. Some of the Objectors have stated that as per Regulations 9 (VII) & 15 (II) states that there is no such restriction on GEOA capacity. The earlier GoG Policy on Wind/Solar Hybrid provides for restriction on setting up aforesaid technology based projects up to 50% of contract demand of consumers. Hence the Commission may clarify that upon implementation of these GEOA Regulations, the aforesaid limitation of earlier policies are not applicable for setting up aforesaid technology based project under these Regulations.

Commission's decision:

The objectors/stakeholders have stated that the requirement of submissions of the document with regard to captive generating plant and/or captive consumption as proposed in the Regulation 9 (III) be revised and the same may be required to submit to the Chief Electrical Inspector as per the decision of the Commission in Petition No. 860 of 2006 stating that the distribution licensee is one of the beneficiary to recover Cross Subsidy Surcharge and Additional Surcharge. Further, there is direct conflict of interest if licensee is authorized to verify and certify the captive status. It is requested that the Commission may identify the third party authority/agency who has no vested interest in the matter.

Some of the objectors have suggested to incorporate in the proviso to Regulation 9 (III) the word "*in accordance with Section 2(8) of the Electricity Act, 2003 read with Rule 3 of Electricity Rule, 2005*".

Some of the objectors have suggested that Captive Consumer should be allowed to set up RE projects within their premises of more than 1 MW capacity, in accordance with *Section 2(8) of the Electricity Act, 2003 read with Rule 3 of Electricity Rule, 2005*.

Some of the objectors have stated that some of the project developers are profiteering through investment activities by entering into power sale/purchase agreement with users (consumers) for supply of power at a specified tariff and also claiming captive status just to avail concessional benefits applicable to captive users. The power sale/purchase agreement is only relevant for supply of power to third party consumers and not in case of captive consumers in real sense. Thus, under the guise of captive power projects, the developers are undertaking third party sale activities and at the same time also claiming the benefits available to captive power projects. Hence, it is suggested to incorporate specific provision in the Regulations providing that the transaction of power under Power Purchase/Sale Agreement executed amongst the equity holder in the generating plant shall be treated as consumption of power by third party consumers and not eligible for benefits of captive users.

Some of the objectors have requested that the submissions of the details/documents pertaining to status of captive generating plant/captive consumption be provided to State Load Despatch Center (SLDC) being an independent organisation instead of distribution licensee.

Some of the objectors have suggested that in Regulation 9 (IV), the provision for timelines for submission of documents/evidence pertaining to Captive Generating Plant be specified as latest by 30th April of the financial year be amended and replaced as 30th June/30th September/31st December of the financial year.

Some of the objectors have suggested to make changes in Regulation 9 (V) by

incorporating following sentences or words in the said Regulations.

- a) To incorporate the change that upon failure to prove the status of Generating Plant and consumption as “Captive” for particular financial year, the effect of the same be applied limited to that financial year only.
- b) The nodal agency for verification of captive status be assigned to GETCO/SLDC instead of distribution licensee inform the Commission to verify the exemption granted from Cross Subsidy Surcharge and Additional Surcharge and levy the same on such consumer.

Some of the objectors have stated that in Regulation 9 (VI) it may be provided that after fulfilment of criteria of captive generating plants and consumption of minimum 51% energy, the sale of excess energy available, if any, in open market or other than captive consumer under third party sale, only to that extent the Cross Subsidy Surcharge and/or Additional Surcharge, if any, be made applicable. Moreover, it cannot change the status of captive generating plant and captive consumption to the extent of 51% of generation and consumption by captive consumer.

Some of the objectors have suggested that in Regulation 9 (VII), the minimum capacity specified 100 kW is applicable to third party sale only and not to the captive consumers.

Some of the objectors have suggested to clarify regarding ‘*the minimum number of time blocks, which shall not be more than 12 time blocks, for which the consumer shall not change the quantum of power consumed through Green Energy Open Access*’ to avoid ambiguity in the Regulations.

Some of the objectors have suggested that open access be permitted with respect to 100% of contract demand or sanctioned load for captive use of energy.

Some of the objector have stated that not permitting revision in schedule more

than 12 time blocks by Green Energy Open Access consumer will lead to higher DSM charges as flexibility of schedule is not available to the consumers and be affected by penalty imposed under DSM Regulations as renewable energy generation is intermittent in nature.

Some of the objectors have requested that upto 96 / 48 time blocks (12 hours) no change in the quantum of power be permitted.

Some of the objectors have suggested that proviso 1 & 2, to Regulation 9 (VII) be combined.

Some of the objector has submitted that grant of open access in excess of contract demand will put strain on distribution network/transmission network.

Some of the objectors have suggested that the provisions in first proviso to Regulation 9 (VII) be modified as under:

Provided that only consumers who have contracted demand or sanctioned load of 100 kW & above, either through single connection or multiple connections aggregating 100 kW or more located in same electricity division of a distribution licensee, shall be eligible to take power through Green Energy Open Access and there shall be no limit of supply of power for the captive consumers taking power under Green Energy Open Access.

Some of the objectors have suggested that in third proviso to Regulation 9 (VII) the word '12 time blocks' be replaced by 6 time blocks'.

Some of the objectors have suggested that the third proviso to Regulation 9 (VII) may be aligned with the provisions of CERC Grid Code notified on 29.05.2023.

Some of the objectors have suggested that once the status of generating plant

and consumption is confirmed as 'Captive' the provisions of third proviso to Regulation 9 (VII) may not be applicable and be deleted.

Some of the objectors have suggested to add the word '*in accordance with Section 2(8) of the Electricity Act, 2003 read with Rule 3 of Electricity Rule, 2005*' in Regulation 9 (VII).

Some of the objectors have suggested that in case the establishment of captive status post verification is not successful, the charges for 'normal green open access charges for that particular technology' may be applicable in place of provisions for normal open access charges.

Some of the Objectors have suggested that in Regulations 9 (VII) & 15 (II) states that there is no such restriction on GEOA capacity whereas earlier GoG Policy on Wind/Solar Hybrid provides for restriction on setting up aforesaid technology-based projects up to 50% of contract demand of consumers. It may be clarified that upon implementation of these GEOA Regulations, the aforesaid limitation of earlier policies is not applicable for setting up aforesaid technology-based project under these Regulations.

Some of the Objectors have suggested that these Regulations provides for levy of banking charges @ 8% of banked energy to compensate the distribution licensees towards cost implication in providing banking facility, the restriction and revision in schedule as provided in third proviso to Regulation 9 (VII) may be removed.

Some of the objectors have suggested that the verification of captive status of generator and/or consumption for the transaction falling under Inter-State category, shall be governed by the provision of MoP Rules and amendments made in it.

As regard to the submission against allowing open access to the consumer with

multiple services having collective load 100 kW and above, it is to clarify that the eligibility criteria for Green Energy Open Access stipulated in these Regulations is in accordance with the provisions of MoP, GoI Rules 2022 and therefore, the suggestion is not accepted.

Considering the aforesaid suggestions/objections of the stakeholders and to give the necessary clarity about certain aspects as mentioned above, we decide to make some changes in the proposed Regulations.

Upon modification, the Regulation 9 (I) to Regulation 9 (VII) as numbered in the Draft Regulations are renumbered as Regulation 9 (III) to Regulation 9 (IX).

Some of the objectors have suggested that the Regulation 9 (III) state that the captive generating plant/captive consumption status claimant have to provide the details of consumption and status of Captive Generating Plant related documents/evidence on annual basis to the distribution licensee for verification of such documents, latest by 30th April be replaced by 30th June/30th September/31st December of the ensuing year, is concerned, we decide to keep the date of submissions of documents latest by 31st October of ensuing year.

Some of the objectors suggested that the consumer who are situated in the distribution licensee area and consuming the electricity from captive generating plant get the benefits envisaged in the Electricity Act, 2003, Rules and Regulations framed under it. The benefits are available in form of exemption from Cross Subsidy Surcharge, Additional Surcharge, to the Captive Consumers. The Distribution Licensee are issuing the energy bills as per the tariff Order of the Commission and recovering the charges against the energy supplied and consumed by the consumers which include adjustment of the Captive energy claimed by such consumer. The licensees have no means or evidence/documents to see that the claim of captive consumption of energy by

such consumer and only they have to rely on the statement of such consumer as captive consumers. We note that the tariff design is made applicable by the Commission consist of Cross Subsidy component. Further, the open access customer whenever avail on transmission/distribution network and procure power from Third Party Sale in that case, there may be stranded cost which needs to be paid by the licensee to the generator, which attract applicability of additional surcharge on such consumer as determined and decided by the Commission as per the provision of Rules, Regulations and Orders of the Commission. Thus, the distribution licensee who is granting the benefits of captive consumption to the consumer are directly affected party with regard to aforesaid charges if such consumer do not qualify and fulfil the conditions of captive consumption specified in the provision of Act, Rules and Regulations framed under it.

Further, in case of failure of such captive consumer for fulfilment of captive status the licensees have no means to verify the same and claim its legitimate rights of recovery of Cross Subsidy Surcharge from such consumers who are failed to comply with the provision of Act, Rules and Regulations framed under it about its captive consumption.

We note that the Regulations 9 (III), (IV), (V), (VI), and (VII) are provided in the Regulations with an intent that the distribution licensee who is one of the affected party is eligible to see and verify the documents/evidence from the consumer/generator claiming captive status of them and in case such entity is not fulfilling the criteria of captive consumption/generation in that case the distribution licensee may approach the Commission for its legitimate right to decide and declare the status of such captive generating plant/captive consumption of the consumer and failure to it by intra-state generator or consumer, recover the applicable charges from such consumer/entities as decided and declared by the Commission. Thus, the aforesaid provisions is not affecting any way to the intra-state generator/consumers claiming their

captive status and associated benefit from it because the status of captive consumption/generator is whether in accordance with law or not is to be decided and declared by the Commission. We also note that in case of non-fulfilment of captive consumption/generator by the captive users the distribution licensees are deprived from recovering surcharges like cross subsidy surcharge and additional surcharge and other charges if any applicable and needs to be factored in the tariff determined by the Commission as a part of revenue of the licensee. Such under recovery is passed on to other consumers which is against the intent and provisions of the Act, Rules and Regulations framed under it.

It is clarified that the status of “Captive Generating Plant” owned by the person/persons and consumption of energy from such plant by the persons/consumer is qualify as “Captive Generating Plant” or not and the consumption of energy of such plant is qualified as “captive consumption” or not is required to be verified and decided by the Appropriate Commission. The said function is statutory function cast upon the Commission by the Act. The Commission may assign the verification function to any person. Merely, assigning that function to licensee or any person with regard to the verification of captive status of intra-state generator and/or captive consumption by the consumer cannot be construed that the licensee to whom such work is assigned is the deciding authority with regard to captive status of generator and/or captive consumption of energy by the consumer.

Some of the objectors have stated that the Chief Electrical Inspector be provided such authority on a ground that in Petition No. 860 of 2006 such authority given to Chief Electrical Inspector. Further, it is also contended that the distribution licensee is having clear and direct conflict of interest as they are getting the benefit of cross subsidy surcharge and additional surcharge. We note that the decision in Petition No. 860 of 2006 of the Commission do not come in way of deciding to provide necessary documents or evidence by the

captive consumers/intra-state generator to the distribution licensee. The Commission has power to frame the Regulations under the provisions of the Electricity Act, 2003 and such power also provides to add, amend and alter the Regulations. Hence, the Commission by way of the present Regulations make provision that the captive consumers/intra-state generators shall required to provide documents/evidence of captive consumption/status of generator to the distribution licensee, which is not in violation of the provisions of Electricity Act, 2003, Rules and Regulations framed under it as well as the Order of the Commission in Petition No. 860 of 2006.

Further, with regard to the contentions of some of the objectors that the distribution licensee is beneficiary of CSS and Additional Surcharge and it has clear and direct conflict of subject matter is concerned, we note that the Electrical Inspector Office is recovering the Electricity Duty on either generation of electricity and/or consumption of electricity from the generator and/or consumer as the case may be as per the provisions of the Gujarat Electricity Duty Act. Hence, if the contention of the objector is considered that the distribution licensee is beneficiary of CSS and Additional Surcharge and there is conflict of interest by providing such rights to them, the same logic and contention can also be made applicable to the Electrical Inspector office including CEI also. We also note that the Chief Electrical Inspector and its Offices have been assigned various tasks specified under the Act which includes electrical safety related issue, approval of drawings, permission for energization of the Electrical Equipment, inspection and verification of electrical installation on periodic basis, any additional duty or function like determination of captive status of the consumer/generator for which there is no limit on load of the consumer in case of renewable/green energy if also assigned to the above entity, it will affect its already allocated functions. We note that the verification of the intra-state generator and energy consumption as “captive status” assigned to any entity i.e. distribution licensee or CEI, such authority shall require to approach the Commission, if the generating plant or

consumer fails to prove its “captive status” from the documents submitted by it to such authority leading to violation of provision of Act, Rules and Regulations framed under it. We note that the task for verification of generator/consumer captive status assigned to the licensee who is having the data of the energy consumption on billing cycle basis can easily verify and compare the data with the actual consumption data of such consumers. Further, the distribution licensee shall require to approach the Commission if it is found that there is non-fulfilment of the captive status by such generator or consumer with all details for declaration that intra-state generator/consumer failed to comply with provision of Act, Rules and Regulations framed under it with regard to captive status and for taking appropriate action by the Commission in accordance with law.

In light of the above, the contentions of the objectors are not accepted.

Some of the objectors have raised the objections stating that the investors are investing in the generating plant by way of equity and also enter in power sale/purchase agreement with the users and availing concessional benefit available to captive user. In fact, it is supply of electricity to third party consumer and not a real case of captive consumption by the consumer.

In this regard, it is necessary to refer the definition of ‘Captive Generating Plant’ provided in Section 2 (8) of the Act read as under:

2 (8) Captive Generating Plant means a power plant set up by any person to generate electricity primarily for his own use and includes a power plant set up by any co-operative society or association of persons for generating electricity primarily for use of members of such co-operative society or association”.

The aforesaid definition states that the generated electricity be primarily for its own use by generating plant owner/owners which may be person, co-operative

society or association of persons. The word “own” is not defined in the Act but as per dictionary meaning, it means to *“belonging to oneself or itself, used to emphasize that something belongs to or is connected with me and no one else”* (Reference : as per Cambridge Dictionary). Thus, the purpose of captive generating plant envisaged in the Act with an intent to see that the generation of electricity from it **primarily for the own use** by the entities such as a **person, Co-operative Society or Association of persons** etc. Once the ownership in the plant and electricity generated from it is made for own use, in that case the question of sale/purchase of agreement between the parties does not arise. Any agreement for sale/purchase of energy between the parties in terms of commercial transaction through contract between the parties do not qualify as ‘own use’. The above is suffice is to clarify the position.

Some of the objectors have suggested that the Commission may clarify that for captive consumers the limit for load of 100 kW and above is not applicable. We clarify that the Regulation 3 (1) (p) state “Green Energy Open Access Consumer” state that the captive consumer shall not have any load limit. Thus, the aforesaid definition clarify that in case of Captive Generating Plant, no limit of load of the consumer is applicable.

Some of the objectors have suggested that minimum 12 time block of 15 minute block of the consumer shall not change the quantum of power Scheduled through Green Energy Open Access is not workable with consideration of intermittent nature of Renewable Source of generation. Some of the objectors have referred to the GERC (Forecasting, Scheduling, Deviation and Settlement related matters of Solar and Wind Generation Sources) Regulations, 2019 and submitted that the said Regulations provide that in case of wind energy generation, the revision in schedule is permitted 16 times in a day while in case of solar, the same is permitted for 9 times. Further, the said Regulation also provides that the revision made if any, the same shall be effective from 4th time block. Thus, the proposed provisions in these Regulation are need to be aligned with the said GERC Regulations, 2019.

Some of the objectors have suggested that as per CERC Grid Code dated 29.05.2023, in case of the ISTS Transaction, revision in schedule made in Odd time block shall become from 7th time block and any revision in Schedule made in even time block shall become effective from 8th time block.

In this regard it is to state that the aforesaid provisions are incorporated in these Regulations as per the provisions of Electricity (Promoting Renewable Energy through Green Energy Open Access) Rules, 2022 and amendments made therein from time to time. Hence, the aforesaid suggestions are not accepted.

Some of the objectors have suggested that schedule generation for 96-time block shall not be change the quantum of power consume by them through Green Energy Open Access to avoid the demand to be met by the Distribution Licensee. In alternatively, the objector has suggested that the Green Energy Open Access consumer shall provide advance schedule of 4 hours prior to DISCOM finalises its schedule on day ahead basis and deviation, if any, attributable to Green Energy Open Access consumer, the implication of it to be borne by such Green Energy Open Access consumers. In this regard we note that the purpose of change in schedule after 12-time block of 15 minutes provided in the Regulations to provide flexibility to the Green Energy Open Access consumer/generator to revise its schedule with consideration of intermittent nature of the generation available from the RE plant. Allowing any change in schedule earlier than 12 time blocks will create grid management issue in real time basis for grid operator.

The suggestions of objector that the schedule generation shall not be changed for 96 blocks, is against the provisions of the Electricity Rules, 2022 read with provision of GERC Regulations, 2019 notified by the Commission. Hence, the same is not accepted.

Some of the objectors have submitted that the proviso stating that the minimum no. of time blocks which shall not be more than 12 time blocks for which consumer shall not change the quantum of power through Green Energy Open Access may

be applicable to the consumer to provide schedule at consumption site is concerned, we clarify that the aforesaid provisions for keeping quantum of power available from green energy open access in 12 time blocks and not permitted to change the quantum of power is in order to avoid high variation in demand of the distribution licensee at its periphery. Hence, the contentions of the objectors are not accepted.

The clarification sought by some of the objectors that in case of sale of energy from captive generating plant above 51% of generation and consumption from such plant by other person under Third Party Sale or Exchange shall attract CSS and Additional Surcharge only to extent of sale of energy beyond 51% is concerned, in this regard it is to clarify that the qualification criteria for captive generating plant and captive consumption is stipulated in the Rules 2005 specifying the requirement of minimum 26% ownership with voting rights in the generating plant and minimum 51% consumption from such plant to qualify as own use from the Captive Generating Plant. Any person who is neither participated in ownership of the plant by specified minimum equity holding with voting rights and purchase surplus energy, if any, available from captive generating plant above 51%, only to that extent, CSS and other charges as per the Regulations shall be applicable. Merely selling surplus power, if any, available after 51% consumption by the captive users, not affecting in any manner, the captive status of the generating plant and also use of such energy as captive use.

Some of the objectors have stated that the consumers who have contract demand or sanctioned load of 100 kW or more either through single connection or through multiple connections aggregating to 100 kW or more, located in same division of a distribution licensee area shall be eligible for availing power through Green Energy Open Access and in such cases no load limit for supply of power for captive users shall apply in case of Green Energy Open Access. In this regard, it is to clarify that the load limit of 100 kW provided in the Regulations is for the person who desire to avail Green Energy Open Access for other than captive power plant and

consumption from it.

Some of the objectors have suggested that in case of solar rooftop power projects set up by the consumer at its premises under Net Metering Regulations, needs to provide undertaking stating that they are fulfilling the criteria specified under Section 2(8) of Electricity Act, 2003 read with Rule 3 of Electricity Rules, 2005 is concerned, the rooftop power projects set up under Net Metering Regulations are governed under that Regulations. Accordingly, no modification is required in the Regulations.

So far as the suggestions that the limit to set up the power project under Net Metering Regulations be removed is concerned, the same is beyond the subject matter of present Regulations. Hence, the same is not accepted.

Some of the objectors have suggested that in case the consumer is failed to establish the captive status post verification, the charges for "*normal green energy open access charges for that particular technology*" may be applicable in place of 'normal open access charges' is concerned, it is to clarify that on failure of the captive status by consumer/generator, they shall be governed as normal open access consumer/generator, as the case may be and accordingly, the charges shall be applicable to them as per these Regulations.

Some of the objectors have suggested that the Additional Surcharge is not applicable to the consumer is concerned, the same shall be governed as per the provisions of Electricity GEOA Rules, 2022 and its subsequent amendments read with these Regulations.

Some of the objectors giving reference of earlier orders of the Commission/Policies of the Government suggested that under these Regulations, there should not be any restriction on contracting capacity for grant of open access under these Regulations since these Regulations provides for minimum contract demand of 100 KW is concerned, it is to clarify that the Green Energy Open Access is granted by the licensees with consideration of provisions of Act, Rules and

Regulations framed under it including these Regulations also. Further, the open access, if any, granted under different Tariff Orders/Regulations are governed as per the provisions of that respective Order/Regulations. Hence, no further clarification is necessary.

Comments/Suggestions from the Stakeholders:

- 19.36. Some of the Objectors have suggested to modify the first and second proviso to Regulation 9 (VII) as under:

Provided that only consumers who have contracted demand or sanctioned load of 100 kW & above, either through single connection or multiple connections aggregating 100 kW or more located in same electricity division of a distribution licensee, shall be eligible to take power through Green Energy Open Access and there shall be no limit of supply of power for the captive consumers taking power under Green Energy Open Access.

Commission's decision:

The Commission decide to amend the proviso as suggested by the objector as it is in accordance with the provisions of Green Energy Open Access Rules, 2022 and amendments made in it notified by the Ministry of Power, GoI.

Comments/Suggestions from the Stakeholders:

- 19.37. Some of the objectors have suggested that the 'status captive' is dynamic and requires to verify on financial year basis. Hence, the word "for that financial year" be added at the end of the Clause 9 (V).

Commission's decision:

The suggestion of the objectors is accepted and accordingly the change in Regulations is incorporated in the Regulation 9 (V) which is renumbered in the final Regulations. Moreover, we also decide to substitute the word 'approach to the Commission' in place of the word 'inform to the State Nodal Agency'.

Comments/Suggestions from the Stakeholders:

- 19.38. Some of the objectors have suggested that Regulation 9 (V) states that failure to provide the above details to the distribution licensee within aforesaid time limit, the distribution licensee shall take action according to provisions of Regulations which includes the removal of captive status and withdrawal of benefit of captive status like exemption from cross-subsidy surcharge, additional surcharge etc. and inform the same to State Nodal Agency.

Commission's decision:

In this regard, it is clarified that the distribution licensee is authorized to collect the information regarding the captive status of green energy open access consumer/generator as the case may be and if any non-compliance of provisions of the Act, Rules and Regulations is found, approach the Commission for appropriate action in accordance with law. Hence, no further clarification is required.

Considering the aforesaid analysis of the Commission, we decide to make appropriate changes and accordingly renumber sub-regulations of Regulation 9 and modified as under:

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9. Eligibility Criteria for applying Green Energy Open Access

- (I) *The Consumer(s) who have contracted demand or sanctioned load of Hundred (100) KW or more, either through single connection or through multiple connections aggregating Hundred (100) kW or more located in same electricity division of a distribution licensee, shall be eligible for Open Access for sourcing Green Energy (RE) under these Regulations.*

Provided that in case of captive consumers, there shall not be any load limitation in terms of contract demand/sanctioned load (kW/MW, KVA/MVA) with Discoms.

- (II) *The minimum number of time blocks, which shall not be more than 12 time-blocks, for which the consumer shall not change the quantum of power consumed through Green Energy Open Access so as to avoid high variations in demand to be met by the distribution licensee.*
- (III) *Subject to the provisions of these Regulations and system availability, consumers, licensees and/or generating company shall be eligible for Green Energy Open Access to the Intra-State Transmission System of the State Transmission Utility or any Transmission Licensee(s) and/or Distribution System(s) of the Distribution Licensee within the State on payment of transmission, wheeling charges and other charges as may be determined by the Commission. The open access customer shall have to install ABT Compliant meters/Special Energy Meter at their place for energy accounting and Remote Terminal Unit (RTU) to facilitate SLDC in real time monitoring, which shall be duly certified by the licensee concerned.*

Provided that Green Energy Open Access consumer seeking open access below 1 MW, shall be allowed based on installation of Special Energy Meter capable of energy recording on 15 time block basis.

Provided that notwithstanding anything contained in these Regulations, any Green Energy (RE) Generating Company having subsisting Power Purchase Agreement (PPA) with the Distribution Licensee, shall not be entitled to Green Energy Open Access for the Green Energy (RE) capacity, for which PPA is entered into as well as for any capacity (quantum of power) for which Open Access is already granted, except in accordance with the terms of such PPA.

Provided further that, such Green Energy Open Access shall be available on payment of such charges as may be determined by the Commission from time to time.

(IV) Every person, who has constructed a Captive Generating Plant (CGP) shall have the right to open access as per the provisions of Section 9 and other provisions of the Act read with Rules and Regulations framed under the Act and Order(s) of the Commission on the subject matter.

(V) The person(s) who claim that it is having Intra-State Captive Generating Plant and utilize Green Energy generated from it for own use (captive use) through Green Energy Open Access shall require to provide the details of shareholding with voting rights owned by it/them in the captive generating plant and utilization of energy generated from such captive generating plant for their own (captive) use on annual basis, i.e. financial year basis to the distribution licensee in whose area of distribution of electricity, such captive consumer(s) is situated and obtained green energy open access for transmission/wheeling of energy from its captive generating plant for own use (self consumption).

Provided that the consumers who are having captive Rooftop Solar Power Project upto 1 MW at its premises under the provisions of GERC (Net Metering Rooftop Solar PV Grid Interactive Systems) Regulations, 2016 and its amendments from time to time shall be exempted from providing the details of equity holding and consumption of energy for fulfillment of CGP criteria with the Distribution Licensee. However, they shall require to submit undertaking to the Distribution Licensee stating that Rooftop project is owned by them.

(VI) The details and documents required to be submitted by the captive

consumer(s) to the Distribution Licensee for verification and to the Commission for compliance of its captive status of generating plant and energy consumption on financial year basis as per Schedule I of these Regulations, latest by 31st October of the ensuing year, after completion of a financial year.

Explanation: *For example, on completion of financial year 2023-24 (i.e. from 01.04.2023 to 31.03.2024), the details for proving captive status, generator and captive consumer(s) require to be submitted to the concerned distribution licensee latest by 31st October, 2024 as per Schedule I of these Regulations.*

Provided further that the power generated from Captive Generating Plant and self utilized by captive user(s) who are located in more than one State fall under Inter-State generating plant, in that case the captive status shall be determined by Central Electricity Authority (CEA) as per Ministry of Power Notification dated 1st September, 2023.

(VII) *Failure to provide the above details to the distribution licensee within aforesaid time limit by concerned Captive Generating Plant and captive consumer, the distribution licensee shall approach to the Commission due to non-compliance of provision of Regulations and seek direction to take action according to provision of Regulations which includes the removal of captive status of such consumer and withdrawal of benefit of captive status like benefits of exemption from cross-subsidy surcharge, additional surcharge etc. for that financial year and recovery of these charges including late payment surcharge thereon from the defaulting entity.*

(VIII) *On receipt of documents/evidence by the distribution licensee from the captive generating plant and captive consumer, the distribution*

licensee shall verify the same within 3 (three) months from the date of receipt of documents/evidence and on verification of documents/evidences, if the distribution licensee found that either generator or consumer has failed to prove the captive generating plant status and/or captive consumption status or found that there is sale of energy from the captive generating plant which qualify under third party sale, in that case, the distribution licensee shall approach to the Commission (GERC) to take action in accordance with law against such captive generating plant and/or captive consumer. The distribution licensee in the aforesaid cases of non-compliance of provisions of Act, Rules and Regulations for captive status of the generator and/or the consumption by the consumer raise the issue with regard to such non-compliance and approach to the Commission (GERC) to decide captive status of the generator and/or consumption by the consumer and claim the recovery of charges payable by such consumer on account of not fulfilling of captive status by the generator and/or consumption by the consumer which includes recovery of cross subsidy surcharge, additional surcharge, if any applicable, and other charges/benefits, if any availed by the person as captive generator and/or consumption by the consumer under the provision of these Regulations or Orders of the Commission. Failure to prove captive status by the generator and/or consumer on completion of financial year, they are treated as normal open access consumers, and consumption of energy by them as non-captive consumption and such consumer shall be liable to pay all charges as payable by the normal open access consumer. The concessional benefits which are granted for captive use of energy shall be withdrawn for the relevant year due to non-fulfillment of necessary conditions of Act, Rules, and these Regulations. Energy supplied from the generator and consumed by the consumer shall be

considered as supply of electricity as normal consumer and not as captive consumer.

- (IX) *The consumer seeking Green Energy Open Access shall obtain No Due Certificate and certificate related to availability of required metering infrastructure at consumption premise from the respective distribution licensee and submit the same along with application to the nodal agency.*

20. Regulation 10, Nodal Agency

- I. *All the applications related to Green Energy Open Access shall be submitted to the portal set up by the Central Nodal Agency. The applications shall be routed to the State Nodal Agency (SNA) by the Central Nodal Agency.*

Provided that, till such time the procedures and formats are devised by Central Nodal Agency, the existing procedures/formats laid down by the Gujarat SLDC may be followed in the matter.

- II. *Gujarat State Load Despatch Centre shall operate as the State Nodal Agency for grant of Short-Term Green Energy Open Access and State Transmission Utility (STU) shall be State Nodal Agency for grant of Long-Term Green Energy Open Access and Medium-Term Green Energy Open Access.*
- III. *The State Nodal Agency shall coordinate with transmission licensees including STU and the Distribution Licensees to make available all relevant information regarding green energy open access to the public on the portal of the Central Nodal Agency.*

Comments/Suggestions of the Stakeholders:

- 20.1. Some of the Objector have submitted that till such time the procedures and

formats are devised by Central Nodal Agency, the existing procedures/formats laid down by the Gujarat SLDC/State Nodal Agency may be followed in the matter.

- 20.2. Some of the Objectors have suggested to provide that the MW capacity applied under MTOA/LTOA/STOA will be at pooling station end only which will be injecting point.

Commission's decision:

The Commission has noted the above suggestions of Objectors.

As regard to the suggestions that “till such time the procedures and formats are devised by Central Nodal Agency, the existing procedures/formats laid down by the respective State Nodal Agency for granting open access may be followed”, the Commission has noted that as per the GERC (Terms and Conditions of Intra-State Open Access) Regulations, 2011, the SLDC is the State Nodal Agency for grant of Short Term Open Access and Medium Term & Long Term Open Access to consumer connected to the Distribution Network and inter-se location of drawl and injection point is within same Distribution Licensee. Whereas, the STU is the State Nodal Agency for grant of Medium Term and Long Term Open Access to the consumer connected to the Intra-State Transmission Network. Further, in order to provide clarity for processing of application wherein inter-se points of injection and drawl fall on the distribution network of same Distribution Licensee, the Commission has decided to modify the Regulation 10 in the final Regulations, as under:

“10 Nodal Agency

1. All the applications related to Green Energy Open Access shall be submitted to the portal set up by the Central Nodal Agency. The applications shall be routed to the State Nodal Agency (SNA) by the Central Nodal Agency.

Provided that SNA shall forward the Application to the concerned Distribution Licensee for the cases wherein the inter-se points of drawl and injection falls on the Distribution Network of the respective Distribution

Licensee and concerned Distribution Licensee shall process the application in accordance with these Regulations.

Provided that, till such time, the procedures and formats are devised by Central Nodal Agency, the existing procedures / formats laid down by the respective State Nodal Agency for granting open access may be followed in the matter.

II. Gujarat State Load Dispatch Centre shall operate as the State Nodal Agency for grant of Short-Term Open Access to Intra-State Transmission System in conjunction with or without Distribution Network of Distribution Licensee of the State. The State Transmission Utility (STU) shall operate as a -State Nodal Agency for grant of Medium Term and Long Term Open Access to the Intra-State Transmission Network in conjunction with or without Distribution Network of Distribution Licensee of the State.

The Distribution Licensee shall operate as a Nodal Agency in co-ordination with the SNA for grant of open access for the cases wherein the inter-se location of drawl and injection points falls on the Distribution Network of the concerned Distribution Licensee.

III. The State Nodal Agency shall coordinate with transmission licensees including STU and the Distribution Licensees to make available all relevant information regarding green energy open access to the public on the portal of the Central Nodal Agency."

The Objector has suggested that MW applied for STOA / MTOA / LTOA / will be at the pooling station end only which will be injecting point. In this context, it is to be noted that as provided in the Commission's order for respective RE Sources, the quantum of Open Access to be sought is with respect to installed capacity of RE project.

21. Regulation 11, Treatment for existing Green Energy (RE) Open Access

consumer(s)

The Green Energy Open Access availed or to be availed by the consumer/generator/licensee sourcing power from the RE generator (Green Energy Generator) which were commissioned prior to date of notification of these Regulations shall continue to be governed by the relevant provisions of the Government Policy or the Order(s) of the Commission or Regulations notified by the Commission under the control period under which the RE generator (Green Energy Generator) was commissioned.

Provided that if the consumer/generator/licensee avail Green Energy Open Access by sourcing power from the RE Generator commissioned after notification of these Regulations shall be governed as per the provisions of the Orders of the Commission and/or Regulations of the Commission as the case may be.

Provided further that in case of inconsistency between the provisions of Order(s) issued after these Regulations of the Commission with regard to Banking facility and charges, the provisions of these Regulations shall prevail.

Provided also that if Open Access for any additional Green Energy (RE) capacity is sought by any existing consumer(s)/generators/licensee in addition to the capacity already contracted under Green Energy Open Access, shall be treated as new application for Green Energy Open Access to the extent of additional capacity commissioned after notification of these Regulations.

Comments/Suggestions of the Stakeholders:

- 21.1. Some of the objectors have suggested to modify the said Regulation suitably so that the consumers shall have a choice to source green power even under GERC GEOA Regulations from the RE Generators commissioned prior to the date of notification of these Regulations.

Some of the objectors have requested to modify the first proviso to Regulation 11 stating that *“if the consumer/generator/licensee avail Green Energy Open Access by sourcing power from the RE Generator commissioned after notification of these Regulations, **the same** shall be governed as per the provisions of **present Regulations and Orders passed by the Commission thereunder.**”*

21.2. Some of the objectors have suggested to clarify the applicability of these Regulations:

1. Regulations prevailing at the time of existing generator was commissioned should be applicable.
2. The Commission may clarify about applicability of GEOA regulations for RE projects.

21.3. Some of the objectors has suggested to ensure that the existing OA agreements be continue in accordance with the existing OA Regulation/policy under which agreements were signed. Once these agreements get expired & when renewed they would fall under the new Regulations.

21.4. Some of the objectors have suggested to incorporate the provision providing that in case of inconsistency between the provisions of Order(s) or RE Policy issued prior to these Regulations of the Commission, the provisions of Order(s) or RE Policy shall prevail.

Commission's decision:

The Commission has noted the suggestions / comments of the Stakeholders.

As regard to the suggestions of Objector to provide choice to the consumer to source green power as per the terms of present regulations from the previously commissioned RE generators i.e. commissioned prior to the date of notification of these regulations, it is to clarify that the previously

commissioned RE generators shall continue to be governed by the relevant provisions of the Government Policy/ Order(s) of the Commission or Regulations notified by the Commission under the control period under which such RE Generator was commissioned till the period of completion of useful life as provided in the relevant Policy / Order of the Commission / Regulations of the Commission.

The provisions of these Regulations shall apply to the open access desired by the entity who has set up Green Energy Project on or after notification of these Regulations and availed the same. Further, the projects which were commissioned under the control period of previous Government Policy, Orders and/or Regulations of the Commission which has completed its normative useful life as specified in such policy, Orders and/or Regulations and if eligible to continue such projects as per the prevailing Government Notification/Policy/Orders/Regulations/Rules for open access, it shall be allowed for Green Energy Open Access as per the provisions of these Regulations.

As regard to the suggestions of Objectors to clarify that the existing RE generators commissioned prior to the notifications of these regulations shall be governed as per the provisions of relevant policy / order of the commission / regulations of the Commission under which such RE generator was commissioned, it is to state that the Regulation 11 of these Regulations amply clarifies that the existing RE generator commissioned prior to the notification of these regulations shall continue to be governed by the provisions of relevant Government Policy/ Order(s) of the Commission or Regulations notified by the Commission under the control period under which RE Generator was commissioned. Further, the 3rd proviso to the Regulation 11 also clarifies that if Open Access for any additional Green Energy (RE) capacity is sought by any existing consumer (s) / generators / licensee in addition to the capacity already contracted under Green Energy

Open Access, shall be treated as new application for grant of Green Energy Open Access to the extent of additional capacity commissioned after notification of these regulations. Thus, the Regulation 11 read with proviso gives ample clarity in regard to the applicability of these regulations and therefore no modifications is required.

As regard to the suggestion to clarify that in case of inconsistency between the provisions of Order(s) or RE Policy issued prior to these Regulations of the Commission, the provisions of Order(s) or RE Policy shall prevail is concerned, we note that said aspects are already dealt in these Regulations and therefore, no further clarification is needed.

22. Regulation 12, Allotment Priority

- (i) *Distribution licensee shall have highest priority over other Green Energy Open Access consumers;*
- (ii) *Green Energy Open Access consumers shall have preference (priority) over normal Open Access consumers in the same category of open access;*
- (iii) *Amongst the Green Energy Open Access consumers, long-term Green Energy Open Access consumers shall have preference (priority) followed by Medium term Green Energy Open Access consumers and subsequently short-term Green Energy Open Access consumers, at any given time, subject to availability of spare transmission/distribution system capacity margins;*

Provided that the decision for allowing the Green Energy Open Access shall be on the basis of first come first serve.

Comments/Suggestions of the Stakeholders:

- 22.1. Some of the objectors have suggested to incorporate following provisions in

the Regulations:

(i) Existing RE Energy Open Access consumers shall have preference (priority) over Green Energy Open Access consumers in the same category of open access;

(ii) Amongst the Existing RE Energy Open Access consumers, long-term Existing Green Energy Open Access consumers and subsequently existing short-term Green Energy Open Access consumers, at any given time.

Commission's decision:

The suggestion of objector that the existing RE open access consumer shall have preference over new Green Energy Open Access consumers in the same category of open access, in this regard, it is to state that there cannot be differentiation amongst RE generators in the same category of Open Access based on existing RE generator and new RE generator. The open access application after expiry of existing open access is to be treated as fresh application only. Therefore, the priority for grant of RE open access in the same category of open access shall be governed in the priority of receipt of application for grant of open access under respective category of Open Access.

23. Regulation 13, Procedure for grant of Green Energy Open Access

- I. The Green Energy Open Access applicant shall submit a complete application in all aspects, in the format as specified by Central Nodal Agency on the central portal set up by the Central Nodal Agency.*
- II. The application shall be forwarded to the concerned State Nodal Agency by the Central Nodal Agency for further verification and the same shall be decided by the nodal agency within 15 days from the date on which received by State Nodal Agency from Central Nodal Agency. The following time schedules shall be followed for processing the Application:*

<i>Sl. No.</i>	<i>Particulars</i>	<i>Time-Line</i>	<i>Remarks</i>
1	<i>Date on which application is received by State Nodal Agency from Central Nodal Agency</i>	<i>T₀ = Zero Date</i>	
2	<i>Acknowledgement of receipt of Application</i>	<i>T₀ = Zero Date</i>	<i>The acknowledgement shall be provided immediately by electronic mode</i>
3	<i>Acceptance of application by State Nodal Agency after confirming that all the relevant documents are furnished by the applicant including processing fees and BG</i>	<i>T₀ + 1 working day</i>	<i>In case the application is incomplete, the State Nodal Agency shall inform the same in writing rejecting the application and furnishing the details of the defects. After rectifying the defects, a fresh application shall be made.</i>
4	<i>Forwarding of application to GETCO/concerned DISCOMs.</i>	<i>T₀ + 3 working days</i>	<i>On acceptance of the application, the same shall be forwarded to GETCO / concerned DISCOMs for ensuring the system availability, metering infrastructure, no pending dues and that there is no subsisting PPA for the capacity for which the Green Energy Open Access is sought.</i>
5	<i>Intimation from GETCO/ DISCOMs.</i>	<i>T₀ + 7 working days</i>	<i>Upon the receipt of application GETCO/DISCOMs shall carry out the system study, and availability of other necessary</i>

			<p><i>infrastructure, if required and confirmation of no pending dues.</i></p> <p><i>In case margin is available in the network and also availability of necessary infrastructure then GETCO/DISCOMs shall intimate to the State Nodal Agency about validity of its application.</i></p> <p><i>In case of LTOA, if system strengthening is required, GETCO/DISCOM shall intimate to the Applicant and the State Nodal Agency regarding the work involved for system strengthening.</i></p> <p><i>In case system strengthening is required, probable date of granting Green Energy Open Access shall be intimated to State Nodal Agency within the same time.</i></p> <p><i>In case intimation is not received within the specified time from GETCO/DISCOM as the case may be, the State Nodal Agency shall consider it to be deemed valid application.</i></p> <p><i>Provided that the system studies at the drawl point to ascertain the availability is not required for a consumer of the licensee availing Open Access, subject to the applicant furnishing an</i></p>
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			<p><i>undertaking that, he would not exceed the contract demand specified in his supply agreement with the licensee even after opting for Open Access.</i></p> <p><i>Provided that in case of captive generating plant the limit of contract demand of 100 kW and above is not applicable for availing the green energy open access.</i></p>
6	<p><i>Intimation by State Nodal Agency to the Applicant</i></p>	<p><i>T₀ + 8 working days</i></p>	<p><i>The State Nodal Agency shall intimate the Applicant, regarding the validity of the Application for grant of Green Energy Open Access within the time specified.</i></p> <p><i>In case Green Energy Open Access cannot be granted, the same shall be intimated by the State Nodal Agency to the Applicant within the above time furnishing the reasons in writing for non-grant of Green Energy Open Access sought.</i></p> <p><i>In case, State Nodal Agency fails to intimate the grant of Green Energy Open Access or otherwise, within the above specified time, the same shall be deemed to have been granted, to be subject to system availability.</i></p>
7	<p><i>Submission of Agreement by the</i></p>	<p><i>T₀ + 13 working days</i></p>	<p><i>The applicant shall submit draft copy of</i></p>

	<p><i>applicant for long term Green Energy Open Access</i></p>		<p><i>Transmission and/or Wheeling Agreement to the licensee to be executed and obtain due acknowledgment of the designated authority notified by the concerned licensee of such submission. Thereafter, the concerned authority will ensure for execution of Agreement with the Applicant within five days and also provide the copy of such executed Agreement to the Applicant.</i></p> <p><i>The time limit for signing of Transmission Agreement by GETCO and Wheeling Agreement by distribution licensee shall be five days in each case, where it is required to sign both Agreements.</i></p> <p><i>Thereafter, the Applicant within three days of receipt of such executed Agreement(s) shall submit copy(ies) of signed Transmission and/or Wheeling agreement to the State Nodal Agency and the State Nodal Agency shall provide acknowledgement of receipt./licensee(s).</i></p> <p><i>The Transmission and Wheeling Agreement to be executed in the standard format as the case may be prepared by State Nodal Agency / licensee(s) as</i></p>
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			<p>approved by the Commission.</p> <p>The existing Wheeling/Transmission Agreement as modified as approved from the Commission for REC and Non-REC route projects in accordance with these Regulations shall be adopted.</p> <p>In case the Applicant fails to submit the Transmission and/or Wheeling Agreement within the specified time, the Open Access granted is deemed to have been cancelled.</p>
8	Submission of signed copies of agreement by GETCO/ concerned DISCOMs	$T_0 + 15$ working days	<p>In case GETCO/ DISCOMs fail to sign/submit the Transmission and/or Wheeling Agreement submitted by the applicant within the specified time above, the Transmission and/or Wheeling is deemed to have been approved.</p> <p>In case of deemed approval, the provisions of standard Agreement(s) approved by the Commission shall be applicable and binding.</p> <p>Accordingly, the applicant is allowed transmission and / or wheeling of energy from the effective date subject to filing of an 'Undertaking' on affidavit that it shall avail the</p>

			<i>transmission and / or wheeling of energy and terms & conditions of the deemed approved Agreement(s) are binding on it.</i>
9	<i>Effective date for wheeling</i>	<i>In case the State Nodal Agency receives from the applicant the copy of the executed agreement(s) / Undertaking on Affidavit with regard to deemed approval, as the case may be, the effective date for commencement of Green Energy Open Access of the applicant shall be the next date from the date of submission of signed copy of the agreement to the State Nodal Agency.</i>	<i>The applicant is allowed to wheel the energy from the effective date.</i>

III. *The State Nodal Agency shall ensure that non-refundable processing fee of Rupees Fifty Thousand for long-term, and (ii) Rupees Twenty-Five thousand for medium-term Green Energy Open Access and (iii) Rupees Five Thousand for Short-Term Green Energy Open Access shall be paid by the Applicant to the State Nodal Agency.*

IV. *An application for a short-term Green Energy Open Access, for Renewable Generating plant(s) or its/their generating unit(s) which are yet to be commissioned, shall be made not before two months prior to the commissioning date of such RE Generating plant(s) or its/their generating unit(s), to avoid unnecessary blocking of corridor.*

- V. *An application for long-term/medium-term Green Energy Open Access shall be accompanied by a Bank Guarantee (BG) of Rupees Fifty thousand (Rs. 50,000/-) for Green Open Access capacity less than 1 MW and Rupees One lakh per MW (Rs. 1,00,000/- per MW) for 1 MW & above which shall be kept valid and subsisting till the signing of agreement for transmission and/or wheeling of electricity and such BG shall be encashed by the Nodal Agency, if the application is withdrawn by the applicant prior to the signing of such agreement. On signing of the agreement for transmission and/or wheeling of electricity, the BG shall be returned immediately to the applicant by the State Nodal Agency.*
- VI. *In case there is any material change with regards to the location of the injection point or quantum of power to be interchanged using the intra-State transmission and/or distribution system, a fresh application shall be made for the entire capacity to ascertain the system availability and such application shall be accompanied by relevant documents, application fees. Moreover, in case of Long-Term Green Energy Open Access with required bank guarantee for the additional capacity. It is also clarified that in case the additional capacity sought for cannot be accommodated in the existing network, the applicant is entitled for Green Energy Open Access to the extent of his original allotment.*
- VII. *Where any application is rejected for any deficiency or defect, the Bank Guarantee shall be returned to the applicant and in such cases a fresh application to the Central Nodal portal shall be made by the applicant after curing the deficiency or defect.*
- VIII. *The State Nodal Agency shall communicate to the applicant through a recognized mode of communication regarding the grant of Green Energy Open Access or otherwise.*

- IX. *Further, during the pendency of application for grant of Green Energy Open Access, the applicant shall not inject any energy to the licensees' network and the licensee shall not be liable to pay any charges for the energy injected during such period.*
- X. *The transmission Licensee/s, distribution licensee's and the SLDC shall ensure proper coordination while arranging for Green Energy Open Access.*
- XI. *New Green Energy (RE) generating plant(s) or generating Unit(s) who has applied for seeking long-term Green Energy Open Access and entering into agreement for wheeling, shall commission such plant(s) or unit(s) within twenty-four months from the date of submission of Green Energy Open Access application, failing which the Green Energy Open Access granted shall be deemed to have been cancelled, to avoid unnecessary blocking of the corridor.*
- XII. *A Green Energy Open Access consumer shall enter into commercial agreements with generators, trading licensee, distribution licensee, as may be applicable, and such agreements shall include provisions pertaining to payment security mechanism.*
- XIII. *The State Nodal Agency shall host on its website the details of every application received from the Central Nodal Agency and the status of such application on a continuous basis, which shall be made available to the public.*
- XIV. *The State Nodal Agency/Distribution Licensee shall prepare procedure for Green Energy Open Access consisting of documents, formats etc. required to be submitted for Green Energy Open Access in line with the provisions of Act, rules, Regulations, orders and procedure followed by Central Nodal Agency, for smooth implementation of the Green Energy Open Access in the State and get approved from the Commission.*

Comments/Suggestions of the Stakeholders:

- 23.1. Some of the objectors have suggested to define time period within which the Application submitted to Central Nodal Agency shall be made available to State Nodal Agency.
- 23.2. Some of the objectors have submitted that the timelines for application processing for all types of GEOA i.e. LTOA, MTOA, STOA is same. These need to be rationalized as per the timelines followed for the transactions governed by CERC. The nature of transaction especially short-term transaction is different compared to Long Term and Medium-Term Transactions. The short-term application could be of a duration of as low as 15 minutes. Application processing time of 15 days defeats the basic nature of Green STOA application. Green Open Access will be subsequent to grant of connectivity to RE generators with Distribution / Transmission grid, as the case may be. Therefore, the Commission is requested to incorporate provisions in the Regulations related to grant of connectivity to RE generators with distribution / transmission grid. Further, it is also requested to stipulate that RE generators shall have connectivity with grid before operationalization of Green Open Access.

Commission's decision:

The Commission has noted the submissions of the Objectors.

The objector has suggested to define time period within which the Application submitted to Central Nodal Agency shall be made available to State Nodal Agency. It may be noted that the timeframe for making available the application to the State Nodal Agency by Central Nodal Agency shall be governed as per the procedure approved by CERC for processing of application for grant of green open access by the Central Nodal Agency.

The Objector has suggested to provide different timeline for processing of LTOA, MTOA and STOA application is concerned, the Commission has with consideration of various activities involved in grant of open access carried out by the various entities specified the period for grant of open access by the State Nodal Agency.

The Objector has suggested to provide shorter timeline for processing STOA application. In this regard it is to state that process for granting of open access involves various activities to be carried out by the licensee including system study to ensure available margin in the network, availability of meters at consumer place and no dues of the consumer etc. requiring sufficient time for transmission licensee and distribution licensee. The applicant need to apply in advance prior to commencement of flow of energy. Thus, there cannot be different timeline for LTOA, MTOA and STOA.

The Objector has requested to incorporate the provisions in the Regulations related to grant of connectivity to RE Generators with grid.

In this regard, the Commission has noted that in pursuance to Clause 20 of the GERC (Terms and Conditions of Intra-State Open Access) Regulations, 2011, the Commission vide letter dated 07.01.2023 has already approved the Detailed Procedure for "Grant of Connectivity to Projects based on Renewable Sources to Intra-State Transmission System". Further, by virtue of Regulation 33.1 of these Regulations, the provisions of GERC (Terms and Conditions of Intra-State Open Access and related matters), Regulations, 2011 shall stand repealed only to the extent, the provisions made out in these Regulations. Thus, the aspects of grant of connectivity to RE projects shall be governed by the provisions of approved procedure for grant of connectivity for RE Projects read with GERC Open Access Regulations 2011.

Comments/Suggestions of the Stakeholders:

Clause 13 (II) (sr no. 5) - Intimation from GETCO / DISCOMs:

- 23.3. Some of the objectors suggested that as per the timeline provided in the draft Regulations, only 4 working days are available with GETCO / DISCOMs, as the case may be, to undertake system study, assess the requirement and work involved for system strengthening, if any. It is requested to appreciate that specifically in case of LTOA application, GETCO / DISCOMs, as the case may be, are required considerable time to undertake above activities and to estimate cost involved for system strengthening, if any.
- 23.4. The objectors have suggested that the timeline for deciding LTOA, MTOA/STOA by GETCO/DISCOM shall be in line with provisions of GERC (Open Access and related matters), Regulations 2011.

Clause 13 (II) (sr no. 5) - Intimation from GETCO / DISCOMs:

- 23.5. Some of the objectors have requested to allow multiple open access instruments as per proposal of limiting total drawl from the system within contract demand.

The objector has cited the example of proposed transaction as under:

Contract Demand of the Consumer: 50 MW

LTOA-1: 50 MW (power drawn during 6:00 AM to 5:00 PM)

LTOA-2: 50MW (power drawn during 5:01 PM to 5:59 AM)

Total Drawl from Open Access: 50 MW.

Clause 13 (II) (sr no. 6) – Intimation by State Nodal Agency to the Applicant.

- 23.6. Some of the objectors have suggested to remove the last sentence “to be subject to system availability” from Regulation 13 (II) (6), as the provision can be misused by the nodal agency in denying the open access to the applicant and could likely create discrimination in granting open access

amongst the applicants, or else direct DISCOM's to update on monthly basis, on their website, S/S wise tentative feasible RE Integration capacity in MW.

Clause 13 (II) (sr no. 7) – submission of agreement by applicant for Long term Green Open Access:

- 23.7. Some of the objectors have requested to clarify that the applicant shall submit draft copy of transmission and / or wheeling agreement as per the draft provided / uploaded by GETCO / DISCOMs, as the case may be, on its website.
- 23.8. Some of the objectors has suggested that there is an inconsistency between two statements of Regulation 13 (II) (7) of the Regulations. Therefore, the Commission is requested to clarify that till the time transmission and wheeling agreement are prepared by State Nodal Agency / licensee(s) and approved by the Commission, the existing wheeling / transmission agreement with appropriate modification as per the provisions of these regulations shall be adopted.

Clause 13 (II) (sr no. 9) – Effective date for wheeling:

- 23.9. Some of the objectors have suggested that the consumer has to enter into wheeling agreement with DISCOMS after completion of RE project along with associated evacuation line and connectivity with the grid. Further, after signing of wheeling agreement, the consumer need to approach the nodal agency for witnessing the commission of the project.

In view of the above, it is requested to modify above provisions stating that *the effective date for commencement of Green Energy Open Access of the applicant shall be the next date from the date of submission of signed copy of **wheeling agreement** to the State Nodal Agency and **on commercial operation of plant.***

Regulation 13 (II)

- 23.10. The objectors have suggested to increase the time limit for carrying out various activities for granting the green energy open access.

Commission's decision:

The Commission has noted the submissions of the Objectors.

The suggestion of the Objectors to provide different timeline for STOA / MTOA / LTOA in line with provisions of GERC Open Access Regulations, 2011, are concerned, we clarify that the time period specified in these Regulations are with consideration of provisions of the Green Energy Open Access Rules, 2022 and amendments made in it by the MoP, GoI and procedure under it notified by NLDC, POSOCO, in this regard. Therefore, the various activities and timeline specified in these Regulations is to meet out the outer time limit for grant of Green Energy Open Access specified in the Notifications of MoP, GoI and procedure under it notified by NLDC/POSOCO.

The Objector has suggested to allow multiple open access instrument citing the example of seeking for 50 MW Green Energy Open Access during different time period of the day like, LTOA-1: 50 MW (power drawn during 6:00 AM to 5:00 PM), LTOA-2: 50MW (power drawn during 5:01 PM to 5:59 AM) while ensuring total Drawl from Open Access will be remained as 50 MW is concerned, the Commission has noted that the suggestion of the objector is in general nature without specifying the injection point of energy, which is necessary for granting LTOA by the licensee to verify as to whether there is any congestion or not in the network as well as any system strengthening is required or not, which is primary requirement. Moreover, it is necessary to refer the definition of LTOA, which provides the period of more than 12 years to 25 years. There is no breakup of time period of a day provided in the Regulations. The

Regulations stipulates various minimum time period required for categorization of open access. Since, the “year” consists of month as well as the day and hours. Similarly, the month consist of day and hours, while the day consist of only hours. Therefore, no bifurcation within a period of either year or month with regard to day and hours in case of minimum period specified in LTOA and MTOA is permissible as per the Regulations. Hence, the suggestion of the objector cannot be accepted.

We note that it is necessary to clarify with regard to captive generating plant that there shall not be any limit of contract demand/sanctioned load which are either in KW/KVA/MVA. Hence we decide to modify the second proviso Sr. No. 5 of table provided in draft Regulation 12 (II) and renumbered as 13 (II) .

The Objector has requested to remove last sentence “to be subject to system availability” from the last para of remark at Sr. 6 of Draft Regulation 12 (II) which read that *in case, State Nodal Agency fails to intimate the grant of Green Energy Open Access or otherwise, within the above specified time, the same shall be deemed to have been granted, to be subject to system availability.*

In this regard, it is to clarify that the objective of providing deeming provisions in the Regulation, is to ensure that State Nodal Agency shall process the application within specified timeline and not withheld / delay the process of grant of Green Energy Open Access disregarding system availability. It is the duty of SNA to adhere the provisions of Regulations and carryout activity specified in the Regulations within the specified time frame. The deeming proviso is provided to ensure the grant of the open access in stipulated time frame and to avoid any delay in this regard. The suggestion of the Objector to remove the words “*to be subject to system availability*” is concerned, the same is not accepted as the primary requirement for grant of open access is system availability. In case of non-

availability of system, the grant of any open access under deeming proviso defeat the primary conditionality of the open access. However, it is duty cast upon the licensee/entities, State Nodal Agency (SNA) to ensure about system availability in specified period and failure to it, the purpose of these Regulations be defeated and consequentially SNA conduct be considered as non-compliance of the provision of these Regulations and consequences follows as per the provision of Act in this regard on SNA. It is also noted that in case of failure of SNA to intimate the applicant about non-availability of system for open access sought by the applicant and if the applicant inject/draw any power from the grid/distribution network the same shall not qualify as default on the part of the applicant under the applicable Regulations. However, the applicant shall restrict the injection/drawl of power immediately upon intimation by the SNA/SLDC as case may be for such green energy open access for safe grid operation and management. Failure to adhere the advice/instructions given by SNA/SLDC in this regard by the applicant it shall be construed as violation on part of the Applicant and shall attract the consequences as per the relevant Regulations. In view of the above, no modification is required in the aforesaid Regulation.

As regard to the comment that there is inconsistency between two statements in remarks column at Sr. No. 7 that *"The Transmission and Wheeling Agreement to be executed in the standard format as the case may be prepared by State Nodal Agency / licensee(s) as approved by the Commission"* and the Statement that *"the existing Wheeling/Transmission Agreement as modified as approved from the Commission for REC and Non-REC route projects in accordance with these Regulations shall be adopted"*, the Commission would like to clarify that till the time the standard format of transmission and wheeling agreement is prepared in accordance with these Regulations and get approved from the Commission, the existing transmission and wheeling agreement with appropriate modification as per the provisions of these Regulations shall be adopted. It is also noted that the

standard format of transmission and wheeling agreement be prepared by the State Nodal Agency / licensee(s) within 'six months' from the date of Gazette Notification of these Regulations and submit to the Commission for approval. After grant of approval of such agreement by the Commission for transmission and wheeling, the licensee shall execute agreements accordingly.

As regard to the request for modification in the provisions at Sr. No. 9 of the draft Regulations 12 which pertains to effective date for wheeling of Green Energy Open Access, it is clarified that the wheeling agreement shall be effective from the date of execution between the parties, whereas wheeling of energy under Green Energy Open Access will be effective from the date as provided in the wheeling agreement.

The Commission has noted the submission of Objector to increase the time limit to carryout various activities for granting open access. In this regard it is to state that the application for Green Energy Open Access needs to be expedite at the earliest in the benefit of RE development. Therefore, the request for increase in timeline is not accepted.

Comments/Suggestions from the Stakeholders:

Regulation 13 (III)

- 23.11. Some of the objectors have suggested that non-refundable processing fees for Short-term Green Energy Open Access should be 1000 INR per application as it is valid only for 30 days and applicant might have to avail this facility for multiple times.
- 23.12. Some of the objectors have suggested that the Commission shall define a period within which SNA/DISCOM shall prepare procedure for GEOA and publish for comments from stakeholders before submitting for approval from GERC. Moreover, till such procedure is formulated and approved, existing procedure shall be followed.

- 23.13. Some of the objectors have suggested that in regulations 13 (III), it is proposed that the applicant shall pay the non-refundable processing fees with applicable Tax.
- 23.14. Some of the objectors have suggested to allow for a uniform charge of Rs 5000/- towards processing fees for short/medium/long term Open Access as the amount of processing work would be same for all kinds of OA availed. Further an exorbitant fee would deter the consumer to avail OA and would hinder the spirit of development of Green energy Open Access.

Commission's decision:

The Commission has noted that the suggestions to increase processing fees at Rs. 10000 instead of Rs. 5000 for application for STOA and other suggestions that application fees for all type of Open Access (LTOA / MTOA / STOA) may be kept the same and levied at Rs. 1000 instead of processing fees of Rs. 5000 for STOA application, Rs. 25,000 for MTOA application and Rs. 50,000 for LTOA application.

The Commission notes that the application processing fees of Rs. 5000/-, Rs. 25,000/- & Rs. 50,000/- is stipulated in the GERC Open Access Regulations, 2011 for STOA, MTOA & LTOA respectively and the same is considered in these Regulations without any change. The Commission is of the view that the suggestion for increase in processing fees for Short Term Green Energy Open Access from Rs. 5000/- to Rs. 10,000/-, will be detrimental to the RE projects and therefore decided to retain the processing fees for STOA/ MTOA / LTOA as specified in the GERC Open Access Regulations, 2011.

The Objector has suggested to clarify that applicable taxes shall be levied on the processing fees. In this context, it is to clarify that the fees specified in these regulations is pertains to recovery towards processing of the Application by the concerned entity. Any tax stipulated in other statute shall

be applicable on such activity and such taxes are not covered under processing activity by concerned entities. Hence, it is clarified that fee for processing of application specify in the Regulations are exclusive of applicable taxes/ duties. Therefore, applicable taxes/duties on processing fees shall also be payable by the applicant.

The Objector has submitted to specify the timeframe within which State Nodal Agency shall prepare the procedure for grant of Green Energy Open Access.

In this regard, the Commission notes that the Regulation 10 (I) of these Regulations provides that the procedures and formats as devised by the Central Agency shall be followed for grant of Green Energy Open Access and till such time the existing procedure / formats laid down by the concerned State Agency shall be followed. Hence, there is no vacuum about availability of applicable procedure and formats for grant of open access. Hence, we feel that this provision of the Regulations adequately addresses the concerns of the Objector.

Comments/Suggestions from the Stakeholders:

Regulation 13, V Procedure for grant of Green Energy Open Access

- 23.15. Some of the objectors have suggested that the given amount of BG, be aligned with the rates specified as per ISTS Long Term applications this amount used to be 10,000 per MW the same has also been removed under GNA Regulations.
- 23.16. Some of the objectors have suggested that the Regulation 13 (V) mandates MTOA/LTOA consumers to provide a Bank Guarantee along with the application for the grant of green open access capacity. This Bank Guarantee may be encashed by the Nodal Agency if the consumer withdraws their application before signing the agreement. However,

since a non-refundable registration fee is already provided by the consumers, such a requirement seems unnecessary and may create the hardship for consumers. Furthermore, providing a payment security in the form of a Bank Guarantee entails substantial costs in terms of blocking of funds, availability of working capital, margin money requirements, Stamp Duty, Bank charges, etc. Therefore, it is requested to delete this subclause.

23.17. Some of the objectors have suggested that the word ‘immediately’ provided in Regulation 13 (v) substituted by the word ‘within 15 working days’ to the applicant by the State Nodal Agency.

23.18. Some of the objectors have suggested that Bank Guarantee (BG) will be returned by the concerned authority in case of deemed approval after submitting the undertaking by Applicant.

23.19. Some of the objectors suggested to add following proviso in Regulations 13 (v):

“.....Provided that, if Renewable generating plants or its/their generating units not commissioned on the date of commencement of schedule, the advance approval granted shall be treated as cancelled and all the charges paid to the State Nodal Agency shall be forfeited.”

Commission’s decision:

The Commission has noted the suggestions of the Objectors.

The suggestion of Objectors to reduce the processing fees for LTOA and the suggestions for providing different timeline for STOA, MTOA and LTOA is already dealt by the Commission in the preceding part of the SoR and therefore need not to be dealt separately.

As regard to submission of the Objectors that since levy of non-refundable registration fees is already provided, the requirement for submission of Bank Guarantee (BG) may be removed or the amount of BG (Rs. 50,000/-

per capacity less than 1 MW and Rs. 1,00,000/- per MW for capacity of 1 MW and above) may be reduced, it is to state that the purpose of levy of processing fees and the purpose of submission of BG is different. The purpose of levy of processing fees is towards resources utilized by the utilities / nodal agency in processing of applications as stipulated in the GERC Open Access Regulations, 2011. While, the purpose of BG is to ensure seriousness of applicant in seeking Open Access so as to ensure efficient utilization of network and to avoid unnecessary blockage of corridor. The State of Gujarat is bestowed with good potential for installation of RE Generating projects. Due to blockage of transmission capacity by non-serious applicant, the other applicants will be deprived of the benefits of open access and leading to stranding and inefficient utilization of transmission network. In order to induce the sense of discipline in seeking Open Access and to see that transmission capacity is not blocked unnecessarily depriving others from the benefits, the Commission feels that adequate mechanism is required to be put in place in the form of submission of BG along with application for grant of Open Access. The Commission is of the view that the amount of BG specified in these Regulations is appropriate and reasonable.

As regard to the suggestion of the Objector to provide for returning of BG within 15 working days to the applicant by the State Nodal Agency upon signing of the agreement for transmission and / or wheeling of electricity is concerned, We note that the Regulations provides that the State Nodal Agency is required to return the BG immediately upon signing of the agreement. The intention is to return the BG to the applicant, once the purpose of BG is served. However, in order to facilitate the open access applicant to receive the Bank Guarantee back in time bound manner, we decide to specify the period for return of Bank Guarantee in Regulation 13 (v) as 25 working days. Accordingly, it is decided to modify the same in the final Regulations.

Comments/Suggestions of the Stakeholders:

Regulation 13 (VI) Procedure for grant of Green Energy Open Access

- 23.20. Some of the objector has suggested to clarify with regard to treatment of existing application and thereof BG submitted towards that application.
- 23.21. Some of the objector suggested that what are those parameters which can quantify/classify as material change and at what stage as covered in Regulation 13 (VI). The Commission may clarify on these aspects.

Commission's decision:

As regard to the suggestion of the Objector to specify the parameters which can quantify / classify as material change, the Commission has noted that the Regulation clearly classifies the events which can be considered as material change, namely change with regard to the location of the injection point or quantum of power to be inter-changed using intra-state transmission and / or distribution system shall be required a fresh application to ascertain system availability. Thus, the Regulation is much clear, and no further clarification is required.

One of the objectors sought clarification about treatment to be given to the existing BG submitted at the time of application which is now treated as a material change. In this regard it is to clarify that as mentioned in Regulation 13 (VI), in case the application qualify as material change, the applicant shall require to submit a fresh application. Accordingly, the existing application is to be treated as withdrawn and existing BG shall be encashed by SNA.

As regard to suggestion for correcting incomplete sentence in draft Regulation 13 (VI), the Commission has observed that there is typographical error in the sentence contained in the Regulation 13(VI). Further, We note that the word "Medium Term" are necessary to

incorporate in the Regulation 13 (VI) after the word “ Long Term”. Therefore, the Commission has decided to correct the Regulation 13 (VI) in final Regulations.

Regulation 13 (VII) Procedure for grant of Green Energy Open Access

Comments/Suggestions of the Stakeholders:

- 23.22. One of the Objector has suggested to provide that the BG will be returned by the concerned authority in case of deemed approval after submitting the undertaking by the applicant.

Commission's decision

In regard to the above suggestion, the Commission would like to clarify that the provision for returning of BG will also applicable in case of deemed grant of Open Access subject to system availability on signing of transmission and/or wheeling agreement by the applicant

Comments/Suggestions of the Stakeholders

- 23.23. One of the objectors has suggested that if renewable generating plant is not commissioned on the date of scheduled commencement, the advance approval grant shall be treated as cancelled and all the charges paid by the State Nodal Agency shall be forfeited.

Commission's decision

The Commission has noted that once agreement for transmission / wheeling of electricity is signed, the consequence for subsequent events / non-fulfilment of obligations under the agreement shall be governed as per the provisions of the agreement. Therefore, there is no need to modify the Regulation.

We note that the rejection of Application for open access due to either reason of non-availability of margin in the network or defect or deficiency in the Application in such a case when there is rejection of Application for grant of open access on technical ground like non-availability of margin in system in that case such BG paid by the Applicant be refunded within 25 working days by SNA. Whereas any application is rejected for any deficiency or defect, the Bank Guarantee shall be returned to the applicant and in such cases a fresh application to the Central Nodal portal shall be made by the applicant after curing the deficiency or defect.

Accordingly, the Commission has decided to modify Regulation 13 (VII) in final Regulations.

Regulation 13 (IX) Procedure for Grant of Green Energy Open Access

Comments/Suggestions of the Stakeholders:

- 23.24. Some of the objectors have suggested to provide that during the pendency of application for grant of Green Energy Open Access, the Applicant shall not inject any energy to the licensees' network and the licensee shall neither be liable to pay any charges nor will give any energy set-off to the Green Energy Open Access Consumer for the energy injected during such period.
- 23.25. Some of the objectors have suggested that in case of the energy sell by the RE project developer to the licensees through PPA which is expired or terminated, in that case, till the time these projects get Open Access after PPA termination/expiry, the power supplied in the grid from these projects is not inadvertent power as in such case, power is scheduled by SLDC and is further utilized by the Distribution Licensee. Therefore, the RE generators have full right to get paid for this power at the rate mentioned in their PPA which just got expired or terminated with the Distribution licensee.

Commission's decision:

The Objector has suggested to clarify that during the pendency of application for grant of Green Energy Open Access, the licensee shall not be liable to pay any charges or provide any set off against injected energy during the period of pendency of application.

In this regard, the Commission has noted the provision of the Regulation 13 (IX). The Commission is of the view that the Regulation 13 (IX) is very clear, and no further modification is required.

Some of Objectors have suggested that energy injected from RE Project once the PPA with DISCOM is expired / terminated, may not be treated as inadvertent flow of the energy into the grid and scheduled and utilized by distribution licensee and also earned the revenue, which needs to be paid to such RE generators at agreed PPA rate.

In this context, the Commission clarifies that the grid discipline assumes paramount importance and injection of energy in the absence of valid commercial arrangement/approval cannot be allowed. In absence of any valid sale/purchase agreement between RE generators and licensees/consumer is not eligible for any price for it. Therefore, the said suggestion is not accepted.

Comments/Suggestions of the Stakeholders:

Regulation 13 (XI) Procedure for grant of Green Energy Open Access

23.26. Some of the objectors have suggested to provide relief/extension of at least 1 year to the projects where the developer is genuinely unable to commission the project within the stipulated timeline due to force majeure reasons or some other reason with no fault of the developer.

23.27. Some of the objectors have stated that the commissioning of RE projects

may not be possible within 24 months given the size, location of the project and work involved for strengthening of transmission network, if any, proposed by GETCO for grant of green energy open access. In such case, the commissioning of RE project need to be aligned with availability of transmission network. It is requested to clarify that the commissioning of associated transmission lines, if any, is required to be completed within 24 months & upon commissioning of transmission line, RE project developer shall commission their RE plants within given time frame and operationalization of green energy open access shall be as per the date/time frame as provided in the agreement with GETCO/DISCOMs, failing which the green energy open access granted shall be deemed to have been cancelled.

Commission's decision:

Some of the objectors have requested to provide relief/extension of at least one year to the project where the developer is facing genuinely difficulty in the commissioning of the project within stipulated timeline is concerned, we note that as per the MNRE Guidelines, the time period for completion of project having project capacity up to 1000 MW is 24 months. The Commission feel that the time period of 24 months provided in the Regulations is quite adequate and reasonable. Any further extension will lead to unnecessary blocking of corridor and therefore, the suggestion is not accepted.

As regard to suggestion of the Objector that commissioning of RE project need to align with availability of transmission network and the operationalization of Green Energy Open Access shall be as per the date/timeframe provided in the agreement with GETCO/DISCOM, it is to state that the time frame provided in these Regulations is with consideration of the open access obtained by the concerned entity which

includes commissioning of the project and also connect it at interface point of transmission or distribution network as case may be. It is duty of RE generator to prove that the project is ready for commissioning with documentary proof as per provisions of the Agreement and relevant Orders of the Commission, on or before the completion of timelines specified for commencement of open access as sought by it, and if transmission/distribution network is not available for evacuation of power from such project due to failure of licensees, in that case, the project developer is having liberty to approach the Commission in advance, i.e., prior to 3 months from schedule date of commission or 24 months whichever is earlier, for getting extension in such time limit. Accordingly, the provisions is modified in the final Regulations.

Comments/Suggestions of the Stakeholders:

Regulation 13 (XII) Procedure for grant of Green Energy Open Access

- 23.28. Some of the objectors have suggested to modify above clause providing that Green Energy Open Access consumer, except seeking green open access from captive power projects, shall enter into commercial agreements with generators, trading licensee, distribution licensee, as may be applicable, and such agreements shall include provisions pertaining to payment security mechanism.

Commission's decision:

The suggestion of the objector to modify the Regulation by incorporating the word 'except captive power project' is concerned, it is necessary to consider the definition of captive generating plant which specify the word 'for own use' come in effect to verify the captive status. Once 'own use' comes into picture, the question of commercial agreement does not arise. Hence, there is no need to modify the said Regulation.

Comments/Suggestions of the Stakeholders:

Regulation 13 (XIV) Procedure for grant of Green Energy Open Access

23.29. Some of the objectors has suggested to add new provision after Regulation 13 (XIV) as under:

The timeline given under this Regulation for grant of open access to Green Energy Open Access Consumers shall be applicable *mutatis mutandis* for granting Open Access to Existing RE Energy Open Access Consumers however time required for intimation by GETCO/DISCOM to State Nodal Agency for system study shall be deducted as the same is not required in case of Existing Green Energy Consumers.

Commission's decision:

The suggestion of the objector that the timeline given under this Regulation for grant of Green Energy Open Access shall be applicable *mutatis mutandis* for granting Open Access to Existing RE Energy Open Access Consumers. However, time required for intimation by GETCO/DISCOM to State Nodal Agency for system study shall be deducted as the same is not required in case of Existing Green Energy Consumers is concerned, it is to clarify that in case existing open access consumers desires open access on GETCO/DISCOM's Network for further period after expiry of existing open access, it requires to make a fresh application which shall be processed within the timelines provided in these Regulations.

Considering the above discussion and decision, the Draft Regulation 13 is modified in the final Regulations as under:

“ 13. Procedure for grant of Green Energy Open Access

- I. The Green Energy Open Access applicant shall submit a complete application in all aspects, in the format as specified by Central Nodal Agency on the central portal set up by the Central Nodal Agency.*

- II. The application shall be forwarded to the concerned State Nodal Agency by the Central Nodal Agency for further verification and the same shall be decided by the State Nodal Agency within 15 days from the date on which the application is received by State Nodal Agency from Central Nodal Agency. The following time schedules shall be followed for processing the Application:

Sr. No.	Particulars	Time-Line	Remarks
1	Date on which application is received by State Nodal Agency from Central Nodal Agency	$T_0 = \text{Zero Date}$	
2	Acknowledgement of receipt of Application	$T_0 = \text{Zero Date}$	The acknowledgement shall be provided immediately by electronic mode.
3	Acceptance of application by State Nodal Agency after confirming that all the relevant documents are furnished by the applicant including processing fees and BG	$T_0 + 1 \text{ working day}$	In case the application is incomplete, the State Nodal Agency shall inform the same in writing rejecting the application and furnishing the details of the defects. After rectifying the defects, a fresh application shall be made.
4	Forwarding of application to GETCO/concerned DISCOMs.	$T_0 + 3 \text{ working days}$	On acceptance of the application, the same shall be forwarded to GETCO / concerned DISCOMs for ensuring the system availability, metering infrastructure, no pending dues and that there is no subsisting PPA for the capacity for which the Green Energy Open Access is sought.

5	<i>Intimation from GETCO/DISCOMs.</i>	<i>T₀ + 7 working days</i>	<p><i>Upon the receipt of application GETCO/DISCOMs shall carry out the system study, to assess availability of other necessary infrastructure if required and confirmation of no pending dues.</i></p> <p><i>In case margin is available in the network and also availability of necessary infrastructure then GETCO/DISCOMs shall intimate to the State Nodal Agency about validity of the application.</i></p> <p><i>In case of LTOA, if system strengthening is required, GETCO/DISCOM shall intimate to the Applicant and the State Nodal Agency regarding the work involved for system strengthening.</i></p> <p><i>In case system strengthening is required, probable date of granting Green Energy Open Access shall be intimated to State Nodal Agency within the same time.</i></p> <p><i>In case intimation is not received within the specified time from GETCO/DISCOM as the case may be, the State</i></p>
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			<p><i>Nodal Agency shall consider it to be deemed valid application.</i></p> <p><i>Provided that the system studies at the drawl point to ascertain the availability of necessary infrastructure is not required for a consumer of the licensee availing Open Access, subject to the applicant furnishing an undertaking that, he would not exceed the contract demand specified in his supply agreement with the licensee even after opting for Open Access.</i></p> <p><i>Provided that there shall be no capacity restriction for setting up of RE projects for captive use with respect to the consumer's contract demand/sanctioned load (kW/MW, KVA/MVA) with Discoms availing power under Green Energy Open Access.</i></p>
6	<i>Intimation by State Nodal Agency to the Applicant</i>	<i>T₀ +8 working days</i>	<p><i>The State Nodal Agency shall intimate the Applicant, regarding the validity of the Application for grant of Green Energy Open Access within the time specified.</i></p> <p><i>In case Green Energy Open Access cannot be granted, the same shall</i></p>

			<p><i>be intimated by the State Nodal Agency to the Applicant within the above time furnishing the reasons in writing for non-grant of Green Energy Open Access sought.</i></p> <p><i>In case, State Nodal Agency fails to intimate the grant of Green Energy Open Access or otherwise, within the above specified time, the same shall be deemed to have been granted, to be subject to system availability.</i></p>
7	Submission of signed Agreement by the applicant for Medium-Term and Long-Term Green Energy Open Access	$T_0 + 10$ working days	<p><i>The applicant shall submit signed Transmission and/or Wheeling Agreement to the licensee to be executed and obtain due acknowledgment of the designated authority notified by the concerned licensee for such submission.</i></p> <p><i>In case the Applicant fails to submit the Transmission and/or Wheeling Agreement within the specified time, the Open Access granted is deemed to have been cancelled.</i></p>
8	Execution of agreement by licensee and return of the executed agreement to the applicant.	$T_0 + 13$ working days	<p><i>The concerned authority will ensure for execution of Agreement with the Applicant within three days and also provide the</i></p>

			<p><i>copy of such executed Agreement and obtain due acknowledgment of the applicant.</i></p> <p><i>The time limit for signing of Transmission Agreement by GETCO and Wheeling Agreement by distribution licensee shall be three days in each case, where it is required to sign both Agreements.</i></p> <p><i>The Transmission and Wheeling Agreement to be executed in the standard format as the case may be; shall be prepared by State Nodal Agency/ licensee(s) as approved by the Commission.</i></p> <p><i>The existing Wheeling/Transmission Agreement as modified and as get approved from the Commission for REC and Non-REC route projects in accordance with these Regulations shall be adopted.</i></p>
9	<i>Submission of signed copies of the executed agreement/Undertaking by the applicant to SNA.</i>	<i>T₀ + 15 working days</i>	<p><i>Thereafter, the Applicant within two days of receipt of such executed Agreement(s) shall submit copy(ies) of signed Transmission and/or Wheeling agreement to the State Nodal Agency and the</i></p>

			<p><i>State Nodal Agency shall provide acknowledgement of receipt.</i></p> <p><i>In case GETCO/ DISCOMs fail to sign and execute the Transmission and/or Wheeling Agreement submitted by the applicant within the specified time above, the Transmission and/or Wheeling Agreement is deemed to have been executed.</i></p> <p><i>In case of deemed execution, the provisions of standard Agreement(s) approved by the Commission shall be applicable and binding.</i></p> <p><i>In case of deemed execution of agreement(s), the applicant is allowed transmission and / or wheeling of energy from the effective date subject to filing of an 'Undertaking' on affidavit that it shall avail the transmission and / or wheeling of energy and terms & conditions of the deemed approved Agreement(s) are binding on it.</i></p>
10	Effective date for wheeling	In case the State Nodal Agency receives from the	The applicant is allowed to wheel the energy from the effective date.

		<p>applicant the copy of the executed agreement(s)/ 'Undertaking on Affidavit with regard to deemed execution of agreement, as the case may be, the effective date for commencement of Green Energy Open Access of the applicant shall be the next date from the date of submission of signed copy of the agreement(s) / undertaking to the State Nodal Agency.</p>	
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- III. An application for open access shall accompany with the non-refundable processing fee as specified in this clause alongwith necessary proof of it. The State Nodal Agency shall ensure that non-refundable processing fee of Rupees Fifty Thousand for Long-Term, and (ii) Rupees Twenty-Five Thousand for Medium-Term Green Energy Open Access and (iii) Rupees Five Thousand for Short-Term Green Energy Open Access shall be paid by the Applicant to the State Nodal Agency.
- IV. An application for a Short-Term Green Energy Open Access, for Green Energy Generating plant(s) or its/their generating unit(s) which are yet to be commissioned, shall be made not before two months prior to the commissioning date of such RE Generating plant(s) or its/their generating unit(s), to avoid unnecessary blocking of corridor.
- V. An application for Long-Term/Medium-Term Green Energy Open Access shall be accompanied by a Bank Guarantee (BG) of Rupees Fifty thousand

(Rs. 50,000/-) for Green Open Access capacity less than 1 MW and Rupees One lakh per MW (Rs. 1,00,000/- per MW) for 1 MW & above which shall be kept valid and subsisting till the signing of agreement for transmission and/or wheeling of electricity and such BG shall be encashed by the Nodal Agency, if the application is withdrawn by the applicant prior to the signing of such agreement. On signing of the agreement for transmission and/or wheeling of electricity, the BG shall be returned within 25 working days to the applicant by the State Nodal Agency.

- VI. *In case there is any material change with regards to the location of the injection point or quantum of power to be interchanged using the intra-State transmission and/or distribution system, a fresh application shall be made for the entire capacity to ascertain the system availability and such application shall be accompanied by relevant documents, application fees. Moreover, in case of Long-Term and Medium-Term Green Energy Open Access, bank guarantee shall be required for the additional capacity. It is also clarified that in case the additional capacity sought for cannot be accommodated in the existing network, the applicant is entitled for Green Energy Open Access to the extent of his original allotment.*
- VII. *The Bank Guarantee (BG) shall be refunded by the nodal agency (SNA) within 25 working days; (i) from the date of submission of signed agreement by open access consumer to the State Nodal Agency (SNA), in case of deemed approval considered for open access; (ii) from the date of rejection of Application for open access on ground of non-availability of margin in the network by SNA and; (iii) from the date of rejection of application by SNA due to any deficiency or defect. In case of rejection of application on a ground of any deficiency or defect a fresh application to the Central Nodal portal shall be made by the applicant after curing the deficiency or defect.*

- VIII. *The State Nodal Agency shall communicate to the applicant through a recognized mode of communication regarding the grant of Green Energy Open Access or otherwise.*
- IX. *Further, during the pendency of application for grant of Green Energy Open Access, the applicant shall not inject any energy to the licensees' network and the licensee shall not be liable to pay any charges for the energy injected during such period.*
- X. *The Transmission Licensee(s), Distribution Licensee(s), SLDC and STU shall ensure proper coordination while arranging for Green Energy Open Access.*
- XI. *New Green Energy (RE) generating plant(s) or generating Unit(s) or generating company who has obtained connectivity on its name, applied for seeking Long-Term Green Energy Open Access and entered into agreement for wheeling and/or transmission on its name, shall commission such plant(s) or unit(s) within twenty-four months from the date of Green Energy Open Access Application, or the schedule date of commencement of open access/SCOD of the plant as specified in the respective PPA/transmission agreement/wheeling agreement, whichever is earlier, as case may be. Failing which, the Green Energy Open Access granted shall be deemed to have been cancelled, to avoid unnecessary blocking of the corridor.*

Provided that in case of project developer is ready for commissioning of the project with supporting documentary evidence but such projects are unable to commission due to non-availability of transmission / distribution network on account of failure of licensee, such generator or generating company has liberty to approach the Commission, preferably, prior to three (3) months from the date of the completion of timelines as specified above.

- XII. *A Green Energy Open Access consumer shall enter into commercial agreements with generators or generating company, trading licensee,*

distribution licensee, as may be applicable, and such agreements shall include provisions pertaining to payment security mechanism.

XIII. The State Nodal Agency shall host on its website the details of every application received from the Central Nodal Agency and the status of such application on a continuous basis, which shall be made available to the public.

XIV. The State Nodal Agency/Distribution Licensee shall prepare procedure for grant of Green Energy Open Access consisting of documents, formats etc. required to be submitted for Green Energy Open Access in line with the provisions of Act, Rules, Regulations, Orders and Procedure followed by Central Nodal Agency, for smooth implementation of the Green Energy Open Access in the State and get approved from the Commission."

24. Regulation 14 - Procedure for applying for Day Ahead Green Energy Open Access Transactions.

The applicant shall apply to the Central Portal for Day Ahead Green Energy Open Access Transactions in the standard application format.

For the applications received by the State Nodal Agency from the Central Nodal Agency, before 13:00 hours of the day immediately preceding the day of scheduling for day-ahead Green Energy Open Access transaction, the State Nodal Agency shall check for congestion in the system and convey grant of approval or otherwise to the applicant through e-mail or fax, not later than 15:00 hours of the day immediately preceding the day of scheduling for day-ahead transaction, after ensuring that there is no subsisting PPA for the capacity sought under Green Energy Open Access.

Non-refundable processing fee of Five Thousand rupees for each transaction shall be paid by the applicant, in manner as prescribed by the State Nodal Agency

like by way of a demand draft or proof of payment through electronic transfer in favour of the State Nodal Agency.

Provided that the actual operationalization of Green Energy Open Access shall be effected subject to payment by the applicant of the charges as specified in these Regulations and orders passed by the Commission from time to time, before 17:00 hours of the day immediately preceding the day of scheduling for day-ahead transaction.

Provided further that minimum 12 time-blocks for which the consumer shall not change the quantum of power consumed through open access so as to avoid high variations in demand to be met by the distribution licensee.

Where Green Energy Open Access is denied, the State Nodal Agency shall furnish reasons thereof to the applicant.

Comments/Suggestions of the Stakeholders:

- 24.1. Some of the objectors have suggested to allow period of 2 days for making payment towards transmission and other applicable charges. A delayed payment surcharge may be levied in case payment is made by the applicant after the due date.
- 24.2. Some of the objectors have suggested to provide for seeking NOC from concerned DISCOMs in regard to availability of proper metering infrastructure and no pending dues which are necessary.
- 24.3. Some of the objectors have suggested that in the Second proviso to Regulation, the word 'minimum 12 time-blocks' be replaced by the word 'minimum 6 time blocks'.
- 24.4. Some of the objectors have suggested that non-refundable processing fee of Five Thousand rupees plus applicable taxes for each transaction shall be paid by the Applicant, in manner as prescribed by the State Nodal Agency through electronic transfer only in favor of the State Nodal Agency.

- 24.5. Some of objectors have suggested that the word "consumed" shall be replaced by "applied" in 2nd proviso to Regulation 14.

Commission's decision:

The suggestion of the Objector to allow period of 2 days for making payment towards transmission and other applicable charges cannot be accepted as in case of day ahead Green Energy Open Access transaction, the payment of applicable transmission and other charges are to be made in advance once Open Access is granted for such day ahead transaction.

The suggestion of the Objector to provide for seeking NOC from concerned DISCOMs in regard to the availability of proper metering infrastructure and confirmation regarding no pending dues of DISCOMs, the said suggestion seems to be valid and accepted by the Commission and accordingly, it is decided to incorporate the said provision in the Regulation that the following Regulation be incorporated as sub-regulation No. IX of Regulation 9 i.e., Eligibility criteria applying Green Energy Open Access, as under:

"9 (IX). Eligibility criteria applying Green Energy Open Access

The consumer seeking Green Energy Open Access shall obtain No Due Certificate and certificate related to availability of required metering infrastructure at consumption premise from the respective distribution licensee and submit the same along with application to the nodal agency."

The Objector has suggested that the minimum time block for which consumer shall not change the quantum of power consumed through open access may be reduced from 12 nos. of blocks to 6 nos. of blocks during a day so as avoid high variation in demand to be met by the Distribution licensee is concerned, the same is already dealt in earlier part of the SoR.

The suggestion of Objector to replace the word "consumed" with the word

“applied” is concerned, the same is not accepted as the said proviso is in line with the provisions of Electricity (Promoting Renewable Energy Through Green Open Access) Rules, 2022 and therefore the Commission has decided to continue with the same.

With regard to the suggestion about applicability of tax on the recoverable processing fee, it is to state that the matter of levy of tax has already been dealt in earlier part of the SoR.

With regard to the suggestion that the processing fees shall be paid by the applicant through electronic mode of transfer only, the Commission note that the Regulation already provides that the processing fees shall be paid by the Applicant in a manner as prescribed by the State Nodal Agency. Therefore, the Nodal Agency is at liberty to specify the mode of payment of application fees.

25. Regulation 15 - Utilization, Non-Utilization of service by Green Energy Open Access Consumers

- I. *A medium-term/long-term consumer shall not relinquish or transfer his rights and obligations specified in the Green Energy Open Access agreement without prior approval of the State Nodal Agency/DISCOM. The relinquishment or transfer of such rights and obligations by a long-term and medium-term consumer shall be subject to payment of compensation, as per the provisions of these Regulations.*
- II. *Provided further that minimum 12 time-blocks for which the consumer shall not change the quantum of power consumed through open access so as to avoid high variations in demand to be met by the distribution licensee.*

In addition, the Green Energy Open Access Consumer shall pay the monthly (a) Transaction charges of Rs. 3,000 (Rupees Three Thousand only) for maintaining the transaction details to the State Nodal Agency and (b) Monthly Meter reading

charges of Rupees One thousand (Rs. 1000/-) to the concerned licensee(s) who carry out such meter reading.

Comments/Suggestions of the Stakeholders:

Regulation 15 (I)

25.1. Some of the objectors have suggested that the payment of compensation on relinquish or transfer of rights and obligations should be applicable only when the relinquish or transfer is done to a third party. In case of wholly-owned subsidiary relinquish or transfer of rights and obligations for connectivity and green energy open access may be allowed.

Commission's decision:

The Objector has suggested that the payment of compensation on relinquishment of Open Access should be applicable only when the relinquishment is done to a third party. The relinquishment/transfer of Open Access rights to a wholly owned subsidiary, may be allowed without relinquishment charges if concerned, the same is not acceptable with consideration of provisions of these Regulations wherein the liability of relinquishment charges arise upon relinquishment of the existing open access granted to the open access customer. We also decide to remove the word 'or transfer' from Regulation 15 (I) of these Regulations as it creates ambiguity with regard to the rights available to open access customer. The purpose of these Regulations is with an intent not to permit the trading of Open Access right and the person who desires to relinquish its right of Open Access due to various reasons and avoid payment of charges for it. Accordingly, the aforesaid Regulation is modified in the final Regulations.

Comments/Suggestions of the Stakeholders:

Regulation 15 (II)

- 25.2. Some of the objectors have made suggestions on Regulation 15 (II) to modify.
- 25.3. Some of the objectors have suggested that the last para of Regulation 15 be modified as under:

*The Green Energy Open Access Consumer shall pay the monthly (a) Transaction charges of Rs. 3,000 (Rupees Three Thousand only) for maintaining the transaction details to the State Nodal Agency and (b) Monthly Meter reading charges of Rupees One thousand **(Rs. 1000/-)** to the **concerned licensee(s)** who carry out such meter reading.*

Comments:

- 25.4. Some of the objectors have suggested to provide for levy of monthly meter reading / energy accounting facilitation charges of Rs. 10,000 by concerned DISCOM.
- 25.5. Some of the objectors have suggested that in addition, the Green Energy Open Access Consumer shall pay the monthly Transaction charges of Rs. 3,000 (Rupees Three Thousand only) per entity (intrastate buyer / seller) for maintaining the transaction details to the State Nodal Agency.
- 25.6. Some of the Objectors have suggested that the Regulation pertaining to recovery of monthly transaction and meter reading charges be deleted as these charges are required to be dealt separately in the tariff determination process by the Commission as well as the proposed charges are high.
- 25.7. Some of the objectors have suggested to remove monthly transaction charges and meter reading charges as SLDC is already collecting application fees as well as Transmission and wheeling charges and these charges are already recovered by them by means of Truing up calculations in their tariff order passed by the Commission.

Commission's decision:

The Commission has noted that some of the Objectors have requested to increase the meter reading charges at Rs. 10,000/- instead of Rs. 1,000/-

per month. The other suggestion is to levy transaction charges of Rs. 3000 per entry basis. Whereas other Objectors have requested not to levy any transaction charge/ meter reading charges as it would lead to additional cost on Green Energy Open Access Consumer and suggested that these charges are required to be dealt with separately in the determination of tariff.

The Commission notes that the State Nodal Agency is required to utilize resources for maintaining energy transaction details of Open Access Energy for providing commercial settlement in the account of Green Energy Open Access consumer. Further, concerned distribution licensee is required to utilize resources for collecting meter reading of Green Energy Open Access consumer. Therefore, State Nodal Agency and concerned distribution licensee need to be reasonably compensated towards resources utilized by them for carrying out activities assigned to them under the Regulation so that the cost burden of the same is not passed on to general body of consumers. The Commission is of the view that the levy of monthly transaction charge of Rs. 3,000/- for maintaining transaction details by the State Nodal Agencies and monthly meter reading charges of Rs. 1,000/- by the concerned licensee is reasonable and justified.

As regard to suggestion that transaction charges be levied on per entry basis is concerned it is to state that the Regulation provides for the levy of Open Access transaction charges on monthly basis. The suggestion with regard to levy of transaction charges on per entry basis will cause unnecessary burden to Green Energy Open Access consumers. Accordingly, the suggestion is not accepted.

As regard to the suggestion to modify the Regulation 15 (II) is concerned, it is to state that the suggestions of the objector has been dealt by the Commission in the earlier part of this SOR. Further, Regulation 15 (II) is in

accordance with provision of GEOA Rules, 2022 and amendments in it notified by the MoP, GOI, hence the suggestions are not accepted.

Further, the Commission has observed that the last para of Regulation 15 pertaining to monthly transaction and meter reading charges should be made part of Regulation 17. Accordingly, the Commission has decided to remove the above para from the Regulation 15 and be incorporated in Regulation 17 as Regulation 17.8.3 in the final Regulation. The modified Regulation 15 is reads as under:

“15. Utilization, Non-Utilization of service by Green Energy Open Access Consumers

- I. *A medium-term/long-term consumer shall not relinquish his rights and obligations specified in the Green Energy Open Access agreement without prior approval of the State Nodal Agency/licensee. The relinquishment of such rights and obligations by a long-term and medium-term consumer shall be subject to payment of compensation, as per the provisions of these Regulations.*
- II. *Provided further that minimum 12 time-blocks for which the consumer shall not change the quantum of power consumed through open access so as to avoid high variations in demand to be met by the distribution licensee.”*

26. Regulation 16, Energy Accounting

1) Inter-state transactions

In case of Green Energy Open Access carried out under inter-state transaction energy accounting shall be as per the CERC Regulations.

Provided that if the generator situated in the State of Gujarat and

connected with the State grid and selling power outside the State the energy accounting for deviation settlement be carried out wherein the deviation charge shall be either (A) Reference Charge Rate or (B) Normal Rate of Charges for deviation, whichever is higher.

Explanation: Reference Charge Rate and Normal Rate of Charges shall have the meaning as defined in CERC DSM Regulations from time to time.

2) Intra-state transactions

Long Term Access/Medium-Term Open Access/Short-Term Open Access:

The deviation charges shall be payable by the generator as per the GERC (Forecasting and Scheduling and Related Matters for Solar and Wind Generation Sources) Regulations, 2019.

Provided that the Green Energy Generator (RE generator) other than solar, wind and Wind-Solar Hybrid generator which were commissioned under the respective RE tariff orders passed by the Commission from time to time and in operation shall be governed by the provisions of relevant orders of the Commission.

In case of intra-state transactions, forecast/schedule shall be replaced with actual metered data at the time of preparing post-facto schedule in energy accounting of wind and solar energy projects.

Comments/Suggestions of the Stakeholders:

Regulation 16.1, Inter-state transactions

- 26.1. Some of the objectors have suggested that for Inter-State transaction for generator as well consumer, the STOA schedule shall not be replaced by actual data as per present prevalent practice.

Further, in addition to the existing provision, the following may be added for energy accounting and metering scheme and data submission to SLDC:

Approval for the interstate transaction shall be given at GETCO pooling station as injection point for the transactions.

When entity enters into the interstate transaction, the metering scheme will be such that the portion of the RE generator involved in Inter-State transaction shall be metered with specific to that part so that actual meter data shall be available to SLDC for UI-DSM calculation.

The objector has given following explanation:

When a wind turbine or group of wind turbine involves in Inter-State transaction, the actual ABT meter data of such wind turbine or group of turbine shall be sent to SLDC for UI-DSM calculation for category of interstate transaction of the entity. This will require to install ABT meter on each wind turbine so that ABT meter data for Inter-State and intrastate transaction can be demarcated to enable SLDC to calculate both UI-DSM applying appropriate methodology.

When a solar generator or part of solar generators involves in Inter-State transaction, the actual ABT meter data of such solar generators shall be sent to SLDC for UI-DSM calculation. This will require installing ABT meter on each group of solar so that ABT meter data of such group can be demarcated at Pooling Sub-Station (PSS) level, which in turn can be brought at GETCO PSS end.

The entity enters into Interstate transaction shall take SLDC NOC and get approval of SLDC in terms of metering arrangement in addition to other requirement of these Regulations. Entity has to install ABT meter as per requirement of SLDC for energy accounting of the Inter-State transactions.

The objector has further submitted that the QCA/entity has to submit forecast only for Intra-State transaction at pooling station. Approved Inter-State transaction/schedule at pooling station will be automatically considered for the computation of deviation. i.e. at pooling station there will be two separate deviation computation one for the Intra-State transaction and second for interstate transaction.

- 26.2. Some of the Objectors have suggested to clarify that the clause 16 (1) shall be applicable for the RE generators connected with inter-state transmission network through Intra-State transmission network. It is also stated that the applicability of deviation mechanism for RE generators connected with Inter-State transmission network through Intra-State transmission network shall be governed as per the CERC deviation mechanism. Therefore, the proviso to clause 16 (1) may be modified stating that if the generator situated in the State of Gujarat and connected with Inter-State transmission network through Intra-State transmission network and selling power outside the State, the energy accounting for deviation shall be governed as per the mechanism notified by CERC, as amended from time to time.

Commission's decision:

The Commission has noted the submission of the Objectors.

The Objector has suggested that in respect of Inter-State transaction for generator as well as consumer, the STOA schedule shall not be replaced by actual data as per present practice. The Commission noted that the Regulation 16 (1) specifies that in case of Green Energy Open Access carried out under Inter-State transaction energy accounting shall be as per the CERC Regulations and therefore no further modification/clarification is required.

Further, it is submitted that the approval for Inter-State transaction shall be given at GETCO polling station as injection point. Moreover, ABT meter shall be installed on each wind turbine so that ABT meter data for Inter-State and Intra-State transaction can be demarcated in cases involving Intra-State Open Access as well as Inter-State Open Access. The Commission is of the view that these aspects shall be governed as per the provisions of the respective RE Orders of the Commission.

The Objector has suggested to clarify that the Regulation 16(1) shall be applicable for RE generators connected with Inter-State transmission network through Intra-State transmission network only. The other suggestion is with respect to energy accounting to be carried out for energy transacted through the Green Energy Open Access to Inter-State transmission network. The Commission has noted the provisions of Regulation 16 (1) which reads as under:

In case of Green Energy Open Access carried out under inter-state transaction energy accounting shall be as per the CERC Regulations.

Provided that if the generator situated in the State of Gujarat and connected with the State grid and selling power outside the State the energy accounting for deviation settlement be carried out wherein the deviation charge shall be either (A) Reference Charge Rate or (B) Normal Rate of Charges for deviation, whichever is higher.

The Commission is of the view that the Regulations 16 (1) specifies the Energy accounting treatment to be given for energy transacted through Inter – State Green Energy Open Access for generator situated in the State of Gujarat and connected with Inter-State transmission network through Intra-State Transmission network. Therefore, the suggestion of the objector is accepted and the Regulation 16 (1) is modified as under:

“16. Energy Accounting

1) Inter-state transactions

In case of Green Energy Open Access carried out under inter-state transaction (including Inter-State RE Projects located in Gujarat & connected to ISTS network, supplying power to consumer in Gujarat) energy accounting shall be as per the CERC Regulations.

Provided that if the generator situated in the State of Gujarat and connected with Inter-State grid through the State grid and selling power outside/inside the State, the energy accounting for deviation settlement be carried out wherein the deviation charge shall be either (A) Reference Charge Rate or (B) Normal Rate of Charges for deviation, whichever is higher.

Explanation: Reference Charge Rate and Normal Rate of Charges shall have the meaning as defined in CERC DSM Regulations from time to time."

With regard to the suggestion for providing installation of ABT meter on each generating unit and consideration of injection point at GETCO polling station etc. the Commission clarifies that such aspects shall be governed as per the provisions of Commission's Order for respective RE source.

Comments/Suggestions of the Stakeholders:

Regulation 16.2, Intra-state transactions

- 26.3. Some of the objectors have suggested to provide that the data of generators having collective capacity of 1 MW and above shall be utilized by the State Nodal Agency (SLDC) for energy accounting and real time grid management. As per prevailing practice, SLDC is doing scheduling for those generators whose installed capacity is greater than 1 MW and scheduling for open access consumers whose contracts capacity is approved above 1

MW. Currently, GETCO gives LTA and MTOA approval for wind, solar and hybrid projects. For LTA / MTOA, the actual apportion from wind generators & hybrid generators are being done by GEDA as per Pooling Station end data send by SLDC to GEDA. This energy is certified by SLDC and utilized for post facto schedule of Discoms (actual energy data replaced against schedule) at the time of DSM bill preparation.

It is suggested that aforesaid methodology is to be utilized for multipurpose solar (i.e. captive, third party, SSDSP) generators having also for all type of access (LTA, MTOA & STOA if any) with multi Discoms. GEDA shall have to give the actual apportion for solar generators also for energy certification and DSM preparation.

It is suggested that the concern Discoms shall carry out accounting and settlement for Green energy OA contracts whose capacity less than 1 MW. The meter data for accounting and settlement of Green Energy Open Access consumer of 100 kW to 1 (one) MW shall be done by concern DISCOMs and Discom shall maintain energy accounting.

- 26.4. Some of the objectors have suggested that the Regulation 17.2 may be modified providing that the deviation charges shall be payable by the generator as per the CERC (Deviation Settlement Mechanism and Related Matters) Regulations, 2022 read with GERC (Forecasting and Scheduling and Related Matters for Solar and Wind Generation Sources) Regulations, 2019, irrespective of any open access limit.

Provided that the Green Energy Generator (RE generator) other than solar, wind and Wind-Solar Hybrid generator which were commissioned under the respective RE tariff orders passed by the Commission from time to time and in operation shall be governed by the provisions of relevant orders of the Commission.

Commission's decision:

The Commission has noted the suggestions of the Objectors.

The suggestion is that SLDC will continue scheduling of energy for the generator whose installed capacity is greater than 1 MW and DISCOM shall carryout accounting and settlement for Green Energy Open Access whose capacity is less than 1 MW. The Commission clarifies that the GERC Open Access Regulations, 2011 deals with the agency responsible for energy accounting and commercial settlement for Open Access to distribution network/Intra-State / Inter State transmission network. The same shall continue to be governed under the Green Energy Open Access.

With regard to the suggestion for apportionment of Energy from Wind-solar Hybrid project etc. is concerned, it is to clarify that the aspects related to injection point, energy apportionment etc. shall be govern by the applicable Order of the Commission of respective RE sources.

The Objector has suggested that the deviation charges payable by generator shall be as per CERC (Deviation Settlement Mechanism and Related Matters) Regulations, 2022 read with GERC (Forecasting and Scheduling and Related Matters for Solar and Wind Generation Sources) Regulations, 2019, irrespective of any open access limit.

In this regard, the Commission notes that these Regulations provides that the Green Energy Open Access of wind/solar generator shall be governed by the GERC Forecasting and Scheduling Regulations, 2019. While other RE technology based generator which were commissioned under the respective RE tariff Order shall be governed by the provisions of the relevant order of the Commission for respective RE sources. Further, the Commission notes that the GERC Forecasting and Scheduling Regulations, 2019 provides that the deviation charges in respect of Wind/Solar generator connected with intra State Grid and selling power outside the

State shall be governed as per the framework provided by the CERC Regulations. Thus, the applicability of DSM Charges for wind and Solar generators shall be governed as per the provisions of the GERC Forecasting and Scheduling Charges 2019 and no further modification/clarification is required in the Regulation.

The objector has suggested to clarify that the provision for replacement of scheduled energy with actual energy on post facto basis shall be for Wind and Solar energy projects only.

In this regard, the Commission notes that the provision for replacement scheduled energy with actual energy on post facto basis is applicable for Wind and Solar projects is in terms of the GERC (Forecasting and Scheduling Related Matters for Solar and Wind Generation Sources) Regulations, 2019 and Commission decides to continue with same for wind, solar project and Wind-Solar Hybrid Projects. Hence, no modification is required.

27. Regulation 17, Charges for Green Energy Open Access

The charges payable by the Green Energy Open Access consumers shall be as follows: -

- 1. Transmission charges;*
- 2. Wheeling charges;*
- 3. Cross subsidy Surcharge;*
- 4. Additional Surcharge;*
- 5. Standby Charges wherever applicable;*
- 6. Banking Charges and*
- 7. Other fees and charges such as SLDC fees and scheduling charges, deviation settlement (DSM) charges as per the relevant Regulations, Orders of the Commission.*

17.1 Transmission Charges

Green Energy Open Access Consumer using transmission system shall pay the charges as stated hereunder:

17.1.1 For use of inter-State transmission system:

(i) As specified by the Central Commission from time to time.

17.1.2 For use of intra-State transmission system:

The determination of Transmission Charges for Long-Term, Medium-Term and Short-Term for open access shall be determined by the Commission as per the prevailing provisions of the GERC MYT Regulations from time to time.

The applicable rate of Transmission Charge payable by Green Energy Open Access Consumer shall be specified by the Commission in its Tariff Order of Green Energy Technology based generation including projects like wind, solar, Wind-Solar Hybrid, Biomass, bagasse, hydro, mini hydro, Municipal Solid Waste to Energy, Green Hydrogen and Green Ammonia based projects.

Comments/Suggestions of the Stakeholders:

- 27.1. Some of the objector has suggested to add provision that only charges specified under GERC (Green Energy Open Access) Regulations, 2024 shall be applicable.
- 27.2. Some of the Objectors have suggested that proposed the imposition of a Full Cross-Subsidy surcharge and Additional Surcharge on Third-party open-access consumers. However, this proposal poses a challenge to DISCOM consumers who wish to procure renewable power but are restricted by their organizational mandate, which does not allow them to invest 26% equity into the project SPV. It is suggested to consider 50% concession on the Cross-Subsidy surcharge and additional surcharge, as provided in the Wind Solar Hybrid Policy 2018.

- 27.3. Some of the objectors have stated that concessional transmission, wheeling, Cross Subsidy Surcharge (CSS) & Additional Surcharge (AS) charges have been imposed on the RE generators of the state till date. Further as per Gujarat Wind Power Policy 2016 which are under effect till date, CSS & AS is applicable at the rate of 50% of normal rate for Third Party Sale of power whereas it is exempted for Captive use. Based on above the Commission may continue with the similar approach while providing different charges (Transmission /Wheeling/CSS/AS) applicable under these Regulations.
- 27.4. Some of the objectors have suggested to add following in Regulation 17.1.2 i.e., Transmission Charges for use of Intra-State transmission system:
- Provided that the Transmission charges for LTA / M TOA is in Rs/MW/Day and Rs/Kwh for STOA.
- Provided that the transmission charges for STOA will be on scheduled kWh only.
- 27.5. Some of the objector has suggested that the clause 17.1.2 provides for payment of transmission charges for use of intra-state transmission system. provide that in addition to transmission charges, transmission losses shall be applicable to consumers / generators, as the case may be, seeking green energy open access.

Commission's decision:

The objectors have suggested to add the provision that only charges specified under GERC (Green Energy Open Access) Regulations, 2024 shall be applied. Some of the objectors have stated that the cross-subsidy surcharge and additional surcharge be applicable at 50% only. Some of the objectors have stated that the transmission charge for LTA and MTOA shall be in Rs. /MW/Day and for STOA it is to be on Rs./kWh on scheduled energy basis. Some of the objectors have

suggested to provide for levy of the transmission losses in addition to transmission charges shall be applicable to green energy open access consumers/generators.

We note that the provisions in the Regulation 17 with regard to different charges are applicable for green energy open access consumers. So far as transmission charge applicable on LTOA, MTOA and STOA is concerned, the transactions on intra-state transmission system, it is as per the provision of GERC (MYT) Regulations read with Commission's Orders. The aforesaid provisions is provided with consideration that there is no discrepancy amongst two Regulations notified by the Commission and the charges determined for utilization of transmission network by the open access consumers shall be as per the MYT Regulations and Orders passed by the Commission in this regards. Further, it is to clarify that when the transmission charges stated as applicable to the LTOA, MTOA and STOA is concerned, it consists of transmission charge and transmission losses for utilization of transmission network by the green energy open access consumer. Accordingly, for providing clarity the said Regulation is modified in the final Regulation.

Some of the objectors have suggested that the Cross Subsidy surcharge and additional surcharge if any payable by the Green Energy Open Access consumer the same shall be levied @ 50% of such charges determined by the Commission, is concerned we clarify that these Regulations are framed with consideration of the provision of Green Energy Open Access Rules, 2022 and amendment made in it. Further this issue is dealt in the later part of SOR at appropriate place.

28. Regulation 17.2, Wheeling Charges

- a. Wheeling charges payable to distribution licensee, by the Green Energy Open Access Consumer for usage of its system shall be as determined by the Commission in the tariff order from time to time:*

- i. The Commission shall specify the wheeling charge of Distribution Wires Business of the Distribution Licensee in its Order passed under sub-section (3) of Section 64 of the Act:*
- ii. The rate of Wheeling Charge payable by Green Energy Open Access Consumer shall be specified by the Commission in its Tariff Order of Green Energy Technology based generation including projects like wind, solar, Wind-Solar Hybrid, biomass, bagasse, hydro, mini hydro, Municipal Solid Waste to Energy based projects, Green Hydrogen and Green Ammonia.*
- iii. Wheeling Charge for Green Energy Open Access shall be computed in Rs./kWh and it shall be charged on the scheduled energy wheeled.*

Provided that the charges payable by a Distribution System User under these Regulations may comprise any combination of fixed/demand charges, energy charges and other charges, as may be stipulated by the Commission in such Order.

- b. In addition to Wheeling Charge, Wheeling loss shall be applicable to consumers or generator as case may be seeking Green Energy Open Access and it shall be as determined by the Commission.*

Comments/Suggestions of the Stakeholders:

- 28.1. Some of the objector has suggested for deletion of proviso to Regulation 17.2 (a) since as per Regulation 17.2 (a) (iii) wheeling Charge for Green Energy Open Access shall be computed in Rs./kWh and it shall be charged on the scheduled energy wheeled. Hence it is proposed to delete the proviso in order to avoid ambiguity.
- 28.2. Some of the objectors have stated that the application of Full Wheeling Charge and Distribution Loss for cases where generation occurs at the 66 kV voltage level and consumption takes place at the 11 kV voltage level. it is suggested to continue 50% concession in wheeling charges provided in

the previous Tariff Order for Hybrid Power, as the consumers utilize electricity at the 11 kV voltage.

- 28.3. Some of the objectors have stated that the wheeling charges should be applicable on the energy settled in the consumer bill.
- 28.4. Some of the objectors have suggested to incorporate following clauses.

Wheeling Charge

Wheeling charges shall be determined voltage wise (excluding EHT Level) as per the ARR requirement towards particular voltage level and total energy wheeling during the year under the particular voltage level.

The objectors have suggested following methodology for determination of wheeling charges;

Following charges shall deducted from ARR towards wheeling for specific voltage level after apportionment of aforesaid charges within different voltage level on the basis of the percentage defined by the Commission based on the allocation of distribution assets over specific voltage levels,

1. Non-Tariff Income
2. Income from Other Business, to the extent specified by the Hon'ble MoP

Further, following Open Access charges shall be recovered from OA Consumers,

4) Banking Charges

1. CSS
2. Cross Subsidy Surcharge CSS shall be deducted from Aggregate Revenue Requirement towards wheeling for particular voltage level after a) apportioned towards wire business and supply business based on the percentage defined by the Hon'ble MoP Appropriate State Commission and

b) Then further apportioned within different voltage level as per the percentage defined by the respective State Commission based on the allocation of Wire Business (distribution) assets over specific voltage levels. Further the formula for calculation of wheeling charge is as below,
Wheeling Charges for specific voltage levels

Net Aggregate Revenue Requirement towards wheeling for specific voltage level/Total energy wheeled during the year under specific voltage level.

Net Aggregate Revenue Requirement towards wheeling for particular voltage level Aggregate Revenue Requirement towards wheeling for specific voltage level minus

1. Non-Tariff income (after apportionment within voltage level as discussed in above para)
 2. Income from Other Business, to the extent specified by the Hon'ble MoP (after apportionment within voltage level as discussed in above para)
- c) Open Access Charges after apportionment as discussed above)
1. Banking Charges
 2. CSS
 3. Cross Subsidy Surcharge CSS

Further concession which has been given or shall be given in wheeling charges, wheeling losses by the respective State Government though its policy or by the State Commission through its Order shall be regulated as per the term and condition of respective State Policy or said Orders.

- 28.5. Some of the objectors have suggested that wheeling charge for Green Energy Open Access shall be computed in Rs./kWh and it shall be charged on the actual energy wheeled instead of scheduled energy.
- 28.6. Some of the objector has suggested that wheeling charges should be applicable on the units adjusted into Consumer's monthly DISCOM bill as

certain units will be banked with DISCOM and applying wheeling charges on same is not valid.

Commission's decision:

The Commission notes that the objectors have raised mainly following objections:

- (i) Delete Regulation 17.2 – a (iii) to avoid ambiguity in the determination of wheeling charges.
- (ii) There is contradiction between clause 17.2 –(a) (i) and 17.2 – (a) (ii).
- (iii) The wheeling charges be applicable at 50% of the wheeling charge and distribution loss determined by the Commission for wheeling of renewable power at 11 kV voltage level decided by the Commission.
- (iv) The wheeling charge shall be determined on voltage wise level as per ARR requirement towards particular voltage level and total energy wheeled during the year on particular voltage level.
- (v) Deduct non-tariff income and income from other businesses to the extent specified by MoP from ARR determination while calculating the wheeling charges.
- (vi) The concession granted in wheeling charges and losses in the State Government Policy or Order be made applicable in wheeling charges and losses.
- (vii) Wheeling charges shall be computed in Rs./kWh and be recovered on actual energy wheeled.
- (viii) Wheeling charges are not applicable on banked energy
- (ix) The wheeling charges shall be levied on actual energy wheeled instead of scheduled energy wheeled.

As regards to the suggestions to delete Regulation 17.2 – a (iii) to avoid ambiguity in the nomenclature of wheeling charges is concerned, it is to state that the proviso to 17.2 (a) is regarding the applicability of wheeling charges payable to

distribution system user. The proviso to the Draft Regulation 17.2 (a) specifies that wheeling charges for use of distribution system can be in terms of fixed/demand charge as well as in terms of Rs. /kWh. We note that Ministry of Power, GoI vide Notification No. G.S.R. 36 (E) dated 10.01.2024 issued Electricity (Amendment) Rules, 2024, wherein at Rule 22 formula for wheeling charges have been stipulated as under:

$$\text{Wheeling charges} = \frac{\text{Annual Revenue Requirement towards wheeling}}{\text{Energy Wheeled during the year}}$$

As per this formula, wheeling charge need to be determined in terms of Rs. /kWh only. Accordingly, it is decided by the Commission to remove the proviso to Regulation 17.2 (a) (iii) in the final Regulations.

With regard to suggestion of some of the objectors that there is contradiction between clause 17.2 –(a) (i) and 17.2 – (a) (ii) is concerned, the same is not acceptable because the wheeling charges determined by the Commission for use of distribution system of the distribution licensee in tariff Petition under Section 62, 64 and 86 (1) (a) of the Act as stated in 17.2 – (a) (i). While the wheeling charges applicable to green energy open access consumers availed from different RE sources are specified by the Commission in its tariff Order for such green/renewable energy sources. Hence, the contention of objectors that there is contradiction between above clauses is not correct.

With regard to suggestion for applicability of wheeling charges at 50% of the wheeling charge and distribution loss determined by the Commission for wheeling of renewable power at 11 kV voltage level, is concerned, the suggestion is not accepted to the Commission as any waiver/relaxation/concession provided in wheeling charges/losses the same is determined and decided by the Commission in its Tariff Order of Green Energy sources. Further, the decision of the Commission with regard to applicability of wheeling charge of different RE sources is concerned, the order/Regulations of the Commission on such for different RE technology based Order is final on it.

It is further suggested by the objector that wheeling charge should be determined on voltage wise level as per ARR requirement towards particular voltage level and total energy wheeled during the year on particular voltage level. It is further suggested to deduct non-tariff income and income from other businesses to the extent specified by MoP from ARR determination while calculating the wheeling charges. In this regard, it is to be noted that the methodology for determination of wheeling charges is subject matter of tariff order passed by the Commission for Distribution Licensee under Section 64 (3) of the Electricity Act from time to time and as per the principles laid down in the Multi Year Tariff (MYT) regulations as applicable. Hence, no modification is required in the Regulations. We also note that Ministry of Power, GoI vide Notification No. G.S.R. 45 (E) dated 17.01.2024 issued Electricity (Amendment) Rules, 2024, amending Rule 22 in Sub-rule (1) of Electricity Rule 2005 by stipulating formula for determination of wheeling charges as under:

$$\text{Wheeling charges} = \frac{\text{Annual Revenue Requirement towards wheeling}}{\text{Energy Wheeled during the year}}$$

Provided that the Appropriate Commission may determine wheeling charges at different voltage levels, separately, in accordance with above formula.

In view of the above, the Commission will take into consideration that above mentioned stipulation by MoP, while determining the wheeling charges in the tariff order for respective distribution licensee.

Some of the objectors have suggested that the Wheeling charges shall be computed in Rs./kWh and shall be levied on actual energy wheeled instead of scheduled energy wheeled. It is also suggested by some of the objector that the wheeling charge may be recovered on units adjusted into consumer's monthly bill is not acceptable as the energy injected into the grid will be first transmitted and wheeled up to the consumer's consumption end for giving adjustment in the consumer's account. In this regard, the Commission notes that the Ministry of Power, GoI vide Notification No. G.S.R. 36 (E) dated 10.01.2024 issued Electricity

(Amendment) Rules, 2024, wherein at Rule 22 formula for determination of wheeling charges have been stipulated. As per the formula specified in the Rules the wheeling charge shall be determined on Rs. / kWh based on energy wheeled during the year. Accordingly, we decide to amend Regulation 17. 2 (a) (iii) in the final Regulations.

The objection regarding wheeling charges are not applicable on banked energy is concerned, the same is not acceptable because the banked energy available to the consumer as a facility provided by the licensee as per the Regulations wherein the open access energy wheeled on its system by the green energy open access consumer/customer i.e. utilization of such network of the licensee which attract payment of wheeling charges and losses as applicable. Hence, the objections in this regard are rejected.

In view of the above, the said Regulation is modified in the final Regulation.

29. Regulation 17.3, Cross Subsidy Surcharge

1. The Green Energy Open Access facility availed by a consumer shall be required to pay cross subsidy surcharge as provided in relevant Tariff Order issued by the Commission from time to time, in addition to transmission and/or wheeling charges. Cross subsidy surcharge determined by the Commission on Per Unit basis shall be payable, on billing cycle basis, by the open access customers based on the actual energy consumed during the billing period through open access. The amount of surcharge shall be paid to the distribution licensee in whose area of supply such consumer is situated.

2. The Cross-subsidy surcharge shall be determined by the Commission in accordance with the provisions of Electricity Act, 2003 readwith the principles and formula stipulated in the Tariff Policy notified by the Ministry of Power, Govt. of India.

Provided also that such cross-subsidy surcharge shall not be levied in case

distribution access is provided to a person who has established a captive generation plant for carrying the electricity to the destination of his own use.

Provided further that the cross-subsidy surcharge for Green Energy Open Access Consumer purchasing green energy, from a generating plant using green energy (renewable energy) sources, shall not be increased, during twelve years from the date of operating of the generating plant using renewable energy sources, by more than fifty percent of the surcharge fixed for the year in which open access is granted;

Provided also that Cross Subsidy Surcharge shall not be applicable in case power produced from a non-fossil fuel-based Municipal Solid Waste-to-Energy plant is supplied to the Open Access Consumer;

Provided also that Cross-Subsidy Surcharge shall not be applicable if green energy drawn through green energy open access is utilized for production of green hydrogen and green ammonia.

3. Cross-Subsidy Surcharge shall not exceed 20% of the tariff or Average Billing Rate (ABR) applicable to the category of the consumers seeking Green Energy Open Access.

4. The Cross Subsidy Surcharge payable by a consumer shall be such so as to meet the current level of cross subsidy within the area of supply of the distribution licensee.

Comments/Suggestions of the Stakeholders:

- 29.1. Some of the objectors have sought clarification about applicability of second proviso to Regulation 17.3 (2).
- 29.2. Some of the objector have suggested that the proposed Regulation 17.3 (b) modified by incorporating following changes:

Cross-Subsidy Surcharge shall not exceed 20% of the average cost of supply applicable to the category of the consumers seeking Green Energy Open Access.

The concession which has been given or shall be given in wheeling charges, wheeling losses by the respective State Government through its policy or by the Commission through its Order shall be regulated as per the term and condition of respective State Policy or said Orders.

- 29.3. Some of the objectors have suggested to modify second, third and fourth proviso to Regulation 17.3 (2) as under:

*Provided further that the cross-subsidy surcharge for Green Energy Open Access Consumer purchasing green energy, from a generating plant using green energy (renewable energy) sources, shall ~~not~~ be **computed as per the formula specified in the Tariff Policy and shall be applicable as per the tariff orders of the Commission increased, during twelve years from the date of operating of the generating plant using renewable energy sources, by more than fifty percent of the surcharge fixed for the year in which open access is granted;***

Provided also that Cross Subsidy Surcharge on Captive use/self Consumption shall not be applicable in case power produced from a non-fossil fuel-based Municipal Solid Waste-to- Energy plant is supplied to the Open Access Consumer.

Provided also that Cross-Subsidy Surcharge on Captive use/self Consumption shall not be applicable if green energy drawn through green energy open access is utilized for production of green hydrogen and green ammonia.

Some of the objector stated that the forth proviso to clause no. 17.3 (2) provides that Cross Subsidy Surcharge shall not be applicable if green energy drawn, through green energy open access, is utilized for production of green hydrogen and green ammonia. It is to highlight that as stated at clause no. 17.3 (4) of draft regulation, the purpose of levy of cross subsidy surcharge is to meet current level of cross subsidy within the area of supply of distribution licensees. It is to state that the distribution licensees is having Universal Supply Obligation (USO) including supply of power at subsidized rate to vulnerable section of society such as BPL, agriculture consumers etc. Any exemption / concession in recovery of cross subsidy surcharge from subsidizing category of green open access consumers will adversely impact the ability of DISCOMs for providing power supply to other consumers at subsidized rate.

- 29.4. Some of the objectors have suggested that the cross-subsidy surcharge should also be exempted for the projects supplying power through RTC / Peaked Power requirement.
- 29.5. Some of the objectors have suggested to clarify that any point in time during the 12-year period if the CSS charges increases more than 50% of the CSS charges applicable during the year of OA granted, then the actual CSS payable by the consumer shall be restricted to 1.5 times the CSS charge fixed at the time of OA granted.
- 29.6. Some of the objector has submitted that the exemption in cross subsidy surcharge provided to captive consumer and capping in cross subsidy surcharge is contrary to provisions of Act. Such restriction on recovery of cross subsidy surcharge will be a huge burden on other consumers.

Commission's decision:

The Commission has noted submissions of various Objectors as stated above in regard to determination and levy of Cross Subsidy Surcharge on the energy consumed under Green Energy Open Access from third party

sources. The Commission has noted that the determination & levy of Cross Subsidy Surcharge on the energy consumed under Green Energy Open Access shall be governed by the provisions of Electricity Act, 2003 read with principles and formula stipulated in the National Tariff Policy notified by the Ministry of Power, Govt of India and provisions of the Green Energy Open Access Rules, 2022 as well as other Rules and amendments made under it as notified by the Ministry of Power, Govt of India. The Commission also note that the captive consumers are exempted from payment of cross subsidy surcharge as per the provisions of Electricity Act, 2003 read with rules framed under it. Further, the capping on cross subsidy surcharge specified in the Regulation is in accordance with the provision of Green Energy Open Access Rules, 2022 notified by GoI.

Considering above, the fourth proviso to the Draft Regulation 17.3 (2) is deleted in view of amendment in the GEOA Rules, 2022 notified by the Ministry of Power, GOI vide notification No. GSR 381 (E) dated 03.05.2023. Accordingly, the said Regulation is modified in the final Regulation.

Further, the objections to amend the Regulation 17.3 (3) proposed by the objector seems valid with consideration of the Electricity Amendment Rules, 2022 notified by the MoP, GOI vide notification No GSR 911(E) dated 29.12.2022. Accordingly, the said Regulation is modified in the final Regulation.

30. Regulation 17.4, Additional Surcharge

i. The Additional Surcharge shall not be applicable to the Green Energy Open Access consumer for the quantum of Green Energy Open Access availed if the fixed charge is being paid by such Green Energy Open Access consumer to the distribution licensee for the quantum of Green Energy Open Access availed up to contract demand / sanctioned load with the licensee.

Provided that in case the quantum of Green Energy Open Access availed by the Green Energy Open Access consumer is more than the contracted demand / sanctioned load with the licensee and no fixed charge or demand charge is being paid or payable for additional quantum, in that case the Additional Surcharge determined by the Commission from time to time as per the Orders of the Commission shall be applicable for such additional quantum availed over the contracted demand / sanctioned load.

Provided further that such additional surcharges shall not be levied in case distribution access is provided to a person who has established a Captive Generation Plant for carrying the electricity to the destination of his own use.

Provided also that Additional Surcharge shall not be applicable in case power produced from a Municipal Solid Waste-to-Energy plant is supplied to the Green Open Access Consumer.

Provided further also that additional surcharge shall not be applicable in case electricity produced from offshore wind projects, which are commissioned up to December, 2032 and supplied to the Open Access Consumers.

Provided also that Additional Surcharge shall not be applicable if green energy is utilized for production of green hydrogen and green ammonia.

Regulation 17.4

Comments/Suggestions of the Stakeholders:

30.1. Some of the objector have sought clarification with respect to levy of additional surcharge in certain cases stated as under:

- Consumer contract demand of 5000 KW
- Load factor of Consumer 80 %
- Energy required by Consumer per Month: 28,80,000 kWh
- Solar Capacity required: about 20,000 kW (20 MW)

- Considering 18 Lac kWh/Year
- Banking is permitted for Billing Cycle basis

30.2. Some of the objectors have suggested to modify Regulation 17.4 in verbatim as under:

The Additional Surcharge shall ~~not~~ be applicable to the Green Energy Open Access consumer for the quantum of Green Energy Open Access availed if ~~the fixed charge is being paid by such Green Energy Open Access consumer to the distribution licensee for the quantum of Green Energy Open Access availed up to contract demand/ sanctioned load with the licensee.~~

~~Provided that in case the quantum of Green Energy Open Access availed by the Green Energy Open Access consumer is more than the contracted demand / sanctioned load with the licensee and no fixed charge or demand charge is being paid or payable for additional quantum, in that case the Additional Surcharge determined by the Commission from time to time as per the Orders of the Commission shall be applicable for such additional quantum availed over the contracted demand /sanctioned load.~~

Provided further that such additional surcharges shall **not** be levied in case distribution access is provided to a person who has established a Captive Generation Plant for carrying the electricity to the destination of his own use.

~~Provided also that Additional Surcharge shall not be applicable in case power produced from a Municipal Solid Waste-to-Energy plant is supplied to the Green Open Access Consumer.~~

~~Provided further also that additional surcharge shall not be applicable in case electricity produced from offshore wind projects, which are commissioned up to December, 2032 and supplied to the Open Access Consumers.~~

~~Provided also that Additional Surcharge shall not be applicable if green energy is utilized for production of green hydrogen and green ammonia.~~

30.3. Some of the objector has suggested to add the following proviso in

Regulation 17.4 of the Draft Regulations ...

Provided that for long term open access consumer who is not paying fixed charge, then the additional surcharge to such consumers shall be linearly eliminated within five years from date of grant of open access in line with Draft Amendment proposed in GEOA Rules, 2022.

- 30.4. Some of the objector has suggested that the concession which has been given or shall be given in wheeling charges, wheeling losses by the respective State Government though its policy or by the Commission through its Order shall be regulated as per the term and condition of respective State Policy or said Orders.
- 30.5. Some of the objector have suggested that the computation of Additional Surcharge should be clarified. In case the RE project installed capacity already exists under previous tariff order/ policy, the aspect as to whether such installed capacity or capacity commissioned would be considered or alternatively added for the computation and levy of additional surcharge.
- 30.6. Some of the objectors have suggested that as per Regulation 17.4 (i) the Additional Surcharge shall not be applicable if the fixed charge is being paid by such Green Energy Open Access consumer to the distribution licensee for the quantum of Green Energy Open Access availed up to contract demand / sanctioned load with the licensee. It is further stated that the formula for computation of Additional Surcharge, decided by the Commission vide Order dated 30.08.2022, already provides for adjustment of demand charges paid by open access consumers against the stranded fixed generating cost to be recovered from open access consumers through Additional Surcharge. Therefore, when payment of demand charges are already considered in computation of Additional Surcharge, no further exemption / concession from payment of Additional Surcharge shall be granted to consumers availing green energy open access up to contract demand / sanctioned load with DISCOMs. Accordingly, it is suggested to

modify the relevant clause of Regulation providing that Additional Surcharge shall be applicable for all green energy open access consumers.

- 30.7. Some of the objector suggested that if the existing RE open access capacity be also counted, how, the units beyond sanctioned load will be determined for levy of additional surcharge.
- 30.8. Some of the objector has suggested to clarify regarding levy of Additional Surcharge as the consumers are allowed to avail Green Energy Open Access from all kinds of RE sources beyond their contracted demand /sanctioned load.
- 30.9. Some of the objector requested for waiver of additional surcharge for all power availed from RE and not keep any restriction on consumer contract demand.
- 30.10. Some of the objector has suggested to modify the first para of Regulation as under:

The Additional Surcharge shall not be applicable to the Green Energy Open Access Consumer for the quantum of Green Energy Open Access availed on Captive use/self-Consumption/to the Green Energy Open Access consumer for the quantum of Green Energy Open Access availed if the fixed charge in full is being recovered from the Green Energy Open Access consumer is being paid by such Green Energy Open Access consumer to the distribution licensee for the quantum of Green Energy Open Access availed up to contract demand / sanctioned load with the licensee.

- 30.11. Some of the objector has suggested to modify first, third, fourth and fifth proviso to Regulation 17.4 stated as under:

Provided that the additional surcharge shall not be applicable also for the Green Energy Open Access quantum which is over and above the contract demand/sanctioned load at the time of availing the Green Energy Open Access.

~~Provided that in case the quantum of Green Energy Open Access availed by~~

~~the Green Energy Open Access consumer is more than the contracted demand /sanctioned load with the licensee and no fixed charge or demand charge is being paid or payable for additional quantum, in that case the Additional Surcharge determined by the Commission from time to time as per the Orders of the Commission shall be applicable for such additional quantum availed over the contracted demand / sanctioned load.~~

Provided also that Additional Surcharge on Captive use/self-consumption shall not be applicable in case power produced from a Municipal Solid Waste-to- Energy plant is supplied to the Green Open Access Consumer.

Provided further also that additional surcharge on Captive use/self-Consumption shall not be applicable in case electricity produced from offshore wind projects, which are commissioned up to December 2032 and supplied to the Open Access Consumers.

Provided also that Additional Surcharge on Captive use/self-consumption shall not be applicable if green energy is utilized for production of green hydrogen and green ammonia.

- 30.12. Some of the objectors have sought clarification whether the existing installed capacity or capacity commissioned under previous tariff order/policy would be considered/added for the computation/applicability of Additional Surcharge on the Contract Demand of the consumer. For example, a customer has a Contract Demand of 10 MVA, having an existing project of 5 MW under previous WSH Policy is now constructing 10 MW more under GEOA Regulations in that case this new 10 MW capacity which is within its contract demand will it qualify for zero additional surcharges as per the Green Energy Open Access Rules or any Additional Surcharge would levy on the customer.
- 30.13. Some of the objector has submitted that the purpose of additional surcharge is to recover the stranded cost from the consumer who opt for open access. Therefore, the Regulation cannot exempt from levy of such

additional surcharge from the consumers who are responsible for such stranded cost just because that consumer wants to opt for sourcing of green power for their commercial consideration.

Commission's decision:

The Commission has noted the comments and suggestions of the stakeholders. The provision for additional surcharge incorporated in the Regulation with consideration of the provision of the Electricity Act, 2003 and Electricity Rules 2022 for Green Energy Open Access and amendment in it. It is observed by the Commission that certain part of suggestions of few of the objectors seems valid in view of amendment Electricity (Promotion of Renewable Energy Through Green Energy Open Access) Rules, 2022 notified vide notification No. G.S.R. 381 (E) dated 23.05.2023 by MOP GOI. The Commission decided to modify the Regulation 17.4 by deleting the fifth proviso of the said Regulation and by correcting some typographical error. The Commission has also carried out modification in Regulation 17.4 considering the Ministry of Power, Notification No. G.S.R. 36 (E) dated 10.01.2024 - Electricity (Amendment) Rules, 2024, wherein Rule 22 (3) reads as under:

“(3) Additional Surcharge.– The additional surcharge levied on any Open Access Consumer shall not be more than the per unit fixed cost of power purchase of the distribution licensee concerned:

Provided that for a person availing General Network Access or Open Access, the additional surcharge shall be linearly reduced from the value in the year in which General Network Access or Open Access was granted so that, if it is continued to be availed by this person, the additional surcharge shall get eliminated within four years from the date of grant of General Network Access or Open Access:

Provided further that the additional surcharge shall not be applicable for Open Access Consumer to the extent of contract demand being maintained with the distribution licensees:

Provided also that the additional surcharge shall be applicable only for the Open Access Consumers who are or have been consumers of the concerned Distribution licensee.

Explanation.– For the purpose of this rule, General Network Access and Temporary-GNA shall have the same meaning as defined in the Central Electricity Regulatory Commission (Connectivity and General Network Access to the inter-State Transmission System) Regulations, 2022 as amended from time to time.”

The Commission noted that the provisions for levy of additional surcharge in this Regulation and exemption provided thereof is in accordance with the provision of Electricity Act, 2003, Rules and Regulations framed under it including the Green Energy Open Access Rules, 2022 notified by Ministry of Power and other applicable Rules/Guidelines of the Central Government and orders passed in the subject matter by the Commission.

With regard to the clarification sought by some of the objectors for treatment to be given for levy of additional surcharge for existing RE capacity set up by Green Open Access consumer under prevailing order/ Regulation of the Commission, is concerned, it is to mention that the levy of additional surcharge in respect of existing RE capacity shall be governed as per the provisions of respective Orders/Regulations of the Commission under which these projects are commissioned as provided in these Regulations. Any further RE generation capacity tied up by the consumer over and above contracted demand with distribution licensee for availing energy through Green Energy Open Access after notification of these

Regulations shall be governed as per the provisions of these Regulations for the purpose of levy of additional surcharge.

In view of the above, the said Regulation is modified in the final Regulation.

31. Regulation 17.5, Standby charges for drawl of power by Green Energy Open Access customer from distribution licensee

In case the green energy open access consumer is unable to procure/schedule power from the generating sources with whom they have the agreements to procure power due to outages of generator, transmission systems and the like, standby arrangement shall be provided to Green Energy Open Access consumer by the distribution licensee of the area of its supply and the licensee shall be entitled to collect Standby charges as Twenty-Five per cent of the energy charges applicable to consumer tariff category in the prevailing rate schedule specified in relevant Tariff Order passed by the Commission on year to year basis.

Provided also that the standby charges shall be in addition to the applicable tariff on standby energy supplied by the Distribution Licensee to the Green Energy Open Access Consumer.

Provided further that the standby charges shall not be applicable, if the green energy open access consumer has given notice, in advance at least a day in advance before closure time of Day Ahead Market on “D – (minus) 1” day, “D being the day of delivery of power for standby arrangement to the distribution licensee.

Provided also that Green Energy Open Access consumers would have the option to arrange standby power from any other source.

Comments/Suggestions of the Stakeholders:

Regulation 17.5

- 31.1. Some of the objector has suggested that the standby charges will be applicable on power drawn over and above contract demand of consumer. If Green energy open access consumer draws power within contract demand, then such consumer will be liable to pay the Tariff payable under relevant category of that consumer and no standby charge is payable.
- 31.2. Some of the objector has stated that as per the draft regulation, it is mandatory on part of DISCOMs to provide for standby arrangements to green open access consumers if such consumers fail to procure / schedule power from open access sources. Further, it is provided that the standby charges shall be at 25% of the energy charge applicable to consumer tariff category in the prevailing rate schedule specified in relevant tariff orders passed by Commission on year-on-year basis. Further, it is stated that, the Commission in the Tariff schedule for DISCOMs has already approved Temporary Tariff applicable for similar usages. Accordingly, it is suggested that the temporary tariff shall be applicable for supply of electricity for temporary period and not availing power supply on regular basis under a proper agreement. In case of standby arrangement also, the supply will not be on regular basis in absence of proper agreement. Based on above it is requested to provide for in these Regulations that the supply of power under standby arrangement to green open access consumers at temporary tariff rate as approved in the tariff schedule by the Commission from time to time. In case, the Commission decides to provide for standby charges at 25% of energy charges applicable to consumer tariff category, it is requested to clarify that, the energy charge shall also include applicable FPPPA charges. Further, 25% of demand charges shall also be recovered as a part of standby arrangement in addition to normal demand charges and the Commission may also stipulate the specified maximum duration under the regulation for which power under standby arrangement shall be provided by DISCOMs. The Objectors have further submitted that the requirement for standby supply will arise only in respect of those

consumers who are meeting their electricity requirement mainly through green energy open access without maintaining corresponding contract demand with DISCOMs. In case, consumer has availed green open access from infirm RE sources such as wind /solar, there would be drawl requirement from DISCOMs on regular basis i.e. even during non-standby period due to infirm generation from RE sources. Therefore, the Commission is requested to incorporate provisions in the regulations for dealing with such cases of drawl from DISCOMs on regular basis by such consumers without maintaining corresponding contract demand with DISCOMs.

- 31.3. Some of the objector has suggested for modification in Regulation considering various options as under:

Option I :

17.5 Standby charges for drawl of power by Green Energy Open Access user from distribution licensee

In case the green energy open access user is not maintaining contract demand with the licensee, the Discom shall have no obligation to supply power to such user as per Section 49 of the Electricity Act read with Section 42.

Option 2:

Regulation 17.5 Standby charges for drawl of power by Green Energy Open Access customer from distribution licensee

In case the green energy open access consumer is unable to procure/schedule power from the generating sources with whom they have the agreements to procure power due to outages of generator, transmission systems and the like, standby arrangement shall be provided to Green Energy Open Access consumer by the distribution licensee of the

area of its supply and the licensee shall be entitled to collect Standby charges as Twenty-Five per cent of the total cost of marginal power being arranged for such standby facility.

Provided also that the standby charges shall be in addition to the applicable tariff on standby energy supplied by the Distribution Licensee to the Green Energy Open Access Consumer. Further the objector has suggested to delete the second proviso to Regulation 17.5.

- 31.4. Some of the objector has suggested that the outages should be limited to system which are in control of generator or consumer scope and in this case DISCOM should be allowed to charge Stand by Charges. Transmission and Distribution system are not in control / scope of generator / consumer hence during their outages, Standby charges should not be applicable.
- 31.5. Some of the objector has suggested to clarify whether the standby charges is applicable only in case of outage of RE generator when such RE generator is not able to generate power due to low wind/radiation. Further, it is suggested that a charge of Rs. 15 lakhs per MW is extremely onerous. It should not be more than Rs. 1 lakhs per MW as is typically prevailing in other states.
- 31.6. Some of the objector has suggested to specify the charges in accordance with Rules specified by Ministry of Power (MoP) while notifying Green Energy Open Access Rules 2022.
- 31.7. Some of the objector has suggested to add the following provisions in this Regulation:

“The open access consumer has to take power from an alternate sources like the distribution licensee and the charges for maintaining standby arrangements for such consumers should be reflective of the costs incurred by distribution licensee for providing these support service.”

31.8. Some of the objector has stated to reduce the proposed banking charges so that the Open Access from green energy sources remain viable. The proposal of restricting the banked quantum to 30% becomes defunct and needs to be reevaluated by the Commission.

31.9. Some of the objector has suggested to modify the first para of Regulation 17.5 as under:

In case the green energy open access consumer is unable to procure/schedule power from the generating sources with whom they have agreements to procure power due to outages of generator, ~~transmission systems and the like~~, except in case of force majeure events standby arrangement shall be provided to Green Energy Open Access consumer by the distribution licensee of the area of its supply and the licensee shall be entitled to collect Standby charges as not more than ten per cent of the energy charges applicable to consumer tariff category in the prevailing rate schedule specified in relevant Tariff Order passed by the Commission on year to year basis.

31.10. Some of the objectors have sought the clarity from the Commission as to when the Standby charges would be payable by the consumer. It is further stated that normally, a captive user/consumer seeking Open Access retains Contract Demand with its distribution licensee. In such a scenario, the Standby Charges ought to be payable only when the power consumed by a consumer is in excess of its Contract Demand/ sanctioned load. e.g. A consumers' total power requirement is 12 MVA. Out of 12 MVA, consumer is seeking 5 MVA from Open Access and remaining 7 MVA is retailed with the distribution licensee. In case such consumer is not able to procure power from its contracted generator and the entire 12 MVA is obtained from the distribution licensee, in such a scenario, the consumer ought to be liable to make payment towards standby charges of 5 MVA [i.e. 12 MVA of

power supplied minus 7 MVA of Contract Demand].

31.11. Some of the objectors have suggested to give examples regarding applicability of Standby Charges.

31.12. Some of the objectors have suggested to modify the first para of Regulation 17.5 and its second proviso as under:

In case the green energy open access consumer is unable to procure/schedule power from the generating sources with whom they have the agreements to procure power due to outages of generator, transmission systems and the like, standby arrangement shall be provided to Green Energy Open Access consumer by the distribution licensee of the area of its supply and the licensee shall be entitled to collect Standby charges as Twenty-Five per cent of the Fixed Charges and Energy Charges applicable to consumer tariff category in the prevailing rate schedule specified in relevant Tariff Order passed by the Commission on year to year basis.

Provided further that the standby charges shall be applicable at the same rate applicable to relevant consumer tariff category of the Consumer including the Fixed/Demand Charge, if the green energy open access consumer has given notice, in advance at least a day in advance before closure time of Day Ahead Market on “D – (minus) 1” day, “D being the day of delivery of power for standby arrangement to the distribution licensee.

31.13. Some of the objectors have suggested to modify the first proviso to Regulation 17.5 as under:

Provided also that only the standby charges shall be applicable on the quantum which is not procured by green energy open access consumer from Generating Sources with who they have agreement due to outages of generator, transmission systems and the like.

- 31.14. Some of the objectors have suggested to exempt consumers from standby charges, as they impose an unwarranted burden on the consumers. These charges seem to unfairly impact consumers who are already fulfilling their responsibilities by regular charges for the services they avail. As such extra fees can lead to increased financial strain, particularly on vulnerable consumers.
- 31.15. Some of the objector has submitted that the distribution licensee may not be obligated to provide for standby supply to green energy open access consumer at one day notice or to draw stand by power with only marginal premium instead of recovery of full cost for providing such standby supply.

Commission's decision:

The Commission noted the submissions of various Objectors in regard to the applicability and levy of Standby charges for drawl of standby power by Green Open Access Consumer from Distribution licensee. The Commission has considered the objections wherein it is stated that standby charges be kept in accordance with Green Energy Open Access Rules, 2022 notified by the Ministry of Power, GoI, and the same is accepted by the Commission and accordingly the necessary change is made in the Regulation.

As regard to the submission of some of the objector that the standby charges @ 25% shall also be applicable on FPPPA charges, demand charges, etc., the Commission clarifies that as per the Tariff Order for Distribution licensee the FPPPA charge is also considered as part of energy charge and therefore, standby charges shall be levied accordingly.

The submissions of some of objectors that the standby charges shall be levied at temporary tariff approved by the Commission in the tariff Schedule

is concerned, the proposed charges by the Commission is as per the provisions of Green Energy Open Access Rules, 2022. Therefore, the suggestion is not accepted.

As regard to levy of standby charges on energy drawn from DISCOM on regular basis on account of infirm nature of energy generation available from Wind/Solar Power project, the Commission clarifies that the standby charges shall be applicable for drawl of energy from distribution licensee without maintaining corresponding contract demand with Distribution Licensee in case the open access consumer is unable to procure the power from generating sources with whom they have the arrangement to procure power due to outages of generator, transmission assets and the like. The drawl of energy by Green Energy Open Access consumers corresponding to contract demand maintained with the Distribution Licensee, the treatment for such drawl from distribution licensee shall be governed as per the GERC Open Access Regulations, 2011 as amended from time to time. As per the explanation provided in the Rules 2022, the standby charge shall mean the charges applicable to open access consumers against the standby arrangement provided by the distribution licensees, in case the open access consumer is unable to procure power from the generating sources with whom they have the arrangements to procure power due to outages of generator, transmission assets and the like. Hence, the purpose of supply of power by distribution licensee under standby arrangement shall only cover the eventualities as mentioned in the explanation provided in the Rules 2022.

The objection raised by some of the objector that drawl of energy from distribution licensee on regular basis without maintaining corresponding contract demand with distribution licensee for the reasons other than covered in the Rules 2022 by the green open access consumer is not

qualified for supply of power under standby arrangement is concerned, it seems valid. We clarify that the eventuality under which the standby supply arrangements available to green energy open access consumer is limited to outage of generator, transmission assets and the like as per the provisions of the Green Energy Rules 2022 read with provisions of these Regulations. It is further to clarify that the supply under standby arrangement is a support service provided by the distribution licensees to facilitate green energy open consumer and the licensee have right to verify such eventualities whether occurred or not and the green energy open access consumer shall require to prove the same. Failure to it by green energy open access consumer, the consequences as per provisions of Act, Rules and Regulations shall follow.

With consideration of above, the said Regulation is modified in the final Regulation.

32. Regulation 17.6- Banking

- (i). *Banking facility shall be provided to the consumers availing Green Energy Open Access.*
- (ii). *For the purpose of these Regulations, the banking means surplus energy injected in the grid and credited with the distribution licensee the energy by Green Energy Open Access consumers and that shall be drawn than it shall require to pay banking charge to compensate the distribution licensee.*
- (iii). *The banking shall be permitted on monthly/billing cycle basis.*
- (iv). *The permitted quantum of banked energy by the green energy open access consumers shall be at least 30% of total monthly consumption of electricity from the distribution licensee by the consumers.*
- (v). *Provided that if the generator situated in the State of Gujarat and connected with the Inter-State Transmission System (ISTS) grid and selling power outside the Gujarat State, the banking charges shall not be applicable.*
- (vi). *The Banking Charges shall be adjusted in kind @ 8% of the energy banked.*

(vii). *The injection of energy from 'Green Energy' Generating Station to the grid shall also be subject to scheduling subject to the limits specified in GERC (Forecasting, Scheduling, Deviation settlement Mechanism and related matters of wind and Solar generating stations) Regulations, 2019 as amended from time to time and relevant Orders of the Commission on different renewable energy based (Green Energy) projects.*

Provided that the credit for banked energy shall not be permitted to be carried forward to subsequent banking cycles and shall be adjusted during the same banking cycle.

Provided further that the unutilized surplus banked energy shall be considered as lapsed at the end of each banking cycle and the renewable energy generating station shall be entitled to get Renewable Energy Certificate (REC) to the extent of the lapsed banked energy.

Provided further that the unutilized surplus banked energy shall be considered as lapsed at the end of each banking cycle and the renewable energy generating station shall be entitled to get Renewable Energy Certificate (REC) to the extent of the lapsed banked energy as per certificate issued by concerned distribution licensee wherein the consumer is situated.

Comments/Suggestions of the Stakeholders:

32.1. The Commission notes that the objectors have mainly raised the following objections:

- (i) It is required to clarify that this surplus energy shall not be utilized by the concerned DISCOM/Utility to discharge its RPO. Also require detail procedure for issuance of such REC.
- (ii) How till the settlement of banked units allowed – will it be TOD wise or monthly. For each of applicable across the RE sources, it is suggested that the energy accounting be done for each 15 minute time blocks/TOD blocks, and surplus generation should be allowed

to be settled during the same time blocks or lower time blocks after payment of banking charge.

- (iii) The Commission has proposed a Monthly Banking facility for consumers who opt for Green Energy Open Access (GEOA). However, banking charges of 8% of banked energy are to be imposed, as per GEOA Rules. This practically imposes a significant reduction in revenue from energy generation. It is suggested that no further charges be imposed on customers who are seeking renewable power either from Solar, Wind or Hybrid as the case may be. The Commission may clarify further that banked energy can't be the entire energy injected from the system, but only such energy that's not utilized during the generation time.
- (iv) Consumer should be allowed to withdraw Banked Energy in any TOD after paying the Banking Charges i.e Peak/Off-peak banked energy should be allowed to withdraw during any TOD slot.
- (v) The banking limit should not be capped at 30% since the Regulations aim at incentivising GEOA. The Rules pertaining to GEOA promulgated by the Central Government provide for banking of at least 30% of power. The position should thus, be clarified in light of the Rules as well as the object sought to be achieved by the Regulations. The banking provided under Central Government's Rules is 100%. The Regulations may thus, be amended.
- (vi) The definition of "Banked Energy" should be incorporated in Regulation, that *"Banked Energy" shall mean energy injected into the grid in a particular TOD and which not gets utilized in same TOD and meant for utilization in other TODs during Same Banking Cycle.*
- (vii) It is suggested to add *"Provided that banking charge shall not be applicable on LAPSED ENERGY"*.
- (viii) The Banking facility shall also be provided to the consumers in the State who are connected with STU/Distribution network, availing

green energy open access from the Renewable plants installed outside the State and connected through ISTS/ CTU network.

- (ix) The banking to be permitted without any limitation of banking quantum as % of consumption of electricity by the consumers from Distribution Licensee.

Commission's decision:

Now we deal with the above objections one by one.

Some of the Objectors have requested to clarify that the surplus energy shall not be utilized by the concerned DISCOM/Utility to discharge its RPO and also required detailed procedure for issuance of such REC, is concerned, we note that the fulfilment of RPO of the Distribution Licensee / Utility is governed by the provisions of the Regulations for RPO notified by the Commission read with the tariff orders of the Commission on Green Energy based generation Sources. Hence, no further clarification is required. Further, it is clarified that the issuance of REC if any, on lapse energy is concerned, the same is governed under the REC Regulations notified by the Central Commission and same is not subject matter of the present Regulations. Hence, the same is rejected.

Now we deal with the issue raised by the Objectors that how the settlement of banked units shall be allowed – will it be TOD wise or monthly basis. Further the suggestions that the energy accounting be done for each 15 minute time blocks/TOD blocks basis and the surplus generation should be allowed to be settled during the same time blocks or lower time blocks after payment of banking charge is concerned, we note that the energy available from the RE sources are intermittent in nature and it also vary during the intra-day, season, month etc. The variance in such generation when utilised for consumption by the consumer there may be chances of varying supply provided by the licensee. Further, the banked energy if any,

available from RE sources is allowed to be utilised to the Green Energy Open Access consumer in a manner specified in the Regulation. We also note that the power requirement of the licensee vary during peak and off-peak period as well as during intra-day also. The pricing for procurement of electricity by the licensee during peak period is quite high. Hence, the banked energy which is available to the Green Energy Open Access consumer allowed by the licensee shall be affected by way of higher price for supply for such energy by the licensee. Similarly, during off-peak period when the price for electricity procurement is lower and allowed to use to Green Energy Open Access Consumer, the banked energy be helpful to reduce the power procurement cost of the licensee. Considering the views/suggestions of the stakeholders and considering the impact on the grid operation and power procurement of distribution licensee due to intermittent nature of RE generation, it is decided that during the billing cycle, the banked energy, if any, available during peak period (i.e. Time of Use -ToU period specified in the Tariff Orders of the Commission for respective distribution licensees from time to time) shall be allowed to be utilized during peak period and off-peak period (i.e. period other than peak period). Further, in case of the banked energy available during off-peak period (i.e. period other than peak period) shall be utilized during off-peak period only by the green energy open access consumer. Accordingly, the necessary modification is carried out in the Regulation 17.6.

The banking is defined in the Regulation as per the provisions of Green Energy Open Access Rules, 2022 and amendment made in it by MoP, GoI. Further, the suggestion/objections of the objectors that the banking be evaluated on 15 minute time block basis and allow the surplus banked energy at any time is concerned, it is clarified that the banked energy shall be evaluated on 15 minute time block basis and such banked energy is permitted to be utilized during the same billing period in accordance with the modified carried out in the Regulation 17.6.

Now we deal with the issue raised by the Objectors that the Commission has proposed a Monthly Banking facility for consumers who have opted for Green Energy Open Access (GEOA). The banking charges are of 8% of banked energy to be imposed in the Regulations is higher and the same may be kept lower. It is submitted that the banking charge practically imposes a significant reduction in revenue from energy generation. It is suggested that no further charges for customers who are seeking renewable power either solar, wind or hybrid be imposed on Green Energy Open Access consumer. It is also stated to clarify further that banked energy can't be on the entire energy injected in the system, but only such energy that's not utilized during the generation time is concerned, we note that the banking facility and charges are specified under these Regulations as a part of promotion of renewable / green energy based generation and consumption. Moreover, it is provided as facility to the beneficiary to meet out its requirement of renewable energy, however the distribution licensees are affected due to intermittent nature of Green Energy generation. It affects financial of the licensee by way of requirement of balancing power in the form of ramp up or ramp down of existing generating plant from which licensees are procuring the power or from other sources. Sometimes, it requires to procure the power from other sources i.e. power exchange etc. The aforesaid activity compel the licensee to incur higher cost on the supply of electricity to the consumers who are procuring power from Green Energy sources under Green Energy Open Access and availing banking facility. Further, the banked energy is allowed to be utilised on billing cycle basis in a manner provided in the Regulation. In such situation, the banked energy which are surplus energy available at consumer end may sometime not required by the licensee, however, the same is provided as facility support to consumer. Sometimes the banked energy is availed by the beneficiary on peak time which leads to meet out by the licensee against the banked energy drawn by such consumer. Thus,

the banking facility creates financial impact on the licensee which requires to be paid by the concerned entity. When the banking facility is provided as per these Regulations read with GEOA Rules 2022 notified by MoP, GoI, the applicability of banking charges on banked energy shall be applicable.

Some of the objectors have suggested that the Consumer should be allowed to withdraw Banked Energy in any TOD after paying the Banking Charges i.e Peak/Off-peak Banked energy should be allowed to withdraw during any TOD slot is concerned, the Commission has dealt this issue appropriately in this SoR.

Some of the objectors have suggested that the banking limit should not be capped at 30% since the regulations aim at incentivizing GEOA. The Rules pertaining to GEOA promulgated by the Central Government provide for banking of at least 30% of power. The position should thus, be clarified in light of the Rules as well as the object sought to be achieved by the Regulations. The banking provided under Central Government's Rules is 100%. The Regulations should thus, be amended in order to incentivize green energy. In this regard, it is to state that the provision for banking facility provided in the Regulation is in accordance with the provisions of Green energy Rules notified by the MoP. Hence, the objections are not sustainable.

Some of the objectors have suggested that the definition of “Banked Energy” should be incorporated in Regulation, that *“Banked Energy” shall mean energy injected in the grid in a particular TOD and which not gets utilized in same TOD and meant for utilization in other TODs during Same Banking Cycle* is concerned, the Commission notes that the definition of banking provided in the Regulation is in accordance with the provisions of GEOA Rules, 2022 and amendments made in it notified by the MoP, GoI. Hence, the objections are not acceptable.

Some of the objectors have suggested that to add “*Provided that banking charge shall not be applicable on LAPSED ENERGY*” is concerned, it is clarified that the banking is provided to the consumers as facility to utilize the surplus energy if any injected in to the grid which is neither need of licensee instead it affects the licensee, but the facility is provided to GEOA consumers against the charges payable for such facility. Hence, the banking facility once provided by the licensee for utilization by it during the billing cycle but the consumer failed to utilize the same, in that condition lapse energy if any remained at the end of billing cycle, no banking charges be made applicable on lapsed energy is correct, because once banking facility is allowed by the licensee and keep such energy banked at relevant time either it is necessary for licensee or not and allowed to the consumer for utilization in the billing cycle, which attract charges, the banked energy needs to be utilized by such consumers during the specified banking period. Failure to utilize banked energy during the billing cycle in a manner specified in these Regulations, the unutilized banked energy, if any, shall be considered as lapsed energy. Hence, no banking charge shall be levied on such lapsed energy.

Some of the objectors have raised the issue that the Banking facility shall also be provided to the consumers in the state of Gujarat who are connected with STU/Distribution network, availing green energy open access from the Renewable plants installed outside the state of Gujarat and connected through ISTS/ CTU network is concerned, it is to clarify that the said aspects shall be governed as per the applicable CERC Regulations readwith MoP Rules. Accordingly, necessary modification is made in final Regulations.

Some of the objectors have submitted that the banking to be permitted without any limitation of banking quantum as % of consumption of electricity by the consumers from Distribution Licensee is concerned, we

note that the provisions related to banking facility is stipulated in these Regulations with consideration of the provision of GEOA Rules notified by the Ministry of Power, GoI, hence, the suggestion from the objector is not accepted.

Comments/Suggestions of the Stakeholders:

Regulation 17.6 (i)& (ii)

- 32.2. Some of the objectors have stated that there is no explicit provisions in the draft regulations which provides for option to consumers to avail banking facility or not. The Discoms are required to arrange for storage facility / flexible generation capacity for meeting balancing power requirement in providing banking facility due to infirm nature of wind / solar generation and dynamic consumer demand. Considering the availability of limited storage/flexible generation resources with DISCOMs for providing banking facility. Based on above, the objector has suggested to incorporate enabling provisions in the regulations providing option to consumers to avail banking facility so as to reduce strain on DISCOMs to the some extent, towards arranging storage / flexible generation and cost implication thereof, in case consumer do not opt for banking facility.

Regulation 17.6 (ii)

- 32.3. Some of the objectors have suggested to clarify that any excess supply above the consumption on a 15-minute time slot shall be considered as banking or the banking be calculated on the monthly aggregate excess of consumption and generation for each TOD slots. It is further stated that as per the FOR Final Report on Model Regulation for Green Energy Open Access, off peak banked quantum can be adjusted for the peak period consumption at additional charge. Such provision is not provided in the draft Regulations.

Regulation 17.6 (ii)

- 32.4. Some of the objectors have stated that as per the clause 17.6 (ii), the banking means surplus energy injected in the grid and credited with the distribution licensee energy by Green Energy Open Access consumers and that shall be drawn than it shall require to pay banking charge to compensate the distribution licensee. It is further submitted that in case of open access, entire energy generated from RE project will be injected into the grid and credited to DISCOMs. Accordingly, it is suggested that the reference to “surplus energy injected in the grid” is not relevant in case of open access transaction involving generation and consumption at different location. Further, there is no clarity as to how surplus energy injected will be worked out for providing banking facility. It is suggested to modify the clause 17.6 (ii) bringing more clarity in regard to banking of energy under green open access clarifying that Green open access energy which is not consumed within same 15 minute time block basis shall be considered as surplus energy for proving banking facility.

Regulation 17.6 (iii)

- 32.5. Some of the objectors have suggested that banking shall be permitted on same Time of Day block basis over a monthly/billing cycle when Green Open access Consumer has opted for banking facility.

Some of the objectors suggested to add following paras:

The project which are not registered under REC mechanism and opting for banking facility, the energy accounting shall be carried out by energy injection worked out at the receiving end sub-station of GETCO, shall be set-off against the consumption during the consumers’ billing cycle on same Time of Day block basis.

The project which are not opted for banking facility, the energy accounting shall be carried out by energy injection worked out at the receiving end

sub-station of GETCO, shall be set-off against the consumption on 15 minute time block basis.

Provided further that the energy banked during peak TOD slots may also be drawn during off-peak TOD slots, but the energy banked during off-peak TOD slots may not be drawn during peak TOD slots.

32.6. Some of the objectors have stated that units lapsed at the end of billing cycle are already consumed by some or the other consumer of DISCOM. Considering the units consumed by DISCOM will be benefited and also help the DISCOM to fulfil its RPO obligation, the generator may be provided the benefit of such energy by way of deemed purchase of such energy by DISCOM by making provisions in the Regulations.

32.7. Some of the objectors have suggested to modify Regulation 17.6 with following options:

Option 1:

(iii). The banking shall not be permitted on and settlement of energy accounting should be done on prevailing time block basis.

Provided surplus energy generated, if any, shall be considered as inadvertent flow.

Further, it is suggested to delete the provision of Draft Regulation 17.6 (ii) related to levy of banking charges at 8% of energy banked.

Option 2:

(iii). The banking shall be permitted on monthly basis.

Provided surplus energy generated, if any, shall be considered as inadvertent flow.

(vi). The Banking Charges shall be at the cost of marginal power purchased by licensee to provide the banking facility.

Some of the objectors have suggested that Banking shall be permitted on Annual (Apr-Mar) basis. Banking should be applicable for the period of 25 Years from the COD of the Captive Project.

- 32.8. Some of the objectors have suggested that the permitted quantum of banked energy by the green energy open access consumers shall be up to 30% of the total monthly consumption of electricity from the distribution licensee by the consumers.

- 32.9. Some of the objectors have suggested to add following paras in the Regulations 17.6:

The excess energy banked shall be treated as dumped energy and shall not be carried forward to next month.

- 32.10. Some of the objectors have suggested to provide in Regulation 17.6 as under:

The banking shall be permitted on billing cycle basis (i.e. 12 months banking).

Provided that the credit for banked energy shall be permitted to be carried forward to subsequent months the credit energy banked during the month shall be adjusted during the following subsequent month.

Provided that unutilized energy at the end of the year shall be consider as deemed purchase by Distribution Licensees at the rate as per the agreement executed between DLs and RE Generators as per the RE Policy and Order of the Commission issued thereunder or eligible for REC.

- 32.11. Some of the objectors have suggested to define the billing cycle stating that billing cycle should be equal to 1 quarter of FY. This will allow consumer to use Banked units for 3 months.

Regulation 17.6 (iv)

Some of the objectors have stated that there is ambiguity in the interpretation Regulation 17.6 (iv) due to reference of permissible quantum of at least 30% of total consumption.

Some of the objectors have requested to consider that there are limited resources in terms of storage facility / flexible generation which are essential for providing energy banking facility to green open access consumers apart from significant cost implications on DISCOMs. Moreover, in case of State of Gujarat, the intra-state ABT mechanism is in place since long back. Therefore, it may not be appropriate to simply apply the general rules / regulations being followed in the other States in the State of Gujarat and it shall be made applicable considering applicable ABT mechanism and other appropriate State oriented parameters.

Accordingly, it is requested to reconsider / review the provisions related to banked energy at clause no. 17.6 (iv) and also bring more clarity for avoiding implementation related issues.

- 32.12. Some of the objectors have suggested to allow 100% banking in Order to promote RE.
- 32.13. Some of the objectors have stated that the permitted quantum of banked energy by the green energy open access consumers shall be at least 30% of total monthly consumption of electricity from the distribution licensee by the consumers. It is suggested that the proposed quantum of banked energy i.e. upto 30% by the green energy open access consumers shall be allowed during day hours only looking to high power availability during day hours, limited generation availability during non-solar hours and absence of long duration of energy storage in the State.

32.14. Some of the objectors have requested clarity on the following aspects:

Calculation of Permitted Quantum / Applicability to Different Renewable Sources / Carry Over and Expiry of Banked Energy / Banking Process and Accountability.

Further, it is stated that if the developer is being required to pay banking charges for the billing cycle-based banking facility being made available by the distribution licence, the same should not be linked with any other restriction.

32.15. Some of the objectors have sought clarity on the word “at least 30%”. It is stated that at least 30% means the consumer can bank up to 30% of their monthly consumption. The quantum at the consumer discretion or the Distribution Licensee will provide banking for more than 30% of the consumer's monthly consumption. Also at what level such 30% shall be computed i.e. of the total monthly consumption of the electricity from the Distribution Licensee (30% of the total consumed energy by the consumer) or the 30% of energy post the consumption from the open access (i.e. only the 30% of the net quantum drawn from the Distribution Licensee by the consumer post the OA adjustment).

32.16. Some of the objectors have stated that the banking charge percentage is relatively high and may be keep lower rate.

32.17. Some of the objectors have suggested that the permitted quantum of banked energy by the Green Energy Open Access consumers shall be fifty percent /seventy percentage/hundred percentage of the total monthly generation / injection of electricity from the renewable energy plant.

32.18. Some of the objectors have suggested that the banking has been made on monthly basis and the limit as per the Rules is defined as “atleast 30%” and not maximum 30%.

Regulation 17.6 (vi)

- 32.19. Some of the objectors have suggested to modify some of the provisions of Regulations 17.6 (vi) as under:

The Banking Charges shall be adjusted in kind @ 8% of the energy banked, with distribution licensee, and banking charges shall be applicable only when Green Open access Consumer has opted for banking facility.

In case the consumer/project developers do not desire to utilize the green energy attributes (RE) component for fulfilment of RPO, the distribution licensee shall consider such consumed energy of the consumers towards fulfilment of its different types of RPO based on such energy consumed.

Further, it is clarified that in case consumer does not wishes to avail banking facility the energy accounting should be on 15 minute time block basis and therefore no banking charges should be levied.

- 32.20. Some of the objectors have suggested to compute banking charges after evaluating the actual impact on DISCOMs power purchase cost of allowing such banking by the DISCOMs.

- 32.21. Some of the objectors have suggested that in the long-term interest of renewable energy, banking charges must fully compensate DISCOMs for the balancing cost of banked energy. This will promote fairness, grid stability, and encourage investments in energy storage solutions, thereby fostering the growth of the renewable energy sector.

Further, it is suggested to devise a proper methodology in regulation for computation of banking charges to be determined by Commission in cost reflective manner on quarterly basis which shall be levied for providing banking facility.

- 32.22. Some of the objectors have suggested that the banking charges should be reduced to 4% from 8%.

Commission's decision:

The Commission notes that the objectors / stakeholders have mainly made the following objections / suggestions with regard to Draft Regulation 17.6 (i) to (vi):

The Regulations is not providing any options to consumers whether it want to avail banking facility or not. The option of availing banking facility be provided to consumer. Such options be provided to consumer to reduce the strain on DISCOMs for providing the banking facility, is concerned, it is to state that the banking facility is provided in the Regulations with intent to utilize the generated green energy by the open access customer to meet out its demand. However, due to intermittent nature of RE generation the facility provided to open access customer to utilize it at later. Further, such facility impact on the distribution licensee as such energy required to provide by the licensee at different time having different cost and also impacting on the generation as well as price of power procurement of the licensee. It also affects other consumers. Hence, any option as to whether provided to open access customer that it does not desire to avail banking facility and also not liable to pay banking charge and the surplus energy as lapsed energy, if any available after set-off is not qualify for payment by the licensee and not entitled for REC, it is beneficial to licensee, open access consumer, as well as other entities/consumers. Hence, we are of the view that such option if desire to avail by any Green Energy Open Access customer foregoing its rights of banking facility by way of giving undertaking to the licensee in this regard the same is permitted. Accordingly, new Regulation is incorporated in the Regulation 17.6 of the final Regulations.

- (i) With regard to suggestion to provide clarity on definition of banking that any excess supply above the consumption on a 15-minute time slot shall be considered as banking or would the banking be calculated on the monthly aggregate excess of consumption and generation for each TOD slots, off

peak banked quantum can be adjusted for the peak period consumption at additional charge etc., is concerned, we note that the banked energy in off-peak period is if allowed to utilize during peak period, it is to be kept in mind that the power requirement of the licensee is higher during the peak period of the day than off-peak period. Moreover, the power procurement price during peak period of the day is higher than off-peak period. Any decision for allowing utilization of banked energy of off-peak period during peak period will affect the power procurement of distribution licensee by way of the higher power purchase cost. Further, it also affects real time grid operation to the SLDC. Considering the above, we are of the view that at present the aforesaid suggestion of the stakeholder is not acceptable and it is provided to allow utilization of peak period banked energy during peak period as well as off-peak period. Whereas off-peak period banked energy is allowed to utilize during off-peak period only, so as to minimize imbalance in the grid operation. The necessary modification is made in the Regulation 17.6 accordingly.

- (ii) In case of open access, entire energy generated from RE project will be injected into the grid and credited to DISCOMs. Therefore, reference to “surplus energy injected in the grid” is not relevant in case of open access transaction involving generation and consumption at different location. Further, there is no clarity as to how surplus energy injected will be worked out for providing banking facility. It is suggested that Green open access energy which is not consumed within same 15-minute time block basis shall be considered as surplus energy for proving banking facility is concerned, in this regard, we note that the provision in the Regulations are kept in line with the provision of the banking provided in the Rules. In order to address the issue raised by the objector as to how banked energy will be evaluated, it is decided to modify Regulation 17.6 in the final Regulations.

- (iii) Some of the objectors have suggested that banking shall be permitted on same Time of Day block basis over a monthly/billing cycle when Green Open access Consumer has opted for banking facility is concerned, the same is already dealt with in the SoR.
- (iv) Some of the objectors have suggested that in Regulation 17.6 the following provisions be added:
 - (a) The project which are not registered under REC mechanism and opting for banking facility, the energy accounting shall be carried out by energy injection worked out at the receiving end sub-station of GETCO, shall be set-off against the consumption during the consumers' billing cycle on same Time of Day block basis is concerned, the same is already dealt with in the SoR.
 - (b) The project which are not registered under REC mechanism and has not opted for banking facility, the energy accounting shall be carried out by energy injection worked out at the receiving end sub-station of GETCO, shall be set-off against the consumption on 15 minute time block basis is concerned, the same is already dealt with in the SoR.
 - (c) Provided further that the energy banked during peak TOD slots may also be drawn during off-peak TOD slots, but the energy banked during off-peak TOD slots may not be drawn during peak TOD slots is concerned, the same is already dealt with in the SoR.
- (v) Some of the objectors have suggested that units lapsed at the end of billing cycle are already consumed by some or the other consumer of DISCOM. Considering the units consumed by DISCOM will be benefited and also help the DISCOM fulfil its RPO obligation, the generator may be provided the benefit of such energy by way of deemed purchase of such energy by DISCOM by making provisions in the Regulations is concerned, the

mechanism for surplus energy if any available after availing banking facility at consumption place is provided in accordance with the provisions of Electricity Rules, 2022 notified by MoP, GoI. Hence, the contention of the objectors which are contrary to the provisions of aforesaid Rules are not accepted.

- (vi) Some of the objectors have suggested that the banking period be considered as one of the options stated below:

Option 1:

Some of the objectors have suggested that the banking shall not be permitted on and settlement of energy accounting should be done on prevailing time block basis.

Provided surplus energy generated, if any, shall be considered as inadvertent flow.

Option 2:

The banking shall be permitted on monthly basis.

Provided surplus energy generated, if any, shall be considered as inadvertent flow.

The aforesaid objection/suggestion are concerned with the banking period, settlement of banked energy, banking charges, surplus energy if any available at the end of banking cycle/period and its treatment etc. These aspects are already dealt with in the SoR.

- (vii) Some of the objectors have suggested that the Banking Charges shall be at the cost of marginal power purchased by licensee to provide the banking facility is concerned, the said suggestions is dealt by the Commission as part of banking charges in the present SoR.

- (viii) Some of the objectors have suggested that banking shall be permitted on

Annual (Apr-Mar)/Quarterly basis is concerned, we note that the Rules notified by the MoP, Central Government provides that banking shall be permitted at least on monthly basis. The banking facility provided to the Green Energy Open Access consumers with a view to promote renewable energy based consumption in the State as well as country. The banked energy needs to be provided by the utility/licensee later on to such consumer. The licensee shall bear the price difference of such banked energy provided by it, the impact of the same on the licensee may be positive or negative. Further, the energy accounting of such banked energy will impact the licensee if longer banking period is provided. The consumption of energy is reflected in billing carried out by the licensee on billing cycle basis. The request of the objectors that the banking facility be provided on yearly basis will affect the licensee by way of price difference of such banked energy and such energy allowed to be utilized by the licensee which may vary in different time slot of the day, like peak and off-peak hours, monthly basis, seasonal basis etc. Such variation due to banked energy may also impact the power system.

Further, it is necessary to refer the provisions of GEOA Rules, 2022 dated 6.06.2022 and amendments made in it by MoP, GoI reads as under:

8. Banking:

(1) Banking shall be permitted at least on a monthly basis on payment of charges to compensate additional costs, if any, to the distribution licensee by the Banking and the Appropriate Commission shall fix the applicable charges.

The aforesaid provisions of the Rules and explanation given in it made it clear that the banking is permitted for at least period of month. We note that the billing carried out by the licensee is with consideration of consumption by the consumer which include the procurement of power

from different sources, i.e. licensee, own generating plant, purchase from third party sale either bilateral or through exchange. Hence, the treatment for energy injection and drawl through open access carried out by the consumer is reflected in the billing cycle. Thus, the energy accounting become easy and transparent from consumer as well as licensee perspective in case banking is considered on billing cycle basis. Further, so far as suggestion of objector that the banking period be allowed for six months/one year is concerned, we note that it affects the energy accounting as well as also uncertainty created for grid operation management due to drawl and injection of energy from the grid by the open access consumer if longer banking period is allowed. Therefore, the suggestion is not accepted.

- (ix) Some of the objectors have suggested that banking should be applicable for the period of 25 Years from the COD of the Captive Project is concerned, the period of banking facility be provided to the open access consumer as per the provision of GEOA Rules, Regulations and Orders of the Commission for the project life is permitted for the project commissioned after Notification of these Regulations read with relevant Tariff Orders on Renewable Energy base technology, issued by the Commission from time to time.
- (x) Some of the objectors have suggested that excess energy banked shall be treated as dumped energy and shall not be carried forward to next month is concerned, we note that the provisions of surplus/excess energy if any available needs to be treated as per the provisions of Electricity (Promoting Renewable Energy Open Access) Rules, 2022, which provides that the banked energy shall not be permitted to be carried forward to subsequent month and the credit of energy banked during the month shall be adjusted during the same month/billing cycle. Accordingly, the treatment be provided for such banked energy.

- (xi) Some of the objectors have suggested that the proviso to be incorporated stating that the credit for banked energy shall be permitted to be carried forward to subsequent months the credit energy banked during the month shall be adjusted during the following subsequent months is concerned, the same is against the provisions made in GEOA Rules, 2022 and subsequent amendments in it. Hence, the same is not accepted.
- (xii) Some of the objectors have suggested that the proviso to be incorporated stating that unutilized energy at the end of the year shall be considered as deemed purchase by DISCOMs at the rate as per the agreement executed between DISCOMs and RE Generators as per the RE Policy and Order of the Commission issued thereunder or eligible for REC is concerned, we note that the provisions made in the Regulations are in accordance with the Electricity (Green Energy Open Access) Rules, 2022 and amendments made in it. According to aforesaid rules surplus energy if any available at the end of billing cycle basis be considered as lapsed. The purpose of banking provided to the Green Energy Open Access consumer is as a facility to utilise the surplus energy, if any, available from RE generators be utilised by Green Energy Open Access users in a manner specified in these Regulations with a view to promote RE generation and consumption. Further, the energy utilisation permitted on later part affects commercially and technically to the licensee. It is the duty of Green Energy Open Access consumer to generate/purchase such energy in a manner that the same may be utilised in stipulated period and it will not affect the licensee on commercial aspects. Hence, failure of utilisation of surplus energy if any available is not considered as deemed sale to the licensee. Therefore, the request of the objector is not accepted.
- (xiii) Some of the objectors have suggested that billingcycle be defined in the Regulations. It is suggested that billing cycle should be equal to 1 quarter

of Financial Year. This will allow consumer to use banked units for 3 months is concerned, we note that the GERC (Supply Code and Related Matters) Regulations stipulates that the billing cycle shall be as decided by the distribution licensee but in any case, not later than a period of 2 months. Accordingly, the word 'billing cycle' used in the Regulations is to be construed. Hence, the suggestion of the objector that billing cycle period be one quarter of financial year is not accepted.

- (xiv) Some of the Objectors have stated that there is ambiguity in the interpretation of Draft Regulations 17.6 (iv) due to reference of permissible quantum of at least 30% of total consumption is concerned, we note that the provisions made in the Regulations are in accordance with the provisions of Electricity (Promoting renewable energy through Green Energy Open Access) Rules, 2022. Hence, the contention of the objectors is not accepted.
- (xv) Some of the Objectors have suggested to reconsider/review the provisions related to banked energy at Regulation no. 17.6 (iv) of Draft Regulation and also bring more clarity for avoiding implementation related issues with consideration of the ABT mechanism operating in the State and consequential impact of it on the DISCOMs etc. is concerned, we note that the permitted bank quantum facility shall be at least 30% of total monthly consumption of the electricity from the distribution licensee by the consumer as provided in the Electricity (Promoting Renewable Energy through Green Energy Open Access) Rules, 2022, which is a clear in language and there is no ambiguity in it. Further, ABT mechanism is operating as per the provisions of ABT Orders passed by the Commission while the banking facility provided in the present Regulations is with consideration of Rules notified by the MoP, GoI, which need to be implemented in the State. Both ABT Order and the Regulations are operated as per the provisions of respective Orders and Regulations with

consideration of harmonious interpretation.

- (xvi) Some of the Objectors have suggested to allow 100% banking in Order to promote RE is concerned, the same is already dealt in earlier part of this SoR, wherein it is stated that the banking facility is provided with consideration of the provision of Electricity (Promoting renewable energy through Green Energy Open Access) Rules, 2022 and amendment made in it and protecting the interest of the licensee, generator and consumer.
- (xvii) Some of the Objectors have suggested to clarify whether banking facility is also available for consumers sourcing/intending to source energy from inter-state connected RE plants (located within or outside Gujarat) is concerned, it is to clarify that the said aspects shall be governed as per the applicable CERC Regulations readwith MoP Rules. Accordingly, necessary modification is made in final Regulations.
- (xviii) Some of the Objectors have suggested that the proposed quantum of banked energy i.e. upto 30% by the green energy open access consumers shall be allowed during day hours only looking to high power availability during day hours, limited generation availability during non-solar hours and in the absence of long duration of energy storage in the State is concerned, we note that the banking facility is provided to all Renewable Energy (Green Energy) based generation irrespective of the different technology of RE generator. Hence, in order to consider the green energy availability during day hours is not correct. The banking facility is provided to the Green Energy Open Access consumers irrespective of the generation of such energy and consumption of it by the open access consumer. The Commission has in this SoR dealt with the issue regarding the period of banking, settlement of banked energy, charges payable on banked energy etc.
- (xix) Some of the Objectors have suggested that presently there is no storage

obligations on Distribution licenses and OA consumers. Allowing banking facilities in fact discourages consumers to adopt storage as consumers are using the grid as perpetual storage. Therefore, it is strongly recommended that consumers installing RE plants more than contracted demand must have appropriate storage obligations. In this regard, we note that the aforesaid suggestion of the objector seems good with consideration of grid operation as well as the impact of banking on the licensee power requirement. Any storage facility created by the green energy open access consumer at its place of consumption and such banked energy utilized by them at requirement of time by such consumer the impact of it on the grid as well as the licensee be minimized or avoided to some extent. However, the banking facility provided in the Regulations as per the provisions of Rules notified by the MoP, GoI with intent to promote the RE generation. So far as energy storage is concerned, the banking facility is provided limited to billing cycle basis and its utilization is allowed in a manner specified in the Regulation, so as the impact of banked energy utilization is lowest on the grid and licensee.

- (xx) Some of the Objectors have suggested to clarify on the following points: Calculation of Permitted Quantum / Applicability to Different Renewable Sources / Carryover and Expiry of Banked Energy / Banking Process and Accountability. In this regard, it is to be noted that the Regulations provides the necessary provisions with regard to the aforesaid aspects. Further, the applicability of these Regulations is allowed for different types of RE sources. The period of banking and after completion of banking period the treatment for banked energy already specified in these Regulations. Hence, no further deliberation is required.
- (xxi) Some of the Objectors have suggested that if the developer is being required to pay banking charges for the billing cycle-based banking facility being made available by the distribution licensee, the same should not be

linked with any other restriction. Accordingly, the Commission may make appropriate change in the aforesaid provision. In this regard, it is to be noted that the Open Access is granted with consideration of provisions of GEOA Rules, 2022, these Regulations and the other applicable Regulations notified by the Commission. Further, it is also necessary to see the Grid operations, impact of banking facility on power system i.e. grid operation and management, including commercial impact of it etc. on licensee. Considering above, the suggestion is not accepted.

- (xxii) Some of the Objectors have stated that the use of the terminology “at least 30%” mean that the consumer can bank up to 30% of their monthly consumption quantum at the consumer discretion or the Distribution Licensee will provide banking for more than 30% of the consumer's monthly consumption or not and also at what level such 30% shall be computed i.e. of the total monthly consumption of the electricity from the Distribution Licensee (30% of the total consumed energy by the consumer) or the 30% of energy post the consumption from the open access (i.e. only the 30% of the net quantum drawn from the Distribution Licensee by the consumer post the OA adjustment). In this regard it is to be noted that the banking facility in Energy terms is specified in the Electricity (Promoting Renewable Energy through Green Energy Open Access) Rules, 2022 and amendments made in it. The language of the aforesaid provision is plain and clear wherein it is stated that the banking facility is provided that the permitted quantum of banked energy by the Green Energy Open Access consumer shall be at least 30% of total monthly consumption of electricity from the distribution licensee by the consumer. Hence, the contention of the objector for further clarification does not survive.
- (xxiii) Some of the Objectors have stated that the proposed charges for banking is relatively higher. A proportional adjustment by banking charges at a reduced rate may be allowed. In this regard it is to state that the aforesaid

objection of the stakeholder is not accepted as the interest of licensee and other consumers as well as the impact of such energy and facilities provided for it on the existing network /power system of the State needs to be considered while notifying the Regulations. With consideration of aforesaid aspects, the Commission has decided about banking facility and banking charges thereof etc. while framing the Regulations.

- (xxiv) Some of the Objectors have suggested that the banking has been made on monthly basis and the limit as per the Rules is defined as “atleast 30%” and not maximum 30%.

The words ‘at least’ on monthly basis under Rule 8(1) may be deleted, as it contradicts with provisions stipulated under Proviso to Rule 8 (2):

Provided that the credit for banked energy shall not be permitted to be carried forward to subsequent months and the credit of energy banked during the month shall be adjusted during the same month.

Based on above, the Objectors have submitted that banking should be provided as 100% in place of 30% otherwise it will make the renewable energy generation and consumption less viable.

The aforesaid contention of the objectors are not accepted as the language of Rules and based on it the provisions made in these Regulations are very clear and there is no ambiguity or discrepancy. Further, the banking facility is provided to the Green Energy Open Access Consumers with consideration of balancing interest of all other stakeholders also. Further, if the 100% banking is to be provided instead of at least 30% in that case the licensee’s power procurement and other aspects may get affected as the licensee are unable to forecast its power procurement on daily basis as the deviation occurred due to the banked energy be consumed by the consumer at different time period as permitted in these Regulations. The power procurement of the licensee may get affected due to uncertainty

about utilization of banked energy by the Green Energy Open Access Consumers and its impact on overall power procurement of the licensee as well as on the power system on real time basis. Hence, the objection of the Objector is not acceptable.

Comments/Suggestions of the Stakeholders:

- 32.23. Some of the objectors have suggested that as per the current provisions, the REC project needs to be registered under CERC mechanism and NLDC shall issue the RECs. However, in the draft Regulations, it is mentioned that the Distribution Licensee shall issue a certificate. It is requested to clarify whether the mentioned "certificate" proposed to be issued by Discom is REC or is it a separate certificate to certify the quantum of surplus banked energy lapsed at the end of banking cycle.
- 32.24. Some of the objectors have suggested to consider lapsed banked energy as inadvertent flow and modify the second proviso to 17.6 (vii) accordingly. Further, the third proviso to clause no. 17.6 (vii) is repetition of second proviso only. Accordingly, third proviso may be deleted.
- 32.25. Some of the objectors have suggested to align with the provisions of Scheduling charges required for GEOA with the GERC (Terms and Conditions of Intra-State Open Access) Regulations, 2011 and readwith GERC (MYT) Regulations, 2016.
- 32.26. Some of the objectors have stated that the proposed process of issuing of REC for surplus energy is a cumbersome process to determine, calculate and issuance of REC and trading thereafter by numerous GEOA Consumer whereas it will be easy to compensate surplus power at a specified rate which is at the rate of average price determined during reverse bidding in last 6 months OR surplus energy should be allowed for selling on the power exchanges. Based on the above, it is proposed that the Commission should consider providing compensation for lapsed surplus energy vis-à-vis

issuance of REC Certificate at the rate of average price determined during reverse bidding in last 6 months OR surplus energy should be allowed for selling on power exchanges.

- 32.27. Some of the objectors have stated that existing banking charges are on consumed units irrespective of generation and consumption in any time slot where is in this Regulation (GEOA Reg. 2024) is applicable to only surplus energy. It is further stated that the existing Banking Charge is very high. It is more than 50% of the solar tariff, if it is compared with the present tariff discovered in the bidding process conducted by GUVNL. It is requested to declare that the banking facility provided under said order dated: 11.06.2021, for 7.00 hours to 18.00 hours (daily basis for HT consumers and 7.00 hours to 18.00 hours (monthly basis for other demand based consumers etc. are to be discontinued and new method of monthly banking with a banking charges are applicable as per these Regulation (i.e. GEOA Regulation 2024) when it come in to force.
- 32.28. Some of the objectors have suggested that if the generator situated in the State of Gujarat and connected with the Inter-State Transmission System (ISTS) grid and selling power inside/outside the Gujarat State, the banking charges shall not be applicable.

Commission's decision:

The Commission has noted the various objections/suggestions made by the Objectors in regard to banking charges:

- (i) Some of the objectors have submitted that the Banking Charges shall be adjusted in kind @ 8% of the energy banked, with distribution licensee, and banking charges shall be applicable only when Green Open access Consumer has opted for banking facility is concerned, we note that the stakeholders have made various comments with regard to banking charge.

Some of the objectors suggested that the banking charge shall be 8% while some of the objectors have stated it may be lower than it. Some of the objectors suggested that the Commission may carryout some technical study and decide the banking charge as per the actual impact on the licensee or open access consumers. Some of the objectors have suggested that to devise a proper methodology in regulation for computation of banking charges to be determined by Commission in cost reflective manner on quarterly basis which shall be levied for providing banking facility. Some of the objectors have suggested to adopt the banking charge as mentioned in the Model Regulations of Forum of Regulators and there is no need to carryout any study in this regard.

- (ii) Some of the objectors have submitted that in the long-term interest of renewable energy, banking charges must fully compensate DISCOMs for the balancing cost of banked energy. This will promote fairness, grid stability, and encourage investments in energy storage solutions, thereby fostering the growth of the renewable energy sector.
- (iii) It is also suggested to devise a proper methodology in regulation for computation of banking charges to be determined by Commission in cost reflective manner on quarterly basis which shall be levied for providing banking facility.
- (iv) Some of the objectors have submitted that the charges must be reduced to 4%. The proposed charges of 8% are very high charge and will be against the objective of Government of promoting renewable energy. Similar example may be taken from Chhattisgarh which has applied 2% banking charge only.

We note that aforesaid the diversified suggestions of the stakeholders in regard to banking charges. We note that the banking charges proposed in the draft regulations at 8% as per FoR recommendation in model draft regulations. However, the banking charges needs to be determined with

consideration of the impact of it on the grid management including commercial implication on licensee and thereby on other consumers. We also note that the Commission has specified banking charge for different technology based generation and at present they are applicable. Accordingly, we decide that the banking charge for green energy/RE at the rate decided by the Commission for solar projects which are at present applicable wherein the Commission has deliberated the aforesaid issue in detail and decided the rates accordingly. The Commission decide to modify the said Regulation in the final Regulations.

With consideration of the diversified suggestions/objections of various objectors on banking charges, the Commission decide the banking charges in the final Regulations on temporary basis. We also decide to revisit the aspects of banking charges separately and the same will be decided in accordance with law.

- (v) The suggestions that in case the consumer/project developers do not desire to utilized the green energy attributes (RE) component for fulfilment of RPO, the distribution licensee shall consider such consumed energy of the consumers towards fulfilment of its different types of RPO based on such energy consumed is concerned, we note that the rights of green attribute/renewable attribute available to the entity/persons who consume such energy for self consumption. The benefit of consumption of such RE/green power is available with such entity only. The rights of such entity/person be available to other entities/person, i.e. licensee only on mutual understanding/agreement between the parties. Hence, the contention of the objector is not accepted.
- (vi) Some of the objectors requested to clarify that in case consumer does not wishes to avail banking facility the energy accounting should be on 15 minute time block basis and therefore no banking charges should be levied is concerned, we note that the said aspects is already dealt with in the SoR.

(vii) Some of the objectors have submitted that as per the current provisions, the REC project needs to be registered under CERC mechanism and NLDC shall issue the RECs. However, in the draft Regulations, it is mentioned that the Distribution Licensee shall issue a certificate, please clarify if the mentioned "certificate" proposed to be issued by Discom or is it REC or is it a separate certificate for the quantum of surplus banked energy lapsed at the end of banking cycle is concerned, we note that the provision of surplus energy if any available after set-off of banked energy on billing cycle/monthly settlement basis be qualified for issuance of REC is as per the provision of GEOA Rules, 2022 notified by MoP, GoI. The Commission has in the draft Regulations accordingly proposed for the RECs for such surplus energy if any available, after settlement of banked energy during the banking period. Thus, this clause is in accordance with the MoP Rules. Hence, the contentions of the Objector are not acceptable.

(viii) Some of the objectors have requested to consider that for RE projects registered under CERC REC mechanism, entire generated energy shall be eligible for issuance of REC. Therefore, issuance of REC to the extent of surplus energy will lead to duplication of REC namely REC issued on entire energy generation and REC for portion of generated energy which remained surplus at consumer end. Further, under the Open Access, energy injected into the grid will be wheeled and credited to DISCOMs for giving set off at consumer end. Therefore, surplus energy, if any, will be accounted in DISCOM / consumer's account only. In view of above, the Commission is requested to consider lapsed banked energy as inadvertent flow and modify the second proviso to 17.6 (vii) accordingly is concerned, we note that the project registered under REC mechanism and project which are not registered under REC mechanism are different and distinct with regard to commercial mechanism and issuance of RECs if any. In case of REC project, the RECs are issued on entire generation of renewable energy by

such project. While in case of the project which are not governed under REC mechanism in that case the energy generated from such project is not qualified for REC. Only surplus energy available after utilization of the generated and banked energy is qualify for issuance of REC. Thus, the issuance of RECs in respect of energy generated from the projects registered under REC mechanism and the projects which are not registered under REC mechanism, are different and distinct. Therefore, the contention of the objectors is not correct and same is not accepted.

- (ix) Some of the objectors have suggested that the third proviso to clause no. 17.6 is repetition of second proviso only. Accordingly, third proviso may be deleted is concerned, we note that the suggestion is valid and correct. Accordingly, we decide to delete 3rd proviso of the Draft Regulation 17.6.
- (x) Some of the objectors have requested to align with the provisions of Scheduling charges required to pay for GEOA with the GERC (Terms and Conditions of Intra-State Open Access) Regulations, 2011 and readwith GERC (MYT) Regulations, 2016 is concerned, we note that the said aspects is already dealt with in the SoR.
- (xi) The suggestion that if the generator situated in the State of Gujarat and connected with the Inter-State Transmission System (ISTS) grid and selling power inside/outside the Gujarat State, the banking charges shall not be applicable. In this regard, the Commission clarifies that if the generator situated in the State of Gujarat and connected with the Inter-State Transmission System (ISTS) grid and selling power inside/outside the Gujarat State, the said aspects shall be governed as per the applicable CERC Regulations readwith MoP Rules.
- (xii) Some of the objectors have suggested that in 3rd proviso to Draft Regulation 17.6 (vii), it may be provided that the unutilized surplus Banked Energy shall not be considered as lapsed at the end of each banking cycle

and shall be purchased by Distribution licensee at the rate specified in the relevant government policy/ commission order instead of renewable energy generating station /Captive Consumer shall be entitled to get Renewable Energy Certificate (REC) to the extent of the lapsed banked energy as per certificate issued by concerned distribution licensee wherein the consumer is situated is concerned, in this regard, we note that the provisions made in the third proviso of proposed Draft Regulations 17.6 (vii) is in accordance with the provision of Green Energy Open Access, Rules 2022 and amendments made in it. Further, the contention of the objectors that the surplus energy if any available at the end of banking cycle be considered as purchased by the licensee as per the tariff rate specified in the Government Policy or Regulations is against the aforesaid Rules. The Rules provided that surplus energy if any available after the set-off at consumer place at the end of billing cycle be considered for issuance of RECs. Hence, the contentions of the objectors are not accepted.

(xiii) Some of the objectors have stated that the proposed process of issuance of REC for surplus energy to the GEOA consumer is a cumbersome process to determine, calculate and trading of RECs, whereas it will be easy to compensate surplus power if any available, after availing banking facility at specified rate of average price determined during competitive reverse bidding process in last 6 months or surplus energy should be allowed for selling on the power exchanges. In this regard, we note that the provisions for surplus energy if any available after availing banking facility at green energy open access customer place shall be eligible for REC as per MoP, Rules. The suggestion of the objectors are contrary to provision of Rules. Hence, the same is not accepted.

(xiv) Some of the objectors have submitted that existing banking charges are on consumed units irrespective of generation and consumption in any time slot whereas this Regulation is applicable only on surplus energy injected and banked. The existing Banking Charge is very high. It is more than 50%

of the solar tariff, if it is compared with the present tariff discovered in the bidding process conducted by GUVNL. Further it is requested to the Commission to declare that the banking facility provided under order dated 11.06.2021, for 7.00 hours to 18.00 hours (daily basis for HT consumers and 7.00 hours to 18.00 hours (monthly basis for other demand based consumers etc.) are to be discontinued and new method of monthly banking with a banking charges shall be applicable as per these Regulations is concerned, we note that the banking facility and charges specified by the Commission in the Order for different RE technology which are installed and commissioned during the control period specified in the respective orders shall continue to be governed as per the relevant decision/provision in the respective Orders/Regulations. The banking facility and other provisions specified in these Regulations shall come in to force from the date of its notification and applied to the projects commissioned after date of notification of these Regulations. Hence, the contention of the objectors are not accepted.

(xv) In view of the above discussion and decisions, the said Regulations is modified in the final Regulations.

33. Regulation 17.7

In respect of consumers availing banking of power from generating plants set up under various policies including the Green Energy Open Access; following shall be the hierarchy of settlement:

The Green Energy Open Access availed by the Green Energy Open Access consumer from the different Green Energy generating plants having different mechanism for energy accounting and set-off of the energy simultaneously in the same time block and/or daily basis and/or monthly basis/billing cycle basis. In such case the energy accounting is carryout by the SLDC/ALDC/Distribution Licensee for giving set-off as under:

1. *The energy wheeled/transmit from the renewable energy generator (green energy generator) shall be given energy accounting treatment for long-term open access, medium-term open access or short-term open access as per the provisions of relevant Government Policy under which such projects set up or commissioned, orders of the Commission on renewable energy generator read with the wheeling agreement with the licensee.*
2. *The priority for energy accounting purpose for the purchase of the Green Energy (RE) through LTA/MTOA/STOA shall be as under:*
 - (i) *LTA based purchased energy/wheeled energy at highest;*
 - (ii) *MTOA based purchased energy/wheeled energy after LTA energy;*
 - (iii) *STOA based purchased energy/wheeled energy after MTOA energy;*
 - (iv) *Priority amongst same category of aforesaid open access cases FIFO (First in First Out) principle shall be followed.*
3. *The surplus energy after consumption set-off in a time-block basis or daily basis is accounted as banked energy and the same shall be consumed by the consumer as per the provisions of these Regulations.*
4. *The banking facilities available, settlement of energy mechanism is provided different for different renewable energy generators.*
5. *If the total energy generated from the different RE sources cannot be accounted for and adjusted in the aforesaid manner, the surplus energy available has to be treated as per deemed sale to the distribution licensee at the rate specified in the relevant Government Policy, Commission Order, and agreement between the parties at the tariff rate specified in the relevant Government Policy, Commission Order, and agreement between the parties.*
6. *Green Energy Open Access will get priority over fossil fuel-based power.*

Comments/Suggestions of the Stakeholders:

Regulation 17.7.(2)

- 33.1. Some of the objectors have stated that the clause 17.7 (2) of draft

regulation provides that the priority for energy accounting for purchase of green energy through LTA / MTOA / STOA shall be as under:

- (i) LTA based purchased energy/wheeled energy at highest;
- (ii) MTOA based purchased energy/wheeled energy after LTA energy;
- (iii) STOA based purchased energy/wheeled energy after MTOA energy;

It is suggested to consider that the period of open access i.e. LTA / MTOA / STOA has no bearing on the energy settlement mechanism. Under the Open Access, the energy settlement is to be carried out on FIFO (First Come First Out) principle basis irrespective of whether open access is under LTA / MTOA / STOA.

It is further stated that a consumer may have Open Access simultaneously from different green energy generating plants having different mechanism for energy settlement such as settlement on 15-minute time block basis, daily basis, monthly basis etc. The Open Access under these regulations which provides for monthly banking facility and levy of banking charge on banked energy basis will further add complexity in energy settlement mechanism. Considering the complexity and implementation related issues in energy settlement for green open access consumers having multiple Open Access simultaneously and to avoid disputes / grievances with consumers and to bring uniformity, it is requested to notify detailed guidelines by the Commission with illustrations for energy settlement mechanism to be adhered to by DISCOMs.

Accordingly, it is requested to modify the clause no. 17.7 (2) providing that the energy settlement mechanism for green open access consumers shall be as per the FIFO principle in accordance with the separate detailed guidelines as may be issued by the Commission.

Moreover, it is requested to incorporate a provision for charging at applicable retail tariff for energy drawn from DISCOMs after giving set-off of green open access energy in the settlement period against consumer's consumption.

- 33.2. Some of the objectors have suggested to retain the provisions of Draft Regulation 17.7 as it is.

Commission's decision:

We note that the aforesaid provisions is provided in the Regulations to avoid the litigation/disputes amongst the licensee and the consumers who are availing open access from different sources under different Government policy or orders of the Commission or Regulations notified by the Commission as well as the open access under these regulations.

It is fact that the open access granted to the consumers / licensees / generators either long term, medium term and short-term basis as availed by the beneficiaries i.e. consumer, licensee or generator.

When any person/consumer availed the open access in different mechanisms of open access wherein the energy accounting is different, the same need to be applied. Further the drawl and consumption of energy in 15 minute time block basis or different time slots of the day or daily basis or monthly basis also required to see and give effect while carryout energy accounting. When there are multiple open access operating as availed by the open access consumer, it is necessary to give effect with consideration of open access granted under the provisions of different policy/order /Regulations of the Commission. Further, the FIFO (First In First Out) principle is provided to the open access customer with consideration of the different open access availed by the consumer/customers, involving different mechanism for allowing energy settlement as and when in energy

accounting such requirement arise as per the provisions of respective Government Policy/Order/Regulations of the Commission. The principle provided in the Regulations 17.7 is with consideration of aforesaid aspects. Hence, we decide to retain the same.

Regulation 17.7 (2)

Comments/Suggestions of the stakeholders:

- 33.3. Some of the objector has requested to clarify that in case of same category of open access whether the FIFO priority shall be with respect to date of agreements or with respect to date of commencement of supply for a consumer with multiple sources of supply.

Commission's decision:

Some of the objectors have suggested that the Commission may clarify that the FIFO principle will be governed by the date of agreements or supply commencement date for a consumer with multiple sources of supply from the same category of different open access is concerned, it is to be noted that the FIFO principle is to be applied to the energy obtained under different open access mechanism by the consumer/customer under different provisions of policy, orders of the Commission or Regulations. Hence, no further clarification is required.

Comments/Suggestions of the Stakeholders:

Regulation 17.7 (3)

- 33.4. Some of the objectors have suggested to modify Regulation 17.7 (3) as under:

In respect of consumers availing banking of power from generating plants set up under various policies including the Green Energy Open Access; following shall be the hierarchy of settlement:

The surplus energy after consumption set-off on monthly/billing cycle

basis is accounted as banked energy and the same shall be consumed by the consumer as per the provisions of these Regulations.

Commission's decision:

In regard to the above suggestion, we note that the banking facility available to the consumer/customers under different policies, orders, regulations notified by the Commission have provisions for such benefits and charges, if any. The provisions made in these regulations are to be given effect to the energy availed by the open access customer in different policy/orders etc. as a part of energy settlement. Therefore, the suggestion of the stakeholders which are contrary to the provisions of the policy, orders etc. are not acceptable. The provisions made in these regulations is to provide clarity on the provisions for the open access granted under these regulations as well as the open access granted in different policy, regulations, orders etc.

Comments/Suggestions of the Stakeholders:

Regulation 17.7 (4) & (5)

- 33.5. Some of the objectors have stated that the above provisions requires more clarity in order to avoid interpretation related issues and disputes with consumers.
- 33.6. Some of the objectors have stated that the provisions at Draft Regulation 17.7 (5) which intend to consider surplus energy as deemed sale to DISCOMs is inconsistent with the second proviso to clause no. 17.6 (7) wherein it is provided that surplus energy shall be considered as lapsed at the end of each banking cycle. Therefore, the Commission is requested to modify the draft Regulation No. 17.7 (4) & (5) bringing more clarity and providing that the surplus banked energy shall be considered as lapsed at the end of each banking cycle.

Commission's decision:

Some of the objectors have submitted that the above provisions requires more clarity in order to avoid interpretation related issues and disputes with consumers. Some of the objectors have further submitted that the provisions at clause no. 17.7 (5) which intend to consider surplus energy as deemed sale to DISCOMs is inconsistent with the second proviso to clause no. 17.6 (7) wherein it is provided that surplus energy shall be considered as lapsed at the end of each banking cycle.

Therefore, it is requested to modify the clause no. 17.7 (4) & (5) bringing more clarity and providing that the surplus banked energy shall be considered as lapsed at the end of each banking cycle.

In this regard to the above suggestion, we note that Draft Regulation 17.6 is provided with regard to banking facility, while Regulation 17.7 and provision made in it are pertaining to accounting for energy availed from generating plant set up under different policy, orders and Regulations of the Commission including green energy open access granted in these regulations and following the hierarchy of settlement of energy. Thus, provisions of Draft Regulation 17.6 and 17.7 are different and distinct from each other. Further, the provisions of Draft Regulations 17.7 (4), (5) and (6) are different and distinct and reflected as a part of the Regulations with consideration to provide clarity of energy settlement under different provisions of banking facility and treatment for surplus energy provided under the different policies, orders and regulations. However, to provide more clarity, it is decided to modify the said Regulation in the final Regulations.

34. Regulation 17.7.1 and Regulation 17.7.2 of Draft Regulations

17.7.1 Scheduling charges

The Green Energy Open Access consumers shall require to pay Rs. 2000/MW/day basis scheduling charges to the SLDC or as decided by the Commission from time to time.

17.7.2 RE Deviation Settlement Charges (RE-DSM)

The Green Energy Open Access consumers (RE generators) from wind and solar energy shall be governed by the GERC (Forecasting, Scheduling, Deviation Settlement and Related Matters of Solar and Wind Generation Sources) Regulations, 2019 notified by the Commission. They shall be liable to pay deviation charges as per aforesaid Regulations as case may be. While other RE technology-based generators shall be governed by the provision of relevant technology based tariff determined by the Commission orders, Government Policies provisions under which such generators are commissioned or as decided by the Commission from time to time.

Comments/Suggestions of the Stakeholders:

Regulation 17.7.1

- 34.1. Some of the objectors have stated that no justification is provided for imposing scheduling charges of Rs. 2000/MW/Day. Further, it is suggested to provide for scheduling charges of Rs. 2000/MW/Month.
- 34.2. Some of the objectors have stated that the proposed scheduling charges is very high. Considering the nature of wind energy, Scheduling Charge should be not being imposed because wind forecasting, DAM mechanism is there, therefore there is no requirement for such charges. Apart from this, kind attention of the Commission is drawn on the scheduling charges applicable in different states as under: -
- Tamil Nadu Rs. 172 / transaction / day (FY:2324).
 - Karnataka - Rs. 33.61 / MW / day

Considering the above, it is requested to the Commission to remove the scheduling charges.

- 34.3. Some of the objectors have stated that the proposed costs to be imposed on the Green Energy Open Access consumer need to be reconsidered. This is an

additional burden on Open Access consumer which makes the RE project unviable. Further, such charges shall be considered by the Commission while Truing up and Determination of ARR and SLDC Fees & Charges. Therefore, it is requested to remove such charges.

- 34.4. Some of the objectors have suggested that the Green Energy Open Access consumers shall require to pay Rs. 2000 / day / transaction basis scheduling charges to the SLDC for STOA or as decided by the Commission from time to time. Further, the SLDC charges for LTA / MTOA will be levied as per SLDC tariff order.
- 34.5. Some of the objectors have requested to confirm that these charges shall only be applicable for green energy traded through energy exchange and not applicable for long term/medium term open access consumers. Because the charges proposed will be very high if made applicable to LTOA/MTOA consumers.
- 34.6. Some of the objectors have suggested that this clause need to be remove as various charges mentioned in the GEOA are deterrent to the promotion of green energy in the state. These are to be reduced to minimum level.
- 34.7. Some of the objectors have stated that Scheduling charges shall require to pay Rs. 2000/MW/ Month basis to the SLDC or as decided by the Commission from time to time.
- 34.8. Some of the objectors have stated that the Green Energy Open Access consumers shall require to pay scheduling charges to the SLDC or as decided by the Commission from time to time.
- 34.9. Some of the objectors have stated that the Green Energy Open Access consumers shall require to pay Rs. scheduling charges to the SLDC as specified by the Commission under sub-section (3) of section 32 of the Act or as decided by the Commission from time to time.

34.10. Some of the objectors have requested to restrict the proposed Scheduling Charges as mentioned under Clause No. 17.7.1 to be at Rs. 100/- /MW/ day instead of proposed Rs. 2000/- MW/ day to maintain affordability of the Green Energy Open Access for MSMEs.

Commission's decision:

The Commission has noted the submission made by various Objectors in regard to levy of Scheduling Charges. Considering the objections/suggestions, it is decided to modify the Draft Regulation 17.7 (1) and provided under the Regulation 17.8 under the heading "other charges" and numbered as Regulation 17.8.1 in the final Regulations. Moreover, the Draft Regulation No. 17.7.2 is now renumbered as 17.8.2 in the final Regulations. In addition to above, the provisions pertaining to levy of Monthly Transaction and Meter reading Charges as provided in the Regulation 15 of Draft Regulation is incorporated as part of Regulation 17.8 and numbered as 17.8.3 in the final Regulations. Accordingly, the said Regulation is modified in the final Regulations.

35. Regulation 17.8 of Draft Regulation - Payment Security Mechanism

The Green Energy Open Access consumer seeking open access of long-term access, medium-term and/or short-term Green Energy Open Access, the applicant/Green Energy Open Access Consumer shall require to open and provide an irrevocable Revolving Letter of Credit or Bank Guarantee in favour of the agency responsible for collection of various charges specified in these regulations for the estimated amount of various charges for a period of two months. Such LC/BG must be available to the State Nodal Agency, licensee during the period of Green Energy Open Access granted by them and avail by the open access consumer. Failure to provide above valid financial

instruments as payment security to the State Nodal Agency, licensee the green energy open access granted shall be considered as deemed cancelled.

Comments/Suggestions of the Stakeholders:

35.1. Some of the objectors have suggested to modify Regulation 17.8 as under:

Provided that, the Green Energy Open Access consumer seeking Short Term Green Energy Open Access, the applicant/Green Energy Open Access Consumer shall require to open and provide an irrevocable Revolving Letter of Credit or Bank Guarantee in favour of the agency responsible for collection of various charges specified in these regulations for the estimated amount of various charges for a period of two months at the time of application submission in central portal. Such LC/BG must be available to the State Nodal Agency; licensee during the period of Green Energy Open Access granted by them and availed by the open access consumer. Failure to provide above valid financial instruments as payment security to the State Nodal Agency, licensee the green energy open access granted shall be considered as deemed cancelled.

35.2. Some of the Objector has requested to clarify that financial instruments (irrevocable Letter of Credit or Bank Guarantee) towards Payment Security Mechanism shall be furnished at the time of application submission in central portal.

Commission's decision:

So far as suggestion to modify the proposed Regulation 17.8 is concerned the same is not accepted because the payment security mechanism provision provided in the Regulations is applicable to all category of open access, i.e. Long Term, Medium Term and/or Short-Term Green Energy Open Access sought by Open Access consumer. The purpose for providing for payment security mechanism is with intent to ensure security towards payment needs

to be made out by different category of open access consumers to the licensees/SNA. Therefore, the suggestion of the objector is not accepted.

Some of the objectors have requested to clarify that financial instruments (irrevocable Letter of Credit or Bank Guarantee) towards Payment Security Mechanism shall be furnished at the time of application submission in central portal is concerned, the suggestion is not acceptable as the suggestion of the objector falls in subject matter of Regulation 13 (V) and it is already taken care in the aforesaid Regulations.

Further, we note that the clarification with regard to the time at which the payment security is to be provided is need to be specified in the Regulations. We decide that the payment security mechanism shall be provided at the time of signing of agreement for transmission and/or wheeling of electricity for granting of LTOA/MTOA. While, in case of STOA the same is required to provide in advance to nodal agency. Accordingly the Commission decide to modify the Draft Regulation, 17.8 and re-numbered as Regulation 17.9 in Final Regulations.

36. Regulation 17.9 of Draft Regulation - Relinquishment and its Charges: Option for relinquishment of Under-Utilization or Non-Utilization of open access capacity in intra-State transmission system/distribution systems by Green Energy Open Access consumers.

(1) Long-term access:

A long-term Green Energy Open Access consumer may relinquish the long-term access rights fully or partly before the expiry of the full term of long-term access, by making payment of compensation for relinquishment capacity sought, as follows:-

(a) Long-term Green Energy Open Access consumer who has availed access rights for at least 12 years

(i) Notice of one (1) year – If such a Green Energy Open Access consumer submits an application to the State Transmission Utility/Transmission Licensee and/or Distribution Licensee at least 1 (one) year prior to the date from which such customer desires to relinquish the access rights, there shall be no charges.

(ii) Notice of less than one (1) year – If such a Green Energy Open Access consumer submits an application to the State Transmission Utility/Transmission Licensee and/or Distribution Licensee at any time less than a period of 1 (one) year prior to the date from which such customer desires to relinquish the access rights, such customer shall pay an amount equal to 66% of the transmission charges and/or wheeling charges for the relinquishment transmission capacity and/or Distribution Capacity requested and for the period falling short of a notice period of one (1) year.

(b) Long-term Green Energy Open Access consumer who has not availed access rights for at least 12 (twelve) years

Such customer shall pay an amount equal to 66% of the estimated transmission charges and/or wheeling charges (net present value) for the relinquishment of transmission capacity and/or distribution capacity requested and for the period falling short of 12 (twelve) years of access rights:

Provided that such a Green Energy Open Access consumer shall submit an application to the State Transmission Utility/Transmission Licensee and/or Distribution Licensee at least 1 (one) year prior to the date from which such customer desires to relinquish the access rights:

Provided further that in case a Green Energy Open Access consumer submits an application for relinquishment of long-term access rights at any time at a notice period of less than one year, then such customer shall pay an amount equal to 66% of the estimated transmission charges and/or wheeling charges (net present value) for the period falling short of a notice period of one (1)

year, in addition to 66% of the estimated transmission charges and/or wheeling charges (net present value) for the relinquishment transmission capacity and/or distribution capacity requested and for the period falling short of 12 (twelve) years of access rights.

(c) The discount rate that shall be applicable for computing the net present value as referred to in sub-clause (a) and (b) of clause (1) above shall be the discount rate to be used for bid evaluation in the Central Commission's Notification issued from time to time in accordance with the Guidelines for Determination of Tariff by Bidding Process for Procurement of Power by distribution Licensees issued by the Ministry of Power.

(d) The compensation paid by the long-term Green Energy Open Access consumer for the relinquished transmission capacity and/or distribution capacity shall be used for reducing transmission charges payable by other long-term Green Energy Open Access consumer and medium-term Green Energy Open Access consumer in the year in which such compensation payment is due in the ratio of transmission charges and/or wheeling charges payable for that year by such long-term customers and medium-term Green Energy Open Access consumers.

(2) Medium-term Green Energy Open Access consumers –

A medium-term open access Green Energy Open Access consumer may relinquish rights, fully or partly, by giving at least 30 days prior notice to the nodal agency:

Provided that the medium-term Green Energy Open Access consumer relinquishing its rights shall pay applicable transmission charges and/or wheeling charges for the period of relinquishment or 30 days whichever is less.

(3) Short-term Green Energy Open Access consumer

(a) The short-term open access schedules accepted by the nodal agency in advance or on first-come-first-served basis may be cancelled or revised downwards on an application to that effect made to the nodal agency by the short-term Green Energy Open Access consumer:

Provided that such cancellation or downward revision of the short-term open access schedules shall not be effective before expiry of a minimum period of two (2) days:

Provided further that the day on which notice for cancellation or downward revision of schedule is served on the nodal agency and the day from which such cancellation or downward revision is to be implemented, shall be excluded for computing the period of two (2) days.

(b) The person seeking cancellation or downward revision of short term open access schedule shall pay the transmission charges and/or wheeling charges for the first two (2) days of the period for which the cancellation or downward revision of schedule, as the case may be, in accordance with the schedule originally approved by the nodal agency, and thereafter in accordance with the revised schedule prepared by the nodal agency during the period of such cancellation or downward revision.

(c) In case of cancellation, operating charges specified in these Regulations shall be payable for two (2) days or the period of cancellation in days, whichever is less.

Comments/Suggestions of the Stakeholders:

Draft Regulation 17.9.1 (a) (ii)

- 36.1. Some of the objectors have suggested that the relinquishment charges are for the Transmission Charges and cannot be for the wheeling charges. Thus, the applicability of the same on wheeling charges shall be removed.

Commission's decision:

The Commission has noted the submission of the Objectors in regard to relinquishment charges. The Objectors have mainly submitted that there cannot be relinquishment charges for relinquishment of distribution capacity. The Commission is not in agreement with this suggestion. The Commission notes that the Open Access is for a particular and specific network segment i.e. from a specified point of injection to a specified point of drawl. When Open Access consumer relinquishes the Open Access rights granted to him for use of transmission and / or distribution network, he has to pay applicable relinquishment charges for the stranded capacity as specified in the Regulations towards transmission charges and / or wheeling charges for the period falling short of Open access period for which such rights were granted.

Considering the aforesaid discussion and decisions, the Regulation 17 is modified alongwith title in the final Regulations as under:

“

17. Energy Banking facility and Charges, Energy Settlement and Open Access Charges, Payment Security Mechanism and Relinquishment of Open Access Rights for Green Energy Open Access:

The provisions related to Green Energy Open Access charges, Energy Banking facility & Charges, Energy Settlement, Payment Security Mechanism and Relinquishment of Open Access Rights for Green Energy Open Access shall be as follows: -

- 1. Transmission charges;*
- 2. Wheeling charges;*
- 3. Cross subsidy Surcharge;*
- 4. Additional Surcharge;*
- 5. Standby Charges wherever applicable;*

6. *Banking facility and Charges;*
7. *Energy Settlement;*
8. *Other fees and charges such as SLDC fees, scheduling charges, deviation settlement (DSM) charges as per the relevant Regulations, Orders of the Commission, transaction charges and meter reading charges.*
9. *Payment Security Mechanism*
10. *Relinquishment and its Charges*

17.1 Transmission Charges

Green Energy Open Access Consumer using transmission system shall pay the charges as stated hereunder:

17.1.1 For use of inter-State transmission system:

(i) As specified by the Central Commission from time to time.

17.1.2 For use of intra-State transmission system:

The Transmission Charges for Long-Term, Medium-Term and Short-Term Green Energy Open Access shall be as determined by the Commission as per the prevailing provisions of the GERC (MYT) Regulations read with Orders passed by the Commission from time to time.

The applicable rate of Transmission Charge and transmission losses payable by Green Energy Open Access Consumer shall be specified by the Commission in its Tariff Order of Green Energy Technology based generation including projects like Wind, Solar, Wind-Solar Hybrid, Biomass, Bagasse, Hydro, Mini/Small/Micro Hydro, Municipal Solid Waste to Energy, Green Hydrogen and Green Ammonia based projects etc.

17.2. Wheeling Charges

- a. *Wheeling charges payable to distribution licensee, by the Green Energy Open Access Consumer for usage of its system shall be as determined by the Commission in the tariff order from time to time:*
 - i. *The Commission shall specify the wheeling charge of Distribution Wires Business of the Distribution Licensee in its Order passed under sub-section (3) of Section 64 of the Act:*
 - ii. *The rate of Wheeling Charge payable by Green Energy Open Access Consumer shall be specified by the Commission in its Tariff Order of Green Energy Technology based generation including projects like Wind, Solar, Wind-Solar Hybrid, Biomass, Bagasse, Hydro, Mini/Small/Micro hydro, Municipal Solid Waste to Energy based projects, Green Hydrogen and Green Ammonia based projects etc.*
 - iii. *Wheeling Charge for Green Energy Open Access shall be computed in Rs./kWh and it shall be charged on the energy wheeled.*
- b. *In addition to Wheeling Charge, Wheeling loss shall be applicable to green energy open access consumers or generator, as the case may be, seeking Green Energy Open Access and it shall be as determined by the Commission in the tariff order from time to time.*

17.3. Cross Subsidy Surcharge

1. *The Green Energy Open Access facility availed by a consumer shall be required to pay cross subsidy surcharge as provided in relevant Tariff Orders issued by the Commission from time to time, in addition to transmission and/or wheeling charges. Cross subsidy surcharge determined by the Commission on Per Unit basis shall be payable, on billing cycle basis, by the open access customers based on the actual energy consumed during the billing period through open access. The amount of surcharge shall be paid to the distribution licensee in whose area of supply such consumer is situated.*

2. *The Cross-subsidy surcharge shall be determined by the Commission in accordance with the provisions of Electricity Act, 2003 read with the principles and formula stipulated in the Tariff Policy notified by the Ministry of Power, Govt. of India.*

Provided also that such cross-subsidy surcharge shall not be levied in case distribution/transmission access is provided to a person who has established a captive generation plant for carrying the electricity to the destination of his own use.

Provided further that the cross-subsidy surcharge for Green Energy Open Access Consumer purchasing green energy, from a generating plant using green energy (renewable energy) sources, shall not be increased, during twelve years from the date of operating of the generating plant using renewable energy sources, by more than fifty percent of the surcharge fixed for the year in which open access is granted.

Provided also that Cross Subsidy Surcharge shall not be applicable in case power produced from a non-fossil fuel-based Municipal Solid Waste-to-Energy plant is supplied to the Green Energy Open Access Consumer.

3. *The surcharge, determined by the Commission under clause (a) of sub-Section (1) of Section 86 of the Electricity Act, 2003 shall not exceed twenty per cent of the Average Cost of Supply.*
4. *The Cross Subsidy Surcharge payable by a consumer shall be such so as to meet the current level of cross subsidy within the area of supply of the distribution licensee.*

17.4.Additional Surcharge

- i. *The Green Energy Open Access consumers are required to pay the Additional Surcharge as determined by the Commission with consideration of provisions*

of Act, Rules, Regulations and Orders of the Commission from time to time. The Additional Surcharge levied on Green Energy Open Access consumer shall not be more than the per unit fixed cost of power purchase of the distribution licensee concerned.

- ii. *The Additional Surcharge shall not be applicable to the Green Energy Open Access consumer to the extent of contract demand being maintained with the distribution licensee.*

Provided that in case the quantum of Green Energy Open Access availed by the Green Energy Open Access consumer is more than the contracted demand / sanctioned load with the licensee and no fixed charge or demand charge is being paid or payable for additional quantum, in that case the Additional Surcharge determined by the Commission from time to time as per the Orders of the Commission shall be applicable for such additional quantum availed over the contracted demand / sanctioned load.

Provided that for a person availing Green Energy Open Access, the Additional Surcharge shall be linearly reduced from the value in the year in which Green Energy Open Access was granted so that, if it is continued to be availed by this person, the Additional Surcharge shall get eliminated within four years from the date of grant of Green Energy Open Access.

Provided further that such additional surcharges shall not be levied in case distribution/transmission access is provided to a person who has established a Captive Generation Plant for carrying the electricity to the destination of his own use.

Provided also that Additional Surcharge shall not be applicable in case power produced from a Municipal Solid Waste-to-Energy plant is supplied to the Green Open Access Consumer.

Provided further that additional surcharge shall not be applicable in case of electricity produced from offshore wind projects, which are commissioned upto December, 2032 and supplied to the Open Access Consumers.

17.5. Standby charges for drawl of power by Green Energy Open Access customer from distribution licensee

In case the green energy open access consumer is unable to procure/schedule power from the generating sources with whom they have the arrangement to procure power due to outages of generator, transmission systems and the like, standby arrangement shall be provided to Green Energy Open Access consumer by the distribution licensee of the area of its supply and the licensee shall be entitled to collect Standby charges as Ten Percent of the energy charges including FPPPA charges as applicable to consumer tariff category in the prevailing rates schedule specified in relevant Tariff Order passed by the Commission on year to year basis.

Provided also that the standby charges shall be in addition to the applicable tariff on standby energy supplied by the Distribution Licensee to the Green Energy Open Access Consumer.

It is hereby clarified that in such situations the open access consumer has to take power from an alternate sources like the distribution licensee and the charges for maintaining standby arrangements for such consumers should be reflective of the costs incurred by distribution licensee for providing these support services.

Provided further that the standby charges shall not be applicable, if the green energy open access consumer has given notice, in advance at least a day in advance before closure time of Day Ahead Market on “D – (minus) 1” day, “D being the day of delivery of power for standby arrangement to the distribution licensee.

Provided also that Green Energy Open Access consumers would have the option to arrange standby power from any other source.

17.6. Banking facility and charges

- (i). *Banking facility shall be permitted to the consumers availing Green Energy Open Access.*
- (ii). *For the purpose of these Regulations, the banking means surplus green energy injected in the grid in 15 minutes time block basis and credited with the distribution licensee energy by the Green Energy Open Access consumers and that shall be drawn along with charges to compensate the distribution licensee by the open access consumer.*
- (iii). *The banking of energy shall be evaluated for energy accounting on 15 minutes time block basis. The difference between the injected energy from green energy generator available at consumption point and consumer's consumption in same 15 minutes time block basis shall be considered as banked energy.*
- (iv). *The consumption of banked energy shall be permitted on billing cycle basis in a manner specified as under :*

In the billing cycle, the banked energy, if any, available during peak period (i.e. Time of Use -ToU period specified in the Tariff Orders of the Commission for respective distribution licensees from time to time) shall be allowed to be utilized during the peak period and the off-peak period (i.e. period other than peak period) by the Green Energy Open Access consumer.

Provided further that in case of the banked energy available during off-peak period (i.e. period other than the peak period) shall be utilized only during off-peak period by the green energy open access consumer.

- (v). *The banking facility is an optional facility provided to the GEOA consumers. In case consumer choose not to avail the banking facility, the same shall be permitted on furnishing an Undertaking in this regard. Once such option is exercised by the consumer, the same shall not be permitted to change before completion of three years from date of operationalization of open access under such option. In case of banking facility is not desired to avail by GEOA consumer, the energy accounting shall be done in 15 minutes time block for open access energy accounting purpose. The surplus energy, if any, available after adjustment in 15 minutes time block basis shall be considered and qualify as inadvertent flow of energy and for that GEOA consumer shall not be entitled for REC to the extent of lapsed banked energy.*
- (vi). *The permitted quantum of banked energy by the green energy open access consumers shall be at least 30% of total consumption of electricity from the distribution licensee by the consumers during the billing period.*
- (vii). *When the generator situated in the State of Gujarat or in the other State, connected with the Inter-State Transmission System (ISTS) grid and directly supplying power to consumer(s) situated in the State of Gujarat who are only connected with Inter-State Transmission System/Grid but not connected with State Transmission Network and/or Distribution System of State, the provisions related to banking facility shall be governed as per applicable CERC Regulations readwith MoP Rules.*
- (viii). *The Banking Charge at rate of Rs. 1.50 per unit shall be effective from the date of notification of these Regulations up to 30th September 2024. Thereafter, the banking charge for the period starting from 1st October 2024 and onwards as decided by the Commission and separately notified by the Regulation, shall be applicable.*
- (ix). *When the Green Energy generator is situated either in State of Gujarat or outside the State of Gujarat and connected with Inter-State Transmission*

System/Grid and supplying power to the consumer connected with Intra-State Transmission and/or Distribution System of the State, in that case, the banking facility shall be governed as per the applicable CERC Regulations readwith MoP Rules.

(x). *The injection of energy from 'Green Energy' Generating Station to the grid shall also be subject to scheduling as per the GERC (Forecasting, Scheduling, Deviation settlement Mechanism and related matters of wind and Solar generating stations) Regulations, 2019 as amended from time to time and relevant Orders of the Commission on different renewable energy based (Green Energy) projects.*

(xi). *The credit for banked energy shall not be permitted to be carried forward to subsequent billing cycles and shall be adjusted during the same billing cycle in a manner specified under these Regulations.*

Provided further that the unutilized surplus banked energy shall be considered as lapsed at the end of each billing cycle and the renewable energy generating station shall be entitled to get Renewable Energy Certificate (REC) to the extent of the lapsed banked energy.

17.7. In respect of consumers availing open access from Green Energy generating plants set up under various policies of the Government /Orders/Regulations of the Commission including these Regulations, following shall be the hierarchy for settlement of energy:

The Green Energy Open Access availed by the Green Energy Open Access consumer from the different Green Energy generating plants having different mechanism for energy accounting and involving set-off of the energy simultaneously in the same time block and/or daily basis and/or monthly basis/billing cycle basis, as the case may be in accordance with applicable Order/Regulations of the Commission/Government Policy, in such case, the

priority for the energy accounting to be carried out by the SLDC/ALDC/Distribution Licensee for giving set-off against consumer's consumption shall be as under:

- 1) The treatment for settlement of energy wheeled/transmitted under long-term open access, medium-term open access or short-term open access from the renewable energy generator (green energy generator) shall be given as per the provisions of relevant Government Policy / Orders of the Commission on renewable energy generator under which such projects were set up or commissioned read with the wheeling/transmission agreement with the licensee.*
- 2) The priority for the purpose of energy accounting for availing the Green Energy (RE) through LTOA/MTOA/STOA shall be as under:*
 - (i) LTOA based purchased energy/wheeled energy shall have highest priority;*
 - (ii) MTOA based purchased energy/wheeled energy shall have priority after LTOA energy;*
 - (iii) STOA based purchased energy/wheeled energy shall have priority after MTOA energy;*
 - (iv) Priority amongst same category of aforesaid open access cases, FIFO (First in First Out) principle shall be followed.*
- 3) The surplus energy after giving consumption set-off in a 15 minute time-block basis shall be accounted as banked energy and the same shall be consumed by the consumer as per the provisions of these Regulations.*
- 4) The banking facilities available, settlement of energy mechanism is provided different for different renewable energy generators in accordance with applicable Order/Regulations of the Commission/Government Policy.*
- 5) If the total energy generated from the different RE sources cannot be accounted for and adjusted in the aforesaid manner, the surplus energy available has to be treated as lapsed energy eligible for RECs as specified in*

these Regulations for the projects qualified under these Regulations. While in case of projects which are commissioned prior to Notification of these Regulations, the treatment for surplus energy shall be as per the provisions of the relevant Government Policy, Commission Orders / Regulations readwith transmission and/or wheeling agreement between the parties.

6) *Green Energy Open Access will get priority over fossil fuel-based power.*

17.8. Other Charges and Fees

17.8.1. Scheduling charges

The Green Energy Open Access consumers shall require to pay scheduling charge of Rs. 2000/ day/approval for Short-Term Open Access and in case of Long-Term Open Access and Medium-Term Open Access the same shall be as per Tariff Order of the Commission with regard to SLDC for respective year.

17.8.2. Renewable Energy Deviation Settlement Charges (RE-DSM)

The Green Energy Open Access consumers (RE generators) from wind and solar energy shall be governed by the GERC (Forecasting, Scheduling, Deviation Settlement and Related Matters of Solar and Wind Generation Sources) Regulations, 2019 notified by the Commission. They shall be liable to pay deviation charges as per aforesaid Regulations as case may be. While other RE technology-based generators shall be governed by the provision of relevant technology based tariff Order of the Commission, Government Policies under which such generators are commissioned or as decided by the Commission from time to time.

17.8.3. Transaction and Meter reading Charges

The Green Energy Open Access Consumer shall pay the monthly (a) Transaction charges of Rs. 3,000 (Rupees Three Thousand only) for maintaining the transaction details to the State Nodal Agency and (b) Monthly Meter reading charges of Rs. 1,000 (Rupees One thousand) to the concerned licensee(s) who carry out such meter reading.

17.9. Payment Security Mechanism

At the time of submissions of signed Agreement for transmission and/or wheeling of electricity, the Green Energy Open Access consumer seeking open access for Long-Term Open Access, Medium-Term Open Access, shall require to provide an irrevocable Revolving Letter of Credit or Bank Guarantee in favour of the agency responsible for collection of various charges specified in these Regulations for the estimated amount of various charges for a period of two months. While in case of Short-Term Open Access, the payment security shall be provided by the Green Energy Open Access customer in advance for the entire period for which open access is sought. In absence of valid payment security instrument as stated above to be provided by the green energy open access consumer, no open access shall be granted.

Such LC/BG must be available to the State Nodal Agency and/or, licensee during the entire period of Green Energy Open Access granted by them and avail by the open access consumer. Failure to provide above mentioned valid financial instruments as payment security to the State Nodal Agency, and/or licensee, the green energy open access granted shall be considered as deemed cancelled.

17.10. Relinquishment and its Charges

Option for relinquishment of Under-Utilization or Non-Utilization of open access capacity in intra-State transmission system/distribution systems by Green Energy Open Access consumers.

(1) Long-term access:

A long-term Green Energy Open Access consumer may relinquish the long-term access rights fully or partly before the expiry of the full term of long-term access, by making payment of compensation for the Stranded relinquishment capacity sought, as follows:-

(a) Long-term Green Energy Open Access consumer who has availed access rights for at least 12 years

(i) Notice of one (1) year – If such a Green Energy Open Access consumer submits an application to the State Transmission Utility/Transmission Licensee and/or Distribution Licensee at least 1 (one) year prior to the date from which such customer desires to relinquish the access rights, there shall be no charges.

(ii) Notice of less than one (1) year – If such a Green Energy Open Access consumer submits an application to the State Transmission Utility/Transmission Licensee and/or Distribution Licensee at any time less than a period of 1 (one) year prior to the date from which such customer desires to relinquish the access rights, such customer shall pay an amount equal to 66% of the transmission charges and/or wheeling charges for the stranded transmission capacity and/or Distribution Capacity requested for the period falling short of a notice period of one (1) year.

(b) Long-term Green Energy Open Access consumer who has not availed access rights for at least 12 (twelve) years

Such customer shall pay an amount equal to 66% of the estimated transmission charges and/or wheeling charges (net present value) for the relinquishment of stranded transmission capacity and/or distribution capacity requested for the period falling short of 12 (twelve) years of access rights:

Provided that such a Green Energy Open Access consumer shall submit an application to the State Transmission Utility/Transmission Licensee and/or Distribution Licensee at least 1 (one) year prior to the date from which such customer desires to relinquish the access rights:

Provided further that in case a Green Energy Open Access consumer submits an application for relinquishment of long-term access rights at any time at a notice period of less than one year, then such customer shall pay an amount equal to 66% of the estimated transmission charges and/or wheeling charges(net present value) for the period falling short of a notice period of one (1) year, in addition to 66% of the estimated transmission charges and/or wheeling charges(net present value) for the relinquishment transmission capacity and/or distribution capacity requested for the period falling short of 12 (twelve) years of access rights.

(c) The discount rate that shall be applicable for computing the net present value as referred to in sub-clause (b) of clause (1) above shall be the discount rate to be used for bid evaluation in the Central Commission's Notification issued from time to time in accordance with the Guidelines for Determination of Tariff by Bidding Process for Procurement of Power by distribution Licensees issued by the Ministry of Power.

(d) The compensation paid by the long-term Green Energy Open Access consumer for the relinquished transmission capacity and/or distribution capacity shall be used for reducing transmission charges payable by other long-term Green Energy Open Access consumer and medium-term Green Energy Open Access consumer in the year in which such compensation payment is due in the ratio of transmission charges and/or wheeling charges payable for that year by such long- term customers and medium-term Green Energy Open Access consumers.

(2) Medium-Term Green Energy Open Access consumers

A Medium-Term Green Energy Open Access consumer may relinquish rights, fully or partly, by giving at least 30 days prior notice to the nodal agency:

Provided that the Medium-Term Green Energy Open Access consumer relinquishing its rights shall pay applicable transmission charges and/or wheeling charges for the period of relinquishment or 30 days whichever is less.

(3) Short-Term Green Energy Open Access consumer

(a) *The Short-Term Open Access schedules accepted by the State Nodal Agency in advance or on first-come-first-served basis may be cancelled or revised downwards on an application to that effect made to the State Nodal Agency by the short-term Green Energy Open Access consumer:*

Provided that such cancellation or downward revision of the Short-Term Open Access schedules shall not be effective before expiry of a minimum period of two (2) days:

Provided further that the day on which notice for cancellation or downward revision of schedule is served on the nodal agency and the day from which such cancellation or downward revision is to be implemented, shall be excluded for computing the period of two (2) days.

(b) *The person seeking cancellation or downward revision of Short-Term Open Access schedule shall pay the transmission charges and/or wheeling charges for the first two (2) days of the period for which the cancellation or downward revision of schedule, as the case may be, in accordance with the schedule originally approved by the nodal agency, and thereafter in accordance with the revised schedule prepared by the nodal agency during the period of such cancellation or downward revision.*

(c) *In case of cancellation, operating charges specified in these Regulations shall be payable for two (2) days or the period of cancellation in days, whichever is less.”*

37. Regulation 18 of Draft Regulations - Curtailment Priority

In case due to transmission/distribution system constraints or otherwise, it is necessary to curtail the service, the following priority shall be followed:

- a. The short-term open access consumer (other than Green Energy Open Access consumer) shall be curtailed first followed by short-term Green Energy Open Access consumers.*
- b. Next, medium-term open access consumer (other than Green Energy Open Access consumer) followed by medium-term Green Energy Open Access consumer shall be curtailed.*
- c. Next long-term open access consumer (other than Green Energy Open Access consumer) followed by long-term Green Energy Open Access consumer shall be curtailed.*

Provided that within a category, the Green Energy Open Access consumers shall have equal curtailment priority and shall be curtailed on pro-rata basis.

Provided further that distribution licensees shall be curtailed as last resort.

Comments/Suggestions of the Stakeholders:

- 37.1. Some of the objectors have suggested that the Regulation should be in line with the CERC IEGC Regulation, 2023 therefore it is requested to modify the Regulation accordingly.
- 37.2. Some of the objectors have suggested that Green Power should be curtailed only after the curtailment of power being supplied under Short-term, Medium-term and Long-term transactions from Conventional Sources. It is requested the modify the proposed Regulations accordingly.
- 37.3. Some of the objectors have suggested that the curtailment priority should be in order of :
STOA - GESTOA - MTOA - GEMTOA - LTOA – GELTOA

Further, the curtailment priority across GESTOA, GEMTOA and GELTOA categories respectively shall be on pro-rata basis.

37.4. Some of the objectors have suggested to clarify following points:

Definition of "Within a Category" / Categorization Parameters / Pro-Rata Basis Calculation.

Regulation 18, Proviso

37.5. Some of the objector has proposed following changes in the Regulation:

"In case due to transmission/distribution system constraints or otherwise, it is necessary to curtail the service, the following priority shall be followed:

The short-term open access consumer (other than Green Energy Open Access consumer) shall be curtailed first followed by medium term open access consumer (other than Green Energy Open Access consumer) followed by long-term open access consumer (other than Green Energy Open Access consumer) Next, the short-term Green Energy Open Access consumer shall be curtailed first followed by medium term Green Energy Open Access consumer followed by long-term Green Energy Open Access consumer."

Commission's decision:

The Commission has noted the submission of various Objectors. The Commission has observed that the curtailment priority specified under the Regulation in the event of constraints in the transmission / distribution network or otherwise, is with consideration that within respective category of open access, the Green Energy Open Access shall be curtailed after curtailment of open access from conventional sources. The provision with respect to curtailment priority is in Order and further modification is not required. Hence, suggestions are not accepted.

38. Regulation 19, Dispute Resolution:

All disputes and complaints relating to Green Energy Open Access shall be made to the concerned State Nodal Agency, i.e. SLDC/STU as case may be, which may endeavor to resolve the grievance.

No application for open access shall be denied unless the applicant has been given an opportunity of being heard in the matter and all orders denying open access shall be speaking orders by the concerned nodal agency.

Appeal against an order of the concerned nodal agency, shall be preferred before the Appropriate Commission, within a period of thirty days from the date of receipt of order under sub-rule (4) of rule 7.

The Appropriate Commission shall dispose the Appeal within a period of three months and the order issued by it, shall be binding on the parties.

Comments/Suggestions of the Stakeholders:

- 38.1. Some of the objectors have suggested to modify the Regulation as under:
All disputes and complaints relating to Green Energy Open Access shall be made to the Appropriate Commission, which may endeavor to resolve the grievance.
- 38.2. Some of the objectors have stated that clause no. 13 (II) of these regulations provides for processing of applications for green open access in time bound manner. The clause no. 13, do not consider the time period required for providing an opportunity of being heard before denying the application. Therefore, it is requested to consider the time period required for providing an opportunity of being heard, appropriately in the timeline provided under clause 13 (II).

Commission's decision:

The Commission has noted the submission of the Objectors.

The Commission is not in agreement with the suggestion of the Objector that all disputes and complaints relating to Green Energy Open Access shall be made directly to the appropriate Commission. The disputes and complaints relating to Green Energy Open Access need to be finally resolved by the appropriate Commission. Accordingly, the either party has liberty to approach the Commission as per the provisions of this Regulation. Hence, no modification in the Regulation is required.

As regard to the suggestion of objector that time period required for providing an opportunity of being heard is to be considered while providing overall timeframe under the Regulation 13 (ii) is concerned, the Commission notes that the time period provided under Regulation 13 (ii) for processing of application for grant of open access is adequate and reasonable and therefore no modification is required.

However, it is decided to modify the Regulation 19 in the final Regulations by incorporating the word “Distribution Licensee” in the first para of the Regulation. The modified Regulation 19 reads as under:

“19 Dispute Resolution:

All disputes and complaints relating to Green Energy Open Access shall be made to the concerned State Nodal Agency, i.e. SLDC/STU/Distribution Licensee as case may be, which may endeavor to resolve the grievance.

No application for open access shall be denied unless the applicant has been given an opportunity of being heard in the matter and all orders denying open access shall be speaking orders by the concerned nodal agency.

Appeal against an Order of the concerned nodal agency, shall be preferred before the Commission, within a period of thirty days from the date of

receipt of order as provided under sub-Rule (4) of Rule 7 of Green Energy Open Access Rules 2022 notified by MoP, GoI.

The Commission shall dispose the Appeal within a period of three months and the Order issued by it, shall be binding on the parties.”

39. Regulation 20, Metering:

Green Energy Open Access consumer shall have to provide four quadrant ABT compliant meters at the generator end, interface points, consumption place which shall conform to the Central Electricity Authority (Installation and Operation of Meters) Regulations, 2006, as amended from time to time.

The metering point as well as the interconnection point for grid connectivity shall be the nearest transmission/distribution licensee sub-station.

Above Meters shall always be maintained in good condition and shall be open for inspection by any person authorized by the State Transmission Utility, Distribution Licensee or the State Load Despatch Centre.

All the Green Energy Open Access consumers shall abide by the metering standards of CEA.

Comments/Suggestions of the Stakeholders:

- 39.1. Some of the objectors have stated that the substation for grant of connectivity is to be decided as per the availability of margin based on the system study. Therefore, the above clause may be modified stating that the interconnection & metering point for grid connectivity shall be decided in consultation with GETCO / DISCOMs based on the system study.
- 39.2. Some of the objectors have suggested that, there is a technical difficulty in providing ABT meters at the premises of LT consumers. Accordingly, it is suggested to modify the Regulation exempting the LT consumers from

installing ABT meter.

39.3. Some of the objectors have suggested that the Commission should take note of all the suggestions/objections of the stakeholders and give its judgement of the same before finalizing the Regulations.

39.4. Some of the objectors have suggested to allow use of smart meter for the purpose of Green Energy Open Access instead of ABT meters, stating that the CEA has vide Notification dated 27.10.2020, permitted the use of smart meters instead of ABT meters for open access purpose.

Commission's decision:

The Commission has noted the submission of the Objectors.

The Objector has suggested that the stipulation for installation ABT meter may be relaxed for LT consumers for grant of Green Energy Open Access. The other Objector has requested to allow smart meter for the purpose of Green Energy Open Access instead of ABT meter.

The Commission notes that the provisions for installation of ABT meter for grant of Green Energy Open Access is in accordance with the provision of Regulation 9(5) of the GERC Open Access Regulation and provisions of GERC Intra-State ABT framework.

The purpose of providing ABT Meter at premises of consumption and generation is with intent to measure the different parameters of electricity flow from generating plant as well as consumption point and give effect to such parameters for consideration of commercial transaction as a part of Energy Accounting, Billing etc. by respective Entities. The data of Generation and Consumption of electricity at generating end / Sub-station end and Consumption place/ premise are important for Billing as well as Energy Accounting purpose by the respective entities. Further, such data

are also important to be considered in case of any disputes arise between the parties and licensees as well as for levy of charges, if any. Hence, the ABT meter or any ABT compliant as specified by the CEA in its Regulations, which fulfil the aforesaid purpose, be permitted by the licensee. Accordingly, the said Regulation is modified in the final Regulations.

As regard to the suggestion to modify the Regulation providing that the interconnection & metering point for grid connectivity shall be decided by GETCO / DISCOMs based on the system study, the Commission has observed that the Regulation 20 only deals with installation of meters with requisite specifications at the metering / interconnection point. The interconnection and metering point for grid connectivity shall be decided by GETCO / DISCOMs upon system study.

As regard to the suggestion that the Commission should note all the suggestions/objections of the stakeholders and provide decision on the same before finalizing the Regulations is concerned, it is to be noted that the Commission has noted the suggestions/objections of the stakeholders and issued this SoR providing views/decisions of the Commission on the suggestions/objections received from the stakeholders.

Considering above discussion and decisions, the Regulation 20 is modified in the final Regulations as under:

“

20. Metering

Green Energy Open Access consumer having contract demand of 1 MW and above shall have to provide four quadrant ABT compliant meters at the generator end, interface points, consumption place which shall conform to the Central Electricity Authority (Installation and Operation of Meters) Regulations, 2006, as amended from time to time.

Provided that the open access consumer who is also consumer of distribution licensee and demanding the green energy open access upto 1 MW shall be permitted by the licensee to install Special Energy Meter capable of energy recording on 15 time block basis, specified by the CEA in its Regulations for fulfillment of the purpose of billing and energy accounting for green energy open access at consumption place as per the discretion of consumer.

The metering point as well as the interconnection point for grid connectivity shall be the nearest transmission/distribution licensee sub-station.

Above Meters shall always be maintained in good condition and shall be open for inspection by any person authorized by the State Transmission Utility, Distribution Licensee or the State Load Despatch Centre.

All the Green Energy Open Access consumers shall be abide by the metering standards of CEA."

40. Regulation 21, Reactive Energy Charge

In respect of Green Energy Open Access consumer the payment for the reactive energy charges shall be in accordance with provisions stipulated in the Tariff Order passed by the Commission from time to time.

Provided that when Green Energy Open Access consumer procuring power from the distribution licensee and simultaneously wheeling the power from Green Energy supplier in that case the Reactive Energy Charge shall be as per the applicable tariff orders for relevant class of consumers.

Comments/Suggestions of the Stakeholders:

- 40.1. Some of the objectors have suggested that in the GEOA Rules, 2022 notified by MOP, GoI there is no provision to levy reactive energy charges. Hence, the same may not be applicable on GEOA consumers.

- 40.2. Some of the objectors have stated that the clause 9.1 of Electricity (Promoting Renewable Energy Through Green Energy Open Access) Rules, 2022 provides the exhaustive list of charges which could be applied on Green Open Access Transaction. The reactive energy charges are not mentioned in the list hence same should not be applicable.

Commission's decision:

The Commission has noted the submission of the Objectors in regard to levy of Reactive Charges. The Objectors have suggested that the Green Energy Open Access Rules specify the exhaustive list of charges to be recovered from Green Energy Open Access consumer and there is no mention for recovery of Reactive Charges under the said Rules. The Commission is of the view that the GEOA Rules, 2022 and its amendments notified by MoP, GoI list out various charges to be recovered for grant of GEOA for utilization of Transmission and / or Distribution network under Open Access rights. Whereas, the provision for reactive charges to be levied under these Regulations is for drawl of reactive energy from the grid by the Green Energy generators. It is necessary to refer the provision of GERC (Grid Code) Regulations notified by the Commission which consist of various provisions with regard to grid operation and management. The said Regulation also consist of the provision with regard to reactive energy injection and drawl by the beneficiaries with consideration of technical aspects. We are therefore of view that the said provision of the said Regulations also needs to be considered while deciding the reactive energy charge applicable on beneficiaries. Accordingly, this Regulation is modified as under:

"21. Reactive Energy Charge

In respect of Green Energy generator, the payment for the reactive energy charges shall be in accordance with provisions stipulated in the Electricity

Grid Code notified by the Commission read with Tariff Order passed by the Commission from time to time.

Provided that when Green Energy Open Access consumer procuring power from the distribution licensee and simultaneously wheeling the power from Green Energy supplier in that case the Reactive Energy Charge shall be as per the applicable tariff orders for relevant class of consumers.”

41. Regulation 24 (a), Information System:

a) SLDC shall post the following information in a separate web page titled ‘Green Energy Open Access Information’ and also issue a monthly and annual report containing following information;

- i. A status report on long term consumers/medium-term/short term consumers;*
- ii. Floor rate for bidding in case of congestion*
- iii. Peak load flows on EHV*
- iv. Information regarding average loss in the transmission system as determined by the licensee/s on a monthly basis, and distribution loss as determined by the Commission in its respective tariff order.*

b) The information shall be updated on every change in status.

c) All previous report shall be available in the web-archives.

d) The SLDC shall host the above information on its website within one month from the date of notification of these Regulations.

Comments/Suggestions of the Stakeholders:

41.1. Some of the objectors have suggested to add following proviso in Regulation

24 (a) (i):

Provided that, the details for LTOA / MTOA shall be provided by State Nodal Agency for LTA / M TOA (i.e. STU) to State Load Dispatch Centre.

Commission's decision:

The Commission has noted the submission of the Objector. The purpose of creating separate web page by SLDC and hosting of the details specified in the Regulation is for information. It is expected that all the concerned entities involved in the grant of Green Energy Open Access will act in close co-ordination and discharge their obligations specified under these Regulations in its letter and spirit. The licensees who are granting LTOA/MTOA shall furnish the details to the SLDC within the timeline specified by SLDC so as to enable SLDC to host the details on the web page within the timeline provided in these Regulations. Failure to it the SLDC who has assigned this function shall approach the Commission for non-compliance by the concerned licensee. Hence, no modification is required.

42. Regulation 26, Communication facility

Green Energy Open Access consumer shall have the requisite communication systems in place to facilitate seamless communication of data/orders/information to/from the generator place to State Nodal Agency (SLDC), ALDC (Area Load Despatch Center), and LMU (Load Management Unit) and from consumer place to distribution licensees on real time basis.

Provided that the data of generators having collective capacity of 1 MW and above shall be utilized by the State Nodal Agency (SLDC) for energy accounting and real time grid management.

Provided further that the data of Green Energy Open Access consumer consists of the generators and the consumer of 100 kW to 1 MW shall be utilized by the Area Load Despatch Center (ALDC) who is also working as Load Management

Unit (LMU) for energy accounting and real time load management grid management.

Comments/Suggestions of the Stakeholders:

42.1. Some of the objectors have stated to modify the Regulations as under:

Green Energy Open Access consumer shall have the requisite communication systems in place to facilitate seamless communication of data / orders / information to / from the generator place to State Nodal Agency (SLDC), Sub - SLDC, ALDC (Area Load Despatch Center) / LMU (Load Management Unit) and from consumer place to distribution licensees on real time basis."

Commission's decision:

The suggestion of the objector to include the word 'Sub-SLDC' in the Regulation seems valid and accordingly the Commission decide to incorporate the same and modify the Regulation 26 in the final Regulations as under:

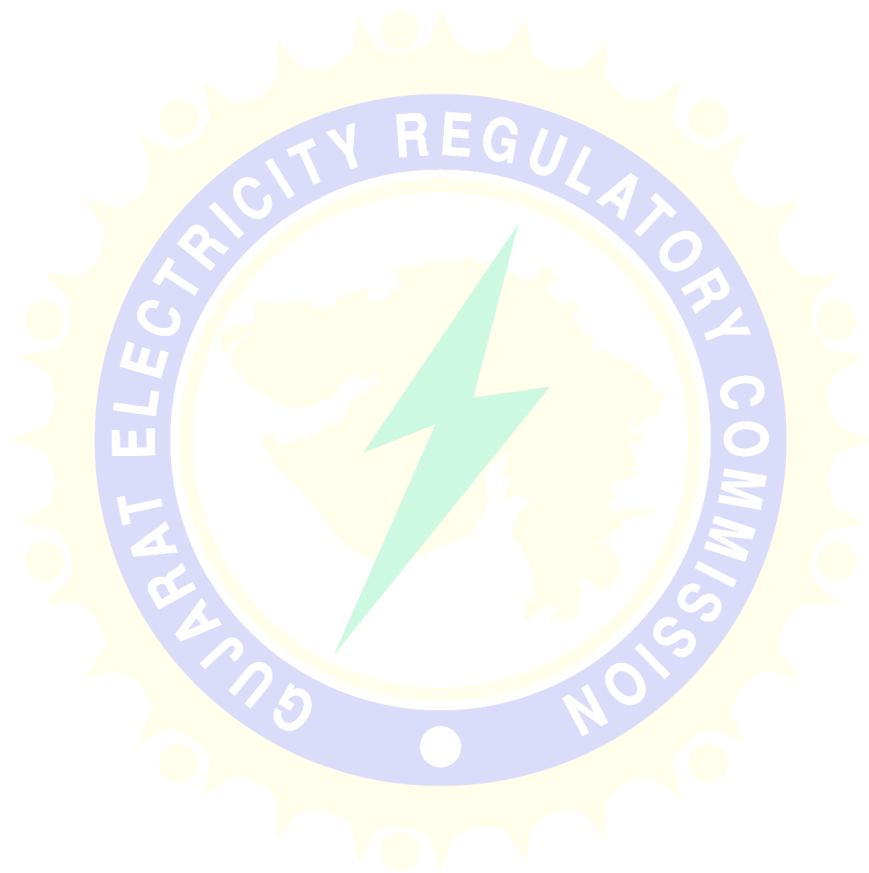
"26. Communication Facility

Green Energy Open Access consumer shall have the requisite communication systems in place to facilitate seamless communication of Data/Orders/information to/from the generator place to State Nodal Agency (SLDC), Distribution Licensee, Sub-SLDC, ALDC (Area Load Dispatch Center), and LMU (Load Management Unit) and from consumer place to distribution licensees on real time basis.

Provided that the data of generators having collective capacity of 1 MW and above shall be utilized by State Nodal Agency (SLDC) for energy accounting and real time grid management.

Provided further that the data of Green Energy Open Access consumer consists of the generators and the consumer of 100 kW to 1 MW shall be utilized by the Area Load Despatch Center (ALDC) who is also working as Load Management

Unit (LMU) for energy accounting and real time load management and grid management.”



43. Schedule – I

Schedule – I

Details shall be provided by the Captive Generating Plant/Captive Consumers on completion of financial year on affidavit to the distribution licensee in whose area such consumer is situated and also to the Commission for verification of status of Captive Generating Plant(s) and Captive consumer(s) when said consumer transmit/wheel power from their Captive Generating Plant situated either within the State or outside the State.

The Captive Generating Plant (CGP) and captive consumer shall require to submit the details with regard to consumption of energy and equity shareholding as prescribed under the Electricity Rules 2005 framed under the Electricity Act, 2003 and amended from time to time annually (Financial Year basis) to the distribution licensee and to the Commission after the end of financial year within 3 months from completion of financial year for verification of CGP and captive consumer status by the Commission and the distribution licensee along with necessary documents/evidence/proof stated in these Regulations as per the provisions of the relevant Acts, Rules & Regulations framed thereunder.

- 1. While applying to grant Green Energy Open Access the generator shall require to prove their captive status with supporting documents.*
- 2. Details of equity shareholding with voting right by the Captive Consumer in the Captive Generating Plant.*
- 3. Change in equity shareholding in the Captive Generating Plant during the Financial Year, if any, amongst different persons, specified periods and quantum of change in shareholding.*
- 4. Period of equity shareholding by the Captive Consumer(s) in the Captive Generating Plant and corresponding consumption for the same during the financial year from the Captive Generating Plant.*
- 5. Captive Generating Plant and captive consumer(s) shall file an affidavit in specified format giving details regarding their electricity generation, entity wise consumption and equity shareholding during the previous Financial Year before 30th April each year.*
- 6. The distribution licensee/Commission shall take assistance of the concerned RLDC, SLDC for the verification of Captive status of Captive Generating Plant or captive consumer based on the affidavit along with necessary*

documents/evidences submitted by such Captive Generating Plant and captive consumer(s).

7. *In case of Change in shareholding pattern due to transfer of shareholding etc. in such cases an undertaking is required to provide by the person who acquire shareholding with voting right from the forgoing captive user that in case of failure of comply with Rules framed for captive generating plants, it shall be liable to pay the charges and for other consequences effect.*

8. Verification of Annual (Financial Year basis) consumption criteria:

- a) *Verification of criteria of consumption shall be based on the net electricity generated from the generating unit(s) in a generating station, i.e. gross electricity generated less auxiliary consumption, identified for captive use recorded in four quadrant ABT compliant Energy Meter installed at the generating end inter-connection with grid as well as consumption end which are certified as per the energy accounting done by the RLDC/SLDC/Distribution licensee as the case may be.*
- b) *Any sale/purchase agreement executed amongst the equity holders of the captive generating plant for sale/purchase of energy generated from such generating plant is qualify as sale of energy to the consumer under third party sale and the same shall not be qualified as captive consumption (own consumption).*
- c) *The details of energy supplied from the Captive Generating Plant even above 51% by way of sale/purchase agreement between the parties/equity owners, if any, the same falls under third-party sale and does not qualify as captive consumption (own consumption), if it is in contravention of the provisions of Electricity Rules, 2005.*
- d) *The net electricity shall be determined on annual basis (Financial-Year basis) at the end of the year.*

Comments/Suggestions of the Stakeholders:

The objections/suggestions of the stakeholders are stated below:

- Some of the objectors have suggested that the nodal agency for

verification of captive status of generating plant and consumer be not made distribution licensee.

- Some of the objectors have suggested that the 3 months/six months time period be provided for submissions of documents after completion of previous financial year instead of 30th April as preparation of audited account and MGT 7 may not be completed by 30th April.
- Some of the objectors have suggested that the word “to prove” and “Captive Status” be deleted and word “submit” and “shareholding details” be added in schedule I.
- Some of the objectors have suggested that as specified in Schedule I (2), the Commission may provide guidelines for verifying equity holding with voting right held by Captive Consumer.
- Some of the objectors have suggested that instead of submitting the undertaking on affidavit by captive generating plant and captive consumers the same may be without it.
- Some of the objectors have suggested that the verification of documents on account of change in shareholding of existing captive users without adding any new stakeholders does not arise when verification is done on annual basis at the end of financial year. It is only in case when new captive users is introduced than only documents qua shareholding have to be furnished.
- Some of the objectors have suggested that the methodology for verification of change in ownership and consumption in case of group captive structure shall be done for each corresponding period of such changes as decided by Hon’ble APTEL in Appeal No. 131 of 2020. Accordingly, the aforesaid clause is not required.
- Some of the objectors have suggested that each legal entity is different and can have liability of its default. A separate legal entity cannot be made liable for default of another legal entity.

Accordingly, the Commission may remove the same clause.

- Some of the objectors have suggested that the verification of consumption be based on the State Energy Account data published by SLDC. Some of the objectors have suggested that T&D losses are to be considered as deemed consumption while working of 51% minimum consumption. Some of the objectors have suggested that T&D loss in kind are to be deducted for wheeling of power from the point of generation to point of consumption. It is also suggested that such T&D loss have been grossed up.
- Some of the objectors have suggested that Clause 8 (b) of Schedule I be deleted as there can be no other criteria than qualifying or disqualifying the CGP or captive consumers except in Rule 3 of the Electricity Rules, 2005.
- Some of the objectors have suggested that there is no other criteria for qualifying captive generating plant than the provision of Electricity Act, 2003 and Rules framed under it. It is suggested that clause 8 (b) is against the provisions of Section 181 (b) of the Electricity Act, 2003 read with the provisions of Electricity Act, 2003 and Electricity Rules, 2005 framed under it.
- Clause 8 (c) of the schedule I is creating uncertainty in regard to the aspects as to how CGP is to be determined. The consumption from CGP is generic and such provisions are not made applicable for consumption of brown power from CGP.
- Some of the objectors have suggested that additional surcharge is not applicable to captive consumers as decided by Hon'ble APTEL and Hon'ble Supreme Court.
- Some of the objectors have suggested that Clause 8 (b) of Schedule I set forth the additional criteria other than provided in the Electricity Rules, 2005 and therefore the same need to be removed.
- Some of the objectors have suggested that as per Electricity Rules,

2005 requirement is only 26% equity investment from the captive consumers and balance 74% equity can be invested by any developer or debt funded where the interest are charged by the lenders. The investment of 74% equity and debt on projects has to be recovered from other equity investor. Moreover, operating expenses needs to be recovered. The sale/purchase agreement is required to be executed between the parties in order to recover the aforementioned cost.

- Some of the objectors have suggested that Green Energy Open Access Rules, 2022 does not contemplate that existence of sale/purchase agreement of energy generated from such captive generating plant and shareholders be qualified as third party sale. (Clause 8 (b)).
- Some of the objectors have contended that Hon'ble APTEL in its Judgement dated 7.06.2021 in Case of Tamilnadu Power Producer Association Vs. TNERC held that the requirement of CGP shall be 26% shareholding and 51% captive consumption fulfilled by captive users once that condition is fulfilled the rest of captive users not required fulfilling above conditions and it will not affect the overall captive structure, therefore, the liability to make payment of CSS by defaulting captive users cannot be arise once criteria of 26% shareholding and 51% consumption of energy from captive generating plant is fulfilled.
- Clause 8 (b) of Schedule 1 is contrary to Section 181 of the Electricity Act, 2003 and Electricity Rules, 2005.
- CGP company while preparing financial statement is required to give disclosure of related party transaction with the captive users alongwith all requisite information about transaction and outstanding balances including commitment and other important terms and conditions necessary for users of financial statement to

understand potential impact of relationship on the financial statement. An absence of written sale and purchase agreement for long term contract will make difficult to the auditor or director of the company to prepare financial statement and thereby negate the mandate of various Sections of Companies Act 2013 and IndAS 24. Therefore, provision made in clause 8 (b) be deleted. The power over and above 51% if any sold to any third entity should only be considered as third party power sale and not the power consumed by the captive consumers.

- Some of the objectors have contended that as per the provision of Act and Rules made under it with regard to captive generating plant and status is concerned, the said provisions needs to fulfill by the person/or member of co-operative society or association of person as case may be. The existence of power purchase agreement or otherwise between the equity holders has never been a disqualification, disentitlement criteria for determining captive status of generating plant. The agreement executed amongst the equity holders of the CGP for sale/purchase of energy generated from such plant to determine that the same to be qualified as third-party sale or not qualified as captive use is against the conditions laid down by Act, Rules, Regulations, Orders, Judgments passed in this regard.
- Some of the objectors have stated that several entities registered as captive generating plant but in fact, they are generating companies with active agreements/contracts/arrangement for sale and purchase of power with their respective captive users. In such case a generating company also act as an entity that sale power to such user thereby not qualify as captive generating entity.
- Some of the objectors have contended that the intent of schedule I of the regulation state that a generating station or plant cannot be considered as captive power plant if there is an arrangement for sale

and purchase of power between the captive generating plant and end users. The said provision is fundamentally erroneous and ignore the provisions of Companies Act, 2013, Income Act, 1961 and Rules and Regulations frame under it.

Commission's Decision:

With consideration of the objections and suggestions of the stakeholders, the Commission is of the view that it is necessary to refer the following provisions of the Electricity Act, 2003 read as under:

Section 2 (8)

8. *"Captive generating plant" means a power plant set up by any person to generate electricity primarily for his own use and includes a power plant set up by any co-operative society or association of persons for generating electricity primarily for use of members of such co-operative society or association;*

As per the aforesaid provision, the Captive Generating Plant can be set up by (i) any person or (ii) members of (a) co-operative society or (b) association of person. The aforesaid definition emphasis that the electricity generated from such plant be "primarily" "for" "own use" by the owner(s) of such plant i.e. (i) person of (ii) member(s) including person of (a) co-operative society or (b) association of persons having ownership in CGP.

The company is defined in sub-section (13) of Section 2 as under:

13. *"company" means a company formed and registered under the Companies Act, 1956 and includes any body corporate under a Central, State or Provincial Act;*

As per aforesaid provisions Company formed and registered under

Companies Act, 1956 include any body corporate under Central , State or Provincial Act.

Generating company defined under sub-section 28 of Section 2 of the Act read as under:

(28) "generating company" means any company or body corporate or association or body of individuals, whether incorporated or not, or artificial juridical person, which owns or operates or maintains a generating station;

As per aforesaid provision generating company be a body of individual, whether incorporated or Association or body of individual whether incorporated or not or artificial judicial person which owns operate or maintain a generating station.

Sub-section 29 of Section 2

(29) "generate" means to produce electricity from a generating station for the purpose of giving supply to any premises or enabling a supply to be so given;

As per the above definition, 'generate' means production of electricity from generating station for the purpose of (i) giving supply to any premises or (ii) enabling a supply to be so given.

Sub-section 30 of Section 2

(30) "generating station" or "station" means any station for generating electricity, including any building and plant with step-up transformer, switch- gear, switch yard, cables or other appurtenant equipment, if any, used for that purpose and the site thereof; a site intended to be used for a generating station, and any building used for housing the operating staff of a generating station, and where electricity is generated by water-power, includes penstocks, head and tail works, main and regulating reservoirs, dams and other hydraulic works, but does not in any case include any sub-station;

According to aforesaid definition, the generating station or station means any station for generating electricity includes any building and plant with step-up transformer, switch- gear, switch yard, cables or other appurtenant equipment, if any, used for that purpose and the site thereof; a site intended to be used for a generating station, and any building used for housing the operating staff of a generating station, and where electricity is generated by water-power, includes penstocks, head and tail works, main and regulating reservoirs, dams and other hydraulic works, but not include any sub-station;

The definition of person stated in sub-section (49) of Section 2 read as under:

(49) "person" shall include any company or body corporate or association or body of individuals, whether incorporated or not, or artificial juridical person;

As per aforesaid definition, it includes any company or body corporate or association or body of individual whether incorporated or not or artificial juridical person.

The definition of Supply is stated in sub-section 70 of Section 2 read as under:

(70) "supply", in relation to electricity, means the sale of electricity to a licensee or consumer;

"Supply" in relation to electricity means the sale of electricity to a license or consumer. Accordingly, any sale of electricity either to licensee or consumer qualify as "supply" of electricity.

From the above definitions, it is clear that the Captive Generating Plant be set up by any person which is individual person or company or association or body of individual whether incorporated or not or artificial judicial person.

We also note that the captive generating plant set up by (i) any person, or (ii) member(s) of (a) co-operative society or (b) association of persons is “primarily for its own use”. The said definition is not consist of the word ‘supply’.

We also note that the generating company may be Captive Generating Plant (CGP) or may not be, with consideration of Section 9 and 10 of the Electricity Act, 2003 as referred above.

It is also necessary to refer Section 9 and Section 10 of the Act read as under:

Section 9. (Captive generation):

(1) Notwithstanding anything contained in this Act, a person may construct, maintain or operate a captive generating plant and dedicated transmission lines:

Provided that the supply of electricity from the captive generating plant through the grid shall be regulated in the same manner as the generating station of a generating company.

¹[Provided further that no licence shall be required under this Act for supply of electricity generated from a captive generating plant to any licensee in accordance with the provisions of this Act and the rules and regulations made thereunder and to any consumer subject to the regulations made under sub-section (2) of section 42.]

(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.

The aforesaid Section state regarding “captive generation”. The captive generation is from captive generating plant set up by a person who has right to construct, maintain or operate plant and/or, dedicated transmission line, if any.

The first proviso to sub-section (1) of Section 9 state that the supply from such plant through grid shall be regulated as the generating station or generating company.

The Second proviso to sub-section (1) of Section 9 state that no licence is required for supply of electricity generated from a Captive Generating Plant to any licensee in accordance with the provisions of Act, Rules and Regulations framed under it and for supply of electricity to the consumer is subject to provisions made in Regulations under sub-section (2) of Section 42.

Section 10 of the Electricity Act, 2003 reads as under:

Section 10. (Duties of generating companies): --- (1) *Subject to the provisions of this Act, the duties of a generating company shall be to establish, operate and maintain generating stations, tie-lines, sub-stations and dedicated transmission lines connected therewith in accordance with the provisions of this Act or the rules or regulations made thereunder.*

(2) A generating company may supply electricity to any licensee in accordance with this Act and the rules and regulations made thereunder and may, subject to the regulations made under sub-section (2) of section 42, supply electricity to any consumer.

(3) Every generating company shall -

(a) submit technical details regarding its generating stations to the Appropriate Commission and the Authority;

(b) co-ordinate with the Central Transmission Utility or the State Transmission Utility, as the case may be, for transmission of the electricity generated by it.

Section 10 of the Act state regarding duties of generating companies. The aforesaid Section state regarding the various duties which include establish, operate and maintain the generating station, tie-lines, sub-station, dedicated transmission lines connected with it in accordance with provisions of Act, Rules and Regulations framed under it.

Sub-Section (2) of Section 10 state that the generating company may supply electricity to any licensee in accordance with the provision of Act, Rules and Regulations framed under it. While supplying to any consumer the same is subject to regulations made under sub-section (2) of Section 42 of the Act.

The Section 42 of the Act read as under:

Section 42. (Duties of distribution licensee and open access): --- (1)
It shall be the duty of a distribution licensee to develop and maintain an efficient, co-ordinated and economical distribution system in his area of supply and to supply electricity in accordance with the provisions contained in this Act.

(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 shall be allowed 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 ²[***] 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:

³[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.]

Section 42(2) of the Act provides that the Commission introduce the open access on distribution licensee in phased manner subject to such condition which include cross subsidy and operational constraints within one year from the date of appointment it and specify the extent of open access in successive phases and in determining the charges for wheeling with due regard to all relevant factors including cross subsidy surcharge and other operational constraints.

First proviso to sub-section (2) of Section 42, provides that in addition to charges for wheeling the open access shall be allowed on payment of surcharge as determined by the State Commission.

The Second proviso to sub-Section (2) of Section 42 provides that such surcharge provided in Section 42 shall be utilized to meet the requirement of current level of cross subsidy within area of supply of the distribution licensee.

The third proviso of sub-Section (2) of Section 42 provides that such surcharge and cross subsidy surcharge shall be progressively reduce in the manner specified by the State Commission. The forth proviso of sub-Section (2) of Section 42 provides that such surcharge shall not be leviable in case of open access is provided to a person who has established a captive generating plant for carrying the electricity to the destination of its own use.

The fifth proviso of sub-Section (2) of Section 42 provides that the State Commission shall not later than five years from the date of commencement of Electricity (amendment) Act 2003 by Regulation provides such open access to all consumers who requires supply of electricity where the maximum power to made available at any time exceed 1 (one) MW.

It is also necessary to refer Section 49 of the Act read as under:

Section 49. (Agreement with respect to supply or purchase of electricity):

Where the Appropriate Commission has allowed open access to certain consumers under section 42, such consumers, notwithstanding the provisions contained in clause (d) of sub-section (1) of section 62, may enter into an agreement with any person for supply or purchase of electricity on such terms and conditions (including tariff) as may be agreed upon by them.

The aforesaid Section states regarding agreements with respect to “supply” or “purchase” of electricity. It states that where the appropriate Commission has allowed open access to certain consumers under Section 42 read with Section 62 (1) (d) of the Act may enter into “agreement” with any person for “supply” or “purchase” of electricity on such terms and conditions as may be agreed upon by them.

On combined reading of the aforesaid provision the following observations are made:

1. Captive Generating Plant is a Generating Company.
2. A captive generating plant can be set up by either (i) “person” or (ii) “members” of (a) co-operative society or (b) association of

persons.

3. The captive generating plant set up by above entities to “generate electricity” for primarily “own use”. Hence, the person or member of co-operative society or member of association of persons is eligible to use the electricity generated from captive generating plant for “own use”.
4. Section 9 (2) of the Act state that every person who has constructed and operating and maintaining captive generating plant has right for open access for carrying electricity from its captive generating plant to the destination of his use. Thus, the aforesaid provisions of the Act specifically state for use of electricity by the owner for his use.
5. The first proviso to sub-section (1) of Section 9 states that electricity generated from captive generating plant and supplied through grid from the generating station of the generating company is regulated.
6. The Second proviso to sub-section (1) to Section 9 of the Electricity Act states that no licence shall require to supply of electricity from such captive power plant to licensee and consumer subject to regulations made under sub-section (2) of Section 42. Thus, the captive generating plant is eligible for ‘supply of electricity’ generated from CGP to the licensee and/or consumer as the case may be under second provisions of sub-section (1) of Section 9 of the Act.
7. The generating company who has set up the generating plant is eligible to supply the electricity to any licensee or consumer under sub-section (2) of Section 42 subject to Regulation made under aforesaid provision of the Act.
8. The language of Second proviso of Section 9 and sub-section (2) of Section 10 state that “supply of electricity” to the licensee

and/or consumer from the captive generating plant and generating company is permissible. However, the electricity “supply” to a consumer by above entity is subject to the Regulation made under sub-section (2) of Section 42 of the Act.

9. The word “supply” is defined as ‘sale of electricity’ to a ‘licensee’ or ‘consumer’.

10. The second proviso of the sub-section (1) of Section 9 and sub-section (2) of Section 10 of the Act recognizes that the captive generating plant and/or generating company is eligible to supply of electricity to licensee or consumer.

11. Sub-section (2) of Section 42 of the Act state that the Commission shall introduce open access on distribution network of the licensee for the consumer who desire to obtain power/electricity by utilization of distribution network of the licensee subject to condition of operational constraints on network and determination of cross subsidy surcharge for such open access including wheeling charges on it.

12. Section 49 of the Act recognize that generating company is eligible to ‘supply the electricity’ to ‘any consumer’ by ‘signing an agreement’ for ‘supply’ or ‘purchase of electricity’ on such terms and conditions as agreed between them. Thus, the aforesaid Section recognize supply or sale of electricity or purchase of electricity between the generating company and consumer as mutually agreed between them which include tariff.

13. On combined reading of aforesaid provisions, it is clear that whenever any captive generating plant is set up by the entity (i) person or (ii) members of (a) co-operative society or (b) association of person is primarily generate the electricity for ‘own use’. The captive generating plant also capable to supply

the electricity to either licensee and/or consumer. However, when such supply made to the consumer, it is subject to provision of Section 42 (2) of the Act. While in case of generating company they are only entitled to supply the electricity either licensee or consumer. The captive generating plant is generating company within the meaning of the provision of the Act. On combined reading of section 2 (8) and section 2 (28) of the Act, a generating company may be captive generating plant or it may not be.

14. In case of captive generating plant, the electricity generated from such plant be utilized by the (i) person or (ii) members of (a) co-operative society or (b) association of person. The supply of electricity from either captive generating plant or generating company to the consumers are governed under the provision of Section 42 (2) of the Act read with Section 49 of the Act.
15. The sale and/or purchase, supply of the electricity is permissible only under 2nd proviso to Section 9 (1) and Section 10 (2) read with Section 49 of the Act, between the generating company, include captive generating plant and consumer.
16. Section 42 state regarding duties of distribution licensee and open access. Sub-Section (1) of Section 42 of the Act state regarding development of distribution system by the distribution licensee in his area of supply. Further, the supply of electricity shall be in accordance with the provisions of the Act. Thus, the said Section states regarding supply of electricity by the licensee. The duty cast upon the distribution licensee for supply of electricity in the aforesaid section.

On combined reading of the aforesaid provisions, it is clear that the electricity be used by the person with its own source of generation

for 'own use' qualify as captive use on fulfillment of qualification criteria stipulated under the Act and Rules framed under it.

Further, it is also permissible under the Act that any (i) person or (ii) members of (a) co-operative society or (b) association of person can construct captive generating plant and utilise the electricity generated from it for primarily for their "own use".

Moreover, the captive generating plant also eligible to supply the electricity to licensee and/or consumer with utilization of grid under open access. Once the supply is done under open access i.e. under Section 42 (2) in that case the provision of said Section shall be applicable.

The captive generating plant also fall in the category of generating company. The generating company are eligible to supply the electricity either to licensee and/or consumer. When the supply of electricity done to consumer under Section 49 of the Act, the same may be through agreement between the parties. Such agreement for supply is qualify as sale and/or purchase of electricity. Hence, in case of generating company, only sale /purchase of electricity will be happened between the consumer/licensee, it may be CGP or not. The word "own use" is different and distinct than the word "supply", "sale" and "purchase" of electricity specified under the Act and in normal legal parlance. Further, in case of "own use" no agreement is needed between the generating company/captive generating plant or consumer.

It is also necessary to refer the provisions of the Electricity Rules, 2005 and 2022 notified by the Ministry of Power, GoI in this regard are reproduced below:

“3. Requirements of Captive Generating Plant.-

(1) No power plant shall qualify as a ‘captive generating plant’ under section 9 read with clause (8) of section 2 of the Act unless-

- (a) in case of a power plant -*
 - (i) not less than twenty six percent of the ownership is held by the captive user(s), and*
 - (ii) not less than fifty one percent of the aggregate electricity generated in such plant, determined on an annual basis, is consumed for the captive use:*

Provided that in case of power plant set up by registered cooperative society, the conditions mentioned under paragraphs at (i) and (ii) above shall be satisfied collectively by the members of the cooperative society:

Provided further that in case of association of persons, the captive user(s) shall hold not less than twenty six percent of the ownership of the plant in aggregate and such captive user(s) shall consume not less than fifty one percent of the electricity generated, determined on an annual basis, in proportion to their shares in ownership of the power plant within a variation not exceeding ten percent;

- (b) in case of a generating station owned by a company formed as special purpose vehicle for such generating station, a unit or units of such generating station identified for captive use and not the entire generating station satisfy (s) the conditions contained in paragraphs (i) and (ii) of sub-clause (a) above including -*

Explanation :-

- (1) The electricity required to be consumed by captive users shall be determined with reference to such generating unit or units in aggregate identified for captive use and not with reference to generating station as a whole; and*
- (2) the equity shares to be held by the captive user(s) in the generating station shall not be less than twenty six per cent of the proportionate of the equity of the company related to the*

generating unit or units identified as the captive generating plant.

Illustration: In a generating station with two units of 50 MW each namely Units A and B, one unit of 50 MW namely Unit A may be identified as the Captive Generating Plant. The captive users shall hold not less than thirteen percent of the equity shares in the company (being the twenty six percent proportionate to Unit A of 50 MW) and not less than fifty one percent of the electricity generated in Unit A determined on an annual basis is to be consumed by the captive users.

(2) It shall be the obligation of the captive users to ensure that the consumption by the Captive Users at the percentages mentioned in sub-clauses (a) and (b) of sub-rule (1) above is maintained and in case the minimum percentage of captive use is not complied with in any year, the entire electricity generated shall be treated as if it is a supply of electricity by a generating company.

Explanation.- (1) For the purpose of this rule.-

- a. "Annual Basis" shall be determined based on a financial year;*
- b. "Captive User" shall mean the end user of the electricity generated in a Captive Generating Plant and the term "Captive Use" shall be construed accordingly;*
- c. "Ownership" in relation to a generating station or power plant set up by a company or any other body corporate shall mean the equity share capital with voting rights. In other cases ownership shall mean proprietary interest and control over the generating station or power plant;*
- d. "Special Purpose Vehicle" shall mean a legal entity owning, operating and maintaining a generating station and with no other business or activity to be engaged in by the legal entity."*

The Ministry of Power has vide its notification GSR No. 466 (E) dated 30th June, 2023 issued Electricity (Amendment) Rules, 2023, wherein in Rules (2) the following provisions are added in the Electricity Rules 2005 in Rule (3):

2. In the Electricity Rules, 2005 (hereinafter referred to as the said rules), in rule 3,-

- (a) in clause (a), for sub-clause (i), the following sub-clause shall be substituted, namely:- "(i) "not less than twenty-six per cent. of the ownership is held by the captive user:*

Provided that if the Captive Generating Plant is set up by an affiliate company, not less than fifty one percent of the ownership, is held by the captive user, in that affiliate company; and”;

(b) in the Explanation occurring after sub-rule (2), for clause (b), the following shall be substituted, namely:-

‘(b) “captive user” shall mean the end user of the electricity generated in a Captive Generating Plant and the term “captive use” shall be construed accordingly:

Provided that the consumption of electricity by the captive user may be either directly or through Energy Storage System:

Provided further that the consumption by a subsidiary company, as defined in clause (87) of section 2 of the Companies Act, 2013 (18 of 2013), of a company which is an existing captive user shall also be admissible as captive consumption by the captive user.’.

By aforesaid Rules, the Rule 3 (a) (i) is substituted as above:

The captive user held not less than 26% of the ownership. The proviso in the aforesaid Clause 3 (a) (i) state that if the captive generating plant is set up by an affiliate company, not less than 51% ownership is held by the captive user in that affiliate company.

In the explanation provided after sub-rule 2 of Rule 3 for clause (b) the following shall be substituted:

“captive user” shall mean the end user of the electricity generated in a Captive Generating Plant and the term “captive use” shall be construed accordingly”....

The first proviso to aforesaid rules provides that the consumption of electricity by the captive user may be either directly or through energy storage system.

The second proviso of the said Rules provide that the consumption by a subsidiary company as defined in clause (87) of the Section 2 of the Companies Act, 2013 of a company which is an existing captive user shall also admissible as captive consumption by captive user.

The Ministry of Power, GoI vide its Notification No. G.S.R 649 (E) dated 1.09.2023 made amendments in the Electricity Rules, 2005 with regard to 'captive generating plant' and 'captive user(s)' as stated below:

“

1. Short title and commencement.- (1) These rules may be called the Electricity (Third Amendment) Rules, 2023.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. In the Electricity Rules, 2005, in rule 3,-

(i) in sub-rule(1), in clause (a), in sub-clause(i), for the words “captive user”, the words “captive user(s); and” shall be substituted;

(ii) in sub-rule(1), in clause (a), in sub-clause (i), the proviso there under shall be omitted;

(iii) in Explanation, in clause (b), for second proviso, the following shall be substituted, namely:-

“Provided further that the consumption by a subsidiary company as defined in clause (87) of section 2 of the Companies Act, 2013 (18 of 2013) or the holding company as defined in clause (46) of section 2 of the Companies Act, 2013 (18 of 2013), of a company which is a captive user, shall also be admissible as captive consumption by the captive user.”;.....”

In the aforesaid Rules, the word 'captive user' provided in clause (a) of Sub-rule (1) of Rule 3 is substituted with words 'captive users(s)'.

Further, the proviso provided in Sub-rule (1) in Clause (a) in Sub clause (i) shall be omitted.

Further, in the said Rules in Explanation in Clause (b) for second proviso of Rule 3 is substituted with other proviso wherein, it is provided that consumption by a subsidiary company as defined in clause (87) of section 2 of the Companies Act, 2013 (18 of 2013) or the holding company as defined in clause (46) of section 2 of the Companies Act, 2013 (18 of 2013), of a company which is a captive user, shall also be admissible as captive consumption by the captive user.

Further, the Commission note that the issue of Captive Generating Plant and utilization of electricity generated from it are decided by the Hon'ble Supreme

Court in its Judgement in C. A. No. 8527 – 8529 of 2009 M/s. DGVCL Vs. M/s Gayatri Shakti Papers and Board and others dated 9/10/2023. The relevant portion of the said Judgement is reproduced below:

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21. *This brings us to the core issue which relates to interpretation of Rule 3 of the Rules. Three issues arise for our specific consideration in view of the conflicting judgments of the APTEL. These are:*

- I. *Eligibility criteria for a CGP/captive user under Rule 3(1)(a) of the Rules.*
- II. *Interpretation of the second proviso under Rule 3(1)(a) of the*

Rules and in particular the words “association of persons”.

- III. *Whether a company set up as a Special Purpose Vehicle for generating electricity is an, “association of persons”, in terms of the second proviso to Rule 3(1)(a) of the Rules.*

Issue I Eligibility criteria for a CGP/captive user specified under Rule 3(1)(a) of the Rules.

22. *Rule 3(1)(a) of the Rules was interpreted by this Court in **Chhattisgarh State Power**. In the said case, M/s. Shri Bajrang Power and Ispat Ltd. had established a CGP. SBPIL had submitted a petition to provide open access for wheeling of power through the transmission system of **Chhattisgarh State Power**, for the captive use by SBPIL’s sister concern, Shri Bajrang Metallica and Power Limited. SBMPL held 27.6% equity shares in SBPIL. However, the judgement also states that SBMPL directly held 26.67% shares in the CGP. The petition was resisted by CSPDCL on the ground that the consumption of electricity by SBPIL and SBMPL independently/individually was not in proportion to their respective ownership of the CGP. SBPIL, while holding 72% shares in the CGP, was to consume 14.16% of the electricity generated, whereas, SBMPL, which was holding 26.67% shares in the CGP, was to consume 57.87% of the electricity generated.*

23. *This Court did not agree with the plea and contention of the distribution licensee. The plant was held to be a CGP and SBMPL a captive user. The requirement under Rule 3(1)(a) of the Rules is twofold. First, the captive user should not hold less than 26% of the ownership in the CGP. Secondly, the captive user should consume not less than 51% of the aggregate electricity generated by such CGP. The second proviso to Rule 3(1)(a)(ii) of the Rules states that in case of an association of persons, the captive user(s) shall not hold less than 26% of ownership of the plant in aggregate and the captive*

user(s) shall not consume less than 51% of the electricity generated, determined on an annual basis, in proportion to their shares in ownership of the CGP within a variation not exceeding $\pm 10\%$. The decision holds that an association of corporate bodies can establish a power plant. SBMPL held 27.6% equity shares in SBPIL and thus satisfied the ownership requirement of 26%. The second requirement with regard to consumption of electricity was satisfied as SBMPL and SBPIL, together, would be consuming more than 51% of the power generated.

24. *The ratio in the **Chhattisgarh State Power** requires clarification and elaboration. We have provided such clarification and elaboration in **Issues I and II**, on our interpretation of the rule of proportionality in terms of the second proviso to Rule 3(1)(a) of the Rules.*
25. *To qualify as a CGP under Section 9, read with Section 2(8) of the Act, the requirements of paragraphs (i) and (ii) to Rule 3(1)(a) of the Rules have to be satisfied. We have already referred to the definition of a CGP under Section 2(8) of the Act which uses the words, “primarily for his own use”. This expression has been given statutory grain vide Rule 3 of the Rules. Rule 3 as repeatedly noticed incorporates two separate requirements. The first requirement is that the captive user(s) should have not less than 26% of the ownership in the CGP. Lower limit or minimum of 26% ownership is prescribed. Upper limit of ownership is not prescribed. The second requirement relates to the minimum electricity consumption. 51% of aggregated or more of the generated electricity should be consumed by the user(s) who meets the ownership requirement.*
26. *The presence of the words, “not less than”, in paragraphs (i) and (ii) to Rule 3(1)(a) of the Rules reflects and shows that the stipulations with regard to 26% ownership and 51% consumption is the minimal or lowest threshold. Maximum is not prescribed. A captive user who owns 100% of the CGP and consumes 51% or more electricity generated from such plant would satisfy the parameters prescribed. Equally, a captive user who owns 26% of the CGP and consumes 51% or more of the electricity generated would qualify as a captive user. However, this can result in abuse or gaming where there are multiple owners with different shareholdings. In case of an association of persons, a situation which is covered by the first explanation. This aspect, when there are multiple owners, in a case of association of persons, is examined under **Issue II**.*
27. *Proviso to clause (b) to Explanation 1 to Rule 3 states that consumption by a subsidiary, or holding company as defined in the Companies Act, 2013, when one of them is a captive user, shall be also admissible as captive consumption by the captive user. Clause (b) to Explanation 1 to Rule 3 states that captive*

user is the end user of the electricity. Captive user is the actual consumer who uses electricity for his own use.

28. *The first proviso to Rule 3(1)(a) of the Rules applies in case of a CGP set up by a registered cooperative society. In such cases, the requirements under paragraphs (i) and (ii) to Rule 3(1)(a) are treated as satisfied collectively by the members of the cooperative society. Therefore, if the members of the cooperative society consume more than 51% of the electricity generated collectively, the power plant is to be treated as a CGP and the members of the cooperative society as captive users. The cooperative society may supply 49% or less of the aggregate electricity generated to third parties. Any third party, who is not a member of the cooperative society, will be a non-captive user and a consumer, who will be liable to pay a cross-subsidy and an additional surcharge, as applicable. The members of the cooperative society when they collectively satisfy the consumption requirement will not be liable to pay cross-subsidy or additional surcharge, irrespective of whether they use dedicated transmission lines or exercise their right to open access using the distribution network of the distribution licensee. They will be liable to pay wheeling charges to the distribution licensee in case they use their distribution network.*
29. *The second proviso to Rule 3(1)(a) of the Rules applies in cases where the captive user(s) is an, "association of persons". We will elaborate on the eligibility requirements for, "association of persons", while interpreting the second proviso to Rule 3(1)(a) in*

Issue II.

30. *Two secondary, but nevertheless important questions arise for our consideration.*
31. *First, a contention was raised before us that since Section 2(8) of the Act uses the expression, "power plant set up by any person", the captive user under Rule 3(1)(a) of the Rules must be the person who had participated in setting up the plant. It is submitted that, "set up", does not include the acquisition of shares/ownership after the power plant has already been set up. Therefore, transfer of captive status through transfer of ownership is prohibited under the Act.*
32. *We should not accept this plea for several reasons. The expression, "set up" used in clause Section 2(8) of the Act should not to be read in a pedantic manner as referring to initial set up. We should recognise the practical reality and not ignore the impractical asinine consequences of this interpretation. Section 2(8) of the Act should not be read as impliedly incorporating a prohibition to transfer of ownership once the CGP has been set up. This bar is*

not specifically stated and mentioned, though the legislature could have stated this in simple words. Rather, in Section 9(1) the words used are, “construct, maintain or operate a captive generating plant”.

33. *Thus, construction, maintenance or operation of a CGP under Section 9(1) of the Act can be read disjunctively. This emanates from the use of the word, “or”, with reference to “construct, maintain or operate” in Section 9(1). This would be rational and reasonable interpretation in consonance with the legislative intent. It is not necessary that the person who maintains and operates the CGP must have also constructed the CGP. Construction, maintenance or operation can be by different persons. This is brought out in Rule 3 of the Rules which specifies the eligibility criteria for captive users. Rule 3 refers to the percentage of ownership of the captive user in the CGP, and use/consumption by the captive user in the financial year.*
34. *Clause (c) to Explanation 1 to Rule 3 states that ownership in relation to the generating station or power plant set up by a company or body corporate means the equity capital with voting rights. In other cases, ownership means proprietary interest and control over the generating station or power plant.*
35. *Section 9(2) the words used are “every person, who has constructed a captive generating plant and maintains and operates such plant”. The expression, “every person” can refer to a person who maintains and operates a CGP while not having constructed the CGP, which meaning and interpretation gains affirmation from the language of Section 9(1) which states that a, “a person may construct, maintain or operate a captive generating plant”. In case of ambiguity, it is useful to apply the purpose and object rule of interpretation. A practical interpretation is preferable, so as not to over-ride the legislative intent. It is legitimate for the court to assume that the legislature knows the reality and supports and enacts practicable laws which encourages and promotes business activities.*
36. *The expression, “person”, as defined under Section 2(49) of the Act, includes, inter alia, body corporates and association or body of individuals, whether incorporated or not. Transfer of ownership in case of companies and association of persons is a normal occurrence and incidence of business.*
37. *This issue was examined in **Kadodara Power** and it has been observed: “Can the ownership of the CGP be transferred after its set up?:*

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21. It is submitted that the words "set up" here are important and that the person who has set up the plant alone can own captive generating plant and not the person(s) who is transferee from the original owner(s). This proposition has not been accepted by the Commission in the impugned order. Nor does this proposition appeal to us. The Act nowhere prescribes that once set up by a person(s) a captive generating plant cannot be transferred to another owner. Nor does the Act say that on transfer of ownership the captive generating plant will lose its character of being captive despite fulfillment of all other conditions requiring it to be so. Section 9 of the Act which permits captive generation begins with the following words: notwithstanding anything contained in this Act, the person may construct, maintain or operate a captive generating plant and dedicated transmission lines". Obviously the owner of a captive generating plant need not be one who constructs. Set up defined in section 2(8) has been made equal to "construct, maintain or operate" by the use of these words in section 9. As we view it a captive generating plant does not lose its character by transfer of the ownership or any part of the ownership provided the generating plant produces power primarily for the use of its owner(s). The Regulation quoted above lays down further restrictions on the user of the power generated by a CGP. If all the provisions of the Act and Regulations governing captive generation and consumption from the CGP are specified a plant will be a CGP notwithstanding the fact that the plant at present is not owned by the person who originally set up the plant."

We agree with the said interpretation and logic. A CGP does not lose its captive status due to transfer of its ownership or any part of its ownership, provided that the transferee, that is, a new captive user, complies with eligibility criteria specified under Rule 3 of the Rules.

38. *This Court in **Global Energy Ltd. and Another v. Central Electricity Regulatory Commission**, while holding that Regulation 6-A of the Central Electricity Regulatory Commission*

(Procedure, Terms and Conditions for Grant of Trading Licence and Other Related Matters), Regulations, 2004 was intra vires the Act and the Constitution of India, had reasoned:

“38. When a disqualification is provided, it is to operate at the threshold in respect of the players in the field of trading in electricity. When, however, a regulatory statute is sought to be enforced, the power of the authority to impose restrictions and conditions must be construed having regard to the purpose and object it seeks to achieve. Dealing in any manner with generation, distribution and supply and trading in electrical energy is vital for the economy of the country. The private players who are permitted or who are granted licence in this behalf may have to satisfy the conditions imposed. No doubt, such conditions must be reasonable. Concededly, the doctrine of proportionality may have to be invoked.”

Dealing with the generation of electricity being vital for the economy of the country, a narrow interpretation will ignore realities, leading to irrational results. Section 2(8) and Section 9(2) are required to be read harmoniously with Section 9(1) of the Act. A purposive interpretation would include a subsequent owner of the CGP, who is an owner as per clause (c) to Explanation 1 to Rule 3 of the Rules.

39. In **Tamil Nadu Power**, the APTEL had held that the minimum ownership and consumption criteria for captive users are required to be satisfied only on the last day of the financial year, that is, 31st March. This, the APTEL in **Tamil Nadu Power**⁴³ observes, will account for any change in shareholding of the CGP, and consequent captive status, throughout the financial year. It is observed:

“292. It is critical for us to note the practical difficulties staring down at the face of the captive users and CGPs in the event the concept of weighted average is applied. We agree with the submissions of the Appellant that the nature of shareholding in a captive structure is fluid and dynamic. That, existing captive users within the said captive structure can choose to give-up its ownership along with consumption of captive power at any point of time if it

considers no usage for the same. In such a scenario, if no new captive user(s) is added then the shareholding along with consumption is accordingly adjusted. A CGP cannot foresee the future and predict as to how many of its shareholders may give up their ownership along with consumption of captive power, neither can it be predicted, if any new/ how many captive user(s) will be inducted within the structure. In such a scenario, if in terms of Rule 3 of the Rules verification of minimum shareholding along with minimum consumption is not done annually, at the end of the financial year but done considering ownership at different periods during the year, then same would create unforeseen difficulties for a CGP to maintain its captive structure. As such, we opine that the verification mandated under the Rule 3 has to be done annually, by considering the shareholding existing at the end of the financial year. This is also evident from a perusal of Format-5 formulated by TNERC as a part of the impugned order, which also specifically contemplates verification to be done as per the shareholding existing at the end of the financial year. Similar view has already been taken by us in Appeal No. 02 and 179 of 2018 titled as "Prism Cement Limited v. MPERC & Ors" (supra).

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294. *In light of our findings, we also observe that suppose there are ten (10) captive users who avail open access for captive use under Section 9 of the Act at the start of the financial year, and in the event three (3) of such captive users stops sourcing captive power after six months, and instead three new captive users are introduced within the captive structure by subscribing equity shareholding with voting rights immediately thereafter, then when the verification of captive status will be done annually on the basis of the shareholding existing at the end of such financial year, in that case the total number of captive users throughout the financial year would be treated as thirteen (7+3+3) and not 10. This is because the shareholding of the*

three captive users who stopped sourcing captive power, cannot have a zero/nil shareholding, as they sourced captive power for the first six months. While verifying the condition under Rule 3(1)(a)(i) and (ii) of the Rules, the consumption of captive power has to be done by captive users holding a minimum of 26% shareholding. Therefore, in the event shareholding of a captive user is considered as zero/nil after a few months into the financial year, then such user cannot be permitted to take benefit of availing captive power thereby seeking exemption from payment of CSS. In any event, the applicability of CSS will also depend upon the observations made by us in Appeal No. 38 of 2013 titled as 'M/s. Steel Furnace Association of India v. PSERC & Anr.'"

39. *We do not agree. The minimum threshold of ownership, which is 26%, is to be met and satisfied throughout the year and not at the end of the financial year alone. The reasoning in **Tamil Nadu Power** ignores that there is a connect between paragraph (i) and (ii) of Rule 3(1)(a) of the Rules. Paragraph (ii) which refers to minimum electricity that is required to be consumed by captive users is with reference to the minimum ownership specified in paragraph (i) of the said Rule. Thus, the minimum ownership requirement is required to be maintained continuously, throughout the financial year, that is, from 1st April of a year to 31st March of the next year, along with the minimum electricity consumption requirement. This is also the mandate of Explanation (2) to Rule 3(1)(b) of the Rules, which casts obligation on the captive users to ensure compliance of clauses (a) and (b) to sub-rule (1) to Rule 3 of the Rules.*
40. *The issue of computation of consumption of electricity and change of shareholding of captive users, when a CGP has more than one captive user and the application of the proportionality principle in terms of second proviso to Rule 3(1)(a) has been dealt by us in **Issue II**.*

Issue II Application of the second proviso to Rule 3(1)(a) of the Rules.

41. *The second proviso provides an additional eligibility requirement where the captive users are "an association of persons". At the outset, we must record that the proviso is ambiguous and confusing. It states that in case of association of persons being the captive user(s), the captive user(s) shall hold not less than 26% of the ownership of*

the plant in aggregate and such captive user(s) shall not consume less than 51% of the electricity generated on an

annual basis. To this extent, it is an exact replica of paragraphs (i) and (ii) of Rule 3(1)(a). Thereafter, the suffix in the last portion, states that the proportion of the shares held by the captive user(s) must be in proportion to the consumption of electricity generated within a variation not exceeding 10 percent.

42. *In **Kadodara Power**, referring to proportionality requirement, it is held: "How proportionality of consumption has to be assessed:*

17. The Electricity Rules 2005 have set down that not less than 51% of the aggregate electricity generated by a CGP, determined on an annual basis is consumed for captive use. However, in case there are more than one owner then there is a further rule of proportionality in consumption. In case the power plant is set up by a cooperative society the condition of use of 51% can be satisfied collectively by the members of the cooperative society. However, if it is an 'association of persons' then the captive users are required to hold not less than 26% of the ownership of the plant and such captive users are required to consume not less than 51% of electricity generated determined on an annual basis in proportion to the share of the ownership of the power plant within a variation not exceeding $\pm 10\%$. For example, if a CGP produces 10,000 kWh of electricity, 5100 kWh need to be consumed by the owners of CGP. In case there are three owners holding equal share, each one must consume 1/3rd of the 5100 kWh within a variation of $\pm 10\%$ i.e. between 1530 kWh to 1870 kWh. It will not be proper to assess the proportionality of the consumption on 100% of the generation. The Commission, however, appears to have calculated the proportion of use to 100% of the total consumption which may be more than 51% of generation...."

*We agree with the said reasoning in **Kadodara Power** But we would like to elaborate on the said reasoning by referring to the clarifications and the*

illustrations provided by Mr. M.G. Ramachandran, learned Senior Advocate appearing on behalf of the appellant – Dakshin Gujarat Vij Company Limited.

43. *The last portion of the second proviso to Rule 3(1)(a) of the Rules, that is, the proportionality principle, specifies an unitary qualifying ratio. The unitary qualifying ratio is the consumption requirement divided by the shareholding requirement, that is, 51% divided by 26%. This means that the owner of every 1% shareholding of the CGP should have minimum consumption of 1.96% of the electricity generated by the CGP, with a variation of $\pm 10\%$ being permissible. Therefore, the unitary qualifying ratio has to be within a range of 1.764% to 2.156%. In other words, we do not take into consideration 100% of the electricity generated. Instead, we apply the shareholding requirement, which should not be less than 26% in aggregate, to the electricity consumed, which should not be less than 51%, and thereby compute whether the ownership criteria and the proportionate consumption criteria is satisfied. Benefit of variation by 10% either way is to be a given.*
44. *For clarity, the illustrations provided Mr. M.G. Ramachandran, Senior Advocate, are reproduced below:*

Total Generation		100%	Unitary Qualifying Ratio is Consumption Requirement divided by Shareholding Requirement (with a variation of 10%) i.e. 51% divided by 26% which equals to 1.96% consumption by a captive user for every 1% shareholding		
Consumption Requirement (Not less than)		51%			
Shareholding Requirement (Not less than)		26%			
Shareholder	Actual Consumption	Actual Shareholding	Unitary Ratio Achieved	Remarks	Result
Illustration 1					
A	20	10.2	1.96	A, B, C, D, and E (all) consume not less than 1.96% for 1%	A to E qualify as
B	20	10.2	1.96		
C	20	10.2	1.96		

D	20	10.2	1.96	shareholding and therefore all qualify as captive users. All collectively own more than 26% shareholding.	captive users
E	20	10.2	1.96		
Others	0	49	0		
Illustration 2					
A	15	7	2.14	A, B, C, D, and E (all) consume more than 1.96% for 1% shareholding and therefore all qualify as captive users. All collectively own 26% shareholding.	A to E qualify as captive users
B	15	6	2.5		
C	15	5	3		
D	15	4	3.75		
E	15	4	3.75		
Others	25	74	-		
Illustration 3					
A	30	10	3	A, B and C qualify the captive consumption qua their shareholding in the ratio of not less than 1.96% of 1% shareholding. The ratio of D is not above 1.96, yet it qualifies on account of its ratio being within the permissible limit of 10% variation. E does not qualify as unitary consumption is 1.67% only, i.e. less than 1.96% per 1% shareholding and the same does not fall within 10% variation. Excluding E, the shareholding held by A, B, C and D is 33% i.e. not less than 26%. Hence A, B, C and D qualify as Captive users.	A to D qualify as captive users. E is not a captive user.
B	30	10	3		
C	20	10	2		
D	5.75	3	1.92		
E	5	3	1.67		
Others	9.25	64	-		

				The disqualification of E will not affect A, B, D and D as they cumulatively consume more than 51% and hold 33% i.e. not less than 26%.	
Illustration 4					
A	25	6	4.17	A, B, C and D qualify the captive consumption qua their shareholding in the ratio of not less than 1.96% for 1% shareholding. E does not qualify as unitary consumption is 1% only, i.e. less than 1.96% per 1% shareholding. Excluding E, the shareholding held by A, B, C and D however is only 21%. Since cumulatively A, B, C, and D do not hold not less than 26%, by virtue of Rule 3(2) of Electricity Rules, 2005, they cannot claim captive user status.	No one qualifies as captive user
B	20	5	4		
C	15	5	3		
D	10	5	2		
E	5	5	1		
Others	25	74	-		
Illustration 5					
A	30	1	30	Neither of A or B qualify as captive user even though they collectively satisfy the requirements of minimum shareholding of not less than 26% and minimum consumption of not less than 51%. B does	No one

B	21	25	0.84	not qualify as unitary consumption is less than 1.95% and not within the 10% variation. A or B independently do not satisfy the shareholding and consumption requirements. By virtue of Rule 3(2) of	qualifies as captive user
Others	49	74	-	Electricity Rules, 2005, they cannot claim captive user status	

Once the above standard is met and satisfied, the person satisfying the requirement will be treated as a member of the group captive users.

45. The aforesaid interpretation checks, “gaming”, by owners, which would amount to misuse and abuse of the Rule 3(1)(a) of the Rules. Instances of gaming are where a 1% or an insignificant shareholder of the CGP disproportionately uses the electricity generated, in which case he should not be treated as a group captive user and, therefore, should be denied the benefits that are given under the Act to the captive users. Gaming or misuse should be checked to protect interests of the Distribution Licensee.

46. This brings us to the question of applicability of the second proviso of Rule 3(1)(a) in cases where there is a change in ownership or shareholding of the CGP. An issue arises with respect to calculation of proportional consumption of electricity under the second proviso to Rule 3(1)(a) of the Rules when an existing captive user exits/transfers their shareholding/ownership to a new captive user.

It may happen in multiple situations. The APTEL in **Tamil Nadu Power** had postulated that such issue would be resolved if the minimum consumption and shareholding requirements are verified only at the end of the financial year. However, we have held that the minimum consumption and shareholding requirement are required to be maintained continuously and not just at the end of the year. It is only with respect to determining the ownership proportionate to consumption of electricity that requires our attention, with respect to the second proviso to Rule 3(1)(a) of the Rules. Gerc@123

47. In case of change of ownership, shareholding, or consumption, the principle of weighted average should be applied to ensure compliance of the proportional

electricity consumption requirement stipulated under the second proviso to Rule 3(1)(a). For instance, if a captive consumer exits or drops out in the middle of the year, transferring its shareholding to another or new captive user, it would be fair to hold that the captive user who has become a shareholder in the middle of the year, is required to consume proportionately to the electricity generated. In a given case, existing captive users taking advantage of the variation, may enhance their consumption. The concept of weighted average shareholding comes in aid to calculate the relevant average shareholding of the captive user in the year and the proportionate electricity required to be consumed by him. To borrow from the illustrations provided by learned Senior Advocate Mr. Basava Prabhu Patil, appearing on behalf of Tata Power Company Limited, this comes in aid in instances where the shareholding of a captive user in a CGP fluctuates, provided that the minimum ownership requirement of 26% in aggregate is not being breached. Further, a shareholder may hold 30% of shares of the CGP for 3 months, 40% of shares for 4 months, and 50% of the shares for the balance 12 months. The weighted average shareholding method is applied by taking average shareholding held by particular shareholder for the year for the purpose of calculating proportionate electricity required to be consumed by it in terms of the second proviso of Rule 3(1)(a).

48. *We agree with the reasoning and logic, that weighted shareholding and proportionate consumption of electricity is the fair, equitable and the correct method to determine whether the essential requirements of the second proviso to Rule 3(1)(a) are satisfied.*

Issue III Whether a company set up as a Special Purpose Vehicle for generating electricity is an 'association of persons' which must meet the proportionality requirement specified in the second proviso to Rule 3(1)(a) of the Rules.

49. *This brings us to the last issue and question – whether a company set up as a SPV, in view of clause Rule 3(1)(b) of the Rules, is absolved from meeting the eligibility criteria specified in paragraphs (i) and (ii) of Rule 3(1)(a) of the Rules read with second proviso to Rule 3(1)(a) of the Rules. This argument was raised and accepted in **Tamil Nadu Power** on the following grounds:*

“255. We have analysed the submissions of the parties on the issue of treatment of an SPV as an AOP. As seen before, Rule 3 of the Rules deals with the requirements to be fulfilled to qualify as a captive. In the said rule, SPV as a CGP

is given under Rule 3 (1)(b). Further, it is also seen that Rule 3(1)(a)(i) has two provisos contemplating the manner in which the requirements to qualify as a CGP is to be fulfilled by a registered Cooperative society and an AOP. It is also seen that the said two provisos do not relate to Rule 3(1)(b) which deals with a SPV.

256. *We agree with the submission put forward by the Appellant that second proviso to Rule 3(1)(a) is a stand-alone provision and as such does not relate to Rule 3 (1)(b). The Parliament in its wisdom has created an intelligible differentia under Rule 3, between a SPV and an AOP. It is clear from a reading of Rule 3 that second proviso to Rule 3(1)(a) which exclusively deals with an AOP, lays down that the captive user (s) shall hold not less than 26% ownership of the plant in aggregate and shall not consume less than 51% of the electricity generated, determined on an annual basis, in proportion to their ownership of the power plant.*

257. *On the other hand, Rule 3(1)(b) exclusively deals with a SPV, and it only provides that the conditions mentioned in Rule 3(1)(a)(i) and (ii) are applicable to a SPV, with the second proviso not mandated to be applied to it. Thus, we find force in the argument of the Appellant that second Proviso to Rule 3(1)(a) is a stand-alone provision.*

258. *The above argument of the Appellant is further strengthened on the principles enunciated by the Hon'ble Supreme Court with regard to interpretation of statutes by Courts. The Hon'ble Supreme Court has time and again held that Courts cannot rewrite or recast legislation, they should not act as law makers where there is no ambiguity in the language in a piece of legislation then such legislation ought to be literally interpreted without any deviation. The Hon'ble Supreme Court has also held that provisos are exceptions to the general rule. In this regard, we refer to the following judgments:*

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259. *From the principles drawn from the above judgments, we observe that TNERC vide the impugned order particularly in para 6.4.4 has endeavoured to add an*

intention to Rule 3(1)(b) which was otherwise absent from its construction. By holding that the second proviso to Rule 3(1)(a) is applicable to Rule 3(1)(b) thereby equating a SPV with an AOP, the impugned order has committed an error in interpreting the said Rule in the manner in which it has been enacted by the Parliament. We also concur with the principles laid down in the cases of Kailash Nath (supra) and Sanjay Kumar (Supra) that a proviso is an exception and it cannot travel beyond the provision to which it is a proviso. We therefore, find that the same are applicable in the facts of the present Appeal. It is settled law that the function of a proviso is to except something out of the enactment or to qualify something enacted therein which but for the proviso would be within the purview of the enactment. Applying this clear jurisprudence, TNERC could not have applied the second proviso to Rule 3(1)(a) to Rule 3(1)(b). Hence, the requirement of consuming minimum of 51% electricity generated on an annual basis and the requirement of the captive users holding 26% of the ownership of the plant in aggregate, and such consumption being in proportion to the shares of ownership of the power plant can only be applicable to power plants set-up by an AOP but cannot be applied to power plants set-up by SPV.

50. **Kadodara Power** takes the opposite view, and the APTEL has reasoned:

"Is a company formed as a special purpose vehicle an association of person?"

15. The question has arisen because the word 'association of persons' is not defined anywhere in the Act or in the Rules. The proviso to Rule 3 (1)(a)(ii) makes two special conditions for cooperative societies and association of persons. If the CGP is held by a person it is sufficient that the person consumes not less than 51% of the aggregate electricity generated in such plant. In case the plant is owned by a registered cooperative society then all the members together have to collectively consume 51% of the aggregate electricity generated. In case the CGP is owned by an association of persons the captive users together shall hold not less than 26% of the ownership of the plant in aggregate and shall consume not less than 51% of the electricity generated in proportion to their shares of the ownership of the plant within a variation not exceeding +

10%. A special purpose vehicle is a legal entity owning, operating and maintaining a generating station with no other business or activity to be engaged in by the legal entity. Now if three companies need to set up the power plant primarily for their own use they can come together and form another legal entity which may itself be a company registered under the Companies Act. This company may set up a power plant. In that case the company formed by three different companies would become a special purpose vehicle. If a company which is a special purpose vehicle is one person then all that is necessary is that this company should consume 51% of the generation. However, if it is treated as association of persons apart from a condition of consuming minimum 51% of its generation the three share holders will also have to consume 51% of the generation in proportion to their ownership in the power plant. It is contended on behalf of some of the appellants before us who are special purpose vehicles that they are not an association of persons and accordingly it is only necessary for them to consume 51% of their generation collectively without adhering to the Rule of proportionality of consumption to their share. This does not appear to us to be the correct view. Section 2(8) of the Act, as extracted above, says that a captive generating plant may be set up by any person and includes the power plant set up by any cooperative society or association of persons. Mr. M. G. Ramachandran contends that going by this definition if the special purpose vehicle is not an association of persons it cannot set up a captive generating plant because the definition does not mention any person other than a cooperative society and association of person. There is small flaw in the argument of Mr. M. G. Ramachandran in as much as the definition of captive generating plant is inclusive. In other words, the captive generating plant may be set up by any person including a cooperative society or association of persons. In other words, the person to set up a generating plant may be somebody who does not fulfill the description of either a cooperative society or association of persons. Nonetheless, reading the entire Rule 3 as a whole it does appear to us that a CGP owned by a special purpose vehicle has to be treated as an association of person and liable to consume 51% of his generation in proportion to the ownership of the plant. Every legal entity is the person. Therefore, the special purpose vehicle which has to be a legal entity shall be a

person in itself. Any generating company or a captive generating company is also a person. The Rules specially deals with cooperative society. In an association of persons it has to be a 'person' because without being a person it cannot set up a captive generating plant. Therefore it will be wrong to say that since the special purpose vehicle is a 'person' in itself it cannot be covered by a definition of 'association of persons' and has to be covered by the main provision which requires the owner to consume 51% or more of the generation of the plant. In our view the definition is somewhat strange in as much as the term 'person' is said to include an 'association of persons'. One therefore cannot say that a CGP owner can be either a 'person' or an 'association of persons' a special purpose vehicle thus can be a 'person' as well as an 'association of persons'. A cooperative society is an 'association of persons' in the sense that some persons come together to form a cooperative society. However, the moment an association or society is formed according to the legal provisions it becomes a person in itself. A special provision has been made permitting a cooperative society from consuming 51% collectively. The first proviso 3 (1)(a)(ii) itself suggests that a special privilege has been conferred on a cooperative society. Other persons who are also legal entities formed by several persons coming together have not been given such special privilege. Who can such association of persons be? Of the various legal entities comprehended as persons owning a CGP the special purpose vehicle does seem to fit the description of 'association of persons'. We fail to comprehend who other than a special purpose vehicle can be an 'association of persons'. None of the lawyers arguing before us gave example of 'association of persons' other than a special purpose vehicle. Therefore, we have no hesitation to hold that special purpose vehicle is an association of persons.

- 16.** *In case the special purpose vehicle was not required to maintain the rule of proportionality of consumption, the Central Government could have specifically mentioned the same just as it has done for a cooperative society. The Rule having not exempted a special purpose vehicle from the requirement of consuming 51% of the generation in proportion to the ownership of the persons forming the special purpose vehicle as has been done in the case of cooperative*

society it will only be rational and logical to hold that a special purpose vehicle is also subject to the rule of proportionality of consumption to the percentage share of ownership as an 'association of persons'.

51. We agree with the reasoning giving in **Kadodara Power** Rule 3(1)(b) of the Rules does not negate or undo the eligibility requirements specified in paragraphs (i) and (ii) to Rule 3(1)(a) of the Rules, which in case of an association of persons mandates the satisfaction of the proportionality requirement under the second proviso to Rules 3(1)(a). Rule 3(1)(b) refers to a situation where a company set up as a SPV has multiple units generating electricity. It stipulates that the company formed as a SPV can identify one or more of such generating units for its captive use. All the generating units need not be identified for captive use. The units which are not identified for captive use need not satisfy the conditions mentioned in paragraphs (i) and (ii) of Rule 3(1)(a) of the Rules. Electricity generated by these unidentified units need not be accounted and considered. The explanation clarifies the situation as it states that the requirement of consumption of electricity by captive users shall be determined with reference to the generating unit or units identified for captive use. The unit or units identified for captive use, in other words, must satisfy the requirements of paragraphs (i) and (ii) of Rule 3(1)(a) of the Rules read with the second proviso. This is also clear from Rule 3(2), which states that the equity shares held by the captive user in the generating station, which is identified for captive use, should not be less than 26% of the proportionate equity of the company relating to the generating unit or units identified as a CGP. The illustration to Section 3(1)(b) that is lucid, for the sake of convenience is again reproduced:

“Illustration.—In a generating station with two units of 50 MW each namely Units A and B, one unit of 50 MW namely Unit A may be identified as the Captive Generating Plant. The captive users shall hold not less than thirteen per cent of the equity shares in the company (being the twenty-six per cent proportionate to Unit A of 50 MW) and not less than fifty-one per cent of the electricity generated in Unit A determined on an annual basis is to be consumed by the captive users.”

Thus, Rule 3(1)(b) of the Rules liberalises, gives flexibility and an option when a generating station owned by company, incorporated as a SPV, has multiple generating units. Rule 3(1)(b) does not undo or override the eligibility criteria specified under Rule 3(1)(a) read with second proviso.

52. *It was submitted before us that since a SPV was an incorporated company, it could not be equated with an association of persons, which is usually understood to mean a recognised taxable entity and not as an incorporated entity. Reliance was placed on the interpretation by this Court in **Ramanlal Bhailal Patel and Others v. State of Gujarat**, to contend that whenever an inclusive definition is provided for a term, an extended statutory interpretation of such term may be adopted. Section 2(49) of the Act uses the word “includes”, in the expression, “‘person’ shall include” to define a “person” with respect to the Act. Thus such extended statutory interpretation for the term, “association of persons”, is submitted is importable from statutes like the Income Tax Act, 1961. We do not agree with the said contention.*

53. *This Court in **Ramanlal Bhailal Patel**, while interpreting the meaning of an, “association of persons”, has held that an association of persons is one where two or more persons join in a common purpose and common action to achieve some common benefit. Further, such common purpose, action or benefit may vary based on the particular context of a statute. The relevant paragraph reads:*

“28. The terms “association of persons” and “body of individuals” (which are interchangeable) have a legal connotation and refer to an entity having rights and duties. They are not to be understood literally. For example, if half a dozen people are travelling in a car or a boat, or standing in a bus-stop, they may be a group of persons or a “body of individuals” in the literal sense. But they are not an association of persons/body of individuals in the legal sense. When a calamity occurs or a disaster strikes, and a band of volunteers or doctors meet at the site and associate or cooperate with each other for providing relief to victims, and not doing anything for their own benefit, they may literally be an association of persons, but they are not “an association of persons/body of individuals” in the legal sense. A mere combination of persons or coming together of persons without anything more, without any intention to have a joint venture or carry on some common activity with a common understanding and purpose will not convert two or more persons into a body of individuals/association of persons. An “association of persons/body of individuals” is one in which two or more persons join in a common purpose and common action to achieve some common benefit. Where there is a combination of individuals by

volition of the parties, engaged together in some joint enterprise or venture, it is known as “association of persons/body of individuals”. The common object will have some relevance to determine whether a group or set of persons is an association of persons or body of

individuals with reference to a particular statute. For example, when the said terms “association of persons” or “body of individuals” occur in a section which imposes a tax on income, the association must be one the object of which is to produce income, profit or gain (vide CIT v. Indira Balkrishna, Mohd. Noorulla v. CIT, N.V. Shanmugam and Co. v. CIT and Meera and Co. v. CIT). But the object need not always be to carry on commercial or business activity. For example, when the word “person” occurs in a statute relating to agriculture or ceiling on landholding, the term “association of persons/body of individuals” may refer to a combination of individuals who join together to acquire and own land as co-owners and carry on agricultural operations as a joint enterprise.”

54. Further, in **Ramanlal Bhailal Patel**, while elaborating on the notion of an association of persons, the Court held that co-owners of a property do not automatically become an association of persons. Where such co-owners lack a common purpose and pursue co-ownership not by their own volition, each of such coowners would constitute a different person instead of being referred to as single person, as an association of persons/body of individuals. The reasoning is reproduced:

“29. Normally, where a group of persons have not become co-owners by their own volition with a common purpose, they cannot be considered as a “person”. When the children of the owner of a property succeed to his property by testamentary succession or inherit by operation of law, they become co-owners, but the coownership is not by volition of parties nor do they have any common purpose. Each can act in regard to his/her share, on his/her own, without any right or obligation towards the other owners. The legal heirs though coowners, do not automatically become an “association of persons/body of individuals”. When different persons buy undivided shares in a plot of

land and engage a common developer to construct an apartment building, with individual ownership in regard to respective apartment and joint ownership of common areas, the co-owners of the plot of land, do not become an “association of persons/body of individuals”, in the absence of a deeming provision in a statute or an agreement. Similarly, when two or more persons merely purchase a property, under a common sale deed, without any agreement to have a common or joint venture, they will not become an “association of persons/body of individuals”. Mere purchase under a common deed without anything more, will not convert a co-ownership into a joint enterprise. Thus when there are ten co-owners of a property, they are ten persons and not a “body of individuals” to be treated as a “single person”. But if the co-owners proceed further and enter into an arrangement or agreement to have a joint enterprise or venture to produce a common result for their benefit, then the co-owners may answer the definition of a “person”.

55. *Thus, the connotation of the expression, “association of persons”, may vary in different statutes based on the particular context in which an association of persons is used in that statute. It needs to be examined whether such association of persons is pursuing a common action to achieve a benefit under the said statute.*
56. *In the context of the Act and Rules, companies or body corporates may come together and set up another company as a SPV, with a common purpose to achieve the common benefit of becoming captive user(s) under the Act and Rules, thereby enjoy the advantages provided to captive users such as waiver of paying cross subsidy or additional surcharge, as applicable.*
57. *Further, explanation 1(d) to Rule 3 of the Rules, defines a SPV to mean a legal entity owning, operating, and maintaining a generating station with no other business or activity to be engaged in by the legal entity. Thus, SPVs have a single purpose as envisaged under the Rules, that is, owning, operating and maintaining a generating station. A SPV cannot consume the electricity generated by the CGP by itself, that is, it cannot be a captive user since its only purpose is to own, operate and maintain a generating station. Thus, the purpose and objective of companies or body corporates in setting up an SPV, which cannot enjoy the benefits provided to captive users itself, would be for such body corporates, companies, or other persons to enjoy the common benefit of becoming captive users.*

58. *Our reasoning is in consonance with section 2(8) of the Act, which defines a CGP, and as noticed above categorises CGPs into two categories:*

i) Single User CGP – the first part of Section 2(8) refers to a power plant set up by any person to generate electricity primarily for his own use; and ii) Group User CGP – the second part of Section 2(8) states that the power plant set up by any person to generate electricity primarily for their own use includes a power plant set up by any cooperative society or association of persons for generating electricity primarily for the use of members of such cooperative society or association.

No other category of CGP is recognised under Section 2(8) of the Act.

59. *The term “person”, as defined in Section 2(49) of the Act, covers a wide category of users, including, any company or body corporate or association or body of individuals, whether incorporated or not, or artificial juridical person.*

60. *The term, “association of persons”, has not been specifically defined in the Act. Conversely, the expression, “association or body of individuals, whether incorporated or not”, used in the definition of “person” under Section 2(49) of the Act widens the scope of a “person” to include both juridical and non-juridical persons.*

61. *To reiterate, Section 2(8) of the Act recognises two categories of CGPs, that is, single captive users and group captive users. For group captive users, only two categories of users are recognised, that is, a cooperative society and association of persons. The first proviso to Rule 3(1)(a) of the Rules creates an exception for cooperative societies. It requires members of the cooperative society to only collectively satisfy the minimum ownership and electricity consumption requirements specified under paragraphs (i) and (ii) of Rule 3(1)(a) of Rules. The second proviso to Rule 3(1)(a), which refers to association of persons, requires such captive users to satisfy the minimum ownership and electricity consumption requirements specified under paragraphs (i) and (ii) of Rule 3(1)(a) of Rules. Additionally, it also requires such captive users to consume electricity generated by the CGP, which shall not be less than 51%, in proportion to their individual shares in the ownership of the CGP, which shall not be less than 26%. Thus, under the Rules, all group captive users which are not registered cooperative societies are required to comply with the test of proportionality specified in the second proviso to Rule 3(1)(a).*

62. This Court in **S. Sundaram Pillai and Others v. V.R. Pattabiraman and Others** has held that a proviso serves four different purposes, as stated below:

“43. We need not multiply authorities after authorities on this point because the legal position seems to be clearly and manifestly well established. To sum up, a proviso may serve four different purposes:

(1) qualifying or excepting certain provisions from the main enactment:

(2) it may entirely change the very concept of the intendment of the enactment by insisting on certain mandatory conditions to be fulfilled in order to make the enactment workable:

(3) it may be so embedded in the Act itself as to become an integral part of the enactment and thus acquire the tenor and colour of the substantive enactment itself; and

(4) it may be used merely to act as an optional addenda to the enactment with the sole object of explaining the real intendment of the statutory provision.”

Accordingly, the second proviso to Rule 3(1)(a) of the Rules is not case specific. It is to be treated as corollary to the interpretation embedded under Section 2(8) of the Act, that is, “primarily for its own use”. In order make the enactment under Section 2(8) of the Act workable in any instance where group captive users are not registered cooperative societies, the rule of proportionality under the second proviso to Rule 3(1)(a) of the Rules should be read as a mandatory condition.

63. This Court in **Monnet Ispat & Energy Ltd. And Others v. Union of India and Others** held that the minimum electricity consumption requirement under paragraph (ii) to Rule 3(1)(a) of the Rules conforms with the requirement under Section 2(8) of the Act, that electricity generated by the CGP should be “primarily for its own use”. Thus it held that Rule 3(1)(a) of the Rules cannot be said to be against the purposes of the Act. This Court in **Monnet Ispat** observes:

“14. In the light of what has been discussed by this Court in Global Energy Ltd. (supra) when we examine definition of Generating Plant in section 2(8) of the Act it emphasizes setting up primarily for his own use or in case of cooperative society for use by its members. When we consider Rule 3(1)(a)(ii) of the Rules of 2005, it is clear that it provides not less than 51% of aggregate electricity generated in such plant determined on annual basis is consumed for captive use. The rule conforms to the requirement of section 2(8) that primarily electricity should be generated by captive generating plant for his own use/members as the case may be. The provisions of Rule 3(1)(a)(ii) of the Rules of 2005 cannot be said to be against purposes of the Act. Rather it promotes rationale of the provision and essential qualifications laid down in the Act itself...”

Similarly, the second proviso to Rule 3(1)(a) of the Rules is in furtherance of Section 2(8) of the Act.

64. *An association of companies or body corporates thus are required to comply with Rule 3(1)(a) read with the second proviso to Rule 3(1)(a). Equally, an association of companies, body corporates, or other persons that set up a SPV which owns, maintains, and operates a CGP is required to comply with Rule 3(1)(a) read with the second proviso to Rule 3(1)(a). A SPV in this regard may be company, but it also is also an association of persons in terms of the second proviso to Rule 3(1)(a).*
65. *We cannot, in any manner, read Rule 3(1)(b) as overriding or prevailing over Rule 3(1)(a) of the Rules. To accept this argument would, in fact, be accepting that “gaming”, as described above, is permissible if a company is formed as a SPV for the purpose of generating and supplying electricity to its shareholders or other body corporates. For instance, a generating company established as an independent power producer being a shareholder of 98% shares in a plant can camouflage as a CGP by giving 2% shares to group captive users and allowing them to consume 98% of the electricity generated. The independent power producer may consume only 2% of the electricity generated despite holding 98% of the shares in the plant. This would be clearly contrary to Section 2(8), which uses the expression, “primarily for its own use”. To accept this submission would also be contrary to the object and purpose behind giving benefit to captive users who spend their money and invest in setting up a CGP. While interpreting a provision which is ambiguous or debatable, the*

court or the adjudicator must keep in mind the intent of the legislature and read the words in a manner that the object and purpose is promoted, rather than accepting an interpretation which would result in misuse or abuse.

66. *In view of the aforesaid reasoning, we hold that SPVs which own, operate and maintain CGPs are an “association of persons” in terms of the second proviso to Rule 3(1)(a) of the Rules. Companies, body corporates and other persons, who are shareholders and captive users of a CGP set up by a SPV, are required to comply with Rule 3(1)(a) of the Rules read with the second proviso of the Rules.*

67. *We accordingly answer the three issues.”*

From the aforesaid decision of Hon’ble Supreme Court, the criteria for fulfilment of captive generating plant and captive consumption of electricity by (i) any person, (ii) members of (a) co-operative society or (b) association of person is transpired. The aforesaid decision of Hon’ble Supreme Court required to be fulfilled by the above entity as and when they claim the consumption of electricity as captive consumption and avail the benefits enshrined in the Act. Failure to it, the consequences of loose of captive status by the (i) any person, (ii) members of (a) co-operative society or (b) association of person shall arise. It also attracts for payment of necessary charges, if any like surcharges on transmission or wheeling of electricity, i.e. Cross Subsidy Surcharge and/or additional surcharge etc. payable by them.

Moreover, the Amendments made in the Rule 3 of 2005 also considered and discuss in earlier part of this SoR. Accordingly, the fulfilment of criteria of ownership in CGP as well as consumption of energy by the ‘captive users’ directly or through energy storage system and also by subsidiaries company defined under clause 2 (87) of the Companies Act qualifying as captive consumption is stated. The fulfillment of criteria for captive generating plant set up by affiliate company, the captive user and subsidiary company is clarified in earlier part of this SoR. Hence, the

aforesaid aspects are need to be applied and considered while verification of captive status of generating plant and captive use by the captive users. Therefore, no further deliberation is required.

Issue wise Analysis:

- We note that some of the objectors have suggested that the nodal agency for verification of captive status of consumer be not made distribution licensee on a ground that they are interested party. We note that the aforesaid issue raised by the some of the objectors in earlier regulations and the same is dealt by us. We also note that the Commission has in earlier part of this SoR decided and recorded that the nodal agency for verification of captive generating plant and captive consumption is the distribution licensee as recorded in earlier para. We also clarify that the status of captive generating plant or captive consumption be decided by the Commission only in case of any dispute. The aforesaid entity is only for verification of documents /evidence and to see as to whether generating plant has fulfilled the criteria of captive generating plant or not, and the consumption by the consumer/owner of the captive plant qualify as captive consumption or not. In case of the distribution licensee found that the generating plant and/or consumer failed to prove the status of captive generating plant or consumption shall approach to the Commission for deciding the status of such entity with consideration of documents/evidence submitted by it in accordance with law.
- We note that some of the objectors have suggested that the time period for submissions of documents be made out 6 months instead of 30th April or within 3 months as some time audited account and MGT 7 are not completed by 30th April. The afore said suggestion seems valid that in some of the cases the audited account may not

be available by 30th April of the financial year, i.e. within one month of the completion of earlier financial year for the companies established under the Companies Act or the co-operative society. Hence, we decide to accept the aforesaid suggestion and accordingly amend the first para of Schedule I, Clause 5 and Clause 12.2 of Schedule I of the aforesaid Schedule to the Draft Regulation, which are now renumbered as Clause 4 and Clause 11.2 respectively by stating that the details of fulfillment of captive generating plant with audited certificate be submitted latest by next 31st October of the financial year falls on completion of financial year for which the captive generating plant and captive consumption status declaration desire by the concerned entity.

- We note that some of the objectors have suggested that the word “to prove” and “Captive Status” be deleted and word “submit” and “shareholding details” be added in Schedule I. The aforesaid suggestion is not accepted as it is responsibility of owner/owners of the captive generating plant to satisfy dual conditions as specified in the Electricity Rules, 2005 read with provisions of the Electricity Act, 2003 with regard to Captive Status of the generating plant and the energy generated from it primarily for use of captive consumption. Failure to it, it attracts the applicable charges payable by the concerned person and/or member of co-operative society or association of persons as case may be. Merely submission of document is not sufficient to declare the status of CGP and qualification of consumption as captive consumption.
- We note that some of the objectors have suggested that as specified in Schedule I, the Commission may provide guidelines for verifying equity holding with voting right held by Captive Consumer. As recorded in earlier para that the status of the captive generating

plant as well as captive consumption is concerned, the same be verified with the relevant data for aforesaid aspects submitted by the entity who is claiming the status of Captive Generating Plant and/or captive consumption of energy generated from it by providing necessary documents/evidence. The details of documents needs to be provided by the aforesaid entity is already specified in clause 9, 10 and 11 of Schedule I of Draft Regulations, which are now renumbered as Claus 8, 9 and 10 respectively. However, if any further documents or mechanism need to be specified by the distribution licensee for verification of captive status of the generating plant and consumption if assigned to the distribution licensee, it shall prepare the procedure for it and get it approved from the Commission.

- Some of the objectors have suggested that instead of submitting the undertaking on affidavit by captive generating plant and captive consumers the same may be without it. The aforesaid objection/suggestion is not accepted because the verification of status of captive generating plant and captive consumption of energy be carried out after completion of year (on annual basis) with the relevant data submitted by the concerned entity as specified in these Regulations .Failure to comply the dual criteria specified in the Electricity Rules, 2005, read with provision of the Electricity Act, 2003, it attracts the payment of surcharges including cross subsidy surcharge as well as additional surcharge etc. if any by such entity to the distribution licensee. The affidavit submitted by the CGP holder(s) ensure the undertaking given by the person/member of (a) co-operative society or (b) association which is binding on them that they are liable for consequences if any on failure of status of captive generating plant and/or consumption by its member(s) or person(s).

- We note that some of the objectors have suggested that the verification of documents on account of change in shareholding of existing captive users without addition of new stakeholders does not arise when verification is done on annual basis at the end of financial year. In case when new captive users is introduced than only documents qua details of shareholding have to be furnished. The aforesaid objections/suggestions are against the provisions of the Electricity Act, 2003 read with Rules framed under it. The change in shareholding with voting rights of the shareholders and change in consumption by the person or members of co-operative society or association as per the provision of Rules needs to be verified on annual basis with consideration of entire financial year. The contention of the aforesaid objection are not valid in terms of the decision of Hon'ble Supreme Court in C. A. No. 8527 – 8529 of 2009 M/s. DGVCL Vs. M/s Gayatri Shakti Papers and Board and others.
- We note that some of the objectors have suggested that the methodology for verification of change in ownership and consumption in case of group captive structure shall be done for each corresponding period of such changes as decided by Hon'ble APTEL in Appeal No. 131 of 2020. Accordingly, the aforesaid clause is not required. The aforesaid objections of the stakeholders are not acceptable because when the provision of Electricity Act, 2003 and Rules made under it provides for establishment of ownership in the Captive Generating Plant as well as consumption of energy from such plant on annual basis and failure to it the entity who is not complying the dual criteria loose the status of ownership and consumption as captive from such plant. It attracts the consequences of failure of compliance with the provisions of Act and

Rules framed under it. Further, the aforesaid objection are not valid in terms of the decision of Hon'ble Supreme Court in C. A. No. 8527 – 8529 of 2009 M/s. DGVCL Vs. M/s Gayatri Shakti Papers and Board and others and hence the same are not acceptable and rejected.

- We note that some of the objectors have suggested that each legal entity is different and have liability of its default. A separate legal entity cannot be made liable for default of another legal entity. Accordingly, the Commission may remove the same clause. We note that the Regulation provides that in case of the change in shareholding of the member(s) of CGP as well as consumption for fulfillment of dual criteria for claiming CGP status as per the provisions of the Electricity Rules, 2005 are not withdrawn but the same are required to be applied and verified to decide the status of the CGP holders on annual basis as per the provisions of the Act and Rules. Failure to it the person/member/company for non-compliance, if any with aforesaid provisions, they are subject to consequences as per the provisions of the Act and Rules framed under it. Further, the aforesaid objections are not valid in terms of the decision of Hon'ble Supreme Court in C. A. No. 8527 – 8529 of 2009 M/s. DGVCL Vs. M/s Gayatri Shakti Papers and Board and others and hence the same are not acceptable and rejected.
- We note that some of the objectors have suggested that the verification of consumption be based on the State Energy Account data published by SLDC. Some of the objectors have suggested that T&D losses are to be considered as deemed consumption while working of 51% minimum consumption. Some of the objectors have suggested that T&D loss in kind are to be deducted for wheeling of energy from the point of generation to point of consumption. It is also suggested that such T&D loss need to be grossed up. In this

regard, it is to be noted that the dual criteria for fulfilment of captive generating plant and captive consumption is specified in the Rules 2005. The person/member who claim that consumption of energy done by them as captive consumption (own use) in terms of provisions of Electricity Act, 2003 and Rules framed under it, are required to fulfill the criteria of (i) shareholding with voting right or ownership in CGP by the subsidiary and (ii) consumption of energy at the place of consumption. The consumption at the premises of the consumer claiming for captive consumption consists of the losses etc. occurred in the network for supply of power from CGP. Hence, there is no need to factor the same separately. Further, the suggestion that the verification of consumption should be based on the SEA issued by SLDC is concerned, we note that the green energy open access is allowed to consumer who has contracted demand/sanctioned load of 100 kW and above, while the same is allowed without any load limit in case of captive consumptions per the provision of Rules and these Regulations. In such eventuality, it is not possible to fix the verification of consumption data limited to SEA issued by SLDC only. However, in case where the SEA issued by SLDC is available during the verification, the said data available from SEA may be utilized. We clarify that the consumption of energy took place at consumer place and it is recorded in the energy meter installed at consumer place. The data of such meter should not be ignored.

- We clarify that clause 2 of Schedule I of Draft Regulations is modified and merged with Clause 1 of Schedule of the draft Regulations. Accordingly, Clause 2 of Schedule I of draft Regulations is deleted. Resultantly, Clause 3 to Clause 12 of Schedule I of the Draft Regulations are renumbered as Clause 2 to Clause 11 of Schedule I in the final Regulations.

- We note that some of the objectors have suggested that there is no other criteria for qualifying captive generating plant other than those provided in the Electricity Act, 2003 and Rules framed under it. It is stated that the clause 8 (b) of Schedule I of Draft Regulations is against the provisions of Electricity Rules framed under Section 176 of the Electricity Act, 2003 and other provisions of Electricity Act, 2003. We note that the criteria specified under the provisions of Electricity Act, 2003 read with the provisions of Electricity Rules framed under it, does not consist of the word “supply”, “sale”, “purchase”, and “agreement”. The word “supply” is defined under the Act is different and distinct than “primarily own use”. Further, on combined reading of Section 9, 10, 42 and 49 of the Electricity Act, 2003, it is clear that a generating company and captive generating plant have an option to “supply” the electricity to the “licensee” and/or consumer by signing an “agreement” for “sale” and “purchase of electricity” on terms and conditions (including tariff) as may be agreed upon by them. Thus, the generating company or captive generating plant and consumer(s) are eligible to avail the electricity purchased from other than the distribution licensee in whose area of supply such consumer(s) are situated, on agreed tariff between the parties. Moreover, the aforesaid clause of Schedule I states regarding the verification of captive status of the generator and consumption of energy by the consumer. It requires that both criteria combinedly fulfilled by the users of electricity from such plant to be eligible for availing the benefit of captive status and connected benefits like non-applicability of the surcharges i.e., cross subsidy surcharge, additional surcharge, if any etc. The aforesaid provisions of these Regulations is not contrary to the provisions of the Act or Rules framed under it. Further, the aforesaid objections are not valid in terms of the decision of Hon’ble Supreme Court in C.

A. No. 8527 – 8529 of 2009 M/s. DGVCL Vs. M/s Gayatri Shakti Papers and Board and others.

However, with consideration of explanation given herein above, we are of the view to provide more clarity on the provisions of clause 8 of Schedule I of the Draft Regulations, now renumbered as Clause 7 of Schedule I and decided to modify it in accordance with the provisions of Act, Rules and Order of Hon'ble Supreme Court.

- We note that some of the objectors have stated that Clause 8 (c) of the schedule I of Draft Regulations is creating uncertainty with regard to the aspects of how CGP status will be determined. Further, the verification of CGP status and consumption from it for Green Energy consumption as provided in these Regulations are generic and not made applicable to consumption of brown power. In this regard, We note that the Captive Generating Plant owners i.e. (i) person or (ii) members of (a) co-operative society or (b) association of persons shall require to comply with the provisions of the Electricity Act, 2003 readwith rules framed under it irrespective whether the captive consumption is claimed from Green Energy Generating plant or other plants. The Hon'ble Supreme Court has in its decision in C. A. No. 8527 – 8529 of 2009 M/s. DGVCL Vs. M/s Gayatri Shakti Papers and Board and others dealt with the aforesaid aspects which are stated as above. Accordingly, the (i) persons or (ii) members of (a) co-operative society, (b) association of persons shall be eligible to keep the equity in the CGP and consume the electricity in compliance with the provisions of Electricity Act, 2003 readwith Rules framed under it read with the decision of Hon'ble Supreme Court as stated above. We also note that MoP, GoI vide Notification No. 649 (E) dated 1.09.2023 stipulated that consumption of electricity by subsidiary company defined in clause

(87) of Section 2 of the Companies Act, 2013 or holding company defined in clause (46) of Section 2 of the Companies Act, 2013 of a company which is a captive user shall also be admissible as captive consumption by captive user. Further, the word captive user used in sub-rule (1) in Clause (a) in sub-clause (i) of Rule 3 are substituted by the words 'captive user(s)' needs to consider while deciding the captive consumption by captive user(s). We also note that the CGP holder(s) are eligible to sale the surplus energy if any, available after complying with the dual criteria of fulfillment of CGP status to other consumer or licensee as case may be. Whenever any surplus energy over and above after fulfillment of dual criteria of CGP status as per the provision of Act and Rules framed under it, such supply by the CGP holders to any person including consumer by way of supply/sale/purchase agreement, cannot be qualify as "primary own use" of electricity by the (i) persons or (ii) members of (a) co-operative society, (b) association of persons and such transaction shall be termed as the energy supplied by the generator to the consumer and shall follow the consequences of it. However, to impart more clarity, the relevant modifications are made in clause 8 of Schedule I of Draft Regulations now renumbered as clause 7 of Schedule I of final Regulation as shown in later part of the SoR.

- Some of the objectors have suggested that additional surcharge is not applicable to captive consumers as decided by Hon'ble APTEL and Hon'ble Supreme Court. We note that provisions related to applicability of additional surcharge is made in these Regulations and clarified above. Hence, the same is not repeated.
- We note that some of the objectors have suggested that as per Electricity Rules, 2005, the requirement is only 26% equity investment by the captive consumers and balance 74% equity can be invested by any developer or debt funded where the interest are

charged by the lenders. The investment of 74% equity and debt on projects has to be recovered from other equity investor. Moreover, operating expenses also needs to be recovered. The sale/purchase agreement made between the parties is in order to recover the aforesaid mentioned cost. In this regard, we note that as clarified above, the issue with regard to status of captive generating plant, consumption of electricity by a (i) persons or (ii) members of (a) co-operative society, (b) association of persons is decided by the Hon'ble Supreme Court in C. A. No. 8527 – 8529 of 2009 M/s. DGVCL Vs. M/s Gayatri Shakti Papers and Board and others. Accordingly, if the captive generating plant owner(s) fulfill the criteria, it qualify as captive consumption and status of such plant as captive generating plant. Any transactions reflected in books of account of the person, company or entity who have set up CGP for generation of electricity for own consumption as per the provisions of Electricity Act and reflected as per the provisions of Companies Act, IT Act, or other Act in compliance as per the provisions of such Act. The test of fulfillment of captive status of generating plant and consumption of electricity done by the (i) person, (ii) member of (a) co-operative society or (b) association of persons, subsidiary or holding company as defined under the Companies Act, 2013 needs to carryout as per the provisions of Electricity Act, 2003 and Rules framed under it.

We note that some of the objectors have suggested that Green Energy Open Access Rules, 2022 does not contemplate that existence of sale/purchase agreement for consumption of energy generated from such captive generating plant by shareholders be qualified as third party sale. We note that the aforesaid issue is already dealt with in earlier part of this SoR. Hence, no further discussion is required.

- We note that some of the objectors have contended that Hon'ble APTEL in its Judgement dated 7.06.2021 in Case of Tamilnadu Power Producer Association Vs. TNERC held that the requirement for qualify as CGP shall be 26% shareholding and 51% captive consumption, once these criteria are fulfilled by the captive users than rest of captive users do not require to fulfill above conditions and it will also not affect the overall captive structure of said CGP and therefore, the liability to make payment of CSS by defaulting captive users cannot be arise once criteria of 26% shareholding and 51% consumption of energy from captive generating plant is fulfilled. We note that the aforesaid issue is already covered under the decision of Hon'ble Supreme Court in C. A. No. 8527 – 8529 of 2009 M/s. DGVCL Vs. M/s Gayatri Shakti Papers and Board and others which is stated above. Accordingly, the contention of objectors are covered under the said Judgement as stated in earlier part of the SoR. Hence, no further discussion is required.
- We note that some of the stakeholders have stated that the CGP company while preparing the financial statement is required to give disclosure of related party transaction with the captive users alongwith all requisite information about transaction and outstanding balances including commitment and other important terms and conditions necessary for users of financial statement to understand potential impact of relationship on the financial statement. In absence of written sale and purchase agreement for long term contract will make it difficult to the auditor or director of the company to prepare financial statement and thereby negate the mandate of various sections of Companies Act 2013 and IndAS 24. Therefore, provision made in clause 8 (b) of Schedule I of Draft Regulations be deleted. Further, the power sold over and above

51%, if any to any third party entity should only be considered as third party power sale and not the power consumed by the captive consumers. We note that the aforesaid suggestions made by the stakeholders are with consideration of various provisions of Companies Act and IndAs 24. However, it is also necessary that when any person or member of Association or Co-operative Society claims the energy consumed by them from the generating plant/generating company as primarily for own use / captive consumption, it has to prove that such claim is in accordance with the provisions of the Electricity Act, 2003 read with the Rules framed under it. It is mandate on such entity to establish the energy consumed by them is not consist of component of the supply of electricity through agreement for sale/purchase to the consumer in terms of provisions of the Act and Rules framed under it as recorded in earlier para. Failure to fulfilling the necessary compliances, it attracts the consequences of payment of cross subsidy surcharge etc. on concerned entity.

- We note that some of the objectors have suggested that the captive generating plant and captive consumption of energy status needs to fulfill only the criteria as per the provisions of Act and Rules made under it by the person/co-operative society or association of person as case may be. The existence of agreement between the equity holders has never been a dis-qualification, dis-entitlement of captive generating plant from captive status. The agreement executed amongst the equity holders of the CGP for sale/purchase of energy generated from such plant to determine the same to qualify as third party sale or not captive use is against the conditions laid down under Act, Rules or Regulations or Orders or Judgments passed in the subject matter. In this regard, it is to be noted that as stated in earlier part of this SoR, the necessary dual criteria for fulfillment of

CGP status by CGP holders and consumption of electricity by (i) persons or (ii) members of (a) co-operative society, (b) association of persons is clarified. Further, the aforesaid dual criteria shall be the mandatory provisions. In this regard, we also note that the fulfillment of aforesaid criteria is also specified and clarified in the provision of Act, Rules and Order / Judgement of Hon'ble Supreme Court in C. A. No. 8527 – 8529 of 2009 M/s. DGVCL Vs. M/s Gayatri Shakti Papers and Board and others. Failure to it, it loose the status of captive use by the person or member(s) or captive generating plant, which shall attract consequences of it. The objection regarding sale and purchase of electricity amongst the shareholders of the CGP already dealt with in the earlier part of the SoR. Considering the above, we are of the view that there is no need to make changes in the existing regulation.

- We note that some of the objectors have stated that several entities registered as captive generating plant but in facts they are generating companies with active agreements/ contracts/ arrangement for sale and purchase of power with their respective captive users. In such cases a generating company also act as an entity that sale power to such user thereby qualify as captive generating entity. In this regard, it is clarified in earlier part of this SoR that captive generating plant or generating company are eligible to supply the electricity to consumer/licensee as case may be by signing an agreement for supply consist of sale/purchase of electricity on agreed tariff between the parties. The tariff in terms of provision of the Electricity Act, 2003 recovered from the consumer by the licensee or generating company as per the tariff determined either under Section 62 readwith Section 79 by CERC or Section 62 readwith Section 86 by the State Commission or the tariff is discovered under the competitive bidding process and adopted by

the Commission. Further, Section 49 provides that the CGP which is a generating company or IPPs which are also generating company are eligible to supply the electricity to the consumer by signing an agreement on agreed tariff between them for sale/purchase of electricity. Hence, it is necessary to verify the aforesaid aspects whenever any person or entity seek the declaration of generating plant or generating company as captive generating plant and use of electricity by them as captive consumption.

- We note that some of the objectors have stated that the intent of schedule I of Regulation is that a generating station or generating plant cannot be considered as captive power plant if there is an arrangement for sale and purchase of power between the shareholders of the captive generating plant and/or end users. The said provision is fundamentally erroneous and ignore the provisions of Companies Act, 2013, Income Act, 1961 and Rules and Regulations frame under it. The aforesaid contention of the objectors are not acceptable as the intent of schedule I of the Regulations is provided with intent to clarify that the captive generating plant and its users shall require to comply with provisions of Electricity Act, 2003 read with the Rules framed under it and failure to it, the consequences as per the provision of Act, Rules and Regulations shall be followed. Hence, the objections are not accepted.

Comments/Suggestions of the Stakeholders:

Schedule-I

- 43.1. Some of the objectors have requested to specify the methodology and other requirements of identification of captive units for solar based CGP as part the procedure to remove difficulties in the same.

Commission's decision:

We note that the requirement of fulfillment of captive generating plant status of the generating plant and consumption of electricity from such generating plant by person or members of (a) co-operative society or (b) association of persons, and subsidiary company or holding company is already specified in the Act, Rules framed under it and earlier part of this SoR. Hence, no further clarification required.

Comments/Suggestions of the Stakeholders:

- 43.2. Some of the objectors have suggested that consumption of electricity for verification of captive status should be based on data published in State Energy Accounting by SLDC.
- 43.3. Some of the objectors have stated that the T&D losses are considered as deemed consumption, while working out the 51% minimum consumption requirement as per the binding judgements of the Honorable APTEL.
- 43.4. T& D losses in kind are deducted for wheeling the power from the point of generation to the point of consumption depending upon the voltage level of the CGP and the consumer. If 100 units are exported to consumer end, at the consumer end, units eligible for adjustment would be after deducting the T &D losses. T &D losses will have to be grossed up to the consumer consumption. Grossing up of Transmission and Distribution losses has not been allowed in the Regulation. In MERC Order No. 117 of 2012 dated 28.08.2013, Transmission and Distribution losses have been grossed up. This methodology has been upheld by the Tribunal in Order No. 316 of 2013 dated 17.05.2016.

Commission's decision:

We note that the stakeholders have suggested while deciding the captive consumption it is necessary to consider T&D losses if any occurred between the place of generation to place of consumption. Further, it is also stated that the data of State Energy Account issued be considered. In this regard, it is clarified that in Clause 10 of Schedule – I of these Regulations specify the methodology/manner or assessment of data related to generation from Captive Generating Plant and consumption by captive consumer(s)/User(s). The said clause specified the places of generation and consumption situated in different conditions and treatment for evaluation of generation and consumption of electricity. The generation data needs to be considered from the meter installed at generating end/plant site while the meters installed at consumer place be used for evaluating consumption of energy by the consumer at its premises. The consumption of electricity at plant level i.e. auxiliary consumption if any occurred, it is reflected in generating end meter data. While at consumer end, data recorded in consumer meter is after the losses if any occurred in the transmission/distribution/supply network between the generating meter and the consumer meter. Therefore, there is no rationale to consider normative losses in above situations. As the meters are checked and calibrated from time to time at both ends. Moreover, the data recorded at SLDC, ALDC or RLDC level through communication system if any installed and provided are reflected in the State Energy Account/Regional Energy Account by SLDC/RLDC are used for verification of energy generation and/or consumption of energy for compliance of captive status of the Captive Generating Plant and Captive Consumption by consumers.

Comments/Suggestions of the Stakeholders:

43.5. Some of the objectors have suggested that MERC had allowed only

additional surcharge (and, not cross subsidy charge) on group captive consumers having purchase/sale agreement amongst them. Hon'ble APTEL and Hon'ble Supreme Court both have struck down the order of MERC, making it clear that additional surcharge (and/or cross subsidy surcharge) cannot be levied on either on single captive consumer or group captive consumers, having formed Association of Person under Rules, 2005.

- 43.6. Further, some of the objectors have suggested that the clause 8 (c) is in line with 8(b) of Schedule I of Draft Regulations and therefore needs to be deleted.

Commission's Decision:

The Commission has considered the objection/suggestions of the Stakeholders. We note that in earlier part of the SoR, it is elaborated with regard to fulfilment of the conditions by the owners of the captive generating plant i.e. (i) person or (ii) member of association (a) co-operative society (b) association of persons, in accordance with the provisions of the Electricity Act, 2003 read with Rules, framed under it. Further, the elaboration is also made out with regard to fulfillment of dual criteria of CGP status and consumption of electricity from such CGP by the person or member of association or co-operative society decided by Hon'ble Supreme Court in case Judgement in C. A. No. 8527 – 8529 of 2009 M/s. DGVCL Vs. M/s Gayatri Shakti Papers and Board and others dated 9/10/2023.

The Surcharge include Cross Subsidy Surcharge and additional surcharge, if any, are applicable on the person or member of association or co-operative society as case may be in case of non-compliance with regard to fulfilment of captive generating plant and captive consumption as per the provisions of Act and Rules framed under it by the individual/group of person. So far as the person, members of (i) Co-operative Society, (ii) Association

subsidiary company or holding company fulfill the criteria of captive status of generating plant and consumption, no surcharge shall be applicable.

Comments/Suggestions of the Stakeholders:

- 43.7. Some of the objectors have stated that as per the Electricity Act 2003 and Electricity Rules 2005, there is no such restriction for sale/purchase agreement execution between the shareholders. As per the Rules, only 26% equity investment is required from the captive consumers, the balance 74% equity can be invested by any developer. Also, the projects are debt funded, where the interests are charged by the lenders. The investment of the 74% equity and the debt of the project has to be recovered from the other equity investors (who have invested 26% of the equity). Also, there are other operating expenses which need to be recovered. This calls for such an agreement of sale/ purchase in order to recover the above mentioned costs.

The proposed methodology puts an additional qualification criterion which has not been provided either under the Electricity Act, 2003 or the Electricity Rules. Besides, such additional qualification criteria will restrict the captive capacity addition which provides significant funding support for capacity enhancement in the State.

Commission's decision:

Some of the objectors have raised the objection that as per the Captive requirement only 26% equity investment is required from the captive consumers, the balance 74% equity can be invested by any developer. Also, the projects are debt funded, where the interests are charged by the lenders. The investment of the 74% equity and the debt of the project has to be recovered from the other equity investors (who have invested 26% of the equity). Also, there are other operating expenses which need to be

recovered. This calls for such an agreement of sale/ purchase in order to recover the mentioned costs. The investment made by the equity holders/investors by way of equity holding with voting right are governed by the provision of the Companies Act 2013 and Rules, Regulations framed under it. The recovery of loan amount for the assets created under it by way of repayment, interest on such loan, O & M cost of the plant/assets needs to recover by way of the provision of Companies Act, Rules and Regulations framed under it. In this regard, it is to be noted that it is the responsibility of the captive generator/consumer to comply with the provision of Electricity Act, 2003 readwith Electricity Rules framed under it and prove the captive status of generating plant/consumption of energy to avail the benefits. Hence, the contention of the objectors/stakeholders are not acceptable.

Comments/Suggestions of the Stakeholders:

Clause 8 (b) & (c) of Schedule I of Draft Regulation

43.8. Objectors have made following submissions with regards to sub-clause (b) and (c) of Clause 8 of Schedule I:

1. Neither provision of Act, Rules, Regulations or Order provides the restriction of sale/purchase agreement if any, executed between the shareholders of the captive generating plant for sale /purchase of electricity from CGP to shareholders or amongst shareholders of such CGP.
2. The provisions in the Electricity Act, 2003 and Rules framed under it provides for fulfillment of dual criteria of equity holding with voting Rights and consumption of electricity of 51% from such CGP and Proportionality Test – where the captive consumer (s) consume the power generated by the captive plant in proportion to their equity holding / ownership.

3. It is a trite law that a company is a juristic person with separate identity and perpetual succession with the right to own properties in its own name.
4. The provision of the draft regulation is fundamentally erroneous and ignores the applicability of various laws such as the Companies Act, 2013, Income Tax Act, 1961 and rules and regulation related thereto.
5. Even though registration is accorded as a captive generating plant, the generating company also acts as an entity that sells power to such user, thereby qualifying as a captive generating entity.
6. The existence of a power purchase agreement or otherwise between the equity holders has never been a disqualification / disentitling a captive plant from captive status.
7. The requirement of the condition where there exists any sale/purchase agreement executed amongst the equity holders of the captive generating plant for sale / purchase of energy generated from such generating plant to determine the same to disqualify as 3rd Party or captive has never been part of any of the conditions laid down by any Act, Rules, Regulations, Orders and Judgements passed in this matter.
8. Verification of Annual (Financial Year basis) consumption criteria in the clause (b) is not in consonance with Section 181 of the Electricity Act, 2003 and is in contravention of the provisions of the Electricity Rules 2005.
9. The captive generating plant company while preparing its financial statements is required to give a proper disclosure of its related party transaction with the captive user along with all the requisite information about those transactions with the captive user and outstanding balances, including commitments and other important terms and conditions, necessary for users of financial statements to

understand the potential effect of the relationship on the financial statements.

10. An absence of a written sale and purchase agreement more importantly for long term contract will make it difficult for the auditors or directors of the company to prepare the financial statements and thereby negate the mandate of the various sections of Companies Act, 2013 and Ind AS 24 as noted above.

11. The consumption requirement of 51% under the Electricity Rules is the minimum requirement. Hence, the captive users are permitted to consume above 51% of the electricity generated. The restriction is not in line with the Electricity Act and the rules made thereunder.

Commission's decision:

We note that some of the Objectors/stakeholders have suggested to delete the clause 8 of the Schedule I of the Draft Regulations.

It is to be noted that as recorded in earlier part of this SOR, the Commission has already dealt the issue regarding fulfillment of conditions by the (i) person or (ii) Members of the (a) Co-operative Society or (b) Association of persons with consideration of the decision dated 09.10.2023 of Hon. Supreme Court in case of in its Judgement in C. A. No. 8527 – 8529 of 2009 M/s. DGVCL Vs. M/s Gayatri Shakti Papers and Board and others. Further, as per amended MoP Rules the Captive Generating Plant set up by either subsidiary company or holding company as defined under the Companies Act, 2013, the consumption of electricity either subsidiary company in CGP set up by the holding company or consumption of electricity by the subsidiary company in CGP of holding company is qualify as captive users. The captive consumption means primarily for “own use”. Therefore, whenever the beneficiary of the generating plant declares as captive

generating plant needs to prove the own use of electricity generated from it by fulfilment of criteria specified in the Act and Rules.

The electricity produced from the CGP is “product” produced by the “CGP”. Thus, “product” is also different and distinct from the shareholders or person or members of association.

The energy transactions amongst the equity holders through an agreement sale/purchase is not permitted in law and there cannot be any claim of captive consumption on that basis. The captive consumption can only be for use and consumption by the identified equity shareholders. Equity holders cannot entered into agreement to sale power as he is not trader nor a generator nor a licensee.

We note that shareholders, company, co-operative society, partnership firm, are different and distinct. Moreover, the right of shareholder in company, co-operative society, partnership firm, in such entity are also different and distinct from such entities. Further, the right on the products, goods, etc. if any produced in such entity is also depends upon the set up of such entity. The product ‘owned’ by such entity when it is produced.

Moreover, the shareholders with voting rights are different and distinct from the company or association or co-operative society or partnership firm constituted under relevant Act setting up generating plant as captive generating plant either by a (i) person or (ii) members of (a) Co-operative Society or (b) Association of persons. Further a generating plant setup by affiliate company is also different and distinct from the shareholders with voting Rights. Moreover, a subsidiary company defined under Section 2 (87) of the Companies Act, 2013 is also different and distinct from the shareholders. It is also different and distinct from the person/Member other than such holding company or subsidiary of it or affiliate company who have been part of set up captive generating plant. Moreover, the Rights and obligations assigned /cast upon the CGP established by (i)

person or (ii) Members of (a) Co-operative society or (b) Association of persons, holding company or subsidiary company is required to fulfil by them as per the provisions of Electricity Act, 2003 and Rules framed under it.

We note that the electricity generated from CGP be utilized by the equity holder(s) of such CGP. The CGP is also eligible to sale the electricity available if any, after 51% consumption of energy by equity holder/owner of CGP to any other person who is not having equity/ownership rights in such CGP, as third-party sale which may be licensee or the consumer under Sections 9, 10, 42 & 49 of the Act at agreed tariff between the parties by way of sale / purchase agreement. Now we deal with the issue raised by the Objectors one by one.

1. The objection of the stakeholders that the applicability of various laws such as the Companies Act, 2013, Income Tax Act, 1961 and Rules and Regulation made thereunder is concerned, we note that the provisions of different Acts are also applicable on the CGP set up by either person or members of (i) Co-operative Society or (ii) Association or (iii) Holding Company and its Subsidiary or Affiliate . However, the provisions of such Acts and Rules and Regulations framed under it are applicable in relation to the provisions of such Act, Rules and Regulations framed under it. The supply of electricity and sale/purchase of electricity on agreed tariff amongst the persons i.e., licensees and consumer, or licensees and CGP or consumer and generating company shall be governed by the provisions of Electricity Act, 2003 read with Rules and Regulations framed under it and Orders of the Appropriate Commission in this regard. In case of any conflict/inconsistency between two Statutes or its provisions in such case the Doctrine of the Overriding Effect and Harmonious interpretation of provision of statute as per law needs to apply. Similarly in case of conflict/inconsistency between two provisions of the same Statute,

Doctrine of Harmonious Interpretation is required to apply. In the present case, we note that the objections raised by the objectors that the provisions of the Companies Act or Income tax Act or the Ind AS 24 are ignored, is not correct because the procedures need to be followed as per the aforesaid Statutes or standard are different and distinct then the provisions of Electricity Act, 2003, Rules and Regulations framed under it. Any sale / purchase of goods or commodities done by the person / company / member of Association or Co-operative Society under relevant Statute governing the relevant statutes are different and distinct then generation of electricity and supply or sale and purchase of electricity, fulfillment of criteria for captive status by generating company or consumer as provided under the Electricity Act, 2003 and Rules and Regulations framed under it. Any transactions made by the Company or Co-operative Society or individual or partnership firm etc., its reporting requirement in the Balance Sheet of such entity and their books of accounts is to be with consideration of actual commercial transactions if any carried out by such entities. Any transactions reflected in books of account of the person, company or entity who have set up CGP for generation of electricity for own consumption as per the provisions of Electricity Act and reflected as per the provisions of Companies Act, IT Act, or other Act in compliance as per the provisions of such Act. The test of fulfillment of captive status of generating plant and consumption of electricity done by the (i) person, (ii) member of (a) co-operative society or (b) association of persons, subsidiary or holding company as defined under the Companies Act, 2013 needs to carryout as per the provisions of Electricity Act, 2003 and Rules framed under it.

There is no conflict between the provisions of the Electricity Act, 2003 and Companies Act or Co-operative Societies Act or Partnership Act etc. with regard to preparation of books of accounts and carry out different activities and its reporting requirement and keep the books/documents as required

under the relevant Statute. The agreement for sale/purchase of electricity at agreed tariff if any carried out by the CGP holders amongst them or CGP with third party consumer who do not qualify the criteria of CGP or not having ownership in CGP is different and distinct from such agreement if any made by the company or Co-operative Society or partnership firm amongst their shareholders or any other interested parties and reporting of the same is also different and distinct from each other in above cases. We note that the failure of captive status and captive consumption by the person attract the applicability of surcharge including CSS and other charges if any in terms of the aforesaid provisions. While in case of fulfilment of condition specified for CGP and captive use, neither any CSS nor any other charges are applicable to the shareholders or Members of the Co-operative Society or partners of the partnership firm. Therefore, the contention of the objector/stakeholder on the aforesaid issue are not acceptable and the same is rejected.

2. Some of the objector have suggested that even though registration is accorded as a captive generating plant, the generating company also acts as an entity that sells power to such user, thereby qualify as a captive consumption is concerned, we note that the generating company is a generating plant owned by the company or Body Corporate or Association or Body of Individuals, whether incorporated or not or Artificial Juridical person who owns or operate or maintain a generating plant. However, such power plant set up by any person to generate the electricity '*primarily for his own use*' is only qualified for captive generating plant, if it fulfills the conditions stipulated in the Act and Rules framed under it. The generating company is eligible to supply the electricity either to licensee or consumer by signing agreement for sale/purchase of electricity at agreed tariff rate between them.

3. The objections pertaining to disclosing the information about related party in the financial statement is concerned, we note that the objectors have accepted that the same are required to be disclosed as per the provisions of the Companies Act, Income Tax Act, etc. with consideration of the transactions if any made through agreement which include purchase/sale of electricity amongst the captive users and CGP. However, no details of such transactions are provided. We clarify that whether any transactions amongst the parties be qualify as captive status or not be examined with considerations of provisions of the Act, Rules and Regulations framed under it.

Comments/Suggestions from the Stakeholders

Clause 8(c) of Schedule – I of Draft Regulation

- 43.9. Some of the objectors have submitted that a captive consumer needs to consume minimum 51% of the power generated from CGP on annual basis to qualify as captive consumption and not the maximum. However, from the above provision it can be inferred that if the captive consumer consumes more than 51% of power from its captive power plant than it will be treated as third party power consumption and will not qualify for captive. Thus, it is submitted that the power over and above 51% if sold to any third entity should only be considered as third-party power sale and not the power consumed by the captive consumer. Therefore, the clause 8 (c) may be deleted.

Commission's decision:

We note that the objectors have submitted various comments with regard to provisions of Clause 8 of Schedule I of the draft Regulations is concerned, it is duty of the generator/consumer to prove its captive status of generator/consumption by consumer. The criteria for fulfilment of captive

generating plant and captive consumption is already dealt with in earlier part of this SoR with consideration of the provision of Electricity Act, 2003, Rules framed under it and decision of Hon'ble Supreme Court in this regard. Accordingly, the captive generating plant needs to fulfil the criteria specified in the Act and Rules framed under it read with the decision of Hon'ble Supreme Court.

Considering the aforesaid objections/suggestions and decision on it by the Commission, we decide to modify the Clause 8 of Schedule -I of Draft Regulations as Clause 7 of the Schedule I of final Regulations as under:

"Schedule I

.....

7. Verification of Annual (Financial Year basis) consumption criteria:

- a) Verification criteria of consumption by captive user shall be based on the net electricity generated from the generating unit(s) of a generating station and injected in the Grid, i.e. gross electricity generated less auxiliary consumption, identified for captive use and as recorded in four quadrant ABT compliant Energy Meter installed at the generating end of inter-connection with grid as well as consumption end, which are certified as per the energy accounting done by the RLDC/SLDC/Distribution licensee as the case may be.*
- b) The electricity injected by the Generating Plant for an identified captive user who is the equity shareholder/ has ownership alone will qualify to be considered for captive generation and captive consumption.*
- c) Any sale/purchase agreement executed amongst the equity holders of the captive generating plant for inter se sale/purchase of energy generated from such generating plant shall be qualified as sale of energy to the consumer under third party sale and the same shall not be qualified as captive consumption (own consumption).*

- d) *The energy supplied from the Captive Generating Plant even above 51% by way of inter-se sale/purchase agreement between the equity holders / owners namely other than the supply by the Generating Station to the identified captive users as per above sub clauses, if any, the same falls under third-party sale and does not qualify as captive consumption (own consumption).*
- e) *If the conditions specified under Rule 3 (1) of Electricity Rules 2005 as amended from time to time are not duly satisfied in terms of sub rule (2) of Electricity Rules, 2005, the entire quantum of supply to the identified captive user including in regard to 51% or in excess thereof being in contravention of the provisions of Electricity Rules, 2005 shall not be qualified for considering as captive use.*
- f) *The net electricity generation and consumption therefrom shall be determined on annual basis (Financial-Year basis) at the end of the year.*

44. Clause 9 of Schedule – I of Draft Regulations: Verification criteria of Draft Regulations:

Verification criteria for various types of captive consumers / users shall be as follows:

Sr. No.	Type of captive consumer / user	Criteria
i	Single Captive consumer/user	<i>The self-consumption shall not be less than 51% of the net electricity generated on an annual basis.</i>
ii	Partnership firm / Limited Liability Partnership (LLP)	<i>The self-consumption shall not be less than 51% of the net electricity generated on an annual basis.</i>

iii	Association of Persons (AoP)	<i>The captive consumers/users shall consume not less than 51% of the net electricity generated on annual basis for captive use in proportion to their share in the power plant within the variation not exceeding 10%.</i>
iv	Co-operative Society	<i>Members of Society shall collectively consume not less than 51% of the net electricity generated on annual basis.</i>
v	Special Purpose Vehicle (SPV)	<i>The captive consumers / user(s) shall consume not less than 51% of the net electricity generated on annual basis in proportion to their shares in the units identified for captive use.</i>

Comments/Suggestions of the Stakeholders:

Clause 9 of Schedule I of Draft Regulations

44.1. Some of the objectors have suggested that the Rule of Proportionality has been incorporated and applied in the Regulations. The learned APTEL in the case of Tamil Nadu Power Producers Association v/s. Tamil Nadu Electricity Regulatory Commission & Ors. Bearing Appeal No. 131 of 2020 has observed as follows:

"Applying this clear jurisprudence, TNERC could not have applied the second proviso to Rule 3(1)(a) to Rule 3(1) (b). Hence, the requirement of consuming minimum of 51% electricity generated on an annual basis and the requirement of the captive users holding 26% of the ownership of the plant in aggregate, and such consumption being in proportion to the shares of ownership of the power plant can only be applicable to power plants set-up by an AOP but cannot be applied to power plants set-up by SPV."

Based on the above, it is submitted to modify the provisions of aforesaid clause in accordance with Hon'ble APTEL Judgement.

Clause 9 (iii) & (iv) of Schedule – I of Draft Regulations

- 44.2. Some of the objectors have suggested to modify the Clause 9 (iii) & (iv) stating that the Captive Generating Plant (CGP) and captive consumer shall require to submit the details with regard to consumption of energy and equity shareholding as prescribed under the Electricity Rules 2005 framed under the Electricity Act, 2003 and amended from time to time annually (Financial Year basis) to ~~distribution licensee and to the~~ Commission after the end of financial year within 3 months from completion of financial year for verification of CGP and captive consumer status by the Commission and the along with necessary documents/evidence/proof stated in these Regulations as per the provisions of the relevant Acts, Rules & Regulations framed thereunder.

Clause 9 (v) of Schedule – I of Draft Regulations

- 44.3. Some of the objectors have suggested to modify the criteria for verification of consumption for SPV by removing the requirement for consumption of electricity generated in proportion to the shareholding of the Captive Users as follows:

"The captive Consumers/ user(s) shall consume not less than 51% of the net electricity generated on annual basis from the units identified for captive use."

- 44.4. Some of the objectors have suggested that the applicability of rule of proportionality to SPV ought to be deleted.
- 44.5. Some of the objectors have suggested that the requirement of consumption of energy on annual basis by captive consumers in proportion to their share in the captive unit/plant shall be removed.

- 44.6. Some of the objectors have suggested that the date of 30th April specified in Schedule 1, Regulations 9 may be modified as 30th June/30th September/30th December of ensuing year.

Commission's decision:

We have considered the objections by the objectors raised against the clause 9 of the Draft Regulation wherein they have proposed that the proportionality test provided under the Regulation needs to be deleted with consideration of the decision of Hon'ble APTEL in Tamil Nadu Power Producers Association v/s. Tamil Nadu Electricity Regulatory Commission & Ors bearing Appeal No. 131 of 2020 is concerned, it is recorded in earlier part of this SoR that the Hon'ble Supreme Court has already dealt with aforesaid issue in its Judgement in C. A. No. 8527 – 8529 of 2009 M/s. DGVCL Vs. M/s Gayatri Shakti Papers and Board and others. Hence, the suggestion of the objectors are not acceptable, which is against the provisions of Act, Rules and decision of Hon'ble Supreme Court of India.

We also note that the suggestion made by some of the objectors that the details for verification of CGP status need to be provided by the generators/captive consumers on or before 30th April of each year is concerned, the suggestion of the objector is already accepted and accordingly the clause 5 of the Schedule I of Draft Regulations is modified providing that the details for submission of data for CGP and captive consumption be latest by 31st October of the ensuing financial year in the final Regulations.

So far as the objection raised by the stakeholder that the details of verifying captive status of generator and consumption by the captive users be provided to the Commission and not to the distribution licensee, is

concerned the said issue is dealt by the Commission in earlier part of this SoR. Hence, no repetition.

Clause 10 of Schedule I of Draft Regulations

45. Manner of assessment of data related to generation from Captive Generating Plant and consumption by captive consumer(s)/user(s):

Sr. No.	Location	Method of assessment
<i>i</i>	<i>CGP and its captive consumers / user(s) are co-located</i>	<i>Based on net generation from the CGP and consumption by the captive consumers / user shall be based on the reading of the meter installed for recording the generation at the generation side ("generation meter") and the electricity sourced from the captive generating plant at the consumption side ("consumption meter").</i>
<i>ii</i>	<i>CGP and its captive consumers / users are located within the State (but not co-located),</i>	<i>Based on actual generation from the CGP as per the data provided by the respective SLDC/ALDC/licensee and the actual consumption based on the meter reading at the consumer / user interface with the grid as provided by the concerned SLDC/ALDC/licensee and the distribution licensee in whose area the consumer(s) / user(s) are located.</i>
<i>iii</i>	<i>The CGP and its captive consumer(s) / user(s) is/are located in different States</i>	<i>Based on actual generation from the CGP as per the data provided by the respective RLDC and the actual consumption, based on the meter reading at the consumer(s) / user(s) interface with the grid as provided by the concerned SLDC and the distribution licensee in whose area the consumer(s) / user(s) are located.</i>

Comments/Suggestions of the Stakeholders:

Clause 10 (iii) of Schedule – I of Draft Regulations

- 45.1. Some of the objectors have suggested to specify authority for verification of captive status for Inter-State Power Sale will be Central Electricity Authority and aligned the same as per MOP's Notification.

Commission's decision:

With consideration of the suggestion, it is to clarify that for verification of captive status of generator and consumption for inter-state transactions be as per the provision of MoP Rules and the same is incorporated in the Schedule I of the final Regulations. We also observed that in clause 10 (i) of Schedule I of Draft Regulations needs certain change with consideration of the Rooftop Power Projects set up under Net Metering Regulations. Accordingly, the necessary changes has been made in the Schedule I of final Regulations.

46. Clause 11 of Schedule I of Draft Regulations

Verification of equity shareholding criteria:

Verification criteria for various types of CGP shall be as follows:

<i>Sl. No.</i>	<i>Type of captive generating plant / user(s)</i>	<i>Criteria</i>	<i>Support Document</i>
<i>i</i>	<i>Single captive consumer / user</i>	<i>The consumer / user shall hold 100% of the equity share capital having voting rights throughout the year</i>	<i>(i) A certified copy of Share Register and Share Certificate and (ii) Certificate issued by the Chartered Accountant/CS alongwith (iii) balance sheet of the company/Individual if</i>

			<i>any and (iv) Annual Audited Account.</i>
<i>ii</i>	<i>Partnership firm/ Limited Liability Partnership (LLP)</i>	<i>Ownership in the captive plant shall be with respect to not less than 26% proprietary interest and control over the generating station or power plant on annual basis.</i>	<i>A certified copy of (i) Partnership Deed and (ii) Share Holding and (iii) return filed before the Registrar of Firms by Partnership firm on annual basis as per provisions of the relevant Act.</i>
<i>iii</i>	<i>Limited Liability Partnership Company (LLPC)</i>	<i>Ownership in the captive plant shall be with respect to not less than 26% proprietary interest and control over the generating station or power plant on annual basis.</i>	<i>(i) A certified copy of Share Register and (ii) Share Certificate and (iii) certificate from the Company Secretary and return filed before the Registrar of Firms/ Companies by LLP respectively on annual basis as per provisions of the relevant Act.</i>
<i>iii</i>	<i>Association of Persons (AoP)</i>	<i>The captive consumers / users shall hold in aggregate not less than 26% of the ownership/paid up equity share capital with voting rights throughout the year</i>	<i>(i) A certified copy of returns filed before the Registrar of Companies, (ii) Registrar of Firm or Registrar of Society on annual basis as per provisions of the relevant Act, (iii) Share Register showing equity share holding with voting rights of the members/shareholders of the Association of Persons in the Captive Generating Plant and (iv) a certificate from a registered Chartered Accountant, alongwith Audited</i>

			<i>Annual Account and Balance Sheet and Certificate from Company Secretary.</i>
<i>iv</i>	<i>Cooperative Society</i>	<i>Members of society shall collectively satisfy not less than 26% of the ownership on annual basis.</i>	<i>(i) A certificate from the District Registrar of Cooperative Society along with (ii) copy of Share Register of Co-Operative Society showing shareholding of respective shareholders (members) with voting rights for respective financial year.</i>
<i>v</i>	<i>SPV/ Company</i>	<i>The captive consumer(s) / user(s) shall hold in aggregate not less than 26% of the proportionate paid up equity share capital with voting rights of the units identified for captive use (i.e. the proportionate of the Equity of the company related to the generating unit or units identified as the CGP throughout the year.</i>	<i>A certified copy of (i) return filed before the Registrar of Companies on annual basis as per provisions of the relevant Act, (ii) Certified copy of Share Register showing equity holding with voting right of the members of the SPV in the Captive Generating Plant as share holder(s) and (iii) their equity holding along with voting rights, (iv) Memorandum of Associations, (v) Articles of Association and a certificate from a registered Chartered Accountant and Company Secretary.</i>

Comments/Suggestions of the Stakeholders:

Clause - 11 of Schedule-1 of Draft Regulations

- 46.1. Some of the objectors have suggested that the consumer / user shall hold 26% of the equity share capital having voting rights throughout the year as per Electricity Rules, 2005.

Commission's decision:

The objections of the objectors is considered wherein it is proposed that in case of single captive consumer/user the equity holding with voting right kept as 100% in the draft regulations be revised as 26% is concerned, we note that in case of single user/consumer also the equity holding with voting right is not less than 26% as per the provision of Electricity Rules and decision of Hon'ble Supreme Court. Accordingly, this clause is revised in Schedule 1 of final Regulations.

Clause 11 (v) of Schedule I of Draft Regulations

- 46.2. Some of the objectors have suggested that the requirement for submission of MoA and Articles of Association of SPV/Company are not required on yearly basis when SPV/Company will be involved in the same business activity. MOA & AOA may be submitted in case of any change in the business activity. Further, it is also suggested that some of the documents which are necessary to consider while deciding the captive status with consideration of provisions of Companies Act, etc. be incorporated in the Clause 11 of Schedule I.

Commission's decision:

We have considered the objections raised by the objectors on the Clause 11 (v) of Schedule I of the Draft Regulations. We are of the considered view that

the requirement of documents / details as provided under Clause 11 of Schedule I of the Regulation are the necessary documents / details for verification of captive status. Hence, no modification as suggested is carried out. Further, considering the suggestions regarding various documents necessary for verification of captive status in accordance with various Acts, the modification in this Clause is carried out in the Schedule I of final Regulations.

The Commission note that Ministry of Power has vide its Notification Nos. G.S.R. 466 (E) dated 30.06.2023 and G.S.R. 649 (E) dated 1.09.2023 made certain amendments in Electricity Rules, 2005 with respect to Captive Generating Plant. The provisions made in aforesaid amendments be also considered while framing the Regulations and decision taken in this SoR. The Ministry of Power, GoI in its aforesaid Notification also provided that the consumption of subsidiary company defined under Clause 87 of Section 2 of the Companies Act, 2013 or Holding Company as defined in the Companies Act, 2013 are also eligible to consume the electricity generated from CGP of subsidiary company by holding company. Similarly, energy consumed by subsidiary company from CGP set up by holding company is qualify as captive user. Accordingly, necessary modifications for verification of holding company and subsidiary company as per the provisions of the Companies Act required to be carried out while verifying the captive consumption by above entities. Therefore, the required provisions are incorporated in the Schedule I of final Regulations with regard to (i) holding company and (ii) subsidiary company.

47. Clause 12.2 of Schedule I of Draft Regulations

Consequence of failure to meet Captive consumer / user status

12.2. The Captive consumer / user shall deposit by 30th April of every year, the security deposit in the form of unconditional and irrevocable Revolving

L.C./Bank Guarantee equivalent to 51% of captive consumption, to the concerned distribution licensee as payment security against estimated Cross Subsidy Surcharge and Additional Surcharge as may be decided by the Commission.

Provided that there shall be no exemption from Cross Subsidy Surcharge on the electricity consumed by non-Captive consumers.

Comments/Suggestions of the Stakeholders:

- 47.1. Some of the objectors have stated that as per the Rule 3(2), Electricity Rules, 2005, if a captive user fails to meet the prescribed captive conditions, they will be considered a normal open access consumer. The Captive Users are exempted from payment of Cross Subsidy Surcharge & Additional Surcharge and imposing such an obligation is unnecessary and could negatively impact their project's commercial viability. It is further stated that not all captive users can meet these financial requirements, making it impractical to enforce. Further, demanding the Bank Guarantee from Captive Users goes beyond the intended scope of the Electricity Act, 2003. This would impose financial obligations that were not originally intended. The Maharashtra Electricity Regulatory Commission has upheld this principle in the order in Petition No. 23/2017, emphasizing its potential negative impact on the financial viability of Captive Users. Such a practice would burden Captive Users and contradict the fundamental objectives of the Electricity Act, 2003, which aims to promote and encourage captive use of electricity. For the reasons as stated above, the Commission is requested to reconsider the significance of the said regulation and remove the requirement of security deposit in the form of unconditional and irrevocable Revolving L.C./Bank Guarantee equivalent to 51% of captive consumption.

- 47.2. Some of the objectors have suggested that the requirement of furnishing a security deposit in the form of an unconditional and irrevocable Revolving L.C./ Bank Guarantee equivalent to 51% of captive consumption, to the concerned distribution licensee as payment security against estimated Cross Subsidy Surcharge and Additional Surcharges, would result in an additional financial burden on consumer and restrain from sourcing power under the captive mode.

Commission's decision:

We note that the objectors have stated that in the Draft Regulations the proposed clause to provide security deposit in form of unconditional and irrevocable revolving LC/Bank Guarantee equivalent to 51% of captive consumers to the distribution licensee as payment security against estimated CSS and Additional Surcharge is against the provisions of EA, 2003 and Rules framed under it. It is also contended that the said provisions is burdensome to RE generators. We note that the EA, 2003 and Rules framed under it provides that in case of failure of fulfilment of CGP conditions and captive consumption by the beneficiary, they are liable to pay the CSS and other charges as determined and applicable as per the relevant regulations/orders of the Commission for the energy consumed as non-captive consumption by the consumers. It is therefore, necessary to ensure that the payment security against such charges be available with the distribution licensee who are eligible to recover such charges in case of failure of CGP status by RE generator or consumers. The Act also recognise that the payment security mechanism against the energy supplied by the licensee be provided by the consumers. Hence, we note that the payment security mechanism is necessary for protecting the interest of the licensee. Therefore, we are of the view that payment security mechanism is necessary for ensuring the interest of licensee and consumer as well as RE

generator on aforesaid issue. Accordingly, we decides that the objections raised by the objectors are not acceptable and hence, the same are rejected.

In view of the above discussions, the Schedule I of draft Regulations is modified/revised in the final Regulations as under:

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Schedule – I

Details shall be provided by the Captive Generating Plant/Captive Consumers on completion of financial year on affidavit to the distribution licensee in whose area such consumer is situated for verification and to the Commission for compliance of status of Captive Generating Plant(s) and Captive consumer(s) when said consumer consume energy transmitted and/or wheeled from their Captive Generating Plant situated either within the State or outside the State.

The captive consumer and Captive Generating Plant (CGP) including CGP set up by Holding Company and/or Subsidiary Company shall require to submit the details with regard to consumption of energy and equity shareholding with voting rights as prescribed under the Electricity Rules, 2005 framed under the Electricity Act, 2003 and amended from time to time on annual (Financial Year) basis to the distribution licensee for verification and to the Commission for compliance of CGP and captive consumer status along with necessary documents/evidence/proof stated in these Regulations readwith the provisions of the relevant Acts, Rules & Regulations framed thereunder, by 31st October of ensuing year after completion of financial year.

- 1. While applying for granting Green Energy Open Access, the generator shall submit their shareholding details with voting rights with supporting documents such as Memorandum of Associations, Articles of Associations etc., as case may be.***
- 2. Change in equity shareholding in the Captive Generating Plant during the Financial Year, if any, amongst different persons, specifying the periods and quantum of change in shareholding.***

- 3. Period of equity shareholding by the Captive Consumer(s) in the Captive Generating Plant and corresponding consumption towards the same during the financial year from the Captive Generating Plant.*
- 4. Captive Generating Plant and captive consumer(s) shall file an affidavit in specified format giving details regarding their electricity generation, entity wise consumption and equity shareholding with voting rights of the Financial Year on or before 31st October of ensuing year.*
- 5. The distribution licensee/Commission may take assistance of the concerned RLDC, SLDC for the verification of Captive status of Captive Generating Plant or captive consumer based on the affidavit along with necessary documents/evidence submitted by such Captive Generating Plant and captive consumer(s).*
- 6. In case of change in shareholding pattern due to transfer of shareholding with voting rights etc. an undertaking is required to be provided by the person who acquire shareholding with voting right from the forgoing captive user to the effect that in case of failure of comply with Rules framed for Captive Generating Plants, it shall be liable for payment of charges and other consequences.*
- 7. Verification of Annual (Financial Year basis) consumption criteria:**
 - a) Verification criteria of consumption by captive user shall be based on the net electricity generated from the generating unit(s) of a generating station and injected in the Grid, i.e. gross electricity generated less auxiliary consumption, identified for captive use and as recorded in four quadrant ABT compliant Energy Meter installed at the generating end of inter-connection with grid as well as energy recorded at consumption end, which are certified as per the energy accounting done by the RLDC/SLDC/Distribution licensee as the case may be.*

- b) The electricity injected by the Generating Plant for an identified captive user who is the equity shareholder/ has ownership alone will qualify to be considered for captive generation and captive consumption.*
- c) Any sale/purchase agreement executed amongst the equity holders of the captive generating plant for inter se sale/purchase of energy generated from such generating plant shall be qualified as sale of energy to the consumer under third party sale and the same shall not be qualified as captive consumption (own consumption).*
- d) The energy supplied from the Captive Generating Plant even above 51% by way of inter-se sale/purchase agreement between the equity holders / owners namely other than the supply by the Generating Station to the identified captive users as per above sub clauses, if any, the same falls under third-party sale and does not qualify as captive consumption (own consumption).*
- e) If the conditions specified under Rule 3 (1) of Electricity Rules 2005 as amended from time to time are not duly satisfied in terms of sub rule (2) of Electricity Rules, 2005, the entire quantum of supply to the identified captive user including in regard to 51% or in excess thereof being in contravention of the provisions of Electricity Rules, 2005 shall not be qualified for considering as captive use.*
- f) The net electricity generation and consumption therefrom shall be determined on annual basis (Financial-Year basis) at the end of the year.*

8. Verification criteria for consumption of electricity in respect to various types of captive consumers / users:

Verification criteria for consumption of electricity in respect to various types of captive consumers / users, shall be as follows:

Sr. No.	Type of captive consumer / user	Consumption Criteria
i	Single Captive consumer/user, one person Company	The self-consumption shall not be less than 51% of the net electricity generated on an annual basis.
ii	Partnership firm / Limited Liability Partnership (LLP)	The self-consumption shall not be less than 51% of the net electricity generated on an annual basis.
iii	Association of Persons (AoP)	The captive consumers/users shall consume not less than 51% of the net electricity generated on annual basis for captive use in proportion to their shares in ownership in the power plant within a variation not exceeding 10%.
iv	Company incorporated under Indian Company's Act	The self-consumption shall not be less than 51% of the net electricity generated from the power plant on an annual basis.
v	Co-operative Society	Members of Society shall collectively consume not less than 51% of the net electricity generated from the power plant on annual basis.
vi	Special Purpose Vehicle (SPV)	The captive consumers/users shall consume not less than 51% of the net electricity generated from power plant on annual basis for captive use in proportion to their shares in ownership in the power plant within the variation not exceeding 10%.

9. Manner of assessment of data related to generation from Captive Generating Plant and consumption by captive consumer(s)/user(s):

Manner of assessment of data related to generation from Captive Generating Plant and consumption by captive consumer(s)/user(s), shall be as follows:

Sr. No.	Location	Manner of assessment
<i>i</i>	<i>CGP and its captive consumers / user(s) are co-located and set up under Net Metering provisions.</i>	<i>The consumers who are having captive Rooftop Solar Power Project upto 1 MW at its premises under the provisions of GERC (Net Metering Rooftop Solar PV Grid Interactive Systems) Regulations, 2016 and its amendments from time to time shall be exempted from providing the details of equity holding and consumption of energy for fulfillment of CGP criteria with the Distribution Licensee. However, they shall require to submit undertaking to the Distribution Licensee stating that Rooftop project is owned by them.</i>
<i>ii</i>	<i>CGP and its captive consumers / users are located within the State (but not co-located),</i>	<i>Based on actual generation from the CGP as per the data provided by the respective SLDC / ALDC / licensee and the actual consumption based on the meter reading at the consumer / user interface with the grid as provided by the concerned SLDC / ALDC and the distribution licensee in whose area the consumer(s) / user(s) are located.</i>
<i>iii</i>	<i>The CGP and its captive consumer(s) / user(s) is/are located in different States</i>	<i>Based on actual generation from the CGP as per the data provided by the respective RLDC and the actual consumption, based on the meter reading at the consumer(s) / user(s) interface with the grid as provided by the concerned SLDC and the distribution licensee in whose area the consumer(s) / user(s) are located.</i> <i>Provided that the verification of captive status of such generating</i>

Sr. No.	Location	Manner of assessment
		<i>plant and consumption for Inter-State transactions shall be determined by Central Electricity Authority (CEA) as per the MoP, Electricity (Third Amendment) Rules, 2023 notified on 1st September, 2023.</i>

10. Verification criteria of equity shareholding with voting rights:

Verification criteria for equity shareholdings with voting rights for various types of CGP shall be as follows:

Sr. No.	Type of captive generating plant / user(s)	Criteria of Equity Shareholding with voting rights	Supporting Documents
<i>i</i>	<i>Captive generating plant owned by single consumer / user</i>	<i>The consumer / user shall hold not less than 26% of the equity share capital having voting rights throughout the year</i>	<i>(i) A certified copy of Share Register and Share Certificate and (ii) Certificate issued by the Chartered Accountant / CS (iii) balance sheet of the Company / Individual if any and (iv) Annual Audited Account.</i>
<i>ii</i>	<i>Partnership firm/ Limited Liability Partnership (LLP) with 26% capital holding</i>	<i>Ownership in the captive plant shall be with respect to not less than 26% proprietary interest and control over the generating station or power plant on annual basis.</i>	<i>A certified copy of (i) Partnership Deed and (ii) Share Holding and (iii) return filed before the Registrar of Firms by Partnership firm to whomsoever applicable on annual basis as per provisions of the relevant Act.</i>
<i>iii</i>	<i>Limited Liability Partnership Company (LLPC) with</i>	<i>Ownership in the captive plant shall be with respect to not less than 26% proprietary</i>	<i>(i) A certified copy of Share Register and (ii) Share Certificate and (iii) Certificate from the Company Secretary and</i>

Sr. No.	Type of captive generating plant / user(s)	Criteria of Equity Shareholding with voting rights	Supporting Documents
	26% equity shares with voting rights	interest and control over the generating station or power plant on annual basis.	return filed before the Registrar of Companies, including Form MGT-7 or 7-A whichever is applicable and Form-AoC-4 to be furnished on annual basis as per provisions of the relevant Act.
iv	Association of Persons (AoP)	The captive consumers / users shall hold in aggregate not less than 26% of the ownership / paid up equity share capital with voting rights throughout the year	(i) A certified copy of returns filed before the Registrar of Companies, including Form MGT-7 or 7-A whichever is applicable and Form-AoC-4, filed before Registrar of Firm or Registrar of Society on annual basis as per provisions of the relevant Act, (ii) Share Register showing equity share holding with voting rights of the members / shareholders of the Association of Persons in the Captive Generating Plant, (iii) a certificate from a registered Chartered Accountant, along with Audited Annual Account and Balance Sheet and (iv) Certificate from Company Secretary.
v	Cooperative Society	Members of society shall collectively satisfy not less than 26% of the	(i) A certificate from the District Registrar of Cooperative

Sr. No.	Type of captive generating plant / user(s)	Criteria of Equity Shareholding with voting rights	Supporting Documents
		ownership on annual basis.	Society, (ii) copy of Share Register of Co-Operative Society showing shareholding of respective shareholders (members) with voting rights for respective financial year.
vi	SPV/ Company	The captive consumer(s) / user(s) shall hold in aggregate not less than 26% of the proportionate paid up equity share capital with voting rights of the units identified for captive use (i.e. the proportionate of the Equity of the company related to the generating unit or units identified as the CGP throughout the year.	A certified copy of (i) return filed before the Registrar of Companies, including Form MGT-7 or 7-A whichever is applicable and Form-AoC-4 to be furnished on annual basis as per provisions of the relevant Act, (ii) Certified copy of Share Register showing equity holding with voting right of the members of the SPV in the Captive Generating Plant as share holder(s) and; (iii) Memorandum of Associations, (iv) Articles of Association and a certificate from a registered Chartered Accountant and (v) Company Secretary.
vii	CGP set up by Holding Company and consumption of energy from such CGP by	The Holding Company shall comply the provisions of Section 2 (46) of the Companies Act	(i) Annual Balance Sheet (ii) Form MGT7 (iii) Account of Company (Form AOC-4) filed under Companies Act and Rules by Holding

Sr. No.	Type of captive generating plant / user(s)	Criteria of Equity Shareholding with voting rights	Supporting Documents
	Holding Company and/or Subsidiary Company.	2013 and Subsidiary Company shall comply with the provisions of Section 2 (87) of the Companies Act, 2013.	Company and Subsidiary Company.
viii	CGP set up by Subsidiary Company and consumption of energy from such CGP by Subsidiary and/or Holding Company.	The Subsidiary Company shall comply the provisions of Section 2 (87) of the Companies Act 2013 and Holding Company shall comply with the provisions of Section 2 (46) of the Companies Act, 2013.	(i) Annual Balance Sheet (ii) Form MGT7 (ii) Account of Company (Form AOC-4) filed under Companies Act and Rules by Subsidiary Company and Holding Company.

11. Consequence of failure to meet Captive consumer / user status:

- 11.1. If the CGP or Captive Consumer / user fails to meet the criteria of ownership and consumption, specified in Rule 3 of the Electricity Rule 2005, as amended from time to time, determined on annual basis, such CGP or Captive Consumer / user shall lose its Captive status for that year leading to imposition of Cross Subsidy Surcharge and Additional Surcharge, Late Payment Surcharge and such other charges as applicable on open access consumers.
- 11.2. The Captive consumer(s) / user(s) shall deposit in advance and maintain the same throughout the period desired to avail the captive status, the security deposit in the form of unconditional and irrevocable Revolving L.C. / Bank Guarantee equivalent to 51% of annual captive consumption to the concerned

distribution licensee as payment security against estimated Cross Subsidy Surcharge and other charges, if any applicable, as may be decided by the Commission.

Provided that there shall be no exemption from Cross Subsidy Surcharge on the electricity consumed by non-Captive consumers.

12. Development of Online Portal by the Distribution Licensees for submission of documents by Captive users / Captive Generating Plant

The Distribution Licensees shall prepare detailed procedure with regard to the implementation of various provisions applicable to CGP and its verification, etc. and develop online portal for submission of requisite documents by the CGP holders and get it approved from the Commission, within 3 months, for ensuring seamless flow of information related to determination of captive status."

48. Additional comments from the stakeholders:

- 48.1. One of the objectors requested to confirm that any solar plant setup as per CEA guidelines 2005 or its amendments for complying with captive requirements i.e. having 26% or more equity and consuming 51% or more energy will be eligible to claim captive status. At present GEDA /Gujarat Power Deptt, is not giving permission for solar only projects proposed to be setup under group captive mode.

Commission's decision:

The aforesaid issue is not pertaining to subject matter of these Regulations.

- 48.2. Some of the objectors have suggested to clarify that in case of customers having rooftop solar plant under net metering be allowed for open access for RE to the maximum extent possible considering the consumption of energy.

Commission's decision:

The solar rooftop power projects set up under net metering provisions are

different and distinct from the green energy open access available to the consumer, licensee or generator under these regulations. Both are having different and distinct provisions in the Regulations. Therefore, the applicability of provisions of the above Regulations to the beneficiaries/persons shall be in accordance with the provisions of the relevant Regulations.

- 48.3. Some of the objectors have suggested to carryout case study for determination of imbalancing charge on account of renewable energy.

Commission's decision:

These Regulations consist of the provisions specifying the charges payable by the open access customer. So far as the suggestion with regard to charges towards imbalancing of grid is concerned, the said issue is dealt in earlier part of this SoR.

- 48.4. One of the objectors stated that the Commission has prescribed the detailed methodology for verification of captive generating plants and captive consumers by the distribution licensee. Since the Commission has permitted consumers having sanctioned load/contract demand of 100kW and above to avail green energy open access and considering the lower cost of such RE power-particularly wind and solar, the number of green energy open access consumers are expected to be very high. In turn, the Licensee will require to create a separate and dedicated team of people comprising of techno-commercial and legal persons to verify the various details of captive generating plants. This activity is in addition to the scheduling, metering, accounting, and billing activities that the licensee has to perform for such green energy open access consumers. Accordingly, it is suggested that any O&M expenses incurred by the licensee to carry out the activity of verification of captive generating plants shall be allowed as a pass through in the True-up.

Commission's decision:

The issue is raised by the objector is not pertaining subject matter of these Regulations.

48.5. Contract demand with DISCOMs:

Some of the objectors have suggested that the injection of power from green energy generators (wind/solar) is infirm in nature and the actual injection is known on post facto basis only. Therefore, it would be appropriate that the consumers seeking Green Open Access from wind/solar sources shall have contract demand with DISCOMs equivalent to the quantum of Open Access.

Therefore, Commission is requested to incorporate appropriate provisions in the regulations for ensuring that contract demand is maintained by open access consumers with DISCOMs in commensuration to quantum of Open Access granted. Any mis-match in quantum of Open Access vis-à-vis contract demand will lead to issues in grid operation and grid balancing.

Commission's decision:

We note that Contract Demand with the Licensee kept by the consumer with consideration of its power requirement from distribution licensee. Further, the connection granted by the licensee also consists of various equipment, cables / conductor, CTPT, Fuse etc. with consideration of such contract demand of the consumers. The open access shall be granted by the licensee with consideration of provision of Act, Rules and Regulations framed under it. Hence, no further comments on it.

48.6. Storage Obligation for consumers seeking Green Open Access from wind/solar projects:

Some of the objectors have suggested that DISCOMs shall require to arrange for storage / flexible generation facility to provide banking facility to consumers

seeking Green Open Access from wind/solar projects. Considering the limited availability of storage / flexible generation resources, it may impact capacity addition from wind / solar sources. Therefore, it is imperative to cast obligation on part of Green Open Access consumers also to arrange for storage facility, say storage facility of 25% of energy generated during the month for availing banking facility. This will reduce strain on DISCOMs and on other hand will ensure RE capacity addition in the State from wind/solar sources in a targeted manner.

Commission's decision:

The aforesaid objections mandates the Green Energy Open Access consumers to create storage facilities which is against the provisions of the Green Energy Open Access Rules notified by the MoP, GOI. Further, though the storage is helpful for the Grid operation point of view. It is an option available to the Green Energy Open Access consumer. The suggestion of the objector also needs to carryout study and based on it take decision in the subject matter.

49. The Commission directs that the GERC (Terms and Conditions for Green Energy Open Access) Regulations, 2024 be published in the Official Gazette after incorporating the changes as decided and indicated in the foregoing paragraph of this SoR.

Sd/-
[S. R. Pandey]
Member

Sd/-
[Mehul M. Gandhi]
Member

Sd/-
[Anil Mukim]
Chairman

Place: Gandhinagar.

Date: 20/02/2024.

Annexure – I

The Commission has received objections/suggestions from the following stakeholders pursuant to public notices dated 23.06.2023, in the matter of Draft Gujarat Electricity Regulatory Commission (Terms and Conditions for Green Energy Open Access) Regulations, 2023.

Sr. No.	Name of Objector
1	Ashwin Mistry
2	Himanshu Bodawala
3	Boghani Synthetics
4	S G Solar Association
5	Solnce Green Energy LLP
6	Next Green energy Pvt Ltd
7	SGCCI President
8	Federation of Kutch Industries Association
9	Novergy Solar
10	Cleanmax Enviro Energy Solutions Pvt. Limited
11	Easy Solar
12	FORCE
13	Reliance Industries Limited
14	Ultratech Cement Limited
15	MPSEZ Utilities Limited
16	Total Energies
17	Green Infra Wind Energy Limited
18	Drashta Power Consultant Pvt. Limited
19	Fourth Partner Energy
20	Adani Green energy Limited
21	Distributed Solar power Association

Sr. No.	Name of Objector
22	Aditya Birla Renewable Limited
23	ReNew power Pvt. Limited
24	Continuum green Energy (India) Pvt. Limited
25	Kunj Bihari J. Shah
26	BA Prerna Renewables Pvt. Limited
27	Indian Wind Power Association
28	Torrent Power Limited
29	Aasan Consultancy
30	State Load Despatch Centre
31	Amplus Energy Solutions Pvt. Limited
32	Vena Energy Sustainable Power Pvt. Limited
33	Radiance Renewables
34	GETCO
35	The Chamber of Commerce & Industry Kutch
36	Integrum Energy Infrastructure Pvt. Limited
37	Indian Wind Turbine Manufactures Association
38	GUVNL
39	National Solar Federation of India
40	Prayas (Energy Group)
41	Amplus Energy Solutions Pvt. Limited
42	Ministry of New & Renewable Energy Govt. of India
43	Prozeal Green Energy Private Limited
44	AM Green Energy Private Limited
45	All India Consumer Protection and Action Committee

Annexure - II

The following stakeholders were present during the hearing on 28.08.2023, in the matter of Draft Gujarat Electricity Regulatory Commission (Terms and Conditions for Green Energy Open Access) Regulations, 2023:

Sr. No.	Name of Objector
1	Ashwin Mistry
2	Himanshu Bodawala
3	Boghani Synthetics
4	S G Solar Association
5	Solnce Green Energy LLP
6	Next Green energy Pvt Ltd
7	SGCCI President
8	Federation of Kutch Industries Association
9	Cleanmax Enviro Energy Solutions Pvt. Limited
10	Easy Solar
11	FORCE
12	Reliance Industries Limited
13	Ultratech Cement Limited
14	MPSEZ Utilities Limited
15	Green Infra Wind Energy Limited
16	Drashta Power Consultant Pvt. Limited
17	Adani Green Energy Limited
18	ReNew power Pvt. Limited
19	Continuum green Energy (India) Pvt Limited
20	Torrent power Limited

Sr. No.	Name of Objector
21	State Load Despatch Centre
22	Amplus Energy Solutions Pvt. Limited
23	Vena Energy Sustainable Power Pvt. Limited
24	GETCO
25	The Chamber of Commerce & Industry Kutch
26	Indian Wind Turbine Manufactures Association
27	GUVNL
28	Amplus Energy Solutions Pvt. Limited
29	AM Green Energy Private Limited
30	MGVCL
31	Brookfield
32	DGVCL