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Engg.	Secretary <i>2/3/2020</i>
Law	Chairman
Tariff	Member / PRR
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To
The Secretary
A.P. Electricity Regulatory Commission
4th floor, Singareni Bhavan, Red Hills
Hyderabad - 500 004

March 2, 2020

Respected Sir,

Sub : Submission of objections and suggestions on the amendment proposed to Regulation 2 of 2005 relating to APERC (Terms and conditions of Open Access) Regulation, 2005 in O.P.No.3 of 2020.

With reference to your public notice dated 17.2.2020, inviting objections and suggestions on the subject issue, I am submitting the following points for the consideration of the Hon'ble Commission:

1. Both the AP Discoms have submitted that the RPP Obligation for 2020-21 is 15% and the present renewable energy availability is around 30% of system energy requirement. The Discoms have also mentioned that smooth integration of this much RE (Solar and Wind power) of 8515 MW which is variable in nature, with the Grid having system demand of 9000 to 10000 MW is a difficult task. Further, the Discoms stated that in this scenario, presently promotion of RE power is not envisaged and not warranted.
2. In view of the latest policies of solar and wind power issued by GoAP, and as requested by the Discoms, the Hon'ble Commission has proposed amendments to APERC (Terms and Conditions of Open Access) First Amendment Regulation, 2016 (Regulation No. 1 of 2016), deleting the second proviso to para 17.1 (i), the third proviso to para 17.1 (i) and the second proviso to para 17.1 (iii). The second proviso to para 17.1(i) says: "Provided further that the Transmission and Wheeling charges shall be exempted for wheeling of power generated from such Solar and Wind Power Projects and for such operative periods as mentioned in G.O.Ms.No.8, Dated 12-02-2015 and G.O.Ms.No.9, Dated 13-02-2015 respectively for only captive use / third party sale within the State." The third proviso of Para 17.1 (i) says: "Provided also that the Distribution losses shall be exempted for such Solar Power Projects and for such operative period as mentioned in G.O.Ms.No.8, Dated 12-02- 2015 injecting at 33 kV or below irrespective of voltage-level of the delivery point within the Discom for such projects." The second proviso to Para 17.1 (iii) says: "Provided

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further that the Cross Subsidy Surcharge and additional surcharge shall be exempted for third party sale if the source of power is from such Solar Power Projects set up within the State as mentioned in G.O.Ms.No.8, Dated 12-02-2015 for a period of five (5) years from the date of commissioning of such projects."

3. Deletion of the proposed three provisos is justified for the following reasons, among others:

- a) When the above three provisos were incorporated in 2016 in the subject regulation, following the solar and wind policies of the then Government, the issue of who should bear the burden of such exemptions was ignored both in the concerned G.Os of GoAP and the amendments brought about by the Hon'ble Commission.
- b) As per the three provisos proposed to be deleted from the subject regulation, capacity that is being, and will be, used by the solar and wind power units for captive use/third party sale within the State gets exempted from paying transmission and wheeling charges, distribution losses and cross subsidy surcharge and additional surcharge. On the basis of supply of power to their consumers only, AP Transco/the Discoms can collect transmission and wheeling charges from their consumers to that extent only. They cannot collect the same from the developers of solar and wind power projects for captive use or third party sale. In other words, neither the developers, nor their consumers, would pay the transmission and wheeling charges for captive use or third party sale of solar and wind power. As a result, it leads to under-recovery of revenue by the Discoms.
- c) If, from the total peak transmission capacity, the capacity that is used for captive use/third party sale of solar and wind power is excluded, then the average tariff for transmission and wheeling charges per unit would increase and the entire burden will be imposed on the consumers of the Discoms as a part and parcel of retail tariffs as decided by the Hon'ble Commission in the annual tariff orders.
- d) Captive use of solar and wind power or its sale to third parties under open access means the developers use it for their own requirements or sell the same to the consumers of their choice at their own tariffs, without any regulation of tariffs. The Discoms or their consumers have absolutely nothing to do with those transactions and supply and consumption of such solar and wind power.
- e) If the GoAP wanted to give some concessions like exempting the solar and wind

power being used for captive purpose or third party sale through open access from payment of transmission and wheeling charges, as a part and parcel of its policy of encouraging generation and consumption of solar and wind energy, in all fairness, it should have borne the entire cost of such transmission and wheeling charges. The Hon'ble Commission should have directed the GoAP accordingly, while amending the relevant Regulation in line with the solar and wind power policies of the GoAP. Directing, by implication or otherwise, the Discoms or their consumers of power to bear that burden did tantamount to an unfair trade practice. This approach of forcing the Discoms or their consumers of power to bear the cost of transmission and wheeling charges for the solar and wind power generated by developers and sold to consumers of their choice at their tariffs is perverse and contrary even to the canons of free trade.

- f) Developers of wind and solar power projects are generating and selling power to the consumers of their choice under open access and earning substantial profits and the consumers purchasing power from them also must be getting that power at tariffs lower than the tariffs determined by the Commission in the annual tariff orders applicable to different categories of consumers. Needless to say, consumers, whether of commercial or industrial categories, opt for purchase of power under open access, if only the tariffs are lower than the tariffs applicable as per the annual tariff orders of the Commission. Otherwise, they opt to get supply of power from the Discoms only. Since the tariffs being determined by the Hon'ble Commission to commercial or industrial or other high consumption categories of consumers in the annual tariff orders are much higher than the tariffs of wind or solar power, both the developers of wind and solar power units and consumers who get supply of power from them under open access get benefit, the developers in the form of higher tariffs and the consumers in the form of relatively lower tariffs. Obviously, it is an absurdity to impose the burden of transmission and wheeling charges of such open access transactions on the Discoms or their consumers of power.
- g) If solar and wind power is used for captive use, the costs of transmission and wheeling of that power should be borne by those users only. The Discoms and their consumers of power have absolutely nothing to do with such consumption of power. Imposing that burden on the Discoms or their consumers of power is also an absurdity.
- h) Freedom of choice is given to the developers of solar and wind power projects to sell their power to anybody, anywhere in the country and at the tariffs decided by themselves under open access. Though the consumers also are given such a

freedom of choice to purchase power from any developer/supplier under open access, subsidised consumers of power of the Discoms who constitute the overwhelming majority cannot opt for such a choice, as that would increase the burden of tariffs which, invariably, tend to be much higher than what they have to pay to the Discoms as determined by the Hon'ble Commission in the annual tariff orders after factoring cross-subsidy and after taking into account the subsidy the Government agrees to provide. On the other hand, the Discoms, in effect their consumers of power, are forced, as it were, to purchase a minimum percentage of NCE, mainly solar and wind power, out of their total sales under the Renewable Power Purchase Obligation orders being issued by the Commission periodically. However, there is no compulsion to the developers of NCE units, including solar and wind power units, to sell their power to the Discoms either under the outdated and inflated generic tariffs determined by the Commission or through competitive bidding. In other words, the policy approaches of the Government and regulatory obligations of the Commission are already heavily loaded in favour of the developers of NCE units, especially solar and wind power units, at the cost of consumers of power of the Discoms. Relating to these issues, we have already made, on earlier occasions, detailed submissions before the Hon'ble Commission on the kind of adverse consequences the consumers of the Discoms have been facing as a result of the questionable policy approaches of the Governments and regulatory approaches of the Commission. Imposing the burden of transmission and wheeling charges for captive use or third party sale under open access of solar and wind power on the Discoms or their consumers of power is nothing but penalising them again for their no fault, or robbing Peter to pay Paul.

- i) Captive use or sale of solar and wind power, or other power, to third parties by the developers concerned under open access results in loss of business to the Discoms. To that extent the Discoms are being deprived of profit and cross subsidy. Users of captive power or power purchased under open access are better off. Neither the developers of wind and solar power projects, nor their consumers who get power under open access, have any obligation of cross-subsidizing, as per the related proviso of the subject regulation, whereas the Discoms have the social responsibility of serving the cross-subsidized consumers. As such, with loss of revenue to the Discoms, their revenue gap, as well as the need for tariff hike or increased subsidy from the Government, would arise. Imposing the burden of transmission and wheeling charges which should be borne by the users of captive power or by the developers or their consumers who avail themselves of solar and wind power under open access on the Discoms or their consumers of power, including overwhelming majority of subsidised

consumers, is nothing but forcing the latter to subsidise or cross-subsidise the private developers of solar and wind power projects and their consumers who avail themselves of the power under open access and users of captive power.

- j) Even if the solar and wind power projects whose power is being sold under open access by their developers are old units, over the years they must have recovered a lion's share of their capital costs already. In other words, by continuing to sell their power under open access at tariffs which are much higher than they would have been due to depreciation of their units and recovery of capital cost, they continue to get windfall profits and do not deserve exemption of transmission and wheeling charges anymore.
 - k) As is well known, the tariffs being discovered through competitive bidding for solar and wind power are as low as less than Rs.2.50 per kwh. Needless to say, such developers reap windfall profits by selling their power under open access. With tariffs for wind and solar power falling drastically through competitive bidding, the tendency to sell solar and wind power under open access gets intensified, and, as and when a viable and economical system of battery storage for power is developed and put to use, sale of solar and wind power under open access will increase by leaps and bounds. If the Discoms or their consumers of power are forced to bear the burden of transmission and wheeling charges and distribution losses for such third party sale or captive use of solar and wind power, the totally unjustifiable burden on them would also increase accordingly. Such predatory absurdities are being perpetrated by politico-bureaucratic-corporate maverickism masquerading itself under the guise of "reforms" and working for ensuring undue benefits to private capital at the cost of larger public interest.
4. As long as the Hon'ble Commission decides cross subsidy, it should be made applicable to those categories of consumers, whether they are getting power from the Discoms or generators under open access. In view of ensuring redistributive justice and equity, it is imperative.
 5. When the Discoms are serving all categories of consumers, including subsidised consumers, they have a social responsibility of providing cross subsidy to the subsidised consumers as decided by the Commission. When cross-subsidising consumers leave the Discoms under the arrangement of open access, the latter get deprived of revenue that accrues on account of cross subsidy. As a result, to the extent cross subsidy is lost, either the tariffs to the subsidised consumers or the

subsidy to be borne by the Government will have to be increased. On the other hand, the suppliers and consumers under open access will have no obligation to provide cross subsidy, if there is no cross subsidy surcharge. In other words, it will create a situation in which social responsibility and additional burden to the Government and additional burden to subsidised consumers, on the one hand, and profits to open access suppliers and benefits to open access consumers, on the other. That is the reason why imposition of cross subsidy surcharge on open access consumers is permitted in the Electricity Act, 2003.

6. In a situation of severe scarcity for power when cross-subsidising consumers, subjected to severe power cuts, are forced or permitted to get power through open access from other sources, obviously, at a higher price than the applicable tariffs of the Discoms, imposing cross subsidy surcharge on such open access purchases would tantamount to penalising such cross-subsidising consumers. Moreover, when cross-subsidising consumers are forced to purchase power under open access in the face of persisting scarcity for power and huge power cuts, obviously, at prices higher than the applicable tariffs of the Discoms, there will be no scope for working out cross subsidy surcharge based on the difference between the applicable tariffs of the Discoms and the higher prices at which open access consumers buy power from other sources. In such a situation, if no cross subsidy surcharge is imposed on such open access consumers, loss of cross subsidy and profits of the Discoms on account of slump in their sales to such open access, but otherwise regular, consumers will lead to imbalances and affect the finances of the Discoms and their ability to adjust required cross subsidy. Therefore, for the failures of the Government of India in ensuring adequate supply of fuels like natural gas and domestic coal to the power projects with whom the Discoms had PPAs, of the policy decisions of GoAP, and of the regulations of the Commission, the consumers should not be penalised either in the form of imposing cross subsidy surcharge on such consumers who are forced to buy power from other sources at prices higher than the applicable tariffs of the Discoms or in the form of denying or reducing cross subsidy to the subsidised consumers or in the form of affecting the finances of the Discoms. The Government of India and GoAP should provide additional subsidy to cover the loss of cross subsidy the Discoms suffer whenever substantial scarcity for power is created by the failures of the former in ensuring adequate supply of fuels like natural gas and domestic coal as per allocations made by it to the power projects with whom the Discoms had PPAs and aberrations in policies of GoAP and regulations of APERC.
7. Barring this exception, as explained above, cross subsidy surcharge should be determined and collected from the open access consumers. In view of availability of substantial surplus power with the Discoms, there is no scarcity for power to force consumers to opt for open access purchases. Similar situation will continue in future also.

8. When any cross-subsidising consumer leaves the Discom concerned, opting for open access, the transmission and distribution capacity created for such a consumer earlier becomes idle, depriving AP Transco and the Discom concerned of charges that were being collected for utilisation of T&D capacity, as a part and parcel of tariff that was being collected from such consumer till then. Till the utilities give new service connections or increase supply of power to the existing consumers, that part of T&D capacity continues to remain idle. Additional surcharge is intended to avoid loss of charges on account of such capacity remaining idle. The capital investment made for creating such T&D capacity, interest thereon, the costs of its maintenance, including repairs, and any other incidental expenditure required during the useful life span of such capacity, plus permissible profit – or simply transmission and distribution charges determined by the Commission - justify imposition of additional surcharge on open access consumers. Once, AP Transco/Discom can make use of such idle capacity by serving the existing and/or new consumers, the need for collecting additional surcharge from the earlier consumer who opted for open access ceases.
9. I request the Hon'ble Commission to bring about the proposed subject amendments. I request the Hon'ble Commission to provide me an opportunity to make submissions in person during the public hearing.

Thanking you,

Yours sincerely,

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