Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
World Trade Centre, Centre No.1, 13th Floor, Cuffe Parade, Mumbai 400005.
Tel. 022 22163964/65/69 Fax 22163976
Email: mercindia@mercindia.org.in
Website: www.mercindia.org.in

Suo Motu proceeding No. 50 of 2012

Dated: 18 May, 2012

ISSUES ON OPEN ACCESS

PUBLIC NOTICE

The Maharashtra Electricity Regulatory Commission ("**the MERC**") was established as the Commission for the State of Maharashtra under Section 17 of the Electricity Regulatory Commissions Act, 1998 and continued as such under the first proviso to Section 82 of the Electricity Act, 2003 ("**the 2003 Act**") as the State Commission for the purposes of the 2003 Act. The MERC exercises various functions for the implementation of the 2003 Act. One of the functions is to introduce open access in distribution under Section 42 and to consider all other attendant provisions including that of determination of wheeling charges and surcharge thereon for open access consumers.

By a letter dated 30th November 2011, the Ministry of Power, Government of India, has requested that necessary steps for immediately implementing the provisions relating to open access under the 2003 Act may be taken in the light of an opinion from M/o Law & Justice. M/o Law & Justice has opined that –

(a) as per the provisions of the 2003 Act, bulk consumers (above 1 MW) shall be deemed to be open access consumers with effect from January 2009, in terms of the proviso to Section 42(2);

(b) once a consumer becomes an open access consumer, the State Commission has no longer fix the energy charges to be paid by such a consumer, but will continue to fix the wheeling charges and surcharges in accordance with the provisions of the 2003 Act;

(c) an analysis of the various provisions of the 2003 Act (particularly Section 49) shows that if certain consumers want to have the benefit of the option to buy power from competing sources, then it is logical that DISCOMS/Distribution Licensees do not have an obligation to compulsorily supply power to such consumers. If such consumers want power from the DISCOM, then the terms and conditions of the supply would be determined in terms of section 49;

(d) A notice under Section 42(3) is not a precondition for the implementation of open access as such a notice is not for seeking permission to use the distribution

licensee's network, but only to communicate the open access consumers intention of using such a network.

The Act envisages Open Access in transmission and distribution network. Open Access in transmission has been allowed from the very beginning and without any fetter. However, in so far as Open Access in distribution is concerned, the law envisages introduction of such Open Access in phases with due consideration of the operational constraints and existence of cross subsidy between consumer categories. At the same time, MERC is required to protect and safeguard the interest of consumers. This responsibility of phased introduction of open access in distribution has been bestowed on State Electricity Regulatory Commissions.

Hence, the MERC deems it fit to suo motu initiate solicitation of views and suggestions from the members of public and from all stakeholders in the State of Maharashtra on the four broad findings rendered under the opinion of M/o Law & Justice and also other relevant and attendant issues. The objective of the Public Notice is to generate debate and seek comments of the stakeholders on this issue, **which may be submitted by 30th June 2012** addressed to the following:

The Secretary
Maharashtra Electricity Regulatory Commission,
13th Floor, Center No.1, World Trade Centre,
Cuffe Parade, Mumbai – 400 005.
(Email: secretary@mercindia.org.in)

The Commission may hold the hearing for considering the above views and suggestions for which the Commission will separately indicate the venue, date and timing.

A copy of the letter of the Ministry of Power, Government of India dated 30th November 2011 bearing ref. No.23/1/2008-R&R (Vol-IV) alongwith Forum of Regulators (FOR) Position Paper (May 2012) on Open Access is available on the website of the MERC (www.mercindia.org.in).

SECRETARY