

## Interactive Meeting on Activating Open Access in Electricity Sector 7<sup>th</sup> January 2011, Yojana Bhawan, New Delhi

### A report

1.1 CUTS Institute for Regulation and Competition (CIRC) had arranged an interactive meeting on Activating Open Access in Electricity Sector under the chairmanship of Gajendra Haldea, Adviser to DCH, Planning Commission and Pradeep S Mehta, Chairman, Managing Committee, CIRC as the moderator on 7<sup>th</sup> January 2011 at Yojana Bhawan, New Delhi.

#### Background:

1.2 Pradeep S Mehta (PSM), while welcoming participants, mentioned the ongoing debate on open access in electricity sector in the electronic forum: FunComp@cuts.org maintained by CUTS. In this debate divergent views were posited on the feasibility and desirability of open access in the electricity sector in India, given, the political reality of the sector. However, if open access has to be an instrument in unleashing competition in the sector, it is important to understand the existing constraints and what ought to be done to overcome those constraints.

1.3 Starting the discussion, Gajendra Haldea opined that the Electricity Act 2003 was a milestone act which opened the power sector to a number of companies and laid down provisions for design of a power market with infusion of competition.

1.4 J L Bajaj highlighted the need for universal access. Liberalization was a process and not an event and deliberations on open access must be synthesized into a meaningful outcome. Open access should be looked as open access in distribution as well as in transmission. As the major costs were the generation cost, procurement cost and cost of labour, the market players could be engaged in offering competitive price through competitive bidding. He then cited the flaws in the competitive bidding process which was diluted by allowing exemptions to PSUs. He suggested a re-look at the objectives of open access. He said that competition did not always bring down prices but another way to bring down the prices was to bring down the distribution cost.

#### Open Access- Choice and Prices:

1.5 Payal Malik rebutted a causal relationship between open access and reduction in prices. There was a social value created by open access. According to her, the significant positive externalities (“spillovers”) that open access produces makes it socially desirable and internalization through exclusive property rights inefficient. Stated more broadly, open access to infrastructural resources like distribution and transmission supports society’s economic interest in wealth maximization and allocative efficiency as well as other societal goals of fairness, equality, and nondiscrimination. The social benefits generated by the resources derive from the downstream uses. Value is created downstream by a wide variety of end users that rely on access to the infrastructure.

1.6 S L Rao mentioned the cases of Karnataka and Mumbai, and termed the case of Mumbai as an ‘unholy mess’. Government had to withdraw in Karnataka. In Mumbai, open access and consumer choice in the context of supply constraints had created more problems. There had been issues with the system of open access. Putting the issues of open access at the retail level aside might be useful, till state governments are empowered with greater intent

and will to ensure supplies while not making the supplier suffer. When the supply was not adequate, there should be no talk of open access at retail level.

#### International Experience:

1.7 Haldea opined that open access existed even before the Electricity Act 2003. He also pointed out that the Act contemplates distribution and supply, but the intent was that supply has to be seen different from distribution. He also said the notion that open access requires a formal application by the consumer is also misguided and is a way to stall the process. The case of Karnataka was misinterpretation of law. The case of Mumbai was also not one of open access, since one had to rely on the wires of 'A' for having supply from 'X', 'Y' or 'Z'. Open access is being practiced in US and UK. The issue was not of open access in transmission (as in case of Karnataka). It was rather about section 42 i.e. open access to consumers. He emphasized that open access was practiced across the world. In London consumers could choose between 12 suppliers over the same wires and ironically India hadn't had a single open access consumer till date. In that context, Geeta Gouri, Member, Competition Commission of India, said that there was legislative intent which was an impediment as section 42 (3) said that same wires couldn't be used.

#### Pricing Mechanism- separate generator and distributor for user agreements:

1.8 Sunil Wadhwa, MD, NDPL said that the prices could be broken up into components like production cost, transmission loss cost etc. He stated that everyone was for separating carrier and content business. He opined that consumers should be allowed to contact the suppliers and then should talk to discoms to buy the content for them. He further mentioned that there was a need to do away with the complication of charges and distribution.

1.9 The status of open access consumers, clarity of the law regarding open access, off beam subsidy to the open access consumers, unbundling of retail supply etc. was also debated in the interactive meeting and the debate had started to address those issues. Harish K Ahuja, Joint Secretary, Department of Power, Govt. of Delhi, opined that open access consumer was a 'couch potato'. He argued that if a category was competitive then one could not charge regulated tariff. He mentioned that the Act was very clear regarding open access and cited the example of WBERC. There should be two separate agreements, one with generator and the other with distributor. He also mentioned that unbundling of retail supply for competitive accounting had to be separate.

#### Regulatory Gaps:

1.10 V S Ailawadi, Ex-Chairman, Haryana Electricity Regulatory Commission, also opined that both open access and competition were clearly embedded in the act. He said open access would come in phases but in the last seven years regulatory authorities went only by letter not by the spirit. He stated that regulatory authorities only promoted transmission and did not do justice with distribution. Even in transmission, he mentioned, CERC had not done full regulation and there were several gaps. While speaking about open access in distribution, he mentioned that there was not a single case under section 42. He further opined that open access gave big opportunity to promote bulk consumers of one megawatt and above, who have the right to choice under sections 42 (3) and 49. These provisions have to be used to push competition in the supply of electricity to the consumers. It is now the duty of the regulators to give effect to this right with enabling procedures. Ailawadi referred to the recently approved Model Regulations for Open Access by the Forum of Regulators (FoR) and said that, at best, it was a half hearted attempt to enforce open access in distribution. He added that the bulk consumers should be allowed and load aggregator should be recognized as the entity that would facilitate open access in the distribution segment of the electricity.

Ailawadi observed that current regulations of CERC and FOR do not define load aggregator as an effective route to open access. He then opined that “if the large consumers go away, the utility will suffer” was a misnomer and argued to let the consumer ‘have a choice’.

1.11 Haldea cautioned that only open access in distribution would not help and there was a need to find a model which the discoms could not refuse. He then read the legal provisions in different sub-sections of the concerned act. Haldia clarified that law allowed one to have tariff separately in respect of carrier and content. He mentioned that anybody who was consuming 1 megawatt was an open access consumer by the law. He stressed on Section 42 and highlighted that “The state shall introduce” as per the sub sections 3 and 4. He further highlighted that state commissions ‘shall’ provide by law open access to a consumer consuming above 1 megawatt. He then spoke about the impact of UK electricity laws on the Indian Electricity Act and said India had borrowed from UK, India had unbundled but kept the competition away. Haldea said that sections 42 (3) & (4) have cast a duty on the electricity regulator that any consumer who chooses supply from other than a particular distribution company must not only be encouraged but be backed up by enabling procedures to ensure that choice is effectively exercised. He regretted that regulators have failed to enforce these provisions to encourage competition in retail supply that would have made utilities to improve efficiency and customer satisfaction.

#### Aggregating Demand:

1.12 Harry Dhaul from Independent Power Producers Association of India (IPPAI) highlighted some cases in Gurgaon where housing/office complexes or market complexes were taking single connection and distribute the electricity to its occupants without a license. He asked if those distributors were violating the law in actuality and then questioned the provisions of law in such cases. Wadhwa supported Dhaul in that point and mentioned that NDPL had also noted such issues where there were 80 or 100 small individual customers but due to corrupt practices of such distributors (without license), the utility was getting only one bulk customer. The question was whether electricity aggregators can be considered as open access customers.

#### The Poor and the Low Cost:

1.13 Shantanu Dixit, Member, Prayas Energy Group, reported that in last 10 years, generation had increased 60% but household access increased by only 10%. He suggested that the only way open access will happen if it was possible that the state or regulator could ensure the low cost power to the poor consumers. B M Verma, Ex-Chairman, Jharkhand State Electricity Board, opined in that regard that there existed lack of political will. He stated the example of Punjab where there was surplus power but the benefits did not percolate to the poor consumers. Payal Malik raised the issue of capture of regulators by the distributing licensees in that regard and asked the forum to address the same.

#### Mechanism for Open Access:

1.14 G B Pradhan, Additional Secretary, Ministry of Power, argued that only ‘1 megawatt criteria’ was not sufficient although that was necessary; the concerned consumer had to apply to be an open access consumer. He was of the opinion that although the Act stipulated OA there were hurdles in the way of OA and somewhere down the line we have to address the concerns of the utilities and to convince the utilities that open access will ultimately help them. Haldea did not agree with the fact that the concerned consumer had to apply to be an open access consumer and quoted the act further. Pradhan said that the problems lay in

perception and they needed to work with discoms to convince them. Operationalisation of open access had been the top agenda of Ministry of Power but they must take into consideration the concerns of the distribution companies as well.

#### Open Access Consumers Not Following Norms:

1.15 Gaurav Bhatiani, Head, Market Analysis & Strategy, SN Power Holding India PTE. Ltd., raised the issue whether 'protection to the discoms' or 'protection to the individuals in the discoms' for protecting the large consumers. Navroz Dubash, Senior Fellow, Centre for Policy Research, agreed with Bhatiani and questioned the motive of the open access consumers in establishing their rights. Payal Malik opined in this regard that open access was not happening because the open access consumers were not even paying the market prices and were even getting the benefits of subsidies. PSM supported her view and argued to tackle the issue through competition. Even though most of the states have allowed consumers with more than 1-MW consumption for open access, due to very high cost of external power, no buyer has opted for it anywhere in the country, except in Punjab. In Maharashtra, cross-subsidy charges are zero but still they find it cheaper to pay the regulated tariffs than the open market prices.

#### Should Open Access be the Priority?

1.16 Atmanand, Dean, Executive PG Programme, MDI, Gurgaon, said that in India, allocative efficiency and productive efficiency should be achieved first and then only one should debate on the open access issues. Haldea then highlighted the issues of stealing of power and mentioned the loss of Rs. 60,000 crore of state distribution enterprises in electricity sector. He also pointed out that ironically these rising losses will be a trigger for open access as when bankrupt distribution licensees will be unable to pay for the generating capacity created. Under such a scenario the generators will require direct access to their paying consumers.

1.17 The consensus, which seemed to have emerged in the meeting was that cross-subsidy surcharge was a dampener to open access, though Mr. Haldea said that this surcharge was to be paid by the high value customers in any case. But it was agreed that having the benefit of regulated tariffs that reflected the average price of procurement for the distribution licensee, by large customers made open access tariffs unattractive. Thus, if open access has to be successful all customers above 1 MW, they should face an unregulated tariff. Deregulation of electricity supply to high use customers was the only solution to incentivise open access. This will also address the problem of distribution licensees being left with low value customers as every customer will pay the cost of supply.

1.18 PSM thanked all the participants for attending the interactive meeting and making it a success.