

**[IN THE COMPETITION COMMISSION OF INDIA]
[INFORMATION UNDER SECTION 19(1) OF THE COMPETITION ACT,
2002]**

NAME OF APPLICANT	<p>OPEN ACCESS USERS ASSOCIATION (Regd.) (OAU)</p> <p>Association registered under Section XXI of Societies Registration Act 1860 represented through its Secretary.</p>
ADDRESS	A-49, 2nd Floor, Dwarka Sector-8, New Delhi- 110077.
MODE OF SERVICE PREFERRED	REGISTERED POST A.D. [ADDRESSED TO COUNSEL]
NAME AND ADDRESS OF ENTERPRISES CONTRAVENING THE PROVISIONS OF THE COMPETITION ACT, 2002	<p>1. TATA POWER DELHI DISTRIBUTION LIMITED NDPL House, Hudson Lines Kingsway Camp Delhi-110009 Ph: 011 66112222, 011-66112256, 011-66112162, 011-66112272 Fax: 011 27468042.</p> <p>2. BSES RAJDHANI POWER LIMITED BSESBhawan, Nehru Place, New Delhi-110019 Telephone Number: +91-11-39999808 Fax Number : +91 11 399 99890</p>

3. BSES YAMUNA POWER LIMITED

Shakti Kiran Building,
Karkardooma, Delhi-110032
Telephone Number : +91 11 399
99707
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4. PUNJAB STATE POWER CORPORATION LIMITED

PSEB HEAD OFFICE,
THE MALL, PATIALA – 147001

5. UTTAR HARYANA BIJLI VITRAN NIGAM LIMITED

Represented through its Authorised Representative having its office at Vidyut Sadan, Plot No.: C16, Sector-6, Panchkula, Haryana (India).
Tel. no: 0172-3019134

6. DAKSHIN HARYANA BIJLI VITRAN NIGAM LIMITED

Represented through its Authorised Representative having its office at Vidyut Sadan, Vidyut Nagar, Hisar - 125005 (Haryana)
Tel no.: 01662-223089-90

7. HIMACHAL PRADESH STATE ELECTRICITY BOARD LIMITED

	Kumar House, Vidyut Bhawan, Shimla-171004
LEGAL NAME AND ADDRESS OF COUNSEL	ANM GLOBAL INC A-6/21 Vasant Vihar New Delhi - 110057 Te l No : 011-26144113 011-46632635 E-mail ID: nidhish.mehoratra@anmglobal.net jaydeep.b@anmglobal.net

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New Delhi
Dated:

INFORMATION UNDER SECTION 19(1) OF THE COMPETITION ACT, 2002 FOR INSTITUTION OF AN INQUIRY REGARDING ABUSE OF DOMINANT POSITION BY THE RESPONDENTS MENTIONED HEREINABOVE.

**TO
THE HON'BLE CHAIRMAN,
AND HIS COMPANION MEMBERS
OF THE COMPETITION COMMISSION OF INDIA,
NEW DELHI**

MOST RESPECTFULLY SHOWETH:

1. That the Informant is an association of primarily of high power intensive industries in India by the name of Open Access Users Association (OAUUA) located at A-49, 2nd Floor, Dwarka Sector-8, New Delhi- 77.
2. Shri Amit Ailawadi, S/o Shri Surindra Kumar Ailawadi, presently working as Secretary, Open Access Users Association has been duly authorized by way of Rules & Regulations and Authorization Letter to sign and verify the instant Memorandum of Information and Applications and is also authorized to institute the said Memorandum of Information and Applications before this Hon'ble

Commission and is also authorized to deposit the Fee prescribed under Regulation 49 of the Competition Commission of India [General] Regulations 2009 before this Hon'ble Commission.

3. That Respondent No. 1 is Tata Power Delhi Distribution Limited (TPDDL), a joint venture between Tata Power and govt. of NCT of Delhi involved in distributing electricity in North and North West parts of Delhi.
4. That Respondent No. 2 is BSES-Rajdhani Power Limited, the main partner of Reliance Power Limited which is a Distribution Licensee and carries out the distribution of electricity in the western and southern areas of Delhi.
5. That Respondent No. 3 is BSES Yamuna Power, the chief partner of Reliance Power is a Distribution Licensee in Delhi executing the distribution of electricity in the eastern and central parts of Delhi.
6. That Respondent No. 4 is Punjab State Power Corporation Limited (PSPCL) responsible for distribution, generation and allied activities in the state of Punjab. The Punjab State Electricity Regulatory

Commission (Terms and Conditions for Determination of Tariff) Regulations, 2005 provides that the PSPCL should be considered as the integrated utility as it is engaged in multiple functions namely generation, trading and distribution of electricity. Accordingly, it is the only distribution licensee in the state of Punjab.

7. That Respondent No. 5 is Uttar Haryana Bijli Vitran Nigam Limited (UHBVNL) Government owned distribution company, registered under the companies Act, 1956, engaged in the business of distribution and retail supply of electricity in the state of Haryana. UHBVNL hold the Distribution and Retail Supply License No. DRS-1 of 2004 to cater distribution and retail supply of electricity in the North Zone of Haryana and was formed upon corporatisation / restructuring of erstwhile Haryana State Electrical Board (HSEB) carried out by the State Govt. under the aegis of Haryana Electricity Reforms Act (HERA) in 1998 and 1999.

8. That Respondent No. 6 is Dakshin Haryana Bijli Vitran Nigam Limited (DHBVNL) Government owned distribution company, registered under the companies Act, 1956, engaged in the business of distribution and retail supply of electricity in the state of Haryana.

DHBVNL holds Distribution and Retail Supply License No. DRS-2 of 2004 to cater distribution and retail supply of electricity in the South Zone of Haryana and was formed upon corporatisation / restructuring of erstwhile Haryana State Electrical Board (HSEB) carried out by the State Govt. under the aegis of Haryana Electricity Reforms Act (HERA) in 1998 and 1999.

9. That Respondent No. 7 is Himachal Pradesh State Electricity Board Limited (HPSEBL) and is a deemed licensee under the first proviso to Section 14 of the Electricity Act, 2003 (hereinafter referred to as 'the Act') for distribution and supply of electricity in the State of Himachal Pradesh. The HPSEBL is a vertically integrated utility and is entrusted with the functions of generation, distribution and trading of power in the State of Himachal Pradesh.
10. That the above mentioned are collectively referred to as Respondents and/or Discoms / DISCOMS in this Information Memorandum for convenience of reference.

A. GENERAL BACKGROUND

11. It is pertinent to mention and briefly outline the scenario existing in the electricity sector at the outset. The history and evolution of the

power sector in India dates back to the 1880s, when a small power generating station with local distribution was established in the hills of Darjeeling in the eastern part of India. The legislations of 1887 and 1903 that provided for private power and minimal regulation, evolved into a more comprehensive Indian Electricity Act 1910, which was the first basic framework for electricity industry. It provided for private electricity licences in specified areas for supply of electricity. In the post independence period, with the objectives of extending electrification and achieving regional economic development, the electricity sector was nationalized in 1948. Under the Electricity (Supply) Act, 1948, State Electricity Boards (SEBs) were established. The SEBs were mainly funded by the states and they carried out the objectives of the state policies. The commercial viability of the SEBs started getting affected in 1970s due to a host of reasons and the Government amended the Electricity Act, 1948 in 1985 to provide for 3% as minimum return. Despite this safeguard, SEBs over a period of time suffered financially and in terms of their performance. In the year 1991, steps towards comprehensive reforms in the power sector were undertaken.

12. In 1990s, India ranked eighth in the world in terms of annual

electricity generation. About 75 percent of the country's electricity generation comprised of thermal power plants, followed by hydro (15 percent), and gas (5.5 percent). The level of thermal electricity generation was expected to further in coming years. However, India's per capita electricity generation is one of the lowest in the world. A need for comprehensive reforms was felt and as a result, a new act to govern the power sector in India was enacted in 2003 by the name of Electricity Act, 2003.

13. That the Electricity Act, 2003 which came into force on 10/06/2003 enacted by the Parliament of India has consolidated and provided for a comprehensive legislation in the matters relating to generation, transmission or distribution and supply of electricity throughout the country. Electricity falling List III of Schedule VII to the Constitution of India, namely in the concurrent list, the Union Parliament has exercised its powers to provide for a comprehensive legislation dealing in all matters relating to the electricity sector. The Electricity Act, 2003 inter-alia mandated that State Electricity Boards (SEBs) will no longer exist in the existing form and will be restructured into separate generation, transmission and distribution entities. The Act of 2003 also stipulates licensee-

free thermal generation, non-discriminatory open access of the transmission system, gradual implementation of open access in the distribution system to pave way for creation of power market in India and encouragement of private sector participation in generation, transmission and distribution with the role of the governments being relegated to advisory in nature. The Act has introduced new concepts like power trading and aims to establish market-based regime in the electricity sector. Establishment of Central Electricity Regulatory Commission (CERC) and State Electricity Regulatory Commissions (SERCs) have been formalised. The Ministry of Power has signed MoUs with the states to undertake time bound distribution reforms as a part of reform process. So far 28 states have constituted independent regulatory commissions and 23 SERCs have issued tariff orders for rationalizing tariffs and open access regulations. In all, 16 Electricity Boards /Electricity Departments have been unbundled and corporatized, and Consumer Grievances Redressal Forums and Ombudsmen have been constituted / appointed in 22 states. The CERC and SERCs have been given powers to grant inter-state and intra-state trading licences respectively.

Open Access in the Indian Power Sector

14. The Electricity Act 2003 (EA 2003) enables eligible consumers to have non-discriminatory Open Access (OA) to the network of a Licensee (except that of a local authority engaged in the business of distribution of electricity before the appointed date) on payment of applicable charges. The EA 2003 and National Electricity Policy (NEP) formulated thereunder, mandates the State Electricity Regulatory Commissions to frame the terms and conditions and timeframe for introduction of OA in the State
15. Open access is considered as an important framework seeking to promote competition. The regulations on open access in inter-state transmission together with the regulations on inter-state trading are issued by the Central Electricity Regulatory Commission. The responsibility for the introduction of open access at the distribution level rests with the State Electricity Regulatory Commissions. Open access transactions at interstate transmission have increased from 778 in 2004-05 to 5933 in 2006-07 and to in 2012-2013. The numbers further reached 9560 in 2007-08 and 9347 in 2008-09.
16. Section 2 (47) of the Electricity Act, 2003 defines Open Access,

while Section 42 of the Electricity Act, 2003 mandates the Distribution Licensees to provide open access to eligible consumers subject to payment of cross-subsidy surcharge, additional surcharge and other applicable charges. Section 86 (1) of the EA, 2003 mandates the Commission to determine the cross-subsidy surcharge.

17. That the primary intention behind the concept of open access evolved under the provisions of the Electricity Act is to promote competition. When the consumers have the option and freedom of taking electricity from third parties and not from the distribution licensee in the area of supply, there arises competition between the multiple sources of supply including that of the distribution licensee which ultimately benefits the consumers at large. It is for this purpose that the Electricity Act seeks to do away with the concept of monopoly and provides the freedom of choice to consumers, subject to conditions as may be laid down by the State Commission under Section 42 of the Electricity Act and open access being provided in a phased manner. Section 42 provides that the State Commission shall introduce open access in such phases and subject to such conditions as may be specified.

18. That in terms of Sections 38, 39 and 40 of the Electricity Act, it is the duty of the transmission licensee to provide nondiscriminatory use of the transmission system for open access.
19. That in terms of the National Electricity Policy, the State Electricity Regulatory Commissions were mandated to provide a framework and notify the necessary Regulations by June, 2005 to enable open access in the distribution system of the distribution licensee for consumers whose maximum power drawal at any time exceeds 1 MW. The National Electricity Policy and the National Tariff Policy laid great emphasis on open access to be provided and competition to be promoted in the electricity sector.
20. That open access is generally divided by various State Electricity Regulatory Commissions and also the Central Electricity Regulatory Commission as
 - a) *short-term open access* which is on a monthly basis or generally for a period not exceeding 3 months by a single transaction;
 - b) *medium-term open access* which is generally between 3 months to 3 years; and

c) *long-term open access* which is generally for a period exceeding 3 years.

21. That an open access consumer is required to pay the transmission/wheeling charges for use of the system of purchasing electricity, cross subsidy and surcharge as may be determined by the State Commission in terms of proviso to Section 42(2) and also the additional surcharge that may be determined by the State Commission under Section 42(4). These charges are paid to the transmission/distribution licensee apart from the consideration paid for the purchase of electricity.
22. That Section 42 of the Electricity Act 2003 provides that the Additional Surcharge and the Cross Subsidy shall be progressively reduced. The obligation of reducing such charges is put on the relevant State Commission who is mandated to take such measures as may be necessary to reduce the same. Moreover, the National Tariff Policy also provides that the total Cross Subsidy should not be more than 20% of the Average Cost of Supply.
23. That as per Section 62 of the Electricity Act, 2003, the relevant State Electricity Regulatory Commissions have been empowered to

determine the tariff under various parameters defined under Section 61 and as specified from time to time. These tariffs are determined through orders of the State Electricity Regulatory Commissions based on applications made by Distribution Licensee / Generator (as applicable) for determination of tariff.

24. That various State Electricity Regulatory Commissions based on the blatant recommendations of the Discoms (distribution licensees) have increased the charges for Open Access in the Past few years. Such multiple and sharp increments in charges have extremely affected the Open Access users which in turn has invariably affected the competition in the Power Sector contrary to the competitive intent of the provisions of the Electricity Act 2003.
25. The Brief background and Open Access charges for the various States leading to prompting the Informant to file the present Information Memorandum are provided below:

Power Sector Reforms and Open Access Charges in Delhi

26. In 1905, M/s John Fleming Company was granted the license to supply power to the inhabitants of Delhi. In the year 1951, Delhi State Electricity Board (DSEB), was established replacing a private

utility, in pursuance of the policy for the power industry mandated by the Electricity (Supply) Act, 1948, entrusting the sector primarily to the new institution of State Electricity Boards. DSEB was replaced in 1958 by the Delhi Electric Supply Undertaking (DESU) which was created as a wing of the newly established Delhi Municipal Corporation. Till 1997, Delhi Electric Supply Undertaking (DESU) used to control generation, transmission and distribution of electricity in Delhi. DESU was an integrated utility with generation, transmission and distribution functions serving all of Delhi except the NDMC and MES (Cantonment) areas, to which it supplied power in bulk. Delhi Vidyut Board (DVB), the State Electricity Board of Delhi, was founded in 1997 under the Electricity (Supply) Act, 1948 and was the successor of the Delhi Electric Supply Undertaking (DESU). While DESU was a part of the Municipal Corporation in Delhi, DVB was placed under the Delhi Government.

27. Delhi Government issued a strategy paper in February 1999 outlining its intention to unbundle DVB, create an independent regulatory entity, and privatize distribution. The assets and liabilities of DVB were first transferred to the Delhi government and then to six successor companies----one generating company (Indraprastha

Power Generation Company Limited), one transmission and bulk supply company (Delhi Power Supply Company Limited), three distribution companies and one Holding Company (Delhi Power Company Limited). The three distribution companies were known as Central--East Delhi Electricity Distribution Company Limited, South-West Delhi Electricity Distribution Company Limited and North North--West Delhi Distribution Company Limited. The assets of DVB in the Pragati Power Projects were transferred to Pragati Power Projects Limited (PPCL). The entire capital of the successor Holding Company which was 100 percent owned by the Delhi Government.

28. On July 1, 2002, the Government of the National Capital Territory of Delhi [Delhi Government] privatized the distribution portion of Delhi Vidyut Board (DVB), a vertically integrated state owned power enterprise, through the sale of 51% of the equity in three distribution companies. In the process of privatisation of distribution portion of DVB, six entities -- AES, BSES, Cescon, China Light & Power, Reliance Power and Tata Power-were pre-qualified but only two entities--BSES and Tata - submitted proposals in response to the RFP. The three distribution companies created at the time of

privatization were ultimately sold to two privately owned Indian power companies, BSES and Tata Power. BSES bought two companies covering the central and east zones and the south and west zones and Tata Power purchased one company covering the north and northwest zones. The three distribution companies were privatized but the three other companies continued to be owned by the Delhi Government. At the time of privatization, as per reports, DVB had about 2.5 million customers with a connected load of about 5600 MW, energy sales of about 8000 Gwh and an annual revenue of about Rs 3000 crore (US \$630 million).

29. At present, in the area of generation, Pragati Power Corporation Limited (PPCL) and Indraprastha Power Generation Company Ltd (IPGCL) are Government Companies within the meaning of Companies Act, 1956 and are wholly owned by the Government of National Capital Territory of Delhi. Further, they are also the generating Companies as defined under Section 2(28) of The Electricity Act, 2003. IPGCL was generating electricity from its three power stations viz (i) Indraprastha (ii) Rajghat and (iii) Gas Turbine Power Station. Pragati Power Corporation Limited (PPCL) was supplying power from its power station at Pragati, Ring Road, I.P.

Estate, New Delhi. The power generated from these power stations is being supplied to the transmission Company i.e. Delhi Transco Limited, which is also a Govt. of NCT of Delhi Undertaking. The transmission related functions are being carried out by Delhi Transco Limited, which is also a Govt. of NCT of Delhi Undertaking. The transmission related functions are being carried out by the Delhi Transco Limited (formerly Delhi Power Supply Company Limited), which is supplying electricity for distribution to three Discoms – NDPL, BSES Rajdhani and BSES Yamuna together with NDMC.

30. In Delhi, now the SEB has been unbundled; there is one holding Company and one licensee Transmission Company by the name of Delhi Transco Limited, which remains under the control of Govt. of Delhi. The distribution arm of erstwhile Delhi Vidyut Board has been privatised and licences have been granted to three distribution companies - NDPL, BSES Rajdhani Power Limited and BSES Yamuna Power Limited except for the areas under NDMC and Military Engineering Services. These distribution companies are supplying electricity to the consumers.

31. A profile of three existing discoms is provided below:

- Tata Power Delhi Distribution Limited - TPDDL (Previously known as NDPL-North Delhi Power Limited) – TPDDL is a joint venture between Tata Power Company and the Government of NCT of Delhi with the majority stake being held by Tata Power. It distributes electricity in North & North West parts of Delhi and caters to a population spread over approx. 510 square kms with a consumer base of about 11 lac consumers.
- BSES Yamuna Power Limited (BYPL) - BYPL distributes power to an area spread over approx. 200 sq kms with a population density of 4230 per sq km. It has about 15 lakh customers spread over districts across Central and East areas.
- BSES Rajdhani Power Limited (BRPL) - BRPL distributes power to an area spread over approx. 750 sq. km with a population density of 1360 per sq km. It has over 16 lakh customers spread in districts across South and West areas.

32. In March 1999, Delhi Electricity Regulatory Commission (DERC) was established. The Commission was initially created under an

Act of the Parliament and then after notified under the State Reforms Act. As per Section 76 and Section 82 of the Electricity Act, 2003, Central Electricity Regulatory Commission, established under Section 3 of the Electricity Regulatory Commissions Act, 1998 shall be deemed to be the Central Commission and State Electricity Regulatory Commissions, established under Section 17 of the Electricity Regulatory Commissions Act, 1998 shall be deemed to be the State Regulatory Commissions.

33. For Open Access, The Delhi Electricity Regulatory Commission (hereinafter referred to as Commission/DERC) in exercise of the power vested in it under section 39,40,42, 86 (1)(c) read with Section 181 of the Electricity Act, 2003 and all other powers enabling the Commission in this behalf, notified the Delhi Electricity Regulatory Commission (terms and conditions for Open Access) Regulations, 2005 (hereinafter referred to as Delhi OA Regulations).
34. Regulation 12 of the Delhi OA Regulations provide for the applicable charges to be paid by an open access consumer. These are:

- Transmission & Wheeling Charges
- Cross Subsidy Surcharge
- Additional Surcharge
- Scheduling Charges (to be paid to the State Load Despatch Centre)
- Unscheduled Inter-change (UI) Charges
- Reactive Energy Charges

35. In the aforesaid Regulations, notified in the official gazette on 03.01.2006, open access was allowed to the Intra State Transmission System in the State immediately, subject to the satisfaction of the conditions contained in the Act or in the Regulations. The open access in the Distribution System was also allowed subject to the absence of operational constraints in following phases:-

S No.	Particulars	Date of Introduction
1.	Delivery of electricity for use by the Consumers with the connected load of five MW and above	01.07.2007
2.	Delivery of electricity for use by the Consumers	01.01.2008

	with the connected load of three MW and above	
3.	Delivery of electricity for use by the Consumers with the connected load of one MW and above	01.07.2008

36. The Delhi Electricity Regulatory Commission (DERC) on 29.08.2008 based on the application under Section 64 of Electricity Act 2003 by the Discoms, passed an Order determining the charges for Open Access for the fiscal years 2008-2009. The DERC determined the tariff and Open Access charges for all 3 Discoms (NDPL, BYPL & BRPL) separately. The charges set forth by the DERC in the order dated 29.08.2008 are summarized in the below table:-

Year	Discom	Voltage Level	STU Charges	Distribution / Wheeling Charges	Cross Subsidy
2008 – 2009	NDPL	At LT Level	-	80.66 Paise/unit / Rs. 806.6/mWh	-
	NDPL	At 11kV		45.33 Paise/unit / Rs. 453.3/mWh	-
	NDPL	At 33/66 kV		10.55 Paise/unit / Rs. 105.5/mWh	72.98 Paise/kWh / Rs. 729.8mWh
	NDPL	Above 66kV		N.A	97.03 Paise/kWh / Rs. 970.3/mWh

	BRPL	At LT Level		70.82 Paise/unit / Rs. 708.2/mWh	-
	BRPL	At 11kV		38.07 Paise/unit / Rs. 380.7/mWh	20.93 Paise/kWh / Rs. 209.3/mWh
	BRPL	At 33/66 kV	-	9.03 Paise/unit / Rs. 90.3/mWh	92.76 Paise/kWh / Rs. 927.6/mWh
	BRPL	Above 66kV		N.A	119.79 Paise/kWh / Rs. 1197.9/mWh
	BYPL	At LT Level		87.52 Paise/unit / Rs. 875.2/mWh	-
	BYPL	At 11kV		43.89 Paise/unit / Rs. 438.9/mWh	2.48 Paise/kWh / Rs. 24.8/mWh
	BYPL	At 33/66 kV		10.40 Paise/unit / Rs. 104/mWh	78.76 Paise/kWh / Rs. 78.7/mWh
	BYPL	Above 66kV		N.A	107.16 Paise/kWh / Rs. 1071.6

37. Besides the above mentioned charges, DERC had also determined and allowed to levy Reactive Energy Charges in accordance with Regulation 12 of the Delhi OA Regulations. However, these Reactive Energy Charges were not determined by the DERC and were ordered to be applied on actuals by the relevant Discoms. In addition, an Open Access consumer also had to pay Unscheduled Inter-change (UI) charges and Scheduling charges to the State Load Despatch Centre (SLDC) as per the DERC order dated 29.08.2008 (as per Regulation 12 of Delhi OA Regulations).

However, the Unscheduled Inter-change (UI) charges and Scheduling charges were not determined by the DERC, and the SLDC were to charge these on actuals.

38. The above order dated 29.08.2008 wherein the DERC decided Transmission and Wheeling Charges, Cross Subsidy Surcharge, Additional Surcharge and other applicable charges under Open Access was made applicable to the subsequent fiscal years i.e. 2009-2010, 2010-2011, 2011-2012 & 2012-2013.

39. The DERC had revised the above applicable charges for Open Access vide order dated 24.12.2013. The DERC determined the tariff and Open Access charges for all 3 Discoms (NDPL, BYPL & BRPL) separately vide the order dated 24.12.2013. The charges set forth by the DERC in the order dated 29.08.2008 are summarized in the below table:

Year	Discom	Voltage Level	Additional Surcharge	STU Charges	Distribution / Wheeling Charges	Cross Subsidy
2013 - 2014	TPDDL	At LT Level	April-July		77 Paise/unit / Rs. 770/mWh	-
	TPDDL	At 11kV	Time Slots 0-3 - 30 Ps/Unit		71 Paise/unit / Rs. 710/mWh	26.37 Paise/unit / Rs. 263.7/mWh

	TPDDL	At 33/66 kV	3-9 - 130 Ps/Unit	Rs. 219 / mWh	68 Paise/unit / Rs. 680/mWh	46.23 Paise/unit / Rs. 462.30/mWh
	TPDDL	Above 66kV	9-12 – 30 Ps/Unit		67 Paise/unit / Rs. 670/mWh	-
	BRPL	At LT Level	12-18 – 30 Ps/Unit		72 Paise/unit / Rs. 720/mWh	-
	BRPL	At 11kV	18-24 - 30 Ps/Unit		63 Paise/unit / Rs. 630/mWh	49.38 Paise/unit / Rs. 493.80/mWh
	BRPL	At 33/66 kV	August-November		61 Paise/unit / Rs. 610/mWh	57.35 Paise/unit / Rs. 573.50/mWh
	BRPL	Above 66kV	Time Slots		-	-
	BYPL	At LT Level	0-6 – 300 Ps/Unit		81 Paise/unit / Rs. 810/mWh	-
	BYPL	At 11kV	6-12 – 300 Ps/Unit		69 Paise/unit / Rs. 690/mWh	56.56 Paise/unit / Rs. 565.60/mWh
	BYPL	At 33/66 kV	12-18 – 300 Ps/Unit		68 Paise/unit / Rs. 680/mWh	64.40 Paise/unit / Rs. 644/mWh
	BYPL	Above 66kV	18-24 – 300 Ps/Unit		-	-
			December-March			
			Time Slots			
			0-6 - 300 Ps/Unit			
			6-12 –			

			100 Ps/Unit			
			12-18 – 100 Ps/Unit			
			18-24 - 100 Ps/Unit			

40. Besides the above mentioned charges, DERC had also determined and allowed to levy Reactive Energy Charges in accordance with Regulation 12 of the Delhi OA Regulations. These Reactive Energy Charges were levied for all Discoms @ 10 Paise/kVarh. However, the Commission had not provided any computation methodology or reasoning for calculation of these Reactive Energy Charges.
41. In addition, an Open Access consumer also had to pay Unscheduled Inter-change (UI) charges and Scheduling charges to the State Load Despatch Centre (SLDC) as per the DERC order dated 23.12.2013. The Unscheduled Inter-change (UI) charges were not determined by the DERC, and the SLDC were to charge these on actuals. The Scheduling charges were fixed @ Rs. 2000/per day, to be paid to the SLDC.

42. That, on July 23, 2014, DERC determined the electricity tariff for TPDDL, BYPL & BRPL vide 3 different orders. Vide these orders, DERC determined the wheeling charges and other tariffs for the consumers. The charges set forth by the DERC in the orders (all) dated 23.07.2014 for the fiscal years 2014-15 are summarized in the below table:

Discom	Voltage Level	Wheeling Charges
TPDDL	At LT Level	81 Paise/kWh / Rs. 810/mWh
	At 11kV	75 Paise/kWh / Rs. 750/mWh
	At 33/66 kV	72 Paise/kWh / Rs. 720/mWh
	Above 66 kV	71 Paise/kWh / Rs. 710/mWh
BRPL	At LT Level	67 Paise/kWh / Rs. 670/mWh
	At 11kV	59 Paise/kWh / Rs. 590/mWh
	At 33/66 kV	58 Paise/kWh / Rs. 580/mWh
	Above 66 kV	N.A
BYPL	At LT Level	79 Paise/kWh / Rs. 790/mWh
	At 11kV	68 Paise/kWh / Rs. 680/mWh
	At 33/66 kV	67 Paise/kWh / Rs. 670/mWh
	Above 66 kV	N.A

43. The above table clearly indicates that the wheeling charges for the year 2014-15 have again been raised for the consumers in comparison to the previous years.
44. Additionally, the DERC had also fixed and levied Additional Surcharge to be paid by the Open Access Consumers thereby drastically increasing the overall charges and cost for an Open Access Consumer who wishes to shift to a different distributor.
45. As is visible from the above tables, the charges for Open Access in Delhi have been continuously raised and fixed at a much higher rate.

Power Sector Reforms and Open Access Charges in Punjab

46. Punjab State Electricity Board (PSEB) which was constituted in 1959 under the Electricity (Supply) Act 1948. Subsequently with the re-organization of the erstwhile State of Punjab under the Punjab Re-organization Act 1966 this form came into existence w.e.f. 1st May, 1967. PSEB was a vertically integrated utility being responsible for generation, transmission and distribution of electricity within the State of Punjab.

47. Vide Notification No 1/9/08-EB(PR)196, dated-16.04.2010 issued by the Department of Power, Government of Punjab, the Government of Punjab unbundled the Punjab State Electricity Board into two companies known as the 'Punjab Power Sector Reforms Transfer Scheme' (hereinafter referred to as "**Transfer Scheme**").
48. That, as per the said Transfer Scheme, the erstwhile PSEB, has now been unbundled into two corporate entities i.e. POWERCOM and TRANSCO. The POWERCOM has been named as Punjab State Power Corporation Limited (PSPCL) and the TRANSCO has been named as Punjab State Transmission Company Limited (PSTCL).
49. As per the Transfer Scheme, the transmission segregated the transmission business to PSTCL. The Transfer Scheme mentioned that the PSTCL shall comprise of all assets, liabilities and proceedings, belonging to the PSEB, concerning the transmission of electricity and the State Load Despatch Center (SLDC) function.
50. On the other hand, the Transfer Scheme provided the PSPCL with the Distribution, Generation and allied activities of the erstwhile PSEB. The Punjab State Electricity Regulatory Commission (Terms

and Conditions for Determination of Tariff) Regulations, 2005 provides that the PSPCL should be considered as the integrated utility as it is engaged in multiple functions namely Generation, Trading and Distribution of electricity. There is only one Discom in the State of Punjab i.e. PSPCL.

51. Punjab State Electricity Regulatory Commission (PSERC) was constituted by the Government of Punjab under section 17 of the Electricity Regulatory Commissions Act, 1998 vide its Notification dated 31.3.1999 to discharge the duties and perform the functions specified under Section 22 of the Electricity Act 2003.
52. For Open Access, The Punjab State Electricity Regulatory Commission in exercise of the power vested in it under section 39,40,42, 86 (1)(c) read with Section 181 of the Electricity Act, 2003 and all other powers enabling the Commission in this behalf, notified its Open Access Regulations, known as the Punjab State Electricity Regulatory Commission (Open Access) Regulations, 2005 vide Notification dated 9th August, 2005. These Regulations were amended vide Notifications dated 31st August, 2007, dated 1st December, 2009 and dated 15th July, 2010.

53. The Open Access to the intra state transmission system as to be allowed to all customers subject to the satisfaction of the conditions contained in the Electricity Act 2003 and in the Punjab State Electricity Regulatory Commission (Open Access) Regulations, 2005 Regulations.
54. Open Access to the intra state distribution system was allowed to consumers having regard to operational constraints and other relevant factors, and in the following phases:

Phases	Category of consumers	Open Access to be allowed before or on
Phase I	Consumers with demand of 15 MW and above	January 1, 2006
Phase II	Consumers with demand of 3 MW and above	April 1, 2006
Phase III	Consumers with demand of 1 MW and above	April 1, 2008

55. The Punjab State Electricity Regulatory Commission (Open Access) Regulations, 2005 Regulations provided for various Open Access Charges –
- Transmission & Wheeling Charges (different for Long Term Open Access & Short Term Open Access)
 - Cross-Subsidy charges
 - Additional Surcharge
 - Operation Surcharge
 - Unscheduled Inter-change (UI) charges
 - Reactive Energy Charges
56. As mentioned above, subsequently, in 2010, the PSEB as unbundled into two separate entities i.e. PSPCL and PSTCL. Accordingly, PSPCL in its various references and presentations to the Commission requested for amendment to Punjab State Electricity Regulatory Commission (Open Access) Regulations, 2005 due to serious operational problems and financial losses on account of Open Access. Various executional problems to implement Open Access between PSTCL and PSPCL after unbundling were brought to the notice of the Commission in various petitions made by the OA customers.

57. In addition, Government of Punjab had made various recommendations pointing out various problems faced by PSPCL.

These are:-

- i. The power scheduled by OA consumers through Open Access was varying constantly and is directly linked to the prevailing market rate and for their remaining requirement; they draw power from PSPCL system. Thus, the power requirement from PSPCL system was also varying unpredictably which jeopardizes the system reliability.
- ii. The total Open Access quantum on day ahead basis can be known only at 5PM on the previous day. Due to this short time given to PSPCL, it had no alternative for arranging excess power or surrendering the power and thus PSPCL gets financially affected.
- iii. OA consumers use PSPCL as a standby supplier and for this PSPCL must have spinning reserve. Due to large demand and supply gap, there is no spinning reserve available with PSPCL.
- iv. The frequent shifting of OA consumers from PSPCL to Open Access and again to PSPCL affected the quality of power to other consumers.

- v. The OA consumers being the cross subsidizing category for other consumer groups, this reduction of power off-take by them from PSPCL power pool had adverse impact on the tariff of other categories.
 - vi. Due to Open Access, the LS consumption is likely to reduce which will hit the revenue and T&D losses of PSPCL adversely. In order to prevent financial collapse of PSPCL, appropriate safeguards e.g. cross subsidy surcharge and additional surcharge as provided in the National Tariff Policy be levied on OA consumers.
58. To resolve the above matters, the Commission decided to revise the Open Access Regulations 2005 as amended from time to time. Accordingly, draft Open Access Regulations, 2011 were put on the website of the Commission and suggestions and objections from the general public and stake holders were invited.
59. After considering all the submissions made by various stake holders and general public, the Commission based on the “Statement of Reasons” issued vide No. PSERC/Secy/Reg/56 dated 29.06.2011, notified the Punjab State Electricity Regulatory Commission (Terms and Conditions for Intra-state Open Access)

Regulations, 2011 (hereinafter referred to as “**Punjab OA Regulations**”) on 1st July 2011.

60. The Punjab OA Regulations provided the following charges to be paid by an Open Access consumer:

- Transmission charges
- Scheduling & System Operation charges
- Wheeling Charges
- Cross- Subsidy
- Additional Surcharge
- Imbalance Charges
- Reactive Energy Charges
- Voltage Surcharge

61. Moreover, it is pertinent to mention here that PSERC had amended the above Punjab OA Regulations 2011 on 4th May 2012, vide Punjab State Electricity Regulatory Commission (Terms & Conditions for intra-State Open Access) (1st Amendment) Regulations, 2012; wherein Regulation 25 (regarding wheeling/distribution charges) was amended to read Long term, Medium term and Short term Open Access customers availing supply at 220 KV, 132 KV, 66 KV, 33 KV or 11 KV, in addition to

transmission charges, which shall be liable to pay wheeling charges determined by the Commission as per the Tariff Order applicable for the year.

62. The PSERC has been determining the tariffs and issuing orders for the same since 2002. PSERC passed its first Tariff Order determining tariffs for various categories of consumers to be applicable for the year 2002-03, on September 6, 2002. Subsequently, after the introduction of Open Access in Punjab, the PSERC also determined the various Open Access Charges applicable to Open Access consumers vide the same Tariff Orders.
63. For the purposes of this Information Memorandum, summary of all the Tariff Orders from 2002 is not provided, rather a comparison sheet from the fiscal year 2009-2010 is being provided for this Hon'ble Commission. On 8th September 2009, PSERC passed the order determining the Annual Revenue Requirement (ARR) and Tariff for supply of electricity by the Punjab State Electricity Board (Board) to consumers of the State of Punjab for the year 2009-10. The charges set forth by the PSERC in the order dated 08.09.2009 are summarized in the below table:-

Year	STU Charges	Distribution / Wheeling Charges	Cross Subsidy
2009 – 2010	LTOA Rs. 4281/MW/day STOA Rs. 2569/MW/day	44.2 Paise/kW / Rs. 442.70/mWh	65.28 Paise/kWh / Rs. 652.8/mWh

Note: the above cross-subsidy charges provided are limited to Large Supply Industrial Consumer category.

64. Besides the above charges, PSERC had ordered that other charges such as additional surcharge, operation charges, UI charges, reactive energy charges shall be levied as per the Punjab Open Access Regulations (i.e. the 2005 regulations) / Tariff Regulations notified by PSERC.
65. On 23rd April 2010, PSERC passed the order determining the Annual Revenue Requirement (ARR) and Tariff for supply of electricity by the Punjab State Electricity Board (Board) to consumers of the State of Punjab for the year 2010-11. The charges regarding Open Access set forth by the PSERC in the order dated 23.04.2010 are summarized in the below table:-

Year	STU Charges	Distribution / Wheeling Charges	Cross Subsidy
2010 – 2011	9.4 Paise/kWh / Rs. 94.83/mWh	56 Paise/kWh / Rs. 560.04/mWh	61 Paise/kWh / Rs. 613/mWh

Note: the above cross-subsidy charges are limited to Large Supply Industrial Consumer category.

66. Besides the above charges, PSERC had ordered that other charges such as additional surcharge, operation charges, UI charges, reactive energy charges shall be levied as per the Punjab Open Access Regulations (i.e. the 2005 regulations) / Tariff Regulations notified by PSERC. PSERC also provided for transmission and wheeling charges @ Rs. 5238/MW/Day / Rs. 218.25/mWh for LTOA consumers and Rs. 3143/MW/Day / Rs. 130.96/mWh for STOA consumers.
67. On 9th May 2011, PSERC passed the order determining the Annual Revenue Requirement (ARR) and Tariff for supply of electricity by the Punjab State Electricity Board (Board) to consumers of the State of Punjab for the year 2011-12. The charges set forth regarding Open Access by the PSERC in the order dated 09.05.2011 are summarized in the below table:-

Year	STU Charges	Distribution / Wheeling Charges	Cross Subsidy
2011 – 2012	For LTOA 11 Paise/kWh / Rs. 110/mWh STOA 2.2 Paise/kWh/ Rs. 22/mWh	116 Paise/kWh / Rs. 1160/mWh For STOA:- 23.2 Paise/kWh / Rs. 232/mWh	73.5 Paise/kWh / Rs. 735/mWh

Note: the above cross-subsidy charges are limited to Large Supply Industrial Consumer category.

68. It is pertinent to mention that PSERC drastically increased the Cross-Subsidy surcharge (which according to the Punjab OA Regulations is calculated by deducting the Combined Average Cost of Supply from Average Realisation per unit) due to the increase in Combined Average Cost of Supply Tariff (which is determined by PSERC). In addition, PSERC issued an order dated 29.06.2011 (Order No. PSERC/Secy/Reg/56 in Annexure -II), where PSERC revised the cross subsidy charges for industrial OA consumers and increased it to 74.48 Paise/unit / Rs. 745 /mWh.

69. Besides the above charges, PSERC had ordered that other charges such as additional surcharge, operation charges, UI charges, reactive energy charges shall be levied as per the Punjab Open Access Regulations (i.e. the 2005 regulations) / Tariff Regulations notified by PSERC.
70. On 16th July 2012, PSERC passed the order determining the Annual Revenue Requirement (ARR) and Tariff for supply of electricity by the Punjab State Electricity Board (Board) to consumers of the State of Punjab for the year 2012-13. The charges for Open Access were reframed for the fiscal year 2012-13 in accordance with the Punjab OA Regulations 2011. The charges set forth by the PSERC regarding Open Access in its order dated 16.07.2012 are summarized in the below table:-

Year	STU Charges	Distribution / Wheeling Charges	Cross Subsidy
2012 – 2013	19 Paise/kWh / Rs. 190/mWh	124 Paise/kWh / Rs. 1240/mWh	88.08 Paise/kWh / Rs. 880/mWh

Note: the above cross-subsidy charges are limited to Large Supply Industrial Consumer category.

71. The Order also provided for Open Access customers to bear Transmission & Distribution Losses @ 2.5% transmission loss for Open Access customers at 132/220kV, 2.5% transmission loss and 15% distribution loss for Open Access customers at 66/33kV and 2.5% transmission loss and 40% distribution loss for Open Access customers at 11kV.
72. It is pertinent to mention for fiscal year 2012-13, PSERC had again drastically increased the Cross-Subsidy surcharge (which according to the Punjab OA Regulations is calculated by deducting the Combined Average Cost of Supply from Average Realisation per unit) due to the increase in Combined Average Cost of Supply Tariff (which is also determined by PSERC).
73. Also, the wheeling and distribution charges were drastically increased as well. In pursuance of Punjab State Electricity Regulatory Commission (Terms & Conditions for intra-State Open Access) (1st Amendment) Regulations, 2012; wherein Regulation 25 (regarding wheeling/distribution charges) was amended, all Open Access Consumers including Short Term Open Access

Consumers had to pay high amount of Wheeling/Distribution charges, whereas in the previous years (i.e. before the amendment), STOA consumers were required to pay only 20% of the Wheeling charges.

74. Besides the above charges, PSERC had ordered that other charges such as additional surcharge, operation charges, UI charges, reactive energy charges shall be levied as per the Punjab Open Access Regulations / Tariff Regulations notified by PSERC.
75. On 10th April 2013, PSERC passed the order determining the Annual Revenue Requirement (ARR) and Tariff for supply of electricity by the Punjab State Electricity Board (Board) to consumers of the State of Punjab for the year 2013-14. The charges set forth by the PSERC regarding Open Access in its order dated 10.04.2013 are summarized in the below table:-

Year	STU Charges	Distribution / Wheeling Charges	Cross Subsidy
2013 – 2014	27 Paise/kWh / Rs. 270/mWh	119 Paise/kWh / Rs. 1190/mWh	107Paise/kWh / Rs. 1070/mWh

Note: the above cross-subsidy charges are limited to Large Supply Industrial Consumer category.

76. The Order also provided for Open Access customers to bear Transmission & Distribution Losses @ 2.5% transmission loss for Open Access customers at 132/220kV, 2.5% transmission loss and 15% distribution loss for Open Access customers at 66/33kV and 2.5% transmission loss and 40% distribution loss for Open Access customers at 11kV as per Regulation 30(2) of the Punjab OA Regulations.
77. It is pertinent to mention for fiscal year 2013-14, PSERC once again drastically increased the Cross-Subsidy surcharge (which according to the Punjab OA Regulations is calculated by deducting the Combined Average Cost of Supply from Average Realisation per unit) due to the increase in Combined Average Cost of Supply Tariff (which is also determined by PSERC).
78. Besides the above charges, PSERC had ordered that other charges such as additional surcharge, operation charges, UI charges, reactive energy charges shall be levied as per the Punjab Open Access Regulations / Tariff Regulations notified by PSERC.

79. Although, wheeling/distribution charges were not increased in the fiscal year 2013-14 from the previous year, in pursuance of Punjab State Electricity Regulatory Commission (Terms & Conditions for intra-State Open Access) (1st Amendment) Regulations, 2012; the wheeling/distribution charges were still very high and the STOA consumers had to pay a lot.
80. On 22nd August 2014, PSERC passed the order determining the Annual Revenue Requirement (ARR) and Tariff for supply of electricity by the Punjab State Electricity Board (Board) to consumers of the State of Punjab for the year 2014-15. The charges set forth by the PSERC regarding Open Access in its order dated 22.08.2014 are summarized in the below table:-

Year	STU Charges	Distribution / Wheeling Charges	Cross Subsidy
2014 – 2015	Rs. 2019.31/MW/month	121 Paise/kWh / Rs. 1210/mWh	95Paise/kWh / Rs. 950/mWh

Note: the above cross-subsidy charges are limited to Large Supply Industrial Consumer category.

81. The Order also provided for Open Access customers to bear Transmission & Distribution Losses @ 2.5% transmission loss for Open Access customers at 132/220kV, 2.5% transmission loss and 15% distribution loss for Open Access customers at 66/33kV and 2.5% transmission loss and 40% distribution for Open Access customers at 11kV as per Regulation 30(2) of the Punjab OA Regulations.
82. Besides the above charges, PSERC had ordered that other charges such as additional surcharge, operation charges, UI charges, reactive energy charges shall be levied as per the Punjab Open Access Regulations / Tariff Regulations notified by PSERC.
83. Although, wheeling/distribution charges were not increased by so much of a margin from the previous year, in pursuance of Punjab State Electricity Regulatory Commission (Terms & Conditions for intra-State Open Access) (1st Amendment) Regulations, 2012; the wheeling/distribution charges were still very high and the STOA consumers had to pay a lot.
84. Besides the above, the transmission charges for STOA were levied to the maximum extent possible and were approved @ 109 Paise/kVAh and for LTOA and MTOA @ Rs. 349623/MW/month.

Additionally Rs. 2000/ day are also being paid by the open access consumers which are for scheduling, meter reading and other operating charges of the Licensee and therefore the open access consumers are being made to pay the Retail Supply costs of the Licensee twice. Various stakeholders had requested that the anomaly needs to be set right in the Tariff Order for 2014-15 and either the wheeling charges should cover only the wire business costs of the Licensee or daily scheduling charges be waived off.

Power Sector Reforms and Open Access Charges in Haryana

85. Haryana was one of the first few states in India who endeavored to implement comprehensive power sector reforms much before the enactment of the Electricity Act, 2003 by the Government of India. The Haryana Electricity Reform Bill was passed by the Haryana Legislative Assembly on 22.07.1997. After the presidential assent to the Reform Bill on 28th February, 1998, the gazette notification for the Haryana Electricity Reform Act, 1997 (HERA) was issued by Govt. of Haryana on 10.03.1998. The HERA came into force on 14th August, 1998 as per the State Govt. Notification No. S.O.105 / H.A.10 / 1998 / S.1 / 1998 dated 13.08.1998. The Haryana Electricity Regulatory Commission (HERC) was established in

August 1998 under the provisions of HERA to regulate power sector in the state of Haryana.

86. Uttar Haryana Bijli Vitran Nigam Limited (**UHBVNL**) and Dakshin Haryana Bijli Vitran Nigam Limited (**DHBVNL**) are the two State Government owned distribution companies, registered under the companies Act, 1956, engaged in the business of distribution and retail supply of electricity in the state of Haryana. UHBVNL hold the Distribution and Retail Supply License No. DRS-1 of 2004 to cater distribution and retail supply of electricity in the North Zone of Haryana and DHBVNL holds Distribution and Retail Supply License No. DRS-2 of 2004 to cater distribution and retail supply of electricity in the South Zone of Haryana.
87. These two electricity distribution companies (Discoms) were formed upon corporatisation / restructuring of erstwhile Haryana State Electrical Board (HSEB) carried out by the State Govt. under the aegis of Haryana Electricity Reforms Act (HERA) in 1998 and 1999.
88. The power sector in Haryana was restructured on August 14, 1998. The Haryana State Electricity Board (HSEB) was reorganized initially into two State-owned Corporations namely Haryana Vidyut Prasaran Nigam Ltd. (**HVPNL**) and responsible for operation and

maintenance of State's own power generating stations. HVPNL was entrusted with the power transmission and distribution functions. Simultaneously, an independent regulatory body i.e. Haryana Electricity Regulatory Commission (HERC), was constituted to aid and advise the State Govt. on the development of the power sector, to regulate the power utilities and take appropriate measure to balance the interest of various stake-holders in the power sector, namely electricity consumers, power entities and generation companies etc.

89. The corporatization / restructuring of erstwhile HSEB was carried out through two statutory Transfer Schemes notified by the State Govt. under the provisions of HERA. Through the first Transfer Scheme, titled, Haryana Electricity Reform (Transfer of undertakings, Assets, Liabilities, Proceedings and personnel) Scheme Rules, 1998, the Generation business (undertakings, assets, liabilities, proceedings and personnel) was separated from Transmission and Distribution business and vested in a separate State Govt. owned company, namely Haryana Power Generation Corporation Ltd. (HPGCL) while Transmission and Distribution business was vested in another State Govt. owned company, namely Haryana Vidyut Prasaran Nigam Limited (HVPNL). Thereafter, through the second Transfer

Scheme, titled Haryana Electricity Reform (Transfer of Distribution Undertakings from Haryana Vidyut Prasaran Nigam Limited to Distribution Companies) Rules, 1999, the Transmission undertakings and business was separated from Distribution undertakings and business. While the transmission business was retained by HVPNL, the Distribution business was segregated into two successor Distribution companies namely UHBVNL and DHBVNL as set out below:

- a) UHBVNL was vested with the North Zone comprising of Ambala, Yamuna Nagar, Karnal, Kaithal, Kurukshetra, Jind, Jhajjar, Panipat, Rohtak and Sonapat Circles, which cater to the Ambala, Yamuna Nagar, Karnal, Kaithal, Kurukshetra, Jind, Jhajjar, Panchkula, Panipat, Rohtak and Sonapat Districts.
- b) DHBVNL was vested with the South Zone comprising of Bhiwani, Faridabad, Gurgaon, Hisar, Narnaul and Sirsa Circles, which cater to Bhiwani, Faridabad, Gurgaon, Hisar, Fatehabad, Mohindergarh, Rewari, Mewat and Sirsa Districts.

90. Prior to the notification of Second Transfer Scheme by the State Govt., the Commission vide its licensing order dated 04.02.1999("the First Licensing Order"), granted Distribution and Retail Supply (D & RS) licence to HVPNL permitting it to carry out the distribution and Retail supply business in the entire state of Haryana. Subsequently, after the implementation of second transfer scheme, the Commission permitted HVPNL to continue with the Distribution and Retail Supply business through its newly formed subsidiaries namely UHBVNL & DHBVNL vide its order dated 21.04.1999 ("the Second Licensing Order"). The Commission further directed under para 5 (iii) of the Second Licensing Order that the two subsidiary companies, i.e. UHBVNL and DHBVNL should submit their respective applications for grant of D & RS licensee within period of three months from the date of issue of said Order. Appropriate applications were accordingly filed by UHBVNL and DHBVNL on 20.07.1999 with the Commission for grant of regular D&RS licensee to independently carry out the business of Distribution and Retail Supply in the North Zone and South Zone respectively. Thereafter, on an application filed by HVPNL, the Commission accepted the surrender of D&RS license vide its order dated 4th November, 2004 and granted the D&RS license no. DRS-

1 of 2004 to UHBVNL and D&RS license No. DRS-2 of 2004 to DHBVNL to conduct Distribution and Retail Supply business in the North Zone and South Zone of Haryana respectively.

91. The rights relating to procurement and bulk supply of electricity or trading of electricity were initially vested with the HVPNL at the time of restructuring of erstwhile HSEB. However, in view of HVPNL having been declared State Transmission Utility (STU) vide State Govt. notification dated 9.12.2003 and in view of sections 31 (2), 39 (1) and 41 of Electricity Act, 2003, which prohibit the STU from engaging in the business of trading in electricity, the Govt. of Haryana vide its notification no. 1/6/2005-1/Power dated 9th June, 2005, transferred the rights relating to procurement and bulk supply of electricity or trading of electricity from HVPNL to HPGCL. Subsequently, vide notification dated 11th April 2008 (No. 1/1/2008-1 Power), the Govt. of Haryana transferred the rights relating to procurement of electricity / UI drawls / dispatches or trading of electricity from HPGCL to UHBVNL and DHBVNL w.e.f 15/04/2008. Further with effect from 1st April 2008, the rights and obligations under agreements and contracts relating to procurement and bulk supply of electricity or trading of electricity to which HSEB / HVPNL

/ HPGCL was originally a party, were transferred and vested to Transferee companies i.e. UHBVNL and DHBVNL in 1:1 ratio. Firm allocations in each of the Central Sector Generating Stations along with any allocations from the unallocated quota, as determined by the Government of India for Haryana, was also allocated to UHBVNL and DHBVNL in 1:1 ratio. The power sold by HVPNL from its shared project Bhakra Beas Management Board (BBMB) to the extent of share owned by it was also allocated to UHBVNL and DHBVNL in 1:1 ratio. The notification also provided for setting up of Haryana Power Purchase Centre (HPPC), an administrative body manned by officers from UHBVNL and DHBVNL, to manage the bulk power purchase and supply functions for the two distribution companies. All power purchases, long term as well as short term, from within and outside the Haryana including trading of power are being managed by HPPC for the two Discoms.

92. The Government of India notified The Electricity Act, 2003 with effect from 10th June 2003. However, in Haryana, the provisions of the Electricity Act 2003 were deferred by six months from 10th June 2003 vide notification No. 1/4/2003-IP dated 8.9.2003. Therefore, in Haryana, the provisions of the Electricity Act, 2003 as well as the

provisions of the Haryana Electricity Reform Act, 1997, which are not inconsistent with the Electricity Act, 2003 are applicable.

93. Haryana Electricity Regulatory Commission (HERC) was established on 17th August 1998 as an independent statutory body corporate as per the provision of the Haryana Electricity Reform Act, 1997. Haryana was the second State in India to initiate the process of Reform & Restructuring of the Power sector.
94. The Haryana Electricity Regulatory Commission is a three-member statutory body including the Chairperson with specialised supporting staff, designated to function as an autonomous authority responsible for regulation of the power sector in the state. The State Government on the recommendation of a Selection Committee, set up for the purpose in accordance with section 84 read with the section 85 of the Electricity Act 2003, appoints the Chairperson and Members of the Commission.
95. For Open Access, in accordance with the provisions of the Electricity Act, 2003, the State Commission has framed and notified the Haryana Electricity Regulatory Commission (Terms and Conditions for grant of Connectivity and open access for intra-State Transmission and Distribution system) Regulations, 2012

(hereinafter called the 'Haryana OA Regulations') on 11.01.2012 followed by 1st Amendment to the Regulations on 03.12.2013.

96. HERC, with the objective of encouraging competition in the sector, has introduced open access in phased manner through the above mentioned Haryana OA Regulations notified on 19th May, 2005. The implementation of open access in phases is as follows:

Phases	Consumer with the Contract Demand	Date from which open access allowed
Phase – I	15 MVA & above	From 1 st October 2006
Phase – II	3 MVA & above	From 1 st October 2007
Phase – III	1 MVA & above	From 1 st April 2008
Phase -IV	0.5 MVA & Above	From 3 rd Dec 2008

97. The Haryana OA Regulations provide for the following charges to be paid by an Open Access consumer:

- Transmission Charges
- Wheeling charges

- Scheduling & System Operating Charges
- Cross-subsidy surcharge
- Additional Surcharge
- Reactive Energy Charges
- Imbalance charges

98. HERC determines the transmission charge, SLDC charges, wheeling charges and cross-subsidy surcharge for open access customers. For the purposes of this Information Memorandum, summary of all the Tariff Orders of HERC is not provided, rather a comparison sheet from the fiscal year 2010-11 is being provided for this Hon'ble Commission. The HERC determines the tariff for transmission and distribution separately. The charges for Open Access are decided for by the HERC in the same order along with the Distribution and Retail Supply tariffs.

99. On 13th September 2010, HERC passed an order for determining transmission charge, SLDC charges, wheeling charges and cross-subsidy surcharge for open access customers of State of Haryana for the year 2010-11. The charges set forth by the HERC in the order dated 13.09.2010 are summarized in the below table:-

Financial Year	Additional Surcharge	STU Charges	Distribution / Wheeling Charges	Cross Subsidy
2010 – 11	-	28 Paise/unit / Rs 280/mWh-	46 Paise/unit / Rs. 460/mWh	72 - Paise/Unit / Rs 720MWH

100. Besides the above charges, HERC had ordered that reactive energy charges shall be levied @ 6 Paise/kVarh to be paid by the Open Access Consumers as per the Haryana OA Regulations (Regulation 25) notified by HERC.

101. The Cross Subsidy was not levied by the HERC in its order dated 13.09.2010 due to absence of authentic updated data regarding Cost of Supply; as the Cross-Subsidy is calculated based on the difference between average cost of supply and prevailing tariff. In addition, the State Government wanted to encourage the usage of open access and recommended waiving off of the levy of Cross – subsidy. However, subsequently directions were issued at the request of the Discoms and the Cross-subsidy was levied @ 72 Paise/kWh / Rs. 720/mWh for the HT industry.

102. On 27th May 2011, HERC passed an order for determining transmission charge, SLDC charges, wheeling charges and cross-subsidy surcharge for open access customers of State of Haryana for the year 2011-12. The charges set forth by the HERC in the order dated 27.05.2011 are summarized in the below table:

Financial Year	Additional Surcharge	STU Charges	Distribution / Wheeling Charges	Cross Subsidy
2011 – 12	-	23 Paise /kWh / Rs. 230/mWh	49 Paise/unit / Rs. 490/mWh	58 Paise/unit / Rs. 580/mWh

Note: Cross Subsidy charges shown above is limited to the High Transmission (HT) consumers.

103. Besides the above charges, HERC had increased the reactive energy charges from 6 Paise/kVarh to @ 10.25 Paise/kVarh to be paid by the Open Access Consumers as per the Haryana OA Regulations (Regulations 25) notified by HERC.

104. The Distribution/Wheeling charges were increased for the fiscal year 2011-12. In addition, the Cross-subsidy charges were levied by HERC based on the same formula as in the previous fiscal years

i.e. difference between average cost of supply and prevailing tariff. HERC had also noted that the Cross-subsidy surcharge shall be progressively reduced @20% every year. HERC also introduced Transmission tariff/STU charges to be paid by the Open Access consumer based on the proposal of the Discoms to recover transmission cost, as per Regulation 27 of the Haryana Tariff Regulations.

105. On 31st March 2012, HERC passed an order for determining transmission charge, SLDC charges, wheeling charges and cross-subsidy surcharge for open access customers of State of Haryana for the year 2012-13. The charges set forth by the HERC in the order dated 31.03.2012 are summarized in the below table:

Year	Additional Surcharge	STU Charges	Distribution / Wheeling Charges	Cross Subsidy
2012 – 2013	-	23 Paise/kWh / Rs. 230/mWh	51 Paise/kWh / Rs. 510/mWh	92 Paise/kWh / Rs. 920/mWh

Note: Cross Subsidy charges shown above is limited to the High Transmission (HT) consumers.

106. Besides the above charges, HERC had increased the reactive energy charges to @ 11 Paise/kVarh to be paid by the Open Access Consumers as per the Haryana OA Regulations (Regulations 25) notified by HERC.
107. The Distribution/Wheeling charges were slightly increased from the previous fiscal year. In addition, the Cross-subsidy charges were levied and incredibly increased by almost 35%. HERC cited that neither the tariffs nor the cost of service to the relevant category have been constant over the years. In view of the substantial change in the cost of supply in Fiscal Years 2012-13 as compared to Fiscal Years 2010-11 and the average revenue in view of the revision in tariff in the last three years, HERC observed that the cross subsidy generated by different categories has undergone a change. HERC did not levy the full Cross-subsidy charge, however, the overall cross-subsidy surcharge increased drastically.
108. On 29th March 2013, HERC passed an order for determining transmission charge, SLDC charges, wheeling charges and cross-subsidy surcharge for open access customers of State of Haryana for the year 2013-14. The charges set forth by the HERC in the order dated 29.03.2013 are summarized in the below table:

Financial Year	Additional Surcharge	STU Charges	Distribution / Wheeling Charges	Cross Subsidy
2013 – 14	-	17 Paise/kWh / Rs. 170/mWh	70 Paise/kWh / Rs. 700/mWh	53 Paise/kWh / Rs. 530/mWh

Note: Cross Subsidy charges shown above is limited to the High Transmission (HT) consumers.

109. Besides the above charges, HERC had increased the reactive energy charges to @ 11.05 Paise/kVarh to be paid by the Open Access Consumers as per the Haryana OA Regulations (Regulations 25) notified by HERC.

110. The Distribution/Wheeling charges were increased by about 35% from the previous fiscal year. The Cross-subsidy charges were levied and were restricted to 40% of the cross-subsidy generated by the relevant consumer category. In view of the substantial change in the cost of supply as compared to previous Fiscal Years and the average revenue in view of the revision in tariff in the last three years, HERC observed that the cross subsidy generated by different categories has undergone a change. HERC did not levy the fully Cross-subsidy charge.

111. On 29th May 2014, HERC passed an order for determining transmission charge, SLDC charges, wheeling charges and cross-subsidy surcharge for open access customers of State of Haryana for the year 2014-15. The charges set forth by the HERC in the order dated 29.05.2014 are summarized in the below table:

Fiscal Year	Additional Surcharge	STU Charges	Distribution / Wheeling Charges	Cross Subsidy
2014 – 15	50 Paise/kWh/ Rs. 500/mWh	29 Paise/kWh / Rs. 290/mWh	74 Paise/kWh / Rs. 740 /mWh	Rs. 2.02/kWh / Rs. 2020/mWh For NDS 84 Paise/kWh / Rs. 840/mWh

Note: NDS - Non-Domestic Supply. Cross Subsidy charges shown above is limited to the High Transmission (HT) consumers.

112. Besides the above charges, HERC had increased the reactive energy charges to @ 11.10 Paise/kVarh to be paid by the Open Access Consumers as per the Haryana OA Regulations (Regulations 25) notified by HERC.

113. The Distribution/Wheeling charges were slightly increased from the previous fiscal year. The Cross-subsidy charges were levied and incredibly increased by almost 35%. HERC cited that neither the tariffs nor the cost of service to the relevant category have been constant over the years. In view of the substantial change in the cost of supply in Fiscal Years 2012-13 as compared to Fiscal Years 2010-11 & 2011-12 and the average revenue in view of the revision in tariff in the last three years, HERC observed that the cross subsidy generated by different categories has undergone a change. HERC did not levy the fully Cross-subsidy charge, however, the overall cross-subsidy surcharge increased drastically.
114. In addition, Discoms had prayed for an inclusion of Additional Surcharge as well @ Re. 1 /kWh. HERC did not approve the entire Additional Surcharge as proposed by the Discoms and considered it appropriate to pass on 50% of the stranded cost worked out by the Discoms on account of power drawn through Open Access. Accordingly, the HERC approved an Additional Surcharge @ 50 Paise/kWh.

Power Sector Reforms and Open Access Charges in Himachal Pradesh

115. The Electric supply at the time of formation of the State in 1948 was available only in the capital of the erstwhile princely states and the connected load at the time was less than 500 kW. First electrical division was formed in August 1953 under the Public Works Department and subsequently a Department of Multi-Purpose Projects and Power was formed in April 1964 after realizing the need for exploiting the substantial hydel potential available in the river basins.
116. The Himachal Pradesh Electricity Regulatory Commission ('HPERC' or 'the Commission') constituted under the Electricity Regulatory Commission Act, 1998 came into being in December 2000 and started functioning with effect from 6th January, 2001. After the enactment of the Electricity Act, 2003 on 26th May, 2003, the HPERC has been functioning as statutory body with a quasi-judicial and legislative role under Electricity Act, 2003.
117. Himachal Pradesh State Electricity Board (HPSEB) was constituted in accordance with the provisions of Electricity Supply Act (1948) in the year 1971. Thereafter, all functions of the Department of Multi-Purpose Projects and Power such as generation, execution of

hydroelectric projects except functions of flood control and minor irrigation were transferred to the Board.

118. HPSEB was established in 1971, as a body constituted u/s 5 of the erstwhile Electricity (Supply) Act, 1948 and carried out functions of Generation, Transmission and Distribution for the State of Himachal Pradesh up to 10th June, 2010, when the Government of Himachal Pradesh, in exercise of the power conferred to it under Section 131 (2), 132, 133 and other applicable provisions of the Electricity Act 2003, transferred the functions of generation, distribution and trading of electricity to Himachal Pradesh State Electricity Board Limited (HPSEBL) and the function of evacuation of power by transmission lines to Himachal Pradesh Power Transmission Company Limited (HPPTCL), vide the Himachal Pradesh Power Sector Reforms Transfer Scheme, 2010 (Notification No. MPP-A(3)-1/2001-IV).
119. On 10th of June 2010 Himachal Pradesh State Electricity Board (HPSEB) was re-organised into a company to be known as Himachal Pradesh State Electricity Board Limited (HPSEBL). The HPSEBL, thus, came into being with effect from the date of re-vesting i.e. 10th of June, 2010. In the said transfer scheme the

functions of generation, distribution and trading of electricity have been entrusted with the HPSEB. It is a deemed licensee under the first proviso to Section 14 of the Electricity Act, 2003 (hereinafter referred to as 'the Act') for distribution and supply of electricity in the State of Himachal Pradesh.

120. The HPSEBL is a vertically integrated utility and is entrusted with the functions of generation, distribution and trading of power in the State of Himachal Pradesh. The HPSEBL is responsible for the development (planning, designing, and construction), operation and maintenance of power distribution system in Himachal Pradesh. Investigation & exploitation of hydro potential of the State either through State Sector or through Central, Joint and Private Sectors is also entrusted with the HPSEBL. The HPSEBL has share of power in Central Sector stations while it also imports power from neighbouring states.
121. For Short Term Open Access, in accordance with the provisions of the Electricity Act, 2003, the State Commission has framed and notified the Himachal Pradesh Electricity Regulatory Commission (Short Term Open Access) Regulations, 2010 (hereinafter referred

to as “HP STOA Regulations”) vide notification dated May 2, 2010 (No. HPERC/418).

122. The Himachal Pradesh STOA Regulations provide for the following charges to be paid by an Open Access consumer:

- Transmission charges
- Wheeling Charges
- Operating / SLDC Charges
- Cross-subsidy Surcharge
- Unscheduled Inter-Change (UI) Charges
- Reactive Energy Charges

123. HPERC determines the transmission charge, wheeling charges, Reactive Energy Charges, Operating Charges, Unscheduled Inter-Change Charges and cross-subsidy surcharge for open access customers. The HPERC has been determining the tariffs and issuing orders for the same since 2001. HPERC passed its first Tariff Order determining tariffs for various categories of consumers to be applicable for the year 2001-02, on September 9, 2001. Subsequently, after the introduction of Open Access in Himachal Pradesh, the HPERC also determined the various Open Access

Charges applicable to Open Access consumers vide the same Tariff Orders.

124. For the purposes of this Information Memorandum, summary of all the Tariff Orders of HERC is not provided, rather a comparison sheet from the fiscal year 2010-11 is being provided for this Hon'ble Commission. The charges for Open Access are decided for by the HPERC in the same order along with the Distribution and Retail Supply tariffs.

125. On 19th August, 2010, HPERC passed an order for determining transmission charges, wheeling charges and other charges for open access customers of State of Himachal Pradesh for the year 2010-2011. The charges set forth by the HPERC in the order dated 19.08.2010 are summarized in the below table:

Year	STU Charges	Distribution / Wheeling Charges	Cross Subsidy
2010 – 2011	Rs. 64,967.43 /MW/month	100.73 Paise/unit / Rs. 1007.3/mWH	For EHT 20 Paise/unit / Rs. 200/MWH For LS HT

			Nil
			For BS HT
			Nil

126. Besides the above, HPERC had ordered that SLDC charges / Operating charges were to be levied @ Rs. 2000/day or part of the day for each transaction in accordance with the HP OA Regulations 2010 (Regulation 26).

127. In addition, the Commission had not specifically provided for any Unscheduled Interchange (UI) Charges or Reactive Energy Charges.

128. On 1st December 2011, HPERC passed an order for determining transmission charges, wheeling charges, SLDC charges and Cross subsidy charges for open access customers of State of Himachal Pradesh for the year 2011-2012. The charges set forth by the HPERC in the order dated 01.12.2011 are summarized in the below table:

Year	Voltage	STU Charges	Distribution /	Cross Subsidy
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			Wheeling Charges	
2011	Less than	2.12 Paise/kWh / Rs. 21.20/mWH	186 Paise/unit / Rs. 1860/mWH	For EHT Rs. 2.37/kWh
–	11 kV			
2012	11kV & above		91 Paise/unit / Rs. 910/mWH	/ Rs. 2370/mWH
	66kV & above		38 Paise/unit / Rs. 380/mWH	For LS HT Rs. 2.11/unit / Rs. 2110/mWH
				For BS HT Nil

Note: the above mentioned cross-subsidy surcharge is limited to Peak Load hours of the day only. STU charges are limited to Short Term Open Access only.

129. The Cross-subsidy has been calculated as per the surcharge formula given in the National Tariff Policy.

130. All the lines along with associated equipments, connected with the generating stations and consumers of HPSEB have been transferred to HPSEBL and form part of the distribution system of HPSEBL as per the Transfer Scheme. HPERC mentioned in the

order that since, the per unit cost of wheeling at the EHT (66kV and above) and HT (11kv and above) level shall be substantially lower than the average wheeling cost, it is prudent and better if wheeling charges are fixed voltage wise. Also, the Wheeling and Distribution charges have been levied on the energy drawn at the delivery point in the distribution systems.

131. The Additional Surcharge was to be calculated in accordance with Himachal Pradesh Electricity Regulatory Commission (Cross Subsidy Surcharge, Additional Surcharge and Phasing of Cross Subsidy) Regulations, 2006 has not been calculated as the HPSEBL (distribution licensee) has not registered or substantiated any claim in this regard.
132. Besides the above, HPERC had ordered that SLDC charges / Operating charges were to be levied @ Rs. 2000/day or part of the day for each transaction in accordance with the HP OA Regulations 2010 (Regulation 26).
133. On 26th June 2012, HPERC passed an order for determining transmission charges, wheeling charges, SLDC charges and Cross subsidy charges for open access customers of State of Himachal Pradesh for the year 2012-2013. The charges set forth by the

HPERC in the order dated 26.06.2012 are summarized in the below table:

Year	Voltage	STU Charges	Distribution / Wheeling Charges	Cross Subsidy
2012	Less than 11 kV	2.15 Paise/kWh /Rs. 21.50/mWH	231 Paise/unit / Rs. 2310/mWH	Not Determined
2013	11kV & above		110 Paise/unit / Rs. 1100/mWH	
	66kV & above		47 Paise/unit / Rs. 470/mWH	

Note: STU charges are limited to Short Term Open Access only.

134. The Cross-subsidy has been calculated as per the surcharge formula given in the National Tariff Policy. As per above order dated 26.06.2012, the cross-subsidy surcharge was to be determined by HPERC through a separate order. However, the same was not passed by the HP Commission.

135. HPERC mentioned in the order that, since the per unit cost of wheeling at the EHT (66kV and above) and HT (11kv and above) level shall be substantially lower than the average wheeling cost, it

is prudent and better if wheeling charges are fixed voltage wise. Also, the Wheeling and Distribution charges have been levied on the energy drawn at the delivery point in the distribution systems.

136. The Additional Surcharge was to be calculated in accordance with Himachal Pradesh Electricity Regulatory Commission (Cross Subsidy Surcharge, Additional Surcharge and Phasing of Cross Subsidy) Regulations, 2006 has not been calculated as the HPSEBL (distribution licensee) has not registered or substantiated any claim in this regard.
137. Besides the above, HPERC had ordered that SLDC charges / Operating charges were to be levied @ Rs. 2000/day or part of the day for each transaction in accordance with the HP OA Regulations 2010 (Regulation 26).
138. On 29th May 2013, HPERC passed an order for determining transmission charges, wheeling charges, SLDC charges and Cross subsidy charges for open access customers of State of Himachal Pradesh for the year 2013-2014. The charges set forth by the HPERC in the order dated 29.05.2013 are summarized in the below table:

Year	Voltage	STU Charges	Distribution / Wheeling Charges	Cross Subsidy
2013	Less than 11kV	2 Paise/kWh/ Rs.20/mWH	215 Paise/unit / Rs. 2150/mWH	For EHT Rs. 1.85/kWh/ Rs. 1850/mWH
–	(LT)			
2014	11kV & above		100 Paise/unit / Rs.1000/mWH	
	(HT)			
	66kV & above		44 Paise/unit / Rs. 440/mWH	For HT-1 Rs. 1.61/kWh / Rs. 1610/mWH
	(EHT)			For HT-2 Rs. 1.32/kWh / Rs. 1320/mWH
				For BS HT Rs. 0.18/unit / Rs. 180/mWH
				For BS EHT Rs. 0.18/kWh /

				Rs. 180/mWH
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Note: the above mentioned cross-subsidy surcharge is limited to Peak Load hours of the day only. STU charges are limited to Short Term Open Access only.

139. The Cross-subsidy has been calculated as per the surcharge formula given in the National Tariff Policy. It is pertinent to point out that for BS EHT and BS HT category customers, cross-subsidy was levied at non-peak hours as well @ Rs. 0.18/unit/Rs. 180/mWh.

140. HPERC mentioned in the order that, since the per unit cost of wheeling at the EHT (66kV and above) and HT (11kv and above) level shall be substantially lower than the average wheeling cost, it is prudent and better if wheeling charges are fixed voltage wise. Also, the Wheeling and Distribution charges have been levied on the energy drawn at the delivery point in the distribution systems. In case the power is withdrawn from the distribution system at a voltage level which is different from the voltage level for injection of power into the distribution system, the wheeling charges corresponding to the lower voltage level were made applicable.

141. The Additional Surcharge was to be calculated in accordance with Himachal Pradesh Electricity Regulatory Commission (Cross Subsidy Surcharge, Additional Surcharge and Phasing of Cross Subsidy) Regulations, 2006 has not been calculated as the HPSEBL (distribution licensee) has not registered or substantiated any claim in this regard.
142. Besides the above, HPERC had ordered that SLDC charges / Operating charges were to be levied @ Rs. 2000/day or part of the day for each transaction in accordance with the HP OA Regulations 2010 (Regulation 26).
143. On 12th June 2014, HPERC passed a Multi-year Tariff order for determining transmission charges, wheeling charges, SLDC charges, Cross subsidy charges and other charges for open access customers of State of Himachal Pradesh for the year 2014-2015. The Commission decided to adopt Multi Year Tariff (MYT) principles for determination of tariffs, in line with the provision of Section 61 of the Act. The MYT was brought in by the Commission to provide predictability and reduce regulatory risk. The longer time span enables HPSEBL to propose its investment plan with details on the possible sources of financing and the corresponding

capitalization schedule for each investment. The charges set forth by the HPERC in the order dated 12.06.2014 are summarized in the below table:

Year	Voltage	STU Charges	Distribution / Wheeling Charges	Cross Subsidy
2014 – 2015	Less than 11kV LT	2 Paise/kWh/ Rs.20/mWH	239 Paise/unit / Rs. 2390/mWH	For EHT Rs. 2.43/unit / Rs. 2430/mWH (Peak) Rs. 0.09/unit / Rs. 90/mWh (Non-Peak) For LS HT-2 Rs. 2.18/unit / Rs. 2180/mWH (Peak) Rs. 0.30/unit/ Rs. 300/mWh (Non-Peak)
	11kV – 33kV HT-1		116 Paise/unit / Rs. 1160/mWH	
	33 kV HT-2		75 Paise/unit / Rs. 750/mWH	
	More than 66kV EHT		46 Paise/unit / Rs. 460/mWH	

				<p>For BS HT</p> <p>Rs. 0.82/unit /</p> <p>Rs. 820/mWH</p> <p>(Peak)</p> <p>Rs. 0.82/unit/Rs.</p> <p>820/mWh</p> <p>(Non-Peak)</p> <p>For BS EHT</p> <p>Rs. 0.54/unit / Rs.</p> <p>540/mWH</p> <p>(Both Peak and Non-Peak)</p>
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Note: the above mentioned cross-subsidy surcharge is limited to Peak Load hours of the day only.

144. The STU charges in the order dated 12.06.2014 are not specifically provided for by the Commission.

145. It is pertinent to point out that the Cross-subsidy surcharge for all categories has been provided for levied for Peak as well as Non-Peak hours. Also, as per HPERC tariff order 2014-15 Cross-

subsidy Surcharge is also applicable where OA is availed for 24 hours calculated @ For EHT- Rs 90/MWh, HT2- Rs 300/MWh, For BS EHT- Rs 540/MWh and BS HT- Rs 820/MWh.

146. As per the order dated 12.06.2014, the Average Wheeling charges calculated as per the approved Average Revenue Requirement (ARR) came out to be 138 Paise/unit / Rs. 1380/mWh. However, HPERC determined that most of the open access consumers are utilizing higher voltage level of the network and therefore, applying the average wheeling charge would restrict the open access within the State. Therefore, for the purpose of promoting open access, the Commission worked out the voltage-wise wheeling charge applicable for open access consumers at various voltage level. However, the Commission clarified that the consumers availing short term open access while simultaneously maintaining their contract demand with the distribution license shall, in addition to the applicable demand charges, pay wheeling charges @50% of the wheeling rates applicable at respective voltage levels. Such consumers shall, however, have to pay the distribution losses applicable at relevant voltage levels. However, if the consumer avails open access over and above the contract demand, full

wheeling charges shall be payable. These wheeling charges were fixed, without any subsequent true-up.

147. The Additional Surcharge was to be calculated in accordance with Himachal Pradesh Electricity Regulatory Commission (Cross Subsidy Surcharge, Additional Surcharge and Phasing of Cross Subsidy) Regulations, 2006 has not been calculated as the HPSEBL (distribution licensee) has not registered or substantiated any claim in this regard.
148. Besides the above, HPERC had ordered that SLDC charges / Operating charges were to be levied @ Rs. 2000/day or part of the day for each transaction in accordance with the HP OA Regulations 2010 (Regulation 26).

C. SUMMARY OF CONTRAVENTIONS OF SECTION 4 OF THE COMPETITION ACT, 2002

- i. It is submitted that consumers in India pay one of the highest prices for energy in Purchasing Power Parity (PPP) terms, in comparison with countries like US, Japan or China. Several countries including India, are introducing competition into their city markets with a view to lowering the cost of power and enhancing choice of the

consumers. Looking into the evolution of electricity sector reform throughout the world, each reform process is characterized by at least one or a combination of the following characteristics: independent power production, competition in generation and/or distribution, decentralization, privatization, and unbundling of generation, transmission and distribution.

- ii. Network activities and prices are regulated and, in particular, there are provisions to ensure non-discriminatory third party access to the network, often including some form of separation of network activities from generation and end-user supply.
- iii. There is an independent system operator, which means that the system operator is not owned or, at least, not controlled by the owners of generation assets.
- iv. Transactions between generators, end users and a number of possible intermediaries, including retailers, power exchanges and brokers, take place freely within the constraints imposed by the network).
- v. Thus, on the demand side, end users are free to choose their supplier; on the supply side, generators can sell their electricity to

any other market players. A major challenge in the process of reforms is removal of barriers to entry: competition requires a sufficient number of competitors. If supply is only with a few firms, competition generally fails to develop and prices may remain persistently above their competitive levels. An adequate market structure in all parts of the supply chain has been considered as essential to develop workable competition in the Indian Power sector.

- vi. That as per Section 4 of the Competition Act 2002, dominant position implies a position of strength, enjoyed by an enterprise, in the relevant market, in India, which enables it to—
- (i) operate independently of competitive forces prevailing in the relevant market; or
 - (ii) affect its competitors or consumers or the relevant market in its favour.

Also, Section 19(4) provides for important considerations to be evaluated for any enterprise or enterprises to be in a dominant position. It is reproduced herein below for ease of reference:

The Commission shall, while inquiring whether an enterprise enjoys a dominant position or not under section 4, have due regard to all or any of the following factors, namely:—

- a) *market share of the enterprise;*
- b) *size and resources of the enterprise;*
- c) *size and importance of the competitors;*
- d) *economic power of the enterprise including commercial advantages over competitors;*
- e) *vertical integration of the enterprises or sale or service network of such enterprises;*
- f) ***dependence of consumers on the enterprise;***
- g) ***monopoly or dominant position whether acquired as a result of any statute or by virtue of being a Government company or a public sector undertaking or otherwise;***
- h) ***entry barriers*** *including barriers such as regulatory barriers, financial risk, high capital cost of entry, marketing entry barriers, technical entry barriers, economies of scale, high cost of substitutable goods or service for consumers;*
- i) *countervailing buying power;*
- j) *market structure and size of market;*
- k) *social obligations and social costs;*
- l) *relative advantage, by way of the contribution to the economic development, by the enterprise enjoying a dominant position having or likely to have an appreciable*

adverse effect on competition;

any other factor which the Commission may consider relevant for the inquiry.

- vii. As stated above, the Respondents have violated the provisions of Section 4 of the Competition Act 2002 by their unilateral, abusive and discriminatory conduct on the part of the Respondents. The abusive conduct emanates from the collusive designs of the Respondents of directly demanding unfair and discriminatory conditions and continuous increase in the charges of Open Access thereby completely denying market access to the members of the Informant Association.
- viii. The Respondents have used their 'dominant position' in the Power Sector in their respective States by imposing unfair and discriminatory barriers to the normal and smooth function of the business of the members of the Informant. The Respondents have accordingly abused their 'dominant position' in the relevant Market.
- ix. The dominant position of the Respondents (discoms) can be easily carved out by the fact that they are the only distribution licensees in their respective states. This establishes their monopoly and it is the

discoms which have been persuading to recommend their respective State Commission incessantly by giving proposals to raise the Open Access charges, which the respective State Electricity Regulatory Commissions have allowed. If charges for open access are continuously raised, then the consumers would not be able to utilize the benefits of Open Access and would be forced to procure the electricity only from the respective discoms of their states. Accordingly, if open access is being denied to the consumers in any form, Respondents would be the ultimate beneficiaries.

- x. Facts reveal that the Respondents are in a position of dominance in terms of Explanation (a) to Section 4 of the Competition Act, 2002 read with Section 19(4) of the Act as they have the ability to act independently of the competitive forces, since they were the sole market operators to dominate in the market of distribution and supply electricity in their respective states.
- xi. It is submitted that the Respondents have unduly influenced and made unreasonable suggestions to the respective commissions to increase the various charges for Open Access. In addition to the continuous increase in Open Access charges, the tariff for power

has also been continuously increased by the respective State Electricity Regulatory Commissions based on the recommendations of the Respondents. As a result of this, the consumers are forced to purchase electricity from their respective distribution licensee only and that too at high prices; and they are restrained from procuring electricity from other sources due to the high Open Access charges. So, for example if a consumer is paying power tariff @ Rs. 10/unit from the allotted distribution licensee and on the other hand, through open access he is being offered supply @ Rs. 8 from some other distributor. However, in order to switch to that other distributor, he is having to pay Rs. 3 as Open Access charges to the Distribution Licensee. Because of these high extra open access charges, there is no benefit that he is able to obtain from Open Access and he is being forced to purchase electricity from the particular discom only. This way, the Discoms are abusing their dominant position by imposing unfair and discriminatory conditions in purchase of electricity and also services (wheeling etc.) thereby leading to foreclosure of competition by hindering entry into the market. The same also has the effect of creation of barriers to new entrants and limiting competition and choice to the consumers.

- xii. Open access was to be brought in a phased manner with the ultimate objective of providing the freedom of choice to all the consumers to take electricity from any source of their choice upon payment of the requisite charges. The Respondents have huge inefficiencies in their operation and are not presently in a position to compete with other sources of supply, due to their own acts of commission or omission. To overcome the inefficiencies of the distribution licensees, attempts are being made to stop open access. The Tariff orders regarding Open Access charges have been influenced for the above purpose of the distribution licensees of preventing competition and ensuring that the consumers do not have the choice of taking supply of electricity through open access and particularly over the power exchange.

- xiii. The collusion of the Respondents has resulted in blocking the transactions of the consumers of Open Access of procuring electricity over the power exchange. Over the past few years, the power exchanges have become a very popular platform for procurement of electricity wherein the electricity is available on real time basis based on bids received and bids submitted by seller and purchaser, akin to a stock exchange. Substantial competition has

arisen on account of the power exchange being available as a platform to the consumers for procurement of electricity. The whole of the Open Access charges have persistently been raised with the sole objective of stopping the procurement of electricity by the consumers at large through the power exchanges and ensuring that the consumers do not have choice of procurement of electricity.

- xiv. Each of the Respondents, have been assigned specific areas for distribution and supply of electricity. As per the prevailing licensing conditions and given the present stage of regulatory reforms, the retail supply of electricity is restricted to these Discoms and in the present case the DISCOMS are the only licensees for distribution of electricity in their respective areas with open access option available only to consumers of 1 MW and above. But, by imposing unreasonable and high Open Access charges, it makes no sense for a consumer to utilize such Open Access; as by utilizing such Open Access, a consumer ends up paying more than the actual tariff prevailing because of the high Open Access charges. Therefore, consumers are left availing electricity from only the DISCOMS in any particular licensed area for supply of electricity. In such a scenario, there are no perceivable competitive constraints

faced by the Discoms within the relevant geographic markets of their respective licensed distribution areas. The respondents have also not disputed their dominant position in the relevant market of "distribution and retail supply of electricity". The necessary corollary to this is that each one of the Discoms has the ability to behave independently of the competitive forces prevailing in the relevant market since they have been given exclusive areas for distribution and supply of electricity. This leads to the irrefutable conclusion that the Discoms enjoy position of dominance in their respective areas of operation to the relevant market of supply of electricity to the consumers.

- xv. It is further submitted that the Respondents are abusing their 'dominant position' in terms of Section 4 of the Competition Act, 2002 by purporting unfair and biased conditions and by imposing such restrictions they are impairing the right of the Informant members to free trade and profession and also thereby jeopardizing the future of the Informant and their existence and have also hampered the cheap and competitive supply of electricity to all concerned in the relevant State.

xvi. There is no doubt that the Discoms are the dominant players in the areas which has been assigned to them because in that area they are in a position of strength which allows them to affect their consumers in its favour. The factors which we have to consider under Section 19(4) of the Act are (i) Market share of the enterprise - the market share of the enterprise is hundred percent as there is no competitor and it is monopoly market. The competitors if present are driven away or restricted from the market due to the increasing Open Access charges (ii) Resources of the enterprise - compared to the consumer the size and the resources and enterprise in the monopoly market is extremely large (iii) Size and importance of the competitors - there are no competitors as it is a monopoly market. And as explained beforehand, competitors if present are driven away or restricted from the market due to the increasing Open Access charges (iv) Economic power of the enterprise including commercial advantages over competitors - as it is a monopoly market there cannot be comparison with the competitors (v) Dependence of consumers on the enterprise - the consumers are entirely dependent on the enterprise as there is no other competitor in the monopoly market. Even if a consumer does avail Open Access, the consumer has to take various NOCs from the Discoms

and has to pay to the Discoms applicable Open Access charges, which are very high (vi) Monopoly in a dominant market acquired as a result of any statute or by virtue of being a government company or a public sector undertaking or otherwise - the DISCOMS are a monopoly and the monopoly status is given by the statutes itself (vii) Entry barriers etc. - as it is a monopolistic market all the competitors are restricted from the market due to the high Open Access charges. (viii) Market structure and size of market - the market structure and the size of market is as laid down by the government will allot an area to the DISCOMS (ix) Relevant social obligations and social costs - the social obligation is provided as the DISCOMS have to supply electricity to all its consumers (x) Relative advantage by way of contribution to economic development etc. - due to lack of competition in the area allotted to the DISCOMS the total lack of competition which allows the DISCOMS to abuse its consumers by supplying electricity overcharging the consumers and even overcharging w.r.t Open Access. As the consumers are totally dependent on the DISCOMS, there is an abuse of dominance in the relevant markets of distribution of electricity.

- xvii. It is not out of context to mention here that the Respondents are in a position to influence the decisions of their respective State Electricity Regulatory Commissions and it is the Respondents who file for a request with the State Electricity Regulatory Commissions for revision/revaluation of the applicable tariffs.
- xviii. It is submitted that the State Electricity Regulatory Commissions have not provided for adequate and relevant computation methodology nor proper reasoning for calculating and raising various charges for Open Access. In addition, the conduct of the Respondents implies significant non-disclosure of important information and misuse of power / dominant position by purporting and advocating unfair, discretionary and discriminatory price in purchase or sale (including predatory price) of goods (i.e. electricity) and services (wheeling etc.) as there is a high degree of dependence on them by the consumers. The non-disclosure considerably impacts the consumers and promotes inefficiency in the market to the detriment of the consumers. The above practice of non-disclosure gives rise to information asymmetry puts the consumers in a disadvantageous position and impacts their decision. The consumers are absolutely at the mercy of the

Respondents and are unable to cry foul as they are scattered and not in a position to challenge the power and might (of non-economic nature) of Respondents, even in front of the State Electricity Regulatory Commissions. The freedom of trade can be both direct and indirect. The direct freedom is when there is no hindrance or obstacles in any form exists to the potential as well existing competitors in the market. By continuous increment in the Open Access charges, there is a situation forced wherein it affects the restriction of the buyers in any form to exercise their choice. It also impacts the freedom of participants in the market on the supply side of other distributors.

- xix. It is submitted that as per Section 42 of the Electricity Act 2003, the Open Access consumer shall be liable to pay Cross-subsidy. However, proviso to Section 42 also provides that the Cross-subsidy shall be progressively reduced. The State Electricity Regulatory Commissions have miserably failed to not only reduce the Cross-subsidy but have instead been continuously increasing the cross-subsidy. The continuous increase in the Cross-subsidy surcharge has both directly and indirectly affected the competition in the respective state power sectors as due to the high increase in

Open Access charges, the consumers have been constantly prevented from utilizing the feature of Open Access and thereby cheaper power; and the Respondents are the ultimate beneficiaries thereby gaining undue advantage.

- xx. It is also submitted that, not only as per Section 42, the National Tariff Policy also provides that the Cross-Subsidy shall be progressively reduced over the years and beginning from the fiscal year 2011, it shall at no instance be more than 20% of the Average Cost of Supply. Moreover, it is pertinent to point out Regulation 8.5.1 of the National Tariff Policy, which clearly provides a mandate on the State Electricity Regulatory Commissions that the calculation of the Cross-Subsidy surcharge, needs to be done in a manner that while it compensates the distribution licensee, it does not constrain competition through open access. It provides that the Open Access charges, like Cross-subsidy surcharge should not be so onerous that it eliminates competition which is intended to be fostered in generation and supply of power directly to the consumers through open access. The National Tariff Policy clearly recognizes the fact that a consumer would avail of open access only if the payment of all the charges leads to a benefit to him. The relevant provisions of the National Tariff Policy are reproduced herein below for

convenience:

“8.5 Cross subsidy surcharges and additional surcharge for open access.

8.5.1 National Electricity Policy lays down that the amount of cross subsidy surcharge and the additional surcharge to be levied from consumers who are permitted open access should not be so onerous that it eliminates competition which is intended to be fostered in generation and supply of power directly to the consumers through open access.

‘A consumer who is permitted open access will have to make payment to the generator, the transmission licensee whose transmission systems are used, distribution utility for the wheeling charges and, in addition, the cross subsidy surcharge, therefore, needs to be done in a manner that while it compensates the distribution licensee, it does not constrain introduction of competition through open access. A consumer would avail of open access only

if the payment of all the charges leads to a benefit to him. While the interest of distribution licensee needs to be protected it would be essential that this provision of the Act, which requires the open access to be introduced in a time-bound manner, is used to bring about competition in the larger interest of consumers.

It is hence submitted that the cross subsidy is very high and the industry's viability in the respective states has been becoming untenable as the State Electricity Regulatory Commissions have disregarded their statutory duties and have provided for and approved persistent increment in the Cross-subsidy surcharge over the years. It is pertinent to point out that State Electricity Regulatory Commissions determine such charges based on the recommendations and datas of the Discoms itself and the Discoms have miserably failed to provide relevant and authentic data and have also been unduly gaining advantage because of the high cross-subsidy at the cost of the open access consumer. The Respondents have thus misused and mala fidely abused their dominant position purporting unfair, discretionary and

discriminatory conditions on computation of Open Access charges which is clearly affecting the choice and freedom of open access of consumers and also denying entry into the market for various other distributors, other than the discoms. It is not prudent to allow the cross subsidy to grow per unit unabatedly and the cross subsidy per unit charged from industrial consumers be brought down.

- xxi. It is submitted that especially in the states of Haryana and Punjab, the Cross-subsidy has been arbitrarily and improperly being levied on the consumers. It is pertinent to point out that HERC and PSERC have completely disregarded the principles in determining Cross-Subsidy surcharge on Open Access consumers. PSERC has been utilizing a whole different formula for determining the Cross-Subsidy which is absolutely contrary to the specifications and recommendations provided in the National tariff Policy to which Respondent no.4 has been utilizing the undue benefit of the same and has not taken any steps to rectify or reduce the cross-subsidy charges. Whereas, in Haryana, HERC has multiple times ordered Respondent nos 5 & 6 to provide proper and adequate data for correct computation of Cross-Subsidy, but the Respondent nos 5 & 6 have miserably failed to do so; and instead of not levying Cross-

Subsidy due to lack computation data, HERC has adopted an arbitrary method and ordered the Cross-Subsidy surcharges.

- xxii. Moreover, even in the state of Himachal Pradesh, HPERC had introduced the Himachal Pradesh Electricity Regulatory Commission (Cross Subsidy Surcharge, Additional Surcharge and Phasing of Cross Subsidy) Regulations, 2006 which specifically provided for reduction and complete elimination of the cross-subsidy surcharge, and was to be reduced to 20% (base year FY2006) by the Financial Year 2011. But, HPERC and Respondent no. 7 has completely disregarded the principles in determining Cross-Subsidy surcharge on Open Access consumers. In fact, HPERC at the insist of 7 has over the period (especially after 2011), increased the amount of Cross-subsidy on OA consumers so much so that Cross-subsidy is now levied at both Peak and Non-Peak hours for all categories of customers in the State.
- xxiii. Based on the continuous insistency of the Discoms, certain State Electricity Regulatory Commissions have also levied Additional Surcharges to be paid by the Open Access consumers. The State Electricity Regulatory Commissions have wrongly adopted the recommendations of the Discoms in levying Additional Surcharge thereby all the more increasing the charges for Open Access

charge; contrary to the National Tariff Policy. Regulation 8.5.4 of the National Tariff Policy provides for the conditions under which such Additional Surcharge shall be levied. Regulation 8.5.4 is provided herein below for convenience:

8.5.4 The additional surcharge for obligation to supply as per section 42(4) of the Act should become applicable only if it is conclusively demonstrated that the obligation of a licensee, in terms of existing power purchase commitments, has been and continues to be stranded, or there is an unavoidable obligation and incidence to bear fixed costs consequent to such a contract. The fixed costs related to network assets would be recovered through wheeling charges.

- xxiv. It is submitted that on multiple occasions, the State Electricity Regulatory Commissions have not followed the recommendations and methodology provided in the National Tariff Policy for determination of various applicable Open Access charges. This conduct clearly indicates that the State Electricity Regulatory Commissions have been persistently misusing their powers in this regard and it is the Discoms i.e. the Respondents who have been benefitting from the same.

- xxv. The conduct of all the Respondents clearly indicates that they have abused their dominant position leading to distortion of market and foreclosure of competition. It is already settled in Competition law that there shall be an abuse of dominant position if a dominant enterprise or group directly or indirectly imposes unfair or discriminatory (i) condition in purchase or sale of goods or service; or (ii) price in purchase or sale (including predatory price) of goods and services.
- xxvi. It is further submitted that the Respondents are abusing its 'dominant position' in terms of Section 4 of the Competition Act, 2002 by purporting unfair and discriminatory conditions and by imposing such restrictions they are impairing the right of the Informant to free trade and profession and also thereby jeopardizing the future of the Informant and their existence and have also hampered the cheap and competitive supply of electricity to all concerned in the State.
- xxvii. The Informant submits that the entire balance of convenience lies in its favor. In case the Respondents are not restrained from carrying on their *mala fide* conduct and illegal actions against the Informant and other customers, then future directions of similar nature may

cause unquantifiable and irreparable loss, harm and injury to the Informant and other consumers. The Informant therefore submits that the *prima facie* case is in its favour and against the Respondents. At the outset, the Respondents would lose nothing if their illegal campaign is stopped. It is also submitted that if protective measures are not granted, then it is likely that similar directions may be again issued against the Informant for approaching this Hon'ble Competition Commission.

xxviii. It is submitted that notwithstanding anything contained in the Electricity Act 2003, this Hon'ble Competition Commission has jurisdiction to entertain the present petition in respect of the actions of the Respondents as provided in this Information Memorandum. However, this Hon'ble Commission in ***Shri Neeraj Malhotra, Advocate V. North Delhi Power Limited, BSES Rajdhani Power Limited and BSES Yamuna Power Limited***, Case No. 06/2009, had held that actions of DISCOMS of abuse of their dominant position may be looked into by the CCI in terms of Competition Act 2002. The relevant text of the order of this Hon'ble Commission in the above case is reproduced herein below:

"12.1... However specific issues alluded to by the Petitioner

accusing the DISCOMS of abuse of their dominant position may be looked into by the CCI in terms of Competition Act 2002.”

“12.2 Thus it is amply clear that there is no overlap between DERC and CCI in terms of the jurisdiction in this case. The CCI has accordingly proceeded in this case to deal with the issues relating to competition.”

“12.3 The mandate of Commission is to eliminate practices having adverse effect on competition, promote and sustain competition, protect the interests of consumers and ensure freedom of trade carried on by other participants, in markets in India. Sectoral regulators have necessary technical expertise to determine access, maintain standard, ensure safety and determine tariff. They set rule of game i.e. entry conditions, technical details, tariff, safety standards and have direct control on prices, quantity and quality. Thus sectoral regulators focus on the dynamics of specific sectors, whereas the CCI has a holistic approach and focuses on functioning of the markets through increasing efficiency through competition. In fact their roles are complementary and to each other and share the objective of obtaining maximum benefit for the

consumers.”

“12.4 In view of the above it is clear that the CCI has all the powers to examine the issues relating to abuse of dominance by the DISCOMS. The preliminary objection raised by opposite parties relating to the jurisdiction of the CCI to deal in this matter is accordingly disposed of.”

xxix. This instant Information is being filed with the Hon’ble Commission on an urgent basis. However, the Informant reserves its right to file additional information on a later date, if required.

PRAYER

In light of the aforesaid facts and circumstances, and in the interest of justice and fairness, the Informant most humbly prays that this Hon’ble Commission be pleased to:

- A] Institute an inquiry against the Respondents and pass an order directing the Director General of Investigations to carry out an investigation into the violation of Section 4 of the Competition Act, 2002 and submit its report thereon to the Hon’ble Commission; and
- B] Direct the Respondents to refrain from indulging in similar abusive conduct in the future; and
- C] Impose such penalty/cost on the Respondents as may be deemed fit by this Hon’ble Commission;

D] Pass such other or further or order[s] as may be deemed fit and expedient in the interest of justice.

INFORMANT

THROUGH

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Dated: .09.2014