



## HERC (Green Energy Open Access) Regulations, 2023 1<sup>st</sup> Amendment Regulations, 2025 [Draft]

The HERC notified draft on (Green Energy Open Access) Regulations, 2023, 1<sup>st</sup> Amendment Regulations, 2025. Issued on 9<sup>th</sup> January, 2025.

**Objective:** The draft documents proposes amendments to align with the Central Government's updated green energy rules. Eligibility for Green Energy Open Access is expanded to include consumers with 100 kW load via single or aggregated connections in the same electricity division. Captive users are allowed unrestricted procurement under Green Energy Open Access. Consumers on non-independent feeders may be allowed access, subject to system constraints and without compensation for power cuts. The additional surcharge exemption for offshore wind energy is extended to projects commissioned up to December 2032.

The documents can be accessed [here](#)

### 1. Ensuring the Prerequisite of Connectivity for Open Access Approval: In the Draft

**Clause 1(4):** *“Provided that a generating station, including captive generating plant, or a consumer / person shall not be eligible to apply for long term or medium term or short-term open access unless he has the connectivity or he applies for connectivity to the intra-State transmission or distribution system as the case may be.*

*Provided further that a person may apply for connectivity as well as long term or medium term or short-term open access simultaneously”.*

The draft Clause should clearly specify that the granting of open access would be subsequent to the consumer obtaining connectivity to the transmission network since open access cannot be utilized in the absence of such connectivity. In the absence of this clarification, theoretically speaking, a consumer who has applied for connectivity and open access either simultaneously or sequentially may end up blocking/hoarding open access without any consequential possibility of its utilization (due to the absence of connectivity). This could deprive other applications who may have been granted connectivity for long term, medium term, or short-term open access.

### 2. Limitations of contracted demand for captive consumers: In the 1<sup>st</sup> Proviso of draft

**Clause 2:** *“there shall be no limit of supply of power for the captive consumers taking power under Green Energy Open Access.”*

The draft provision states that there shall be no limit on the supply of power for captive consumers availing GEOA. However, this should be explicitly subject to the consumer having requisite connectivity to the appropriate transmission or distribution network and any system constrains in granting or operationalization open access. Therefore, it is recommended that the regulation clearly specify that open access for captive consumers will be contingent on connectivity requirements and system constraints.

### 3. Clarifying Open Access Terms to Avoid Legal Disputes/Avoiding Legal Ambiguities in

**Open Access: In the 2<sup>nd</sup> Proviso of draft Clause 2** *“Provided further that the eligible consumers of a distribution licensee who are not on independent feeders may be allowed open access subject to the condition that they agree to the system constraints as well as the power cut restrictions imposed by the distribution licensee serving them. In such cases, under*



*drawl, if any, on account of power cut restrictions shall not be compensated.”*

To Prevent legal disputes arising from the amendment to the fourth proviso, the agreement with open access consumers should clearly specify that supply to consumers not connected to independent feeders may be restricted based on system constraints imposed by the distribution licensee. The phrase “they agree to “should be removed, and it should instead be stated that such consumers shall be subject to system constraints. Furthermore, it should also clarify that any under-drawal resulting from power cut restrictions shall not be compensated in terms of reduced charges, except those applicable on per unit basis. Applications submitted by consumers who are not connected to independent feeders shall be considered as their implicit acceptance of these restrictions. Additionally, it is recommended to introduce another proviso stating that no charges shall be levied on the energy scheduled but restricted from import by the distribution licensee due to power cut.

#### **4. Technology agnostic approach to additional surcharge in Open access: In the draft**

**Clause 3:** *“Provided also that additional surcharge shall not be applicable in case electricity produced from offshore wind projects, which are commissioned up to December, 2032 and supplied to the Open Access Consumers.”*

The principle of additional surcharge applies uniformly to, irrespective of its source, electricity supplied through open access. Therefore, the regulation should adopt a **technology-agnostic approach** and ensure non-discriminatory treatment of different renewable energy sources. The **Electricity Act, 2003 also does not mandate any differentiation** based on the type of source for electricity generation.

Exempting additional surcharge specifically for offshore wind projects could create regulatory inconsistencies and may lead to demands for similar exemptions from other renewable energy technologies. To maintain fairness and regulatory clarity, it is recommended that the additional surcharge provisions apply consistently to all open access transactions, irrespective of the sources of generation.