October 17th, 2023

Legal Updates

The Ministry of Power issues Draft Notification on Renewable Generation Obligation.

The Ministry of Power ("**MoP**") vide notification No. 09/02/2022-RCM/NRE dated 06.10.2023 has issued a Draft Notification on Renewable Generation Obligation ("**The Notification**") and has proposed the following:

1. A designated consumer which is a coal/lignite based generating station, shall be obligated to supplement its conventional generation with a minimum supply of RE to fulfil its Renewable Generation Obligation (**RGO**) as tabulated below:

Commercial Operation date (COD) of Coal/Lignite Based generating station	Minimum RGO (%)	Due Date for RGO Compliance.
On or before 31st March 2023	6%	1st April 2026
	10%	1st April 2028
1st April 2023 to 31st March 2025	10%	1st April 2025
1st April Onwards	10%	From COD of coal/ lignite based generating station

2. The RGO shall be assessed in terms of annual share of RE generation as a percentage of the total annual generation, which includes generation of both conventional and RE, by respective designated consumer having established coal/lignite based Generating stations.

3. MoP has also changed the assessment methodology to calculate the shortfall in the RGO target in clause 3(i) in terms of 'TOE' (Tonnes of Oil Equivalent) shall be computed as per the formula given below:

Shortfall (TOE)= (CT- A)) x TG) x 86

T (in %)	Target percentage for RE
A (in %)	Achieved share of RE
TG (in MUs)	Total electricity generated from coal/ lignite-based thermal generating station(s) and RE generating station(s), including RE procured and supplied in Mus

4. Lastly, based on the shortfall which shall be calculated from the above defined formula, the penalty shall be determined subject to section 26(3) of the Energy Conservation Act, 2001.

The abovementioned notification can be accessed by this *LINK.*

TRAI extends last date to receive comments or counter comments on Consultation Paper on *"Digital Inclusion in the Era of Emerging Technologies"*

TRAI vide notification dated 14.09.2023 had released the Consultation Paper on ***"Digital Inclusion in the Era of Emerging Technologies"*** with an object to comprehensively review the existing standards for quality of wireline and wireless access services covering voice and broadband. TRAI invited the stakeholders to submit their comments by 16.10.2023 and counter comments by 31.10.2023. The said deadlines have now been extended to 16.11.2023 and for counter comments by 01.12.2023.
The said Consultation Paper can be accessed here : TRAI releases Consultation Paper on Review of Quality-of-Service Standards for Access Services (Wireless and Wireline) and Broadband (Wireless and Wireline) Services | Telecom Regulatory Authority of India)

TRAI extends last date to receive comments on Pre-Consultation Paper on Inputs for formulation of "National Broadcasting Policy".

TRAI vide notification dated 21.09.2023 had issued Pre-consultation Paper on ***Inputs for Formulation of "National Broadcasting Policy"*** and invited stakeholders to send their comments by 10.10.2023. The said deadline has now been extended to 31.10.2023.

TRAI extends last date to receive comments or counter comments on Draft Registration of Consumer Organisations (Amendment) Regulations, 2023

TRAI vide Notification dated 14.09.2023 had released draft **"Registration of Consumer Organisations (Amendment) Regulations, 2023" ("Draft Regulations")** for stakeholders' to send comments and counter-comments by 04.10.2023. The said deadline has now extended.
The Draft Regulations deal with the fact that in a rapidly evolving digital landscape, emerging technologies like 5G, 6G, Artificial Intelligence, Internet of Things etc. hold immense potential for the betterment of the lives of consumers. Consumer organisations can play a supporting role in raising awareness about the benefits accrued out of these emerging technologies, particularly to the marginalised communities, people in rural areas for bridging the digital divide. For conducting theme-based events, these organisations can assist TRAI. TRAI has also felt the need to register national level consumer organisations. The proposed amendment would enable TRAI to register capable consumer organisations having wider reach to work in more than five states/UTs under national level registration. It simplifies the registration process for such consumer organisations.

The updated submission dates of written comments and counter comments are 20.10.2023 and 27.10.2023 respectively.

GERC decides the Additional Surcharge payable by the consumers of four DISCOMs owned by State of Gujarat.

The Ld. Gujarat Electricity Regulatory Commission ("**Ld. Commission**") vide Order dated 30.08.2022 considered issues pertaining to methodology for calculation of Additional Surcharge payable by Open Access Consumers. The Ld. Commission had decided that the said order shall be effective for calculation of the Additional Surcharge to be made applicable from 01.10.2022. Further, vide the said Order, it was decided that the Additional Surcharge shall be determined by the Ld. Commission on the submitted data for the subsequent 6 months period, i.e. the Additional Surcharge determined on the basis of data for April to September of a particular year shall be applicable for April to September period of next year and so on.

On 30.09.2023, the Ld. Commission in Petition No. 03 of 2023, whilst considering the Order dated 30.08.2022 as well as on the basis of the data provided by GUVNL, decided the Additional Surcharge at Rs. 0.87/ kWh. The said Additional Surcharge of Rs. 0.87/kWh shall now be applicable to the consumers of four State Owned DISCOMs i.e. DGVCL, MGVCL, PGVCL and UGVCL who avail power through Open Access from any source other than their respective DISCOM.

Telecom Disputes Settlement & Appellate Tribunal New Delhi **("TDSAT")** vide its judgment dated 06.10.2023 in AERA Appeal No. 2/2021, ***Mumbai International Airport Ltd. (Appellant) Vs. Airports Economic Regulatory Authority of India & Ors (Respondent)*** with AERA Appeal No. 9/2016 ***Mumbai International Airport Ltd. Vs. Airports Economic Regulatory Authority of India & Ors*** has given a finding with regards to the methodology of calculation of TR. The appeals revolve around the interpretation of operation, management, development, agreement **(OMDA)** and State Support Agreement **(SSA)** which were two major agreements entered into by the appellant with Airport Authority of India **(AAI)** and with the Govt. of India governing the functioning of Chhatrapati Shivaji Maharaj International Airport **(CSMIA)**, Mumbai. Appellant was permitted to recover **(TR)** from different stakeholders and users of CSMIA, Mumbai during the period of second and third control periods.

TDSAT has adjudicated on the following issues and has given the following findings:

i. **Whether the decision of AERA to consider Upfront Fee at Rs. 150 Crores as against Rs. 153.85 Crores as a part of Equity is correct, proper and justified?**
With regards to this issue TDSAT has observed that as per OMDA, which was an agreement entered into by the appellant with AAI, an amount of Rs.150 Crores had been mentioned as upfront fee. This amount could not be altered by the appellant and, therefore, only Rs.150 Crores had been treated as Equity Share Capital by AERA for the calculation of Weighted Average Cost on Capital **(WACC)** in the formula of Target Revenue which reads as: - **"TR = RB x WACC + OM + D + T – S".** Upfront fee could be considered by AERA towards the calculation of WACC, but, the additional amount of Rs.3.85 Crores which had been paid by MIAL was not paid as an upfront fee to AAI. MIAL had never given the details in respect of payment of this amount to AAI. There was no evidence that the amount of Rs. 3.85 Crore was paid towards Upfront Fee to AAI. Therefore, TDSAT had observed that an amount of Rs.3.85 Crores could not be considered towards the Equity Share Capital of the appellant. TDSAT had further observed that decision of AERA to consider Upfront Fee at Rs. 150 Crores as against Rs. 153.85 Crores as a part of Equity was correct and proper.

ii. **Whether the decision of Respondent No.1 not to protect the Reserves & Surplus and to reduce it on account of subsequent losses for the purpose of calculation of WACC is correct, proper and justified?**
With regards to this issue TDSAT ordered to quash and set aside the decision of AERA dated 23.09.2016 to the extent that only paid up Equity Share Capital is protected without protecting the Reserves and Surplus. It further ordered to quash and set aside the decision

TDSAT has given its finding regarding the methodology of calculation of Target Revenue (TR)

of AERA of adjustment of Reserves and Surplus against the subsequent losses for the purpose of determining WACC. TDSAT further mentioned that it ought to be kept in mind that once the amount from Reserves and Surplus is already utilised in the investment of fixed assets, thereafter, even if there is loss in a subsequent year, the investment in assets shall remain intact and as it is.

iii. **Whether the decision of AERA to exclude MAT credit while computing Reserves & Surplus (R&S) for the purpose of calculation of WACC is correct, proper and justified?**

With regards to this issue TDSAT observed that Minimum Alternate Tax **(MAT)** credit is mere entitlement and in fact no amount was coming to the appellant for investment in the Joint Venture. Minimum Alternate Tax (MAT) is levied on a company whose income tax payable on the total income is less than such percentage of its book profits as prescribed from time to time (18.5% for the relevant year). As per Section 115 JD of the Income Tax Act, 1961, such company would be allowed a credit for the excess MAT over the regular Income Tax payable for that year, in any subsequent assessment year in which the regular income tax exceeds the MAT for that year. TDSAT mentioned that the amount paid on account of MAT was not available with the Airport Operator -MIAL for investing into the business and, therefore observed that, no error had been committed by AERA in excluding the amount equal to MAT for the purpose of calculating WACC.

iv. **Whether the decision of AERA to allow return on Refundable Security Deposit (RSD) at weighted average Cost of Debt is correct, proper and justified?**

With regards to this issue TDSAT has observed that once RSD has been utilised for meeting the capital expenditure, it should be treated as a part of Equity Share Capital invested by the appellant in the business and, therefore, the appellant was entitled to reasonable rate of return treating RSD as equity. TDSAT therefore answered in negative i.e. the decision of AERA to allow return on Refundable Security Deposit (RSD) at weighted average Cost of Debt was considered to be incorrect and not justified.

v. **Whether the decision of AERA to adjust balance Development Fee from RAB in the year in which international part of Terminal-2 is commissioned i.e. in the FY 2013-14 instead of proportionate adjustments in FY 2015-16 when the project got completed is correct, proper and justified?**

With regards to this issue TDSAT directed AERA to adjust the Development Fee in RAB based on actual amount of assets funded through Development Fee, as per the Auditor's Certificate/Annual Accounts till FY 2015-2016 when the project got completed because other facilities and balance Terminal-2 was commissioned only in FY 2015-2016. Thus, this issue was answered in negative.

vi. **Whether the decision of AERA not to consider collection charges in respect of Development Fee as operating expense or pass through against DF collections is correct, proper and justified?**

With regards to this issue TDSAT relied on a Circular AIC No.8/2012 dated 31.12.2012 issued by DGCA wherein it was mentioned that *"collection charges not exceeding Rs. 5/- per international passenger and Rs. 2.50/- per domestic passenger shall be receivable by the airline from MIAL, which shall not be passed on to the passengers in any manner."* With regards to this TDSAT gave a finding that Collection Charge could not pass on in any manner. Hence, no error had been committed by AERA in excluding the amount of Collection Charges from Operation and Maintenance Expenditure.

vii. **Whether "Other Income" is to be treated as part of revenue from Revenue Share Assets?**

With regards to this issue TDSAT directed AERA to give true-up for 2nd and 3rd Control Periods for "Other Income." TDSAT further observed that "other income" cannot be a part of revenue, from revenue share assets and consequently, in calculation of "S" factor in target revenue formula which is **TR= RB x WACC + OM + D + T – S.**

viii. **Whether the decision of AERA to consider Aeronautical Asset Allocation Ratio at 83.97% for FY 2013-14 and all years of 2nd Control Period and Allocation ratio at 85.57% for South East Pier of Terminal 2 is correct proper and justified?**

With regards to this issue TDSAT has given an observation that out of the total assets, firstly aeronautical assets should be bifurcated. Simultaneously, Non-aeronautical assets should be bifurcated. Consequently, Common Assets (which are both aero and non-aero assets) shall be identified. "Asset Allocation Ratio" should be applied to Common Assets so as to bifurcate aeronautical assets and non-aeronautical assets out of Common Assets. TDSAT therefore, directed AERA to follow 85.57%:14.43% ratio for the Common Assets of T-2 only, which would result into overall aeronautical assets ratio of 86.17%. This issue was therefore, answered in negative.

ix. **Whether the decision of AERA to apply average depreciation on Aeronautical Assets instead of actual depreciation on each of the aeronautical assets is correct, proper and justified?**

With regards to this issue TDSAT answered in affirmative i.e. the decision of AERA to apply average depreciation on Aeronautical Assets instead of actual depreciation on each of the aeronautical assets was correct, proper and justified.

x. **Whether the assumption and the methodology adopted by AERA on computing carrying cost on revenue gap (difference between Actual Revenue collected and Target Revenue) for FCP and SCP is correct, proper and justified?**

With regards to this issue no error had been committed by AERA in computation of carrying cost on revenue gap for 1st Control Period as well as over recovery into consideration from the year when such under recovery or over recovery occurred. This, issue was therefore, answered in affirmative.

xi. **Whether the decision of AERA to deny inclusion of expenditure on recarpeting of runways/taxiways/apron amortized in RAB over a period of five years, thereby denying return on RAB on the unamortized portion of such expenditure is correct, proper and justified?**

With regards to this issue TDSAT quashed and set aside the decision of AERA of exclusion of expenditure on re- carpeting of runways, taxiways, apron amortized in a regulatory asset base over the period of five years and thereby denying return on RAB on the unamortized portion of such expenditure. TDSAT therefore directed AERA to allow the airport operator, the return on RAB on the unamortized portion of expenditure on re-carpeting of runways/ taxiways/ apron. It further observed that by no stretch of imagination it can be said that there had been violation of Order No. 35/2017-18 dated 12.01.2018 because this order was not renovating the basic standards of norms and principles of accounting. It ought to be kept in mind that carrying cost upon unamortized portion of expenditure towards re-carpeting of the runways should had been allowed by AERA. Denying return on Regulatory Asset Base on unamortized portion of such expenditure was not permissible. This issue was therefore, answered in negative.

xii. **Whether the decision of AERA to cap the Cost of Debt at 10.30% while examining the Fair Rate of Return (FRoR) is correct, proper and justified?**

With regards to this issue, TDSAT held that the decision of AERA to cap the Cost of Debt at 10.30% while examining the Fair Rate of Return **(FRoR)** is incorrect, improper and not justified. TDSAT observed that AERA ought to have allowed actual cost of debt incurred by the appellant especially looking to the fact that debt availed by the appellant was from reputed lenders. Putting a cap upon cost of debt was uncalled for, as AERA had in fact, allowed actual interest rate for First Control Period and Second Control Period and therefore the same methodology should be applied for Third Control Period as well.

xiii. **Whether the decision of AERA to reduce the Hypothetical Regulatory Asset Base (HRAB) in respect of written down value attributable to old T-2 demolished is correct, proper and justified?**

With regards to this issue, TDSAT held that the decision of AERA to reduce Hypothetical Regulatory Asset Base **(HRAB)** in respect of written down value attributable to old T-2 demolished was incorrect, improper and not justified since the value of HRAB would remain as it is and intact even if those existing properties, which were existing at the time of taking over of the possession of the airport might have fallen down automatically or demolished.

xiv. **Whether Annual Fee is to be included in revenue from Revenue Share Assets in determining "S" factor?**

With regards to this issue, TDSAT held that Amount equal to Annual Fee is to be excluded from revenue from "Revenue Share Assets" in determining "S-factor" since the deduction of Annual Fee takes place first even before the said amount is received in MIAL's account as its revenue and, therefore, while calculating "S" factor, Annual Fee should be excluded.

xv. **Whether "S" factor can be considered a part of aeronautical revenue base while determining aeronautical taxes (i.e. T)?**

With regards to this issue TDSAT held that non-aeronautical assets have not been defined in SSA and, therefore, the definition of non-aeronautical assets must be read from OMDA. Ld. TDSAT noted that AERA has permitted the addition of amount equal to tax, whereas the amount of tax upon "S" should also be calculated. TDSAT held that since, basic function of AERA under the AERA Act to be read with SSA and OMDA is to control and guide and determine the tariff aeronautical services, "S" factor should be considered as part of aeronautical revenue base while determining aeronautical taxes (i.e. T).

In view of the above the AERA Appeals 9 of 2016 and 2 of 2021 were partly allowed by TDSAT.

MERC holds that RMC Plants to be classified under Industrial tariff category.

The Maharashtra Electricity Regulatory Commission ("**MERC"**), vide its Order dated 03.10.2023, in the matter of *Maharashtra State Electricity Distribution Company Ltd. (MSEDCL) v. UltraTech Cement Ltd. and Ors.* (Case No. 45 of 2023), held that re-classification of Ready-Mix Concrete **("RMC")** plants from Industrial to Commercial by the petitioner is incorrect, and hence retrospective recovery of differential amount from RMC plants cannot be allowed. MERC also directed MSEDCL to cancel the supplementary bill of differential amount and refund the amount (if it has already been paid) through credit in upcoming electricity bill to all similar RMC Plants along with the applicable interest rate.

While delving into the issue pertaining to reclassification, MERC noted that in the Tariff Orders (prior to order dated 31.03.2023 in Case No.226 of 2022), the Commission had not specified category/tariff applicable to RMC plants. The MERC further observed that tariff applicability to set of activities is generally specified in its Tariff Orders, since it is not possible to cover all usage types. Hence, the tariff schedule is indicative in nature and not exhaustive. Therefore, it is

expected that the Distribution Licensee will interpret the Order and apply the tariff category based on usages analogous to those specified in Tariff Orders.

Furthermore, the MERC highlighted that vide its MTR Order dated 31.03.2023 in Case No.226 of 2022, it had specifically ruled that RMC plants to be categorized under Industrial tariff category. The MERC noted that RMC plant provides ready mix concrete to construction projects and is altogether a different set of activity. The output provided by RMC plants is having different forms than its input and is processed scientifically. The activity carried out herein cannot be equated with construction activities. The MERC dismissing the logic as stated by MSEDCL i.e. as Ready Mix Concrete is used for construction activity it should be categorized under commercial category, held that the same is also not correct because by such logic cement manufacturing, steel manufacturing etc will become commercial, but these have been specifically categorized under Industrial category. Hence, RMC plants needs to be categorized under Industrial Category only, which MSEDCL has been doing before report of their flying squad unit. Hence, the MERC clarified that categorization of RMC plants under Industrial Category is correct in terms of its earlier Tariff Orders applicable till 31.03.2023.

APERC issues Draft Andhra Pradesh Electricity Regulatory Commission Transmission License Regulation, 2023

The Andhra Pradesh Electricity Regulatory Commission ("**APERC**") has issued the Draft Andhra Pradesh Electricity Regulatory Commission Transmission License Regulation, 2023 ("**draft Regulations 2023**"), to consolidate the procedure of granting the license, general and special conditions to take care of the present day requirements, particularly in the context of the development of intra-state transmission systems under Section 63 of the Electricity Act, 2003 through tariff-based competitive bidding. Some of the salient features of the draft Regulations 2023 are as under:

1. Chapter 3 of the draft Regulations 2023 provide for the procedure for grant of Transmission License. It states that the applicants for the Transmission Licence shall meet the technical and financial qualifications prescribed by the Ministry of Power, Government of India ("**MOP"**) in the Standard Request for Proposal ("**RFP**") for Selection of Bidder as Transmission Service Provider from time to time. The application shall be submitted to the Commission for consideration for the grant of a Transmission License after receiving objections/suggestions, if any.

2. Chapter 4 of the draft Regulations deals with the conditions of the license proving that the licensee shall plan and operate the Transmission System, so as to ensure that the Transmission System is capable of providing an efficient, coordinated and economical system of Transmission as per section 40 of the Electricity Act, 20023 ("**Electricity Act"**).

3. The draft Regulations 2023 envisages to introduce competition by granting a Transmission Licence to any person in the same area of Licence as that of the existing Transmission Licensee. For this purpose, the Commission may issue such appropriate orders modifying or amending the Transmission Licence as it may deem fit. On the expiry of the tenure of the licence granted to any person(s) as per the provisions of the Electricity Act, 2003, they shall apply to the Commission for renewal of the licence, and the Commission will renew the licence for a further period appropriately as deemed fit.

APERC has issued public notice inviting comments/suggestions/objections from all the stakeholders and interested parties and the same may be sent by email to commn-secy@aperc.in or by post to the Commission's office at Hyderabad to reach the undersigned on or before 07.11.2023 for consideration by the APERC.

TSERC issues draft 1st amendment to model connection agreement.

The Telangana State Electricity Regulatory Commission ("**TSERC"**) has issued notice on 11.10.2023, in the matter of approval of certain amendments to Model Connection Agreement. Clause 15.2 of the TSERC (State Electricity Grid Code) Regulation 2018 stipulates that the State Transmission Utility shall prepare a Model Connection Agreement ("**MCA"**) and place it before the Commission for its approval. Transmission Corporation of Telangana Limited ("**TSTRANSCO"**) subsequently submitted the draft MCA and the same was approved by TSERC after public consultation process. TSTRANSCO has submitted the proposal of certain amendments to the approved MCA ("**draft MCA Amendment**"). The amendments proposed to the MCA are as follows:

1. A new sub-clause (ii) is proposed to be added to Clause 2.12.d (a) stipulating for Supervision charges on the line maintenance charges. The user has to pay supervision charges @ 10% on the estimated line maintenance charges to TSTRANSCO/ TSDISCOMS in case the generator line is maintained by generator.
2. The draft MCA Amendment propose to provide an annexure indicating the actual annual maintenance charges to be paid by the user calculated as per the methodology enclosed to the agreement.

3. The draft MCA Amendment also propose to introduce a penalty in case of delayed payment. The generator has to pay the bill of bay and line maintenance charges within a period of 45 days from the date of billing failing which the generator is liable to pay a penalty @ 18% per annum i.e., Rs.1.5 per Rs.100 for a month or part thereof after the due date. If the bills are not paid within 3 months from the date of bill, the generator may be given a 30 days' notice for disconnection.

TSERC has issued a Public Notice seeking suggestions/comments/objections from all the stakeholders and public at large and the same may be communicated to the Secretary, TSERC on or before 01.11.2023 before 5:00 P.M.

TSERC passes Order determining average pooled power purchase cost in respect of the power purchases made during FY 2022-23 to be considered during FY 2023-24

The TSERC, vide order dated 09.10.2023, in O.P. No. 21 of 2023 filed by Southern Power Distribution Company of Telangana Limited and Northern Power Distribution Company of Telangana Limited under Section 86(1)(e) read with Renewable Power Purchase Obligation (Compliance by Purchase of Renewable Energy/Renewable Energy Certificates) Regulation, 2022, has determined the pooled cost of power purchase for FY 2022-23 to be considered for FY 2023-24 as Rs.4.994/kWh.

MPERC notifies MPERC (Verification of Captive Generating Plants and Captive Users) Regulations, 2023, First Amendment

The Madhya Pradesh Electricity Regulatory Commission ("**MPERC**"), vide notification dated 10.10.2023, has notified MPERC (Verification of Captive Generating Plants and Captive Users) Regulations, 2023, First Amendment (G-45 (i) of 2023) ("**Draft First Amendment**") which seeks to bring amendments to the MPERC (Verification of Captive Generating Plants and Captive Users) Regulations, 2023 (G-45 of 2023) ("**Principal Regulations**"). The Draft First Amendment proposes certain changes which are necessary in the Principal Regulations to align them with the Electricity Amendment Rules 2023 notified by the MOP on 30.06.2023 and 01.09.2023. Suggestions/ objections / comments on the above Draft Amendments may send them to the Secretary, MPERC latest by 02.11.2023.

Some of the major amendments are as follows: -

1. The Draft First Amendment aims to introduce the definition of Affiliate Company and Subsidiary Company.
2. A table containing new verification criteria for various types of Captive User has been provided.
3. Table under of the Regulation 6.5 of the Principal Regulation has been modified to provide details of supporting documents to be furnished during the verification of captive status.

MPERC notifies MPERC Madhya Pradesh Electricity Supply Code 2021 (Second Amendment)

The MPERC, vide notification dated 10.10.2023, has notified the MPERC Supply Code 2021 (Second Amendment) (**"Second Amendment**") which seeks to bring amendments to the MPERC Supply Code, 2021 ("**Principal Code**"). Suggestions/ objections / comments on the above Draft Amendments may send them to the Secretary, MPERC latest by 31.10.2023. Second Amendment aims to prescribes the followings: -

1. Proviso has been inserted after clause 7.1 of the Principal Code which provides for the automatic revision of the sanctioned load to the lowest maximum demand in case the recorded maximum demand exceeds the sanctioned load in billing cycles. The revised sanctioned load shall be effective from the 1st day of 1st billing cycle of the next financial year subject to technical feasibility of catering revised sanctioned load from the existing supply arrangement.
2. The consumer shall pay the charges as applicable for enhancement of load specified in MPERC (Recovery of Expenses and other Charges for providing Electric Line or Plant used for the purpose of giving Supply) (Revision II) Regulations 2022, as amended and execute a supplementary agreement, wherever applicable.
3. Third Proviso has been inserted clause 7.1 which provides that in case of reduction of maximum demand, the revision of sanctioned load shall be done as specified in the Supply Code
4. In case recorded maximum demand exceeds the contract demand, for at least three billing cycles during a financial year; the contract demand shall stand automatically revised to the lowest of the maximum demand of all such instances when the recorded maximum demand has exceeded the contract demand in billing cycles.
5. Second Proviso inserted after clause 7.2 provides that consumer shall pay the charges as applicable for enhancement of load specified in MPERC (Recovery of Expenses and other Charges for providing Electric Line or Plant used for the purpose of giving Supply).

MERC allows extension of three months to prepare procedures as per the provisions of the MEGC Regulations, 2020

The MERC, vide its order dated 03.10.2023, in the matter *of State Transmission Utility v. Maharashtra State Electricity Distribution Company Ltd.* (Case No. 31 of 2023), has allowed extension of three months to State Transmission Utility **("STU")** and Maharashtra State Load Despatch Centre **("MSLDC")** to prepare procedures as per the provisions of the Maharashtra Electricity Grid Code Regulations, 2020 **("MEGC").** Furthermore, the MERC directed Maharashtra State Electricity Distribution Company Limited **("MSEDCL")** and Indian Railways to provide the required information to STU and SLDC for preparation of Integrated Resource Planning for five years.

Review of the Suo-Moto Order dated 02.08.2022 passed by MERC discussing implementation of DSM Regulations in Maharashtra

The MERC, vide order dated 11.10.2023, Case No. 204 of 2022, has reviewed its suo moto order dated 02.08.2022 (**"Suo-Moto Order**"), wherein it had addressed various issues pertaining to implementation the MERC (Deviation Settlement Mechanism and related matters) Regulations, 2019 **("DSM Regulations")**. Pursuant to the Suo-moto order passed by the MERC, MSEDCL had filed the petition to review the Suo-Moto Order seeking clarifications majorly on three issues i.e. (i) Replacement of actual generation of RE generators in schedule of corresponding buyers; (ii) Treatment for actual Hydro generation in schedule of corresponding buyers; (iii) Applicability of volume limits for buyers and sellers. Accordingly, the MERC vide its Order

dated 11.10.2023 in Case no. 204 of 2022, while partially allowing the petition has clarified these issues and passed the following orders:

(i) **Replacement of actual generation of RE generators in schedule of corresponding buyers**

- Waiver to the Distribution Licensees in the incremental Additional Deviation Charges on account of replacement of Renewable ("**RE"**) generation schedule in the corresponding Buyers' schedule by the actual Renewable generation shall be continued even when the REDSM pool is in shortfall, i.e. the deficit DSM pool may be continued under such circumstances till the DSM pool becomes surplus on account of receipt of the DSM/ADSM charges from the State Entities or receivable Western Region Power Capacity charges.

- The treatment given to the incremental Additional Deviation Charges *(i.e., waiver by Maharashtra State Load Despatch Centre and keeping the Distribution Licensees insulated from these charges*) needs to be made applicable for the decremental Additional Deviation Charges also.

- MERC has directed Maharashtra State Load Despatch Centre ("**MSLDC"**) to take up the issue regarding raising of supplementary bills before Maharashtra State Power Committee **("MSPC")** on top priority in light of deficit DSM pool.

(ii) **Treatment for actual Hydro generation in schedule of corresponding buyers**

- The review sought by the Petitioner on the issue of treatment for actual Hydro generation in schedule of corresponding buyers was not accepted. However, to ensure that the hydro generation is used judiciously, as mentioned in State Grid Code, the MERC directed MSLDC to allow operation of hydro generating stations to restore the load generation balance at the State level, only after exhausting all the other options including ramping up of all thermal generating units upto the available capacity. In emergency situation, if hydro generation is scheduled, then hydro pick up should be gradually decreased considering ramp up rate of thermal generating unit and then thermal generating unit can be operated for grid management.

(iii) **Applicability of volume limits for buyers and sellers**

- The relaxation allowed to the Buyers and Sellers in their respective volume limits for relevant years vide the suo moto Orders dated 06.04.2021, 07.10.2021 and 02.08.2022 has been withdrawn and the volume limits in accordance with the DSM Regulations has been restored. Further, the volume limits as per the DSM Regulations shall be made applicable with effect from Monday, 01.01.2024 and till that period, the existing relaxed volume limits may be continued.

- MERC also clarified that Adani Electricity Mumbai Ltd. (Distribution) shall continue to be entitled for an additional volume limit on account of changeover consumers' actual demand recorded in their T<>D interface metering as decided by the Commission in Order dated 15.09.2022 in Case No. 166 of 2021.

- MSLDC has been directed to submit the volume limit computation for the Buyers based on the formulation given in the DSM Regulations and the DSM procedure within one month of this Order, to be made applicable to the Buyers with effect from 01.01.2024. Before submission of such computation, MSLDC shall share the computation with the concerned stakeholders for their comments.

- MERC further directed MSPC to undertake further analysis, discuss with the stakeholders, and submit its detailed report by 31.12.2023 on the pending issues *(such as VSE operations and cost sharing under Mumbai Transmission Constraints and mapping of Generation Units of Adani Power Maharashtra Ltd. in DSM software)* and also providing its recommendations regarding the review/amendment of existing DSM Regulations in line with the CERC DSM Regulations 2022.

A-142, Neeti Bagh
New Delhi – 110 049, India
T: +91 11 4659 4466 F: +91 11 4359 4466
E: mail@neetiniyaman.co
W: www.neetiniyaman.co

Office No. 501, 5th Floor,
Rehman House Premises CHS,
Nadirsha Sukhia Street,Fort,
Mumbai-400001, India