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Legal Updates

The Hon'ble High Court of Delhi in the matter of *ARG Outlier Media Private Limited v. HT Media Limited*, O.M.P. (COMM) 161/2023, vide Order dated 04.07.2023 has ruled that, under Section 34 of the Arbitration and Conciliation Act, 1996, a court does not act as a court of appeal against an arbitral award and thus it does not have the powers vested in Section 61 of the Indian Stamp Act, 1899 (“**Stamp Act**”). Section 61 of the Stamp Act vests the power in an Appellate Court to revise a decision regarding the sufficiency of stamps. The Bench further added that even if it were to assume that Section 61 of the Stamp Act applied, by virtue of Proviso (b) to Section 61(4), the Court could only impound the document and refer it to the Collector of Stamps for adjudication, and even in this case, the enforcement or validity of the arbitral award would in no way be affected.

The Order came as clarification after it was contended that as per the observations of the Hon'ble Supreme Court in *M/s. N. N. Global Mercantile Private Limited v. M/s. Indo Unique Flame Ltd. and Ors.*, an insufficiently stamped agreement containing an arbitration clause cannot be admitted in evidence.

The Bench however referred to the decision of the Hon'ble Supreme Court in *Javer Chand and Ors. v. Pukhraj Surana*, to hold that once a court, rightly or wrongly, admits a document in evidence, so far as the parties are concerned, the matter is closed, and cannot be ruled against by a Trial Court, Court of Appeal, or a Revision Court. Once an agreement has been admitted in evidence by an Arbitrator, and an award is passed relying on such agreement, such award cannot be set aside on the ground of the agreement being insufficiently stamped.

Delhi High Court holds that an Arbitral Award passed relying on an agreement cannot be set aside on the ground of such agreement being insufficiently stamped

The Himachal Pradesh High Court has clarified that consent from the parties to extend the arbitral period need not be expressly stated in writing

In the matter of Balak Ram vs NHAI, Arb Appeal No.17 of 2023, the Hon'ble High Court of Himachal Pradesh, vide order dated 31.07.2023 has observed the consent to extend arbitral period can be inferred from the parties acts and conduct during the arbitration proceedings and need not be expressly agreed in writing.

MERC directs all concerned Authorities to comply with GEOA Rules, 2022

Maharashtra Electricity Regulatory Commission ("**MERC**") vide its Order dated 28.07.2023 in *Pimpri Chinchwad Municipal Corporation Antony Lara Renewable Energy Pvt. Ltd. vs. Maharashtra State Electricity Distribution Co. Ltd. (MSEDCL)*, Case No. 165 of 2023, has directed all concerned Authorities to comply with the provisions of Electricity (Promoting Renewable Energy Through Green Energy Open Access) Rules 2022 ("**GEOA Rules**") as notified on 06.06.2022. MERC further stated that if there is inconsistency in MERC's Regulations and Rules, then provisions of GEOA Rules will prevail.

The Petition was filed to give effect to the Ministry of Power's ("**MoP**") notification on GEOA Rules in the State of Maharashtra. The Commission observed that while MERC(Distribution Open Access) Regulations, 2016 ("**DOA Regulations**") are in force and last amended in 2019, it is however in the process of aligning its DOA Regulations with GEOA Rules. The amendments will be carried after following due process of previous publication, however till such time, the implementation of GEOA Rules cannot be stopped. Consequently, since the GEOA Rules have been notified, the concerned authorities need to comply with provisions thereof. The Commission also indicated that none of the Distribution Licensees has raised any operational difficulty and issues if can be raised during publication of draft amendment to DOA Regulations for the stakeholders' comments.

APERC issues Draft Second Amendment to the Andhra Pradesh Electricity Regulatory Commission (Terms and Conditions for Determination of Tariff for Transmission of Electricity) Regulations, 2005

The proposed Second Amendment ("**draft Amendment**") to the Andhra Pradesh Electricity Regulatory Commission (Terms and Conditions for Determination of Tariff for Transmission of Electricity) Regulations, 2005 ("**Principal Regulations**") have been published by the Andhra Pradesh Electricity Regulatory Commission ("**APERC**"), envisaging the following amendments:

- i. Sub-clause 8.1 of the Principal Regulations is proposed to be substituted as under:
"8.1 The Transmission Licensee shall, along with the ARR & FPT petition, submit a statement on the status of compliance with directives, if any, issued by the Commission in its previous tariff order."
- ii. The proposed sub-clause 8.2 provides that the transmission licensee shall within 3 working days of intimation given to the licensee, publish a notice in at least one English daily newspaper and one Telugu daily newspaper outlining the proposed ARR and tariffs and such other matters as may be stipulated by the Commission and invite suggestions and objections from the public. It is further required to make available a hard copy of the complete application to any interested party at such locations and at such rates as may be stipulated by the Commission as well as publish on its website, spreadsheet showing detailed computations and the application made to the Commission.
- iii. The proposed sub-clause 8.3 provides that the Commission shall within 120 days from the receipt of a complete application for tariff determination and after considering the suggestions and objections received from the public shall either issue a tariff order accepting the application with such modifications or conditions as may be specified in its order or reject the application for reasons to be recorded in writing. Before rejecting an application, the applicant shall be given a reasonable opportunity of hearing.
- iv. The proposed sub-clause 8.4 provides that the transmission licensee shall publish the tariff approved by the Commission in at least one English daily newspaper and one Telugu daily newspaper and shall place the approved tariff/tariff schedule on its website.
- v. The proposed sub-clause 8.5 provides that the tariffs so published shall be in force from the date specified in the order and shall unless amended or revised continue to be in force for such period as may be stipulated therein.

- vi. The draft Amendment further proposes to substitute sub-clauses 10.6, 10.7 and 10.8 of the Principal Regulations. The proposed sub-clause 10.6 provides for sharing of gains/losses due to variations in controllable items of the ARR. It provides that the aggregate gain/loss of the nth control period in controllable items of transmission business shall be pass-through in the ARR of (n+1) control period at the appropriate ratio for each item as decided by the Commission. The transmission licensee shall submit the gains/losses in each controllable item of the transmission business in the previous financial year by 30th November of the current financial year. The gains/losses in the controllable items of ARR on account of factors beyond control of the transmission licensee shall be passthrough to the consumers similar to controllable items as stated in clause 10.5.
- vii. The draft Amendment proposes to add new clause 26, 27 and 28 after clause 25 of the Principal Regulation. Clause 26 as proposed by the draft Amendment deals with “Issue of orders and practice directions”; clause 27 deals with “Power to Remove difficulties” and clause 28 deals with “Power to Relax”.

The Commission has placed the draft Amendment on its website at <https://www.aperc.gov.in>. The Commission has further directed that the comments/suggestions/objections on the draft Amendment, if any, by all the stakeholders and interested parties may be sent by email to commn-secy@aperc.in or by post to the Commission’s office at Hyderabad on or before 14th August, 2023 for consideration by the Commission.

The Draft Second Amendment to the Andhra Pradesh Electricity Regulatory Commission (Terms and Conditions for Determination of Tariff for Transmission of Electricity) Regulations, 2005 can be accessed [here](#).

In order to have a common methodology for calculation of all the open access charges, Rule 12 of the Electricity (Promoting Renewable Energy Through Green Energy Open Access) Rules, 2022 (“**Rules**”) has mandated the Forum of Regulators (“**FoR**”) to prepare a model regulation on methodology for calculation of open access charges, as well as banking charges within a period of four months from the date of commencement of the rules that is 6th June, 2022. The Rule also specifies that while framing the methodology, the FoR shall ensure that various permissible charges are not onerous and shall meet the prudent cost of the distribution licensee in order to fulfil the objective of promoting the procurement of green energy by Green Energy Open Access Consumers.

FoR in its Model Regulation on Methodology for calculation of Open Access charges and Banking charges for Green Energy Open Access Consumers, has specified that the energy banked during peak Time of Delay (“**ToD**”) slots shall be permitted to draw during peak as well as off-peak ToD slot. However, the energy banked during off-peak ToD slots shall be permitted to draw during off-peak ToD slot by only paying the banking charges and from off peak ToD slot to peak ToD slot by paying additional charges as may be specified by Appropriate Commission in addition to the banking charges.

Karnataka Electricity Regulatory Commission (“**KERC**”), in line with the methodology developed by FoR, has decided to implement ToD settlement of energy injected/drawn. KERC, has already specified the Banking Charges in kind @ 8% of the banked energy in line with the FoR methodology. KERC in line with the methodology developed by FoR, holds that 2% of the banked energy in kind in addition to the 8% banking charges should be charged for drawal of off-peak energy during peak hours. The ToD slots shall be as specified in the Tariff Orders issued from time to time and shall be applicable to LT consumer(s) also who seeks open access under the KERC Green Energy Open Access Regulations, 2022 (“**GEOA**”). The morning peak slot shall be from 6:00hrs. to 10:00 hrs. and the evening peak slot shall be from 18:00 hrs to 22:00hrs.

The discussion paper can be accessed from this [link](#).

**Discussion paper
issued by KERC on
Time of Delay
Settlement
Procedure**



APERC invites comments of stakeholders on the petition filed by APPDCL seeking suitable amendments to certain clauses of the APERC (Terms and Conditions for Determination of Tariff for Wheeling and Retail Sale of Electricity) Regulation No. 4 of 2005.

Views and suggestions may be sent to the Secretary, APERC on or before the date of public hearing i.e. 13.09.2023 at 11:00 A.M. at the address of the Commission or through email to commn-secy@aperc.in. A copy of the above-mentioned Public Notice is placed on the website of the Commission for reference of all the stakeholders and the same can be accessed from the link [here](#).

Any interested person/organization desirous of being heard in person, may appear before the Commission on 13.09.2023 at 11:00 A.M. when the petition will be taken up by the Commission for public hearing.

The Ministry of Power (MoP) has issued Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected Solar PV Power Projects under Section 63 of the Electricity Act, 2003 to enable procurement of Solar Power by procurers from grid-connected Solar Photovoltaic power projects, with or without Energy Storage through tariff based competitive bidding. Upon notification of these Guidelines in the Official Gazette, the erstwhile “Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected Solar PV Projects” and further amendments therein, shall not be applicable to tenders issued subsequent to issuance of these Guidelines. However, projects already awarded or under implementation/commissioned under the erstwhile guidelines, will continue to be governed by those guidelines.

Some of the important provisions laid down by these Guidelines are as under:

Conditions to be met by the Procurer:

- Prepare the bid documents in accordance with these Guidelines;
- Seek approval of the Government for deviations, if any, in the draft RfS, draft PPA, draft PSA from these Guidelines, in accordance with the process described in clause 16 of these Guidelines

The Guidelines provide for a single tariff for supply of Solar power to be quoted by the bidders. The tariff shall be quoted at the delivery point which shall be at the CTU/STU interconnection point. All charges and losses till the delivery point shall be borne by the generator.

The Guidelines further state that the draft PPA proposed to be entered into with the successful bidder and draft PSA (if applicable) shall be issued along with the RfS. The standard provisions to be incorporated as part of the PPA shall include inter alia the following:

1. PPA Period – which shall generally be for a period of 20 years from the Scheduled Commencement of Supply Date or from the rescheduled date of commencement of supply to the extent of extension given by the Procurer on the grounds which are beyond control of the Generator.
2. Power Procurement – The procurement of power shall be in MW terms. These Guidelines permits the Generator to supply power from RE power plant in excess of contracted capacity to any third party of power exchange without requiring any NOC from the Procurer. These Guidelines further provide that for deviation from schedule, the Deviation Settlement Mechanism shall be applicable as per prevailing mechanism. The Deviation Settlement Mechanism charges at the generator end shall be settled by the Solar Power Generator.

Ministry of Power (MoP) issues Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected Solar PV Power Projects.

3. Force Majeure – The Generator shall intimate the procurer about the occurrence of Force Majeure within 15 days of the start of the Force Majeure event and the procurer shall respond on his claim within 15 days of receipt of the intimation.
4. Change in Law/Regulation – The provisions for change in law shall be in accordance with the Electricity (Timely Recovery of Costs due to Change in Law) Rules, 2021 notified by Ministry of Power.

With respect to Request For Selection Document, the standard provisions to be provided by the Procurer shall include the following:

1. Bid Responsiveness by the bidder
2. Technical and Financial criteria to be met by the bidder
3. Quantum of Earnest Money Deposit to be furnished by the bidder
4. Compliance of FDI laws by foreign bidders

The Guidelines further provide for an indicative timeline for the bid process as under:

- Date of issue of RfS document, project specific draft PPAs, other draft Project Agreements and Power Sale Agreements, if applicable – Zero date;
- RfS Bid submission – 22 days from Zero date;
- Evaluation of technical bids – 64 days from Zero date;
- Evaluation of financial bids and conduction of e-reverse auction – 99 days from Zero date;
- Issuance of Letter of Award – 110 days from Zero date;
- Signing of PPA and PSA (if applicable) – 140 days from Zero date.

The Guidelines further require that if the successful bidder is a single company, it shall ensure that its shareholding in the SPV/project company executing the PPA shall not fall below 51% at any time prior to one year from the scheduled commencement of supply date except with the prior approval of the procurer. In the event, the successful bidder is a consortium, the combined shareholding of the consortium members in the SPV/project company executing the PPA shall not fall below 51% at any time prior to one year from the scheduled commencement of supply date except with the prior approval of the procurer.

With respect to the commencement of supply schedule, these Guidelines state that the Developer/Solar Power Generator shall generally commence supply of power within a period of 24 months from the date of execution of the Power Purchase Agreement where the quantum allotted to the Developer/Solar Power Generator is not more than 1000 MW and 30 months from the date of execution of the Power Purchase Agreement where the quantum allotted to the Developer/Solar Power Generator is more than 1000 MW.

The Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected Solar PV Power Projects can be accessed [here](#).

Ministry of Power vide notification dated 26.07.2023 under the provisions of section 63 of the Electricity Act, 2003, issued the ‘Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected Wind Power Projects (herein “**new guidelines**”). The new guidelines shall be applicable to all bids issued subsequent to the issuance of the new guidelines. However, the projects already awarded in the erstwhile bidding guidelines dated 08.12.2017 (“**old guidelines**”) will not attract the new guidelines and will continue to be guided by old guidelines and their amendment thereof.

The new guidelines are issued for procurement of power by the producers from grid connected Wind Power Projects (WPP) satisfying the following conditions:

- Bid capacity of 10 MW and above for projects connected to the intra-State transmission system
- Bid capacity of 50 MW and above for projects connected to the inter-State transmission system

The salient features of the new guidelines

1. The new guidelines provide for the definition of 'wind power generator' and 'scheduled commencement of supply date' (SCSD) which were not provided in the old guidelines.
2. In the new guidelines the mandate of informing the Appropriate Commission about the initiation of the bidding process is removed.
3. The old guidelines provided that the bidder would be required to submit documents in respect of matters such as land acquisition, NOC for the project, forest clearance for the project letter from State/ Central Transmission Utility and any other clearance. However, submission of these documents is no more required as per the new guidelines.
4. The new guidelines provide that a maximum of 50 percent of total capacity as specified in the RfS can be allotted to a single bidder.
5. The new guidelines provide that the PPA period shall generally be for a period of 20 years from the date of SCSD and it may also be for a longer period of 25 years. However, in the old guidelines PPA period was specified as not less than 25 years and thereafter, extendable on mutual agreement between the parties.
6. The old guidelines provided the specifics to be followed for adequate payment security to be provided by the distribution licensee to the WPGs. However, the new guidelines do not specify the payment security mechanism. It provides for the applicability of Electricity (Late Payment Surcharge and Related Matters) Rules, 2022, for adequate payment security mechanism. In addition, the intermediary procurer may maintain a payment security fund. But to be eligible for coverage from the fund the developer undertakes to pay PSM charges @ 2 paise/ unit.
7. Clause 6.6 of the new guidelines deals with the event of default. In the old guidelines, the consequence of the event of default was to be dealt with as per the PPA. However, the new guidelines provide for the consequences in case of events of default and do not refer to it to be dealt with as per the PPA. Clause 6.6(a) read with Clause 14.5 provides as follows:
 - For delay upto 6 months – encashment of performance bank guarantee or alternative instrument on per day basis and proportionate to contracted capacity that has not commenced supply of power
 - For delay beyond 6 months –
 - Contracted capacity shall be reduced to the project capacity that has commissioned supply of power within the period of SCSD plus 6 months. The PPA for the balance contracted capacity that has not commissioned supply of power shall stand terminated.
 - WPG shall be debarred from participating in bids issued by any procurer or any intermediary procurer for one year in case of first default. For two to three years in case of a second or any subsequent default
8. In the event of delay in the commencement of supply of power beyond six (6) months from SCSD penalty shall be imposed on WPG as listed below:
 - For delay upto 6 months – encashment of performance bank guarantee or alternative instrument on per day basis and proportionate to contracted capacity that has not commenced supply of power
 - For delay beyond 6 months –
 - Contracted capacity shall be reduced to the project capacity that has commissioned supply of power within the period of SCSD plus 6 months. The PPA for the balance contracted capacity that has not commissioned supply of power shall stand terminated.
 - WPG shall be debarred from participating in bids issued by any procurer or any intermediary procurer for one year in case of first default. For two to three years in case of a second or any subsequent default
9. Clause 6.7 of the new guidelines provides that the provisions for change in law shall be in accordance with the Electricity (Timely Recovery of Costs due to change in law) Rules, 2021, notified by the Ministry of Power on 22.10.2021.
10. Clause 7.2 of the new guidelines provides that call for the bid can be done either by the procurer or intermediate procurer. In the old guidelines only the procurer was authorized to call for a bid.
11. Clause 7.3 of the new guidelines provides that the developer who has already set up capacity or who has spare untied capacity may also participate in the bid.
12. Clause 8.2 of the new guidelines added another criterion for bid responsiveness, i.e., as on the last date of the bid submission, the bidder and any of its affiliates including any consortium

member or any of its affiliates, their Director should not have been barred or included in the blacklist by any Government Agency or Authority in India.

13. As per Clause 8.3 of the new guidelines a minimum limit is set out, i.e., 2% of the estimated capital cost of the WPP, which the procurer may specify as the quantum of earnest money deposit to be furnished at the time of bidding.
14. Clause 10 of the new guidelines provides for a revised indicative timetable for the bid process, the comparative chart is provided below:

S. No.	Event	Time from 'zero' date (new guideline)	Time from 'zero' date (old guideline)
1.	Date of issue of RfS and draft PPA/ PSA	Zero date	Zero date
2.	Bid clarification, conferences, revision of RfS etc.	**	**
3.	RfS bid submission	22 days	30 to 45 days
4.	Evaluation of bid and issue of letter of award	99 to 110 days	75 days
5.	Signing of PPA	105 days	140 days

15. Clause 12.2 of the new guideline provides that performance bank guarantee shall be 5% of the estimated capital cost of WPP for the financial year in which the bids are invited or as per the upper limit stipulated by the Ministry of Finance from time to time, whichever is lower.
16. Clause 14.2 of the new guideline provides that the project shall commence the supply of power within a period of:
 - For projects less than or equal to 1000 MW – 24 months from the date of execution of PPA.
 - For projects more than 1000 MW – 30 months from the date of execution of PPA.

In the old guidelines, the project was to be commissioned within a period of 18 months from the date of execution of the PPA, and there was no segregation of the commissioning period based on the capacity of the project.

16. As per the new guidelines the State Nodal Agency will now also facilitate in carrying out the site survey and issuance of Elevation Certificate for attaining the NOC from the Ministry of Defence.
17. The new guidelines now recognize and provide that the JERC is also to adjudicate disputes falling within its scope other than CERC and SERC. The JERC is empowered to adjudicate and refer disputes for arbitration.
18. The new guidelines that the ISTS charges and losses on the transmission of power including a waiver for wind power shall be as per extant rules and regulations.

The new guidelines can be accessed [here](#).

The Ministry of Power (“**MoP**”) has notified the Electricity (Second Amendment) Rules, 2023 (“**2023 Rules**”) which shall come into force with effect from 26.07.2023. The following amendments have been brought into effect vide the said Rules:

Rule 15 of the Electricity Rules, 2005 (**original Rules**) has been substituted as under:

“15. Subsidy accounting and payment. - (1) *The accounting of the subsidy payable under section 65 of the Act, shall be done by the distribution licensee, in accordance with the Standard Operating Procedures issued by the Central Government, in this regard.*

(2) *A quarterly report shall be issued by the State Commission for each distribution licensee, in its jurisdiction, giving findings whether demands for subsidy were raised by the distribution licensee in the relevant quarter based on accounts of the energy consumed by the subsidised category and consumer category wise per unit subsidy declared by the State Government, the actual payment of subsidy in accordance with section 65 of the Act and the gap in subsidy due and paid as well as other relevant details.*

Explanation: For the purpose of this rule, (The term “Unit” means Kilo Watt Hour (kWh) or Kilo Watt (kW) or Horse Power (HP) or Kilo Volt Ampere (kVA), in accordance with the relevant Regulations or the Tariff Orders issued by the Appropriate Commission.

(3) *The quarterly report shall be submitted by the distribution licensee within thirty days from end date of the respective quarter and the State Commission shall examine the report, and issue it with corrections, if any, in accordance with sub-rule (2), within thirty days of the submission.*

(4) *In case the subsidy has not been paid in advance, then the State Commission shall issue order for implementation of the tariff without subsidy, in accordance with provisions of the section 65 of the Act.*

(5) *If subsidy accounting and the raising bills for subsidy is not found in accordance with the Act or Rules or Regulations issued there under, the State Commission shall take appropriate action against the concerned officers of the licensee for non-compliance as per provisions of the Act.”*

The existing Rule 20 of the original Rules shall be renumbered as Rule 21 and before Rule 21 as so renumbered, the following rule has been inserted, namely –

“20. Framework for Financial Sustainability: (1) *The Aggregate Technical and Commercial loss reduction trajectory to be approved by the State Commissions for tariff determination shall be in accordance with the trajectory agreed by the respective State Governments and approved by the Central Government under any national scheme or programme, or otherwise.*

(2) *The trajectory for both collection and billing efficiency, for distribution licensee shall be determined by the State Commission in accordance with the trajectory approved under sub-rule (1).*

(3) *All the prudent costs of power procurement, incurred by distribution licensee for ensuring 24x7 supply of electricity to consumers under the Electricity (Rights of Consumers) Rules, 2020 and for meeting requirements as per Resource Adequacy plan prepared under the Electricity (Amendment) Rules 2022 shall be taken into account, provided that the procurement of power has been done in a transparent manner or procurement price has been approved by the Appropriate Commission.*

(4) *All the prudent costs incurred by the distribution licensee for creating the assets for development and maintenance of distribution system in accordance with sub-section (1) of section 42 of the Act shall be passthrough:*

Provided that such pass-through of the cost for the assets created by the distribution licensee shall be subject to following conditions:-

(i) *the asset has been created in accordance with the capex roll out plan for the licensee approved by the respective State Commission.*

- (ii) the asset has been procured in competitive and transparent manner.
- (iii) the asset is geo-tagged and properly recorded in Fixed Asset Register.

(5) Gains or losses accrued to distribution licensee due to deviation from approved Aggregate Technical and Commercial loss reduction trajectory shall be quantified on the basis of Average Power Purchase Cost and shared between the distribution licensee and consumers. Two third of the gains shall be passed on to the consumers in tariff and rest shall be retained by the distribution licensee. Two third of the losses shall be borne by the distribution licensee and rest shall be borne by the consumers.

(6) The operation and maintenance norms for distribution licensee shall be determined by the State Commissions in accordance with the guidelines issued by the Authority.

(7) Reasonable Return on Equity shall be permitted, with the assessment of overall risk and the prevalent cost of capital.

(8) The Return on Equity by the State Commission shall be aligned with the Return on Equity specified by the Central Commission for generation and transmission in its Tariff Regulations for the relevant period, with appropriate modification taking into account the risks involved in distribution business.”

The Electricity (Second Amendment) Rules, 2023 can be accessed [here](#).

Ministry of Corporate Affairs (“MCA”) vide Notification dated 02.08.2023, has introduced Companies (Incorporation) Second Amendment Rules, 2023, and accordingly has brought out amendment under Companies (Incorporation) Rules, 2014 in the Annexure by substituting new Form No. RD-1. Form No.RD-1 is used by companies for filing application to Central Government (Regional Director) for approval of Compromises, Arrangements, Amalgamations, and Conversions. Copy of the Revised Form No. RD-1 can be accessed [here](#).

The Maharashtra Electricity Regulatory Commission vide notification dated 05.08.2023 has issued the draft MERC (Grid Interaction Rooftop Renewable Energy Generation Systems) (First Amendment) Regulation, 2023 (“**draft**”). The draft seeks to amend MERC (Grid Interactive Rooftop Renewable Energy Generating Systems) Regulations, 2019 (“**Principal Regulation**”). The MERC has invited comments, suggestions or objections on the draft amendment within 21 days i.e., on or before 25.08.2023. All the comments, suggestions and objections shall be either uploaded on the MERC website or delivered physically at the Commission’s address.

The draft proposes the following amendments in the Principal Regulation:

1. With respect to “eligible consumer”, the draft, proposes to remove the cap on capacity of less than 1 MW. Further, in the case of a net metering arrangement, the capacity of the Renewable Energy Generating System shall be limited to 1 MW or the contracted demand/sanction load of consumers, whichever is lower.
2. The draft provides the definition of “Gross Metering”, “Gross Metering Connection Agreement” and ‘Prosumer’.
3. The draft provides for the modification of the meaning of ‘New Billing Arrangement’. As per the draft, the Net Billing Arrangement is dealt with in correlation to the surplus energy injected into the grid by the RE Generating system. In the Principal Regulation, the New Billing Arrangement was correlated to energy generated by the RE Generation System.
4. The draft further proposes to increase the applicability of the Principal Regulation on gross metering arrangements.

**MCA notifies
Companies
(Incorporation)
Second Amendment
Rules, 2023**

**MERC issues draft
MERC (Grid
Interactive Rooftop
Renewable Energy
Generating
Systems) (First
Amendment)
Regulations, 2023**

5. The draft introduces Regulation 4.3, which provides that the Prosumer(person who consumes electricity from the grid and can also inject electricity into the grid for distribution licensee using same point of supply) will maintain consumer status and have the same rights as the general consumer.
6. The draft proposes the payment of compensation to the consumer by the distribution licensee, in case of delay in performing its activity, @500 Rs per day till the delay lasts.

7. The draft proposes for insertion of a proviso after Regulation 11.4(e), which provides as follows;

“Provided that in case such credit amount is continuously increasing at the end of three consecutive financial years, then at the end of third financial year, 50% of the credit amount shall be paid in cash to the consumer and balance 50% shall be credited in electricity bill.”

8. The draft introduces Regulation 11 (A) to the Principal Regulation which provides for the Energy Accounting and Settlement of Net Billing.
9. The draft introduces Regulation 12.1(a) to the Principal Regulation which provides for the Energy Accounting and Settlement of Gross Metering, which is as follows:

“12.1 Gross Metering is the arrangement where the Renewable Energy Generating System is setup for selling entire generated power to Distribution Licensee under Power Purchase Agreement:

Provided that if Renewable Energy Generating System is connected on the consumer side of the consumer meter, then the consumer shall have to replace the consumer meter with a Net Meter.”

The Maharashtra Electricity Regulatory Commission (“**MERC**”), vide public notice dated 05.08.2023, issued draft of First Amendment (“**draft First Amendment**”) to the MERC (Renewable Purchase Obligation, its Compliance and Implementation of Renewable Energy Certificate Framework), 2019 (“**2019 Regulations**”). Vide the draft First Amendment, the MERC has envisaged to bring about the following amendments:

1. Sub-clause 2.1(f)(a) has been introduced to provide that “HPO” means Hydro Purchase Obligation (“**HPO**”);
2. Sub-clause 2.1(j)(a) has been introduced to provide that “Other RPO” means Renewable Purchase Obligations (“**RPOs**”) that may be met by energy produced from any Renewable Energy project not covered under Regulation 2.1(f)(a) and 2.1(n)(a);”
3. Sub-clause 2.1(n)(a) of the 2019 Regulations has been inserted to provide the definition of “**Wind RPO**” which means RPO that shall be met by energy produced from Wind Power Projects (“**WPPs**”) commissioned after 31.03.2022 and the wind energy consumed over and above 7% from WPPs commissioned till 31.03.2022;”
4. Sub-clause 4.2 (d) of the 2019 Regulations has been amended to provide that all Hydro Power Projects (“**HPPs**”) include Large Hydro Power Projects (“**LHPs**”), Pumped Storage Projects, Small Hydro, Mini Hydro and Micro Hydro Power;
5. Regulation 4.2 (h)(a) has been inserted to include Green Hydrogen and Green Ammonia;
6. Sub-clause 4.3(A) has been inserted providing for HPO Target, which states that:
 - a) HPO shall be met only by energy produced from all Hydro Projects (including Pumped Storage Projects (**PSPs**) and Small Hydro Projects (**SHPs**)) commissioned on and after 8 March 2019 to 31.03.2030;

MERC issues draft of First Amendment to the Maharashtra Electricity Regulatory Commission (Renewable Purchase Obligation, its Compliance and Implementation of Renewable Energy Certificate Framework), 2019.

- b) Energy from all other Hydro Power Projects (HPPs) including free power from HPPs commissioned before 08.03.2019 will be considered under category of ‘Other RPO’;
 - c) HPO of the Distribution Licensee may be met out of the free power being provided to the State from Large Hydro Projects (including PSPs and Small Hydro Projects (SHPs)), commissioned after 08.03.2019 as per agreement at that point of time excluding the contribution towards Local Area Development, if consumed within the Distribution Licensee area;
 - d) In case, the free power mentioned above is insufficient to meet the HPO target, then the Distribution Licensee would have to buy the additional hydro power to meet its HPO target or may have to buy the corresponding amount of Renewable Energy Certificates corresponding to Hydro Power;
 - e) Hydro Power imported from outside India shall not be considered for meeting HPO.
7. Regulation 6 is to be substituted to provide that the Operating Period of the RPO framework specified under 2019 Regulations shall commence from 1 April, 2020 and shall be valid until 31 March, 2030”
 8. Regulation 7 of the 2019 Regulations provides that RPO targets for FY 2024-25 specified in the Table under Regulation 7.1 of the 2019 Regulations stands deleted. RPO targets for FY 2024-25 to FY 2029-30 have been specified under Regulation 7.5 (A).
 9. Regulation 7.5(A) has been inserted to provide that: *“Every Obligated Entity shall procure electricity generated from eligible RE sources to the extent of the percentages, out of its total procurement of electricity from all sources in a year, set out in the following Table:—*

Year	Quantum of purchase (in %) from renewable Energy source (in terms of energy equivalent in kWh)			
	Wind RPO	HPO	Other RPO	Total RPO
2024-25	2.46%	1.08%	26.37%	29.91%
2025-26	3.36%	1.48%	28.17%	33.01%
2026-27	4.29%	1.80%	29.86%	35.91%
2027-28	5.23%	2.15%	31.43%	38.81%
2028-29	6.16%	2.51%	32.69%	41.36%
2029-30	6.94%	2.82%	33.57%	43.33%

Provided that any shortfall in achievement of ‘Other RPO’ category in a particular year can be met with either the excess energy consumed from Wind Power Projects (WPPs) commissioned after 31 March 2022 beyond ‘Wind RPO’ for that year or with excess energy consumed from eligible Large Hydro Projects (including PSPs and Small Hydro Projects (SHPs)), commissioned after 8 March 2019 beyond ‘HPO’ for that year or partly from both.

Provided further that any shortfall in achievement of ‘Wind RPO’ in a particular year can be met with excess energy consumed from Hydro Power Plants, which is in excess of ‘HPO’ for that year and vice versa.

Provided also that Distribution Licensee with peak demand less than 10 MW, a Captive User of a Captive Generating Plant with installed capacity of 1 MW and above, and Open Access Consumers with Contract Demand of 1 MW and above, shall be required to meet only their composite RPO target set out in column (d) of the Table above annually:

10. Regulation 7.6 of the 2019 Regulation to be substituted to provide that an Obligated Entity may meet its RPO target by one or more of the following methods:
 - (a) Own generation from Renewable energy sources

- (b) By procuring Renewable Energy through Open Access from any Developer either directly or through a trading licensee or through power markets.
- (c) By Requisition from Distribution Licensee:
 - i. Any entity may elect to purchase green energy either upto a certain percentage of the consumption or its entire consumption and they may place a requisition for this with their Distribution Licensee, which shall procure such quantity of green energy and supply it;
 - ii. The consumer may purchase on a voluntary basis, more renewable energy, than he is obligated to do and for ease of implementation, this may be in steps of Twenty-five per cent and going upto Hundred per cent;
 - iii. The tariff for the green energy shall be determined separately by the Commission, which shall comprise of the Average Pooled Power Purchase Cost of the renewable energy, cross-subsidy charges if any, and service charges covering the prudent cost of the Distribution Licensee for providing the green energy;
 - iv. Any requisition for green energy from a Distribution Licensee shall be for a minimum period of one year;
 - v. The quantum of green energy shall be pre-specified for at least one year;
 - vi. The green energy purchased from Distribution Licensee or from Renewable Energy sources other than Distribution Licensee in excess of Renewable Purchase Obligation of obligated entity shall be counted towards Renewable Purchase Obligation compliance of the Distribution Licensee;
 - vii. The Accounting of renewable energy supplied by Distribution Licensee level shall be on a monthly basis;
- (d) By consuming renewable energy from captive power plant
- (e) By purchasing of Renewable Energy Certificates (RECs).
- (f) By Purchase of green hydrogen or green ammonia;
- (g) The quantum of green hydrogen or green ammonia would be computed by considering the equivalence to the green hydrogen or green ammonia produced from one MWh of electricity from the renewable sources or its multiples and norms in this regard shall be notified by the Central Commission.
- (h) Any other sources, as may be, determined by the Central Government:
 - (i) Provided that procurement of RE power by a Distribution Licensee at a Generic Tariff rate approved by the Commission or at a rate discovered through transparent process of competitive bidding and duly approved/adopted by the Commission shall be considered as eligible quantum for fulfilment of the RPO of such Distribution Licensee:

11. Regulation 7.7 is proposed to be inserted under 2019 Regulations which provides for Energy Storage Obligation -

- a) The Energy Storage Obligation shall be calculated in energy terms as a percentage of total consumption of electricity and shall be treated as fulfilled only when at least 85% of the total energy stored in the Energy Storage System (ESS), on an annual basis, is procured from renewable energy sources.
- b) The following percentage of total energy consumed shall be solar/wind energy along with/through storage:

Year	Storage (on Energy basis)
2024-25	1.5%
2025-26	2.0%
2026-27	2.5%
2027-28	3.0%
2028-29	3.5%
2029-30	4.0%

- c) The Energy Storage Obligation to the extent of energy stored from RE sources shall be considered as a part of fulfilment of the total RPO as mentioned in Regulation 7.5(A).

- d) the Energy Storage Obligation shall be reviewed periodically considering the commissioning/operation of PSP capacity, to accommodate any new promising commercially viable Energy Storage technologies and also reduction in cost of Battery Energy Storage Systems (“BESS”).”

Proviso of Regulation 8 of the 2019 Regulations to be substituted with new proviso which states that: “Provided that, in the event of an Obligated Entity seeking to fulfil its RPO by purchase of Certificates, the obligation to purchase electricity from various Renewable Energy Sources as stipulated in Regulation 7.1 and Draft MERC(Renewable Purchase Obligation, its Compliance and Implementation of Renewable Energy Certificate Framework) (First Amendment) Regulations, 2023

7.5(A) may be fulfilled by purchase of appropriate Certificates as per Central Commission’s REC Regulations.”

12. Regulation 12.1 of the 2019 Regulations to be substituted to provide that as per Regulation 7.1 provides minimum percentage of RE to be procured in each year by the Obligated Entity.

Regulation 12.2 of 2019 Regulations states that Distribution Licensee shall endeavour to achieve total RPO target notified by the Central Government and for doing so it will get incentive of Rs 0.25 per kWh for RE procured above the minimum percentage specified in Regulation 7.1 up to the percentage notified by the Central Government as under or as may be notified from time to time:

Year	Solar	Non-Solar	Total
2020-21	8.75%	10.25%	19.00%
2021-22	10.50%	10.50%	21.00

Provided that such incentive will not be applicable if Distribution Licensee has not fulfilled Renewable Purchase Obligations on cumulative basis:

Provided further that RE procured during the year for meeting RPO of previous year shall be deducted while determining eligible RE quantum for incentive.

Regulation 12.3 of the 2019 regulations provides that any shortfall in meeting the minimum percentage of RE as specified in Regulation 7.1 or 7.5(A) may be carried forward from FY 2020-21 and FY 2021-22 to FY 2022-23, from FY 2023-24 to FY 2024-25, from FY 2025-26 and FY 2026-27 to FY 2027-28 and from FY 2028-29 to FY 2029-30 and Obligated Entity shall meet such shortfall on cumulative basis by 31 March 2023, 31 March 2025, 31 March 2028 and 31 March 2030, respectively:

Provided that Distribution Licensee shall be subjected to reduction in Aggregate Revenue Requirement at a rate of Rs 0.10 per kWh for cumulative shortfall in total RE procurement target for each year:

Provided further that other Obligated Entities shall be subjected to penalty of Rs. 0.10 per kWh for cumulative shortfall in total RE procurement target for each year:

Provided also that any cumulative shortfall in RE procurement as on 31 March 2023 and/or 31 March 2025 and/or 31 March 2028 and/or 31 March 2030 shall not be carried forward for next year and be adjusted by imposing reduction in ARR for Distribution Licensees and imposing penalty for other Obligated Entities, at rate of floor price of respective REC as on that date:

Provided also that if Obligated Entity is able to demonstrate that even after taking all possible measures including procurement of RECs, it is not able to meet RPO target, then the Commission may reduce the penalty amount subject to conditions as may be stipulated in that Order.

Maharashtra Electricity Regulatory Commission (“MERC”), vide public notice dated 05.08.2023, issued draft of Second Amendment (“**draft Second Amendment**”) to the MERC (Distribution Open Access) Regulations, 2016 read with Maharashtra Electricity Regulatory Commission (Distribution Open Access) First Amendment Regulations 2019 (“**2019 Regulations**”). Vide the draft Second Amendment, the MERC has envisaged to bring about the following amendments:

Introduction of Regulation 2.1(7)(a) after Regulation 2.1(7) of the Principal Regulations:—
“Regulation 2.1(7)(a) “**Central Nodal Agency**” means the nodal agency notified by the Central Government to set up and operate a single window green energy open access system for renewable energy.”

Introduction of Regulation 2.1(19)(a) and 2.1(19)(b) after Regulation 2.1(19) of the Principal Regulations:—

“2.1(19)(a) “**Entity**” means any consumer who has contracted demand or sanctioned load of Hundred kW or more either through multiple connections aggregating Hundred kW or more located in same electricity division of a Distribution Licensee, except for captive consumers:

Provided that in case of captive consumers, there shall not be any load limitation;

“2.1(19)(b) “**Forum of Regulators**” means the Forum as referred to in sub-section (2) of Section 166 of the Act.

Substitution of Regulation 2.1(32) of the Principal Regulations:—

“2.1(32) “**Renewable Energy**” / “**Green energy**” means the electrical energy from renewable sources of energy including hydro and storage (if the storage uses renewable energy) or any other technology as may be notified by the Government of India from time to time and shall also include any mechanism that utilises green energy to replace fossil fuels including production of green hydrogen or green ammonia as per any other sources, as may be, determined by the Central Government.”

Introduction of Regulation 2.1(32)(a) after Regulation 2.1(32) of the Principal Regulations:—

“2.1(32)(a) “**Rules**” shall mean the Electricity (Promoting Renewable Energy Through Green Energy Open Access) Rules, 2022 and subsequent amendments.

Amendment to Regulation 3 of the Principal Regulations:

2nd and 8th Provisos to Regulation 3.2 of the Principal Regulations stand deleted.

Introduction of Regulation 3.3 and 3.4 after Regulation 3.2 of the Principal Regulations:

“3.3 Notwithstanding anything contained in Regulations 3.2, Consumers having Contract Demand or Sanctioned Load of 100 kW or more or as may be amended in the Rules from time to time, or Entity through multiple connections aggregating 100 kW or more located in same electricity division of a Distribution Licensee, shall be eligible to take power from Green Energy through Open Access:

Provided that there shall be no limit of supply of power for the captive consumers taking power under Green Energy Open Access:

Provided further that for Open Access consumers sourcing power from renewable energy generators, capacity limit up to Contract Demand or Sanctioned Load as specified in Regulation 3.2 shall not be applicable, but shall be subject to conditions of resultant power flow specified under Regulation 8.10:

Provided also that in case of multiple connections before start of Green Energy Open Access, consumers shall intimate the Distribution Licensee in advance regarding the percentage share of energy generation from the Renewable Energy projects to each connection so as to enable the Distribution Licensee to account for the same appropriately:

Provided also that Green Energy Open Access consumers shall not change the quantum of power consumed through open access for at least twelve-time blocks.”

MERC issues draft of Second Amendment to the Maharashtra Electricity Regulatory Commission (Distribution Open Access) Regulations, 2023.

3.4 Subject to meeting eligibility criteria under Regulation 3.2 or 3.3 as the case may be, Consumer having Roof Top Renewable Energy Generating Systems can simultaneously avail Open Access under these Regulations.

Amendment to Regulation 4 of the Principal Regulations:

Introduction of 3rd Proviso to Regulation 4.1 of the Principal Regulations:

“Provided also that procedures and formats devised by Central Nodal Agency as per provisions of Rules shall be followed for seeking Green Energy open access.”

Amendment to Regulation 8 of the Principal Regulations:

Introduction of 3rd, 4th, and 5th Provisos after 2nd Proviso to Regulation 8.1 of the Principal Regulations:

“Provided further that formats and timelines devised by Central Nodal Agency as per provisions of Rules shall be followed for seeking Green Energy open access:

Provided also that in case of Short-Term Green Energy Open Access, Maharashtra State Load Despatch Centre and in case of Medium / Long Term Green Energy Open Access, the State Transmission Utility shall perform duties of Nodal Agency as stipulated in the procedure framed by Central Nodal Agency:

Provided also that concerned Distribution Licensee shall provide all required details to the Nodal Agency so as to enable them to comply with the timelines stipulated in Rules and procedure for Green Open Access framed by the Central Nodal Agency.”

Amendment to Regulation 14 of the Principal Regulations:

Introduction of 2nd, 3rd and 4th Provisos after 1st Proviso to Regulation 14.7 (d) of the Principal Regulations:

“Provided further that the cross-subsidy surcharge for Green Energy Open Access Consumer purchasing green energy from a generating plant using renewable energy sources, shall not be increased during twelve years from the date of operating of the generating plant using renewable energy sources, by more than fifty percent of the surcharge fixed for the year in which open access is granted:

Provided also that cross-subsidy surcharge shall not be applicable in case power produced from a non-fossil fuel based Waste-to-Energy plant is supplied to the Open Access Consumer:

Provided also that Cross-subsidy surcharge shall not be applicable if green energy is utilized for production of green hydrogen and green ammonia.”

Introduction of 2nd, 3rd and 4th Provisos after 1st Proviso to Regulation 14.8 (d) of the Principal Regulations:

“Provided further that additional surcharge shall not be applicable if power produced from a non-fossil fuel based Waste-to-Energy plant is supplied to the Open Access Consumer:

Provided also that additional surcharge shall not be applicable if green energy is utilized for production of green hydrogen and green ammonia:

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

Amendment to Regulation 17 of the Principal Regulations:

Introduction of 2nd Proviso after 1st Proviso to Regulation 17.1 of the Principal Regulations:

“Provided further that Green Energy Open Access to Consumer with Contract Demand lower than 1 MW shall be allowed based on ToD meter.”

Amendment to Regulation 20 of the Principal Regulations:-

Substitution of Regulation 20.4 of the Principal Regulations:

“20.4 Banking charges shall be adjusted in kind @ 8% of the energy banked.”

Substitution of Regulation 20.5 of the Principal Regulations:

“20.5 The un-utilised surplus banked energy shall be considered as lapsed at the end of each banking cycle:

Provided that the Renewable Energy generating station shall be entitled to get Renewable Energy Certificates to the extent of the lapsed banked energy.”

The draft of Second Amendment to the Maharashtra Electricity Regulatory Commission (Distribution Open Access) Regulations, 2023 can be accessed [here](#).

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