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Legal Updates

Delhi High Court adjudicates on the relevant date for the purpose of application of MSME Act

The High Court of Delhi, vide judgement dated 05.07.2023, in W.P.(C) 13758 of 2021 titled as *Sterlite Power Transmission Limited v. EPC Solutions*, has held that the relevant date for determination of the status of an enterprise under the Micro Small and Medium Enterprises Development Act, 2006 (“MSME Act”) is the date of registration of enterprise, date of agreement and additionally the date on which the goods were supplied.

Under writ jurisdiction, the Petitioner had challenged the decision of the Micro & Small Enterprises Facilitation Council (“MSEFC”), whereby it referred the parties to arbitration on the ground that at the time of reference, the Respondent was Medium Enterprise, hence does not fall within the ambit of the MSME Act. The High Court observed that a subsequent upgradation in the status of an enterprise from Micro to Medium will not deprive the enterprise of the benefit under the MSME Act. Further, the High Court also took note of the notification dated 18.10.2022 issued by the Ministry of MSME, wherein the Ministry has notified that if there is reclassification of any enterprise, the enterprise would continue to avail of the benefits of the category in which it existed before reclassification for a period of 3 years.

The Calcutta High Court, vide judgement dated 18.07.2023, in AP 281 of 2023 titled *Srei Equipment Finance Limited v. Seirra Infraventure Private Limited*, has held that the parties right to appoint the Arbitrator is forfeited once the Court intervenes to appoint the Arbitrator.

In the present case, the Arbitrator was appointed by the Court under Section 14 of the Arbitration and Conciliation Act 1996 (“A&C Act”). However, the Arbitrator was not able to perform the duties on account of being elevated to the bench and relocated outside India.

Calcutta High Court held that the Party's right to choose Arbitrator cannot be revived once it is surrendered to the Court u/S 11(6) of the Arbitration Act

The court observed that in order to decide at what stage the process of appointment of Arbitrator will revert back, it has to ascertain that whether the Arbitrator who is to be substituted was appointed by parties or by the Court. The Court observed that in the present case, the Arbitrator was appointed by the Court since the parties were unable to appoint to the Arbitrator. Therefore, for the purpose of substitution of Arbitrator, the entire process will not revert back to a stage which will restore the right upon the parties to appoint the Arbitrator as they have already forfeited their right to appoint Arbitrator by surrendering such right to the Court. The Court held that the reason for the above view, lies in the continuity of proceedings envisaged as under Section 15(2) and (3) of the A&C Act, ensuring that the arbitration process remains uninterrupted by giving the option to the substitute Arbitrator to either repeat the hearings already held by the earlier Arbitrator or commence the proceedings anew. The flow of proceedings continues till section 15(4) where the validity of orders passed by the Arbitral Tribunal, pre-replacement, are deemed to remain undisturbed regardless of a change in the composition of the Arbitral Tribunal. The Court further noted that in present case, the Arbitrator(s) had held a few sittings before becoming unable to perform her functions. This fact also leans towards continuity of the arbitration already initiated rather than relegating the parties to a stage which is prior even to the first appointment.

The Supreme Court vide its judgment dated 17.07.2023 in C.A. No. 7976 of 2019 titled *Paschimanchal Vidyut Vitran Nigam Limited vs Raman Ispat Pvt. Ltd. & Ors.* held that Section 238 of the IBC overrides the provisions of the Electricity Act, 2003.

Paschimanchal Vidyut Vitran Nigam Limited (“**PVVNL/ Appellant**”) had preferred an appeal against the order of the National Company Law Appellate Tribunal (“**NCLAT**”). NCLAT had by its order rejected the appeal preferred against an order of the National Company Law Tribunal, Allahabad (“**NCLT**”/ “**Adjudicating Authority**”). The NCLT by its order had allowed an application directing the District Magistrate and Tehsildar, Muzaffarnagar to immediately release property (which was previously attached at the request of PVVNL) in favour of the liquidator of the Respondent i.e., Raman Ispat Pvt. Ltd. (“**Corporate Debtor**”) for enabling its sale, and after realisation of its value, for distributing the proceeds in accordance with the provisions of the Insolvency and Bankruptcy Code, 2016 (“**IBC**” / “**Code**”).

By virtue of Section 56 of the Electricity 2003 Act (“**2003 Act**”), a licensee is empowered to disconnect electricity supply to consumer or person who neglects to pay charges for electricity payable in respect of supply, transmission or distribution or wheeling of electricity to him. These provisions in the 2003 Act and the respective Supply Codes form the legal framework for recovery of dues by various kinds of licensees under the 2003 Act.

The Uttar Pradesh Electricity Regulatory State Commission (“**UPERC**”) had issued the Electricity Supply Code 2005 (“**2005 Code**”). Clause 6.15 of the 2005 Code provides that recovery of arrears shall be in accordance with the provisions of the Uttar Pradesh Government Electrical Undertakings (Dues Recovery) Act, 1958. In the present case, the Corporate Debtor had entered into an agreement with PVVNL for supply of electricity on 11.02.2010 which stipulated that outstanding electricity dues would constitute a ‘charge’ on the Corporate Debtor’s assets. This stipulation was in accordance with Clause 4.3(f)(iv) of the 2005 Code and the parties were to be governed by the 2003 Act.

The Supreme Court held that the creation of a charge need not necessarily be based on an express provision of the 2003 Act or plenary legislation but could be created by properly framed regulations authorized under the parent statute. Accordingly, PVVNL’s submission that by virtue of Clause 4.3(f)(iv) of the Supply Code, read with the stipulations in the agreement between the parties, a charge was created on the assets of the Corporate Debtor, is acceptable and PVVNL also came under the definition of ‘secured operational creditor’ as per law.

The counsel for the liquidator had submitted that dues owed to PVVNL were technically owed to the “government”, and thus occupied a lower position in the order of priority of clearance. In this regard, the Supreme Court observed that the expression “government dues” is not defined in the IBC and finds

Supreme Court holds that the IBC overrides the provisions of the Electricity Act

a place only in its preamble. However, what constitutes such dues is spelt out in the ‘waterfall mechanism’ under Section 53(1)(e) of the IBC, which inter alia states that, “Any amount due to the Central Government and the State Government including the amount to be received on account of the Consolidated Fund of India and the Consolidated Fund of the State” ranks lower in priority to the class of creditors described in Clauses (a) to (d) of Section 53(1). Thus, there exists a separate categorisation of Central Government and State Government dues, as a class apart from other creditors, including creditors who may have secured interest (in respect of which amounts may be payable to them). The repeated reference of lowering of priority of debts to the government, on account of statutory tax, or other dues payable to the Central Government or State Government or amounts payable into the Consolidated Fund on account of either government, in the various reports which preceded the enactment of the IBC, as well as its Preamble, means that these dues are distinct and have to be treated as separate from those owed to secured creditors. In other words, dues payable to statutory corporations which do not fall within the description of “amounts due to the central or state government” such as for instance amounts payable to corporations created by statutes which have distinct juristic entity but whose dues do not constitute government dues payable or those payable into the respective Consolidated Funds stand on a different footing. Such corporations may be operational creditors or financial creditors or secured creditors depending on the nature of the transactions entered into by them with the Corporate Debtor. Whereas dues payable or required to be credited to the Treasury, such as tax, tariffs, etc. which broadly fall within the ambit of Article 265 of the Constitution are ‘government dues’ and therefore covered by Section 53(1)(e) of the IBC.

In view of the above, the Supreme Court observed that PVVNL undoubtedly has government participation. However, that does not render it a government or a part of the ‘State Government’. Its functions can be replicated by other entities, both private and public. The supply of electricity, the generation, transmission, and distribution of electricity has been liberalized in terms of the 2003 Act barring certain segments. Private entities are also entitled to hold licenses. Thus, the Supreme Court held that in the present case, dues or amounts payable to PVVNL do not fall within the description of Section 53(1)(e) of the IBC.

The Supreme Court while referring to *State Tax Officer v. Rainbow Papers Ltd.*, 2022 (13) SCR 808, observed that it would be possible to hold that the State is to be treated as a ‘secured creditor’ in the absence of a specific enumeration of government dues as in the present case under Section 53(1)(e) of the IBC. However, the separate and distinct treatment of amounts payable to secured creditor on the one hand, and dues payable to the government on the other clearly signifies Parliament’s intention to treat the latter differently - and in the present case, having lower priority as evident from reading the preamble to the IBC.

The Supreme Court further referring to earlier decisions in *ABG Shipyard v. Central Board of Indirect Taxes and Customs* wherein it was *inter alia* held that once moratorium is imposed in terms of Sections 14 or 33(5) of the IBC, the Custom Authority only has a limited jurisdiction to assess/determine the quantum of customs duty and other levies. The Custom Authority does not have the power to initiate recovery of dues by means of sale/confiscation, as provided under the Customs Act. Similarly, in *Duncans Industries Ltd. v. AJ Agrochem*, Section 16G of the Tea Act, 1953 which required prior consent of the Central Government (for initiation of winding up proceedings) was held to be overridden by the IBC.

Accordingly, the Supreme Court held that Section 238 of the IBC overrides the provisions of the Electricity Act, 2003 despite the latter containing two specific provisions which open with non-obstante clauses (i.e., Section 173 and 174). The position of law with respect to primacy of the IBC, is identical with the position discussed in *Sundaresh Bhatt and Duncan Industries (supra)* [refer also: *Innoventive Industries (supra)*; *CIT v. Monnet Ispat & Energy Ltd.*; *Ghanashyam Mishra & Sons (P) Ltd. v. Edelweiss Asset Reconstruction Co. Ltd.*; and *Jagmohan Bajaj v. Shivam Fragrances Private Limited.*]

For the above reasons, the Supreme Court held that the appeal deserves to fail and directed the liquidator to decide the claim exercised by PVVNL in the manner required by law.

The Principal Bench of the National Company Law Appellate Tribunal (“NCLAT”), vide judgment dated 13.07.2023, in the case of Company Appeal (AT) (Insolvency) No.1148 of 2022 titled as *Akashganga Processors Pvt. Ltd. v. Shri Ravindra Kumar Goyal & Ors.*, has observed that a successful Resolution Applicant (“Applicant”) cannot discriminate amongst the Operational Creditors while making payments to them.

In this case, the Corporate Debtor had two Operational Creditors namely, Government of Gujarat and the Government of India, to whom State Tax and Central Excise were owed respectively. In addition to this, the Corporate Debtor also had statutory dues owed to Gujarat Industrial Development Corporation and Surat Municipal Corporation, both of whom were classified as Operational Creditors. However, the Resolution Plan submitted by the Applicant on behalf of the Corporate Debtor and approved by the Committee of Creditors, only proposed payment of dues to Gujarat Industrial Development Corporation and Surat Municipal Corporation and did not allocate any sums to the Government of Gujarat or the Government of India.

The NCLAT placed reliance on the decision of the Supreme Court in *Committee of Creditors of Essar Steel India Limited vs. Satish Kumar Gupta & Ors.*, (2020) 8 SCC 531, wherein it was held that differential payment of debts could only be in regard to Financial and Operational Creditors, but not in-between the same class of Creditors. Accordingly, the NCLAT held that the Applicant was at liberty to not allocate any amount to any of the Operational Creditors, however if it did, the same had to be done without any discrimination. The NCLAT, thus, directed distribution of sums amongst all four creditors on a pro-rata basis.

The Grid Controller of India Limited (“GCOIL”), vide its notification dated 14.07.2023, has issued the draft of ‘Procedure for Carrying out Inter-Connection Studies of New Power System Elements’ (“The Procedure”) under Regulation 10(3) of the Indian Electricity Grid Code, 2023 (“the Grid Code”). Some of the salient features are as under:

1. A joint system study of the concerned system to be conducted by State Load Despatch Centers (“SLDCs”), Regional Load Dispatch Centers (“RLDCs”), National Load Dispatch Center (“NLDC”) along with Central Transmission Utility (“CTU”), State Transmission Utility (“STU”), as the case may be, before six (6) months of the expected date of first energization of a new power system element to identify operational constraints, if any.
2. The Procedure provides the timeline and responsibilities for date submission to SLDCs, RLDCs or NLDCs for carrying out interconnection studies of new elements.
3. In case of non-submission of necessary technical and modelling data by the specified entities, necessary assumptions shall be made by respective entities responsible for conducting interconnection studies.
4. The interconnection studies shall be carried out by SLDCs, RLDCs or NLDC, each month on a rolling basis duly considering all the elements expected to be energized in the next six (06) months.
5. Interconnection studies shall be carried out for at least the following four time periods (i.e. considering the load-generation balance of four cardinal points on the monthly load curve) for the expected month of integration of the element.
 - a) Solar Peak Period
 - b) Non-Solar Peak Period
 - c) Non-Solar Off-peak Period
 - d) Morning Peak Demand Period

Studies for other scenarios may also be carried out as per requirement.

6. The Procedure provides the summary of the elements expected to be first time energized in next six (06) months.

The NCLAT observes that the same class of creditors cannot be treated in a discriminating manner

Grid Controller of India Ltd. issues draft Procedure for Carrying out Inter-Connection Studies of New Power System Elements

The GCOIL has invited the suggestions / comments from the stakeholder which may be submitted by 07.08.2023 @ nldcreliability@grid-india.in

The Andhra Pradesh Electricity Regulatory Commission (“**APERC**”), vide notice 14.07.2023, issued draft of Second Amendment (“**draft Second Amendment**”) to the APERC (Terms and Conditions for Determination of Tariff for Transmission of Electricity) Regulations, 2005 (“2005 Regulations”). Vide the draft Second Amendment, the APERC has envisaged to bring about the following amendments:

1. Sub-clause 8.1 of the 2005 Regulations is proposed to be substituted to provide that the Transmission Licensee shall, along with the Aggregate Revenue Requirement (“**ARR**”) and Filing for Proposed Tariff (“**FPT**”) petitions, submit a statement on the status of compliance with directives, if any, issued by the APERC in its previous tariff order.
2. 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 APERC and invite suggestions and objections from the public.
3. The proposed sub-clause 8.3 provides that the APERC, 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.
4. The proposed sub-clause 8.4 provides that the Transmission Licensee shall publish the tariff approved by the APERC in at least one English daily newspaper and one Telugu daily newspaper and shall place the approved tariff/tariff schedule on its website.
5. 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. The Transmission Licensee shall raise the bills for the electricity transmitted or services rendered to its users in accordance with the notified tariff.
6. The draft Second Amendment further proposes to substitute sub-clauses 10.6, 10.7 and 10.8 of the 2005 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.
7. The draft Second Amendment proposes to insert new clauses 26, 27 and 28 after clause 25 of the 2005 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”.

Comments/suggestions/objections on the draft Amendments may be sent by email to commn-secy@aperc.in or by post to the APERC’s office at Hyderabad on or before 14.08.2023 for consideration by the APERC.

The APERC, vide public notice dated 15.07.2023, issues the draft Eighth Amendment (**draft Eighth Amendment**) to the Andhra Pradesh Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 (**Principal Regulations**). The draft Amendment aims to delete *Clause 45-A* pertaining to ‘*Expected Revenue from charges, and tariff proposals*’ and *Clause 45- C* relating to ‘*Subsidies*’ in the Principal Regulations

The APERC has placed the draft Eighth Amendment on its website and has invited the comments/suggestions/objections on the draft Amendment, if any, by all the stakeholders and interested parties which may be sent by email to commn-secy@aperc.in or by post to the APERC’s office at Hyderabad on or before 05.08.2023 for consideration by the APERC.

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

APERC issues draft Eighth Amendment to the Andhra Pradesh Electricity Regulatory Commission (Conduct of Business) Regulations, 1999

**APERC amends
RPPO (Compliance
by Purchase of
RE/REC)
Regulations, 2022**

The APERC has notified the first amendment (“**First Amendment**”) to the APERC Renewable Power Purchase Obligation (Compliance by Purchase of Renewable Energy/Renewable Energy Certificates) Regulations, 2022 (“**RPO Regulations**”) and shall come into force with effect from 14.07.2023. Following amendments have been made to the RPO Regulations:

1. Insertion of a new proviso after first proviso of sub-clause 3.2 of the RPO Regulations which provides that the purchase of renewable energy (“**RE**”) by the open access consumer from the distribution licensee as per the procedure stipulated under clause 3.4 shall also be counted towards the fulfilment of renewable power purchase obligation (“**RPPO**”) by such an open access consumer;
2. Insertion of a new proviso after first proviso of sub-clause 3.3 of the RPO Regulations which provides that the purchase of RE by the captive consumer from the distribution licensee as per the procedure stipulated in clause 3.4 shall also be counted towards the fulfilment of RPPO by such a captive consumer;
3. Insertion of new sub-clause 3.4 after sub-clause 3.3 of the RPO Regulations which provides for the manner in which obligated/non-obligated entities may purchase renewable energy from the distribution licensee.
 - a) Any entity may elect to purchase RE either up to a certain percentage of the consumption or its entire consumption and may accordingly place requisition for this with the distribution licensee three months before the commencement of the financial year during which the entities intended to procure from FY 2024-25. For the balance period of FY 2023-24, the entities may place a requisition with their distribution licensee within one month from the date of this regulation coming into force.
 - b) The obligated entities may purchase on voluntary basis more renewable energy than their obligation and up to hundred percent. The percentage of renewable energy requisite by obligated/non-obligated entities from the distribution licensees shall not be less than RPO specified by the Government of India/APERC for the obligated entities whichever is higher for that financial year.
 - c) The Green Tariff for the renewable energy supplied by the distribution licensee for FY 2023-24 shall be 75 paise over and above the normally applicable tariff for respective entities as per the RST order for FY 2023-24. The energy consumed at 75 paise over and above the normally applicable tariff shall be treated as the renewable energy supplied by the distribution licensee during that billing month. The distribution licensee shall issue the monthly digital certificate to such consumers certifying the quantity of renewable energy out of the total consumption.
 - d) All electricity consumers in the State have the option to source 100% renewable energy power by additionally paying above stated Green Tariff without the need to opt for a separate category “Green Power” that is already in place as per RST order approved by the Commission.
 - e) Any requisition for renewable energy from the distribution licensee shall be for a minimum period of one year from FY 2024-25 onwards and for the balance period of FY 203-24 and accordingly, month wise energy shall be specified.
 - f) Any excess renewable energy purchased from a distribution licensee by an obligated entity over and above its renewable energy obligation and 100 percent of the renewable energy procured by a non-obligated entity shall be counted towards the renewable energy obligation of the distribution licensee.
 - g) The revenue earned by a distribution licensee from the sale of renewable energy shall be considered as revenue from the sale of power. The distribution licensee shall separately maintain tariff category and sub-category wise accounting of no. of consumers, connected load, sale and revenue from sale under the Green Tariff for consumers and the same shall be shown separately by the distribution licensee at the time of ARR filings and truing up.
 - h) The distribution licensee shall provide green stars certificate on an yearly basis to the entities for the procurement of the green energy beyond the renewable purchase obligation for obligated entities notified by the Government of India/APERC whichever is higher. 5 green stars shall be given 100 percent of green energy consumption, 4 green stars for 75

percent of green energy consumption and 3 green stars for 50 percent of green energy consumption. The distribution licensee shall issue green stars certificate to the eligible entities within three months after the completion of the financial year. Such green stars shall also be indicated in their monthly bills based on the month wise requisition of energy and total consumption of the month as per the percentages indicated above.

- i) Non-obligated entities of any category including domestic consumers at any voltage level may opt to procure the renewable energy as per procedure stated above.
- j) This distribution licensee shall give wide publicity at regular intervals during the year about the availability of renewable energy power through newspapers/media/interaction meetings with the industrial consumers based on their renewable energy procurement status.
- k) The Commission will undertake a review of the Green Tariff, the above modalities during Retail Supply Tariff proceedings from time to time.

The APERC notifies the second amendment to the APERC (Fees) Regulation, 2005 (“**Principal Fess Regulations**”) and the same has come into force w.e.f. 14.07.2023. The following amendments have been brought into effect:

1. Sub-clause 4(1)(a) of the first amendment of the principal regulation under the heading **i) Fees to be paid with the application for License or for Exemption** is replaced and substituted as under:

| | | |
|-----|--|--------------|
| (a) | Application for grant of a transmission/distribution/trading license | Rs. 90,000/- |
|-----|--|--------------|

2. Sub-clauses 4(ii)(a), 4(ii)(b) and 4(ii)(c) of the first amendment of the principal regulation under the heading **ii) Annual License Fee to be paid by Licensees** are replaced and substituted as under:

| | | |
|-----|--------------------------------------|---|
| (a) | Transmission License | Rs.3,000/- per MW of the allocated capacity. |
| (b) | Distribution License/ Deemed License | 0.20 paise per each unit of energy (kWh) to be handled during the year. |
| (c) | Exemption from the license | 0.20 paise per each unit of energy (kWh) to be handled during the year. |

3. Sub-clause 4(iii)(a) of the first amendment of the principal regulation under the heading **iii) fees to be paid with the application for determination of tariff** is replaced and substituted as under:

| | | |
|-----|----------------------|---|
| (a) | Generating Companies | Rs.20,000/- per MW for conventional generators with a maximum of Rs. 200 Lakhs and Rs.15,000/- per MW for renewable generators with a maximum of Rs. 150 Lakhs |
|-----|----------------------|---|

4. Sub-clauses 4(iv)(a) and 4(iv)(c) of the first amendment of the principal regulations under the heading **iv) Fees to be paid along with petition for adjudication of disputes and other issues, invoking the provisions of the Act, 2003** are replaced and substituted as under:

| | | |
|-----|--|--|
| (a) | For the adjudication of a dispute u/s. 33(4) and 86(1)(f) of the Act | Rs.90,000/- If the value of the relief sought is more than 100 lakhs, the fee will be Rs.1,50,000/- |
| (c) | For petitions under any other provisions of the Act | |
| | (i)Licensee / Generating Company. | Rs.30,000/- |
| | (ii)Individuals / Consumer Organizations | Rs.3,000/- |

APERC notifies the second amendment to the APERC (Fees) Regulation, 2005

5. Sub-clauses 4(v)(a), 4(v)(b) and 4(v)(c) of the first amendment of the principal regulations under the heading **v) Fees to be paid with petition seeking review of Commission's orders** are replaced and substituted as under:

| | | |
|-----|--|-------------|
| (a) | For a review of orders issued u/s.62 and 64 of the Act/Section 26 of the A.P. Electricity Reform Act, 1998 | Rs.1 Lakh |
| (b) | For review of orders issued u/s.9, 33(4) and 86 (1)(f) | Rs.50,000/- |
| (c) | For others | Rs.3,000/- |

6. Sub-clause 4(6) of the principal regulation under the heading **(6) For any other petitions not covered in the above sub-clauses** is replaced and substituted as under:

| | | |
|------|-------------|-------------|
| (i) | Individuals | Rs.5,000/- |
| (ii) | Others | Rs.10,000/- |

The APERC vide public notice dated 14.07.2023 has proposed draft fifth amendment (**Draft Amendment**) to the APERC (Terms and Conditions for Determination of Tariff for Wheeling and Retail Sale of Electricity) Regulation, 2005 (**Principal Tariff Regulations**). Vide the Draft Amendment, the APERC is proposing to bring about the following amendments, *inter alia*, to the Principal Regulation:

- Clause 5 of the Principal Tariff Regulation is proposed to be amended to provide that as long as there is complete segregation of accounts of distribution and retail supply businesses, the ARR for each business shall be supported by an allocation statement that contains the apportionment of costs and revenues to that business and that the allocation statement shall also contain the methodology that has been used for the apportionment. The Draft Amendment proposes to substitute Clause 5 of the Principal Tariff Regulations by specifying ratio for distribution of costs between the distribution business and retail supply business as per the table provided therein.
- Clause 6.2 of the Principal Tariff Regulation is proposed to be substituted in a manner wherein for retail supply business the ARR filing is proposed preferably for the entire control period and on annual basis if permitted by the Commission.
- The Draft Amendment proposes to add new sub-clauses 6.3 to 6.8 after clause 6.2 of the Principal Tariff Regulations.
 - a) Clause 6.3 proposes that the Distribution Licensee shall submit a statement on the status of compliance and directives issued by the Commission along with the ARR and FPT petition.
 - b) Clause 6.4 proposes that the notice of filing of the petition by the Distribution Licensee shall be done in one English daily newspaper and one Telugu daily newspaper for inviting suggestions and objections from the public within 3 working days of an intimation given to them. The hard copy and soft copy of the application shall also be made available for interested parties in the manner provided.
 - c) Clause 6.5 proposes that the Commission shall issue its order within 120 days from receipt of complete application for tariff determination.
 - d) Clause 6.6 proposes that the Distribution Licensee shall publish the tariff approved by the Commission in at least 1 English daily news paper and 1 Telugu daily newspaper and shall also place the approved tariff/tariff schedule on its website. The bills, for electricity supplied or transmitted or services rendered to consumers, shall be raised as the per notified tariff.
 - e) Clause 6.7 proposes that the notified tariff shall not be amended more than once in any financial year. Tariff rates shall be adjusted in accordance with the Fuel and Power Purchase Cost Adjustment (“FPPCA”) notified in the latest amendments.
 - f) Clause 6.8 proposes that the tariff determined and notified may not be amended more than once in any financial year except that the tariff rates shall be adjusted in accordance with the Fuel and Power Purchase Cost Adjustment as notified in the latest amendments to the Principal Regulations.
- Clause 7.4 (c) is propose to be substituted to provide that each tariff proposal submitted by the Distribution Licensee shall be supported with a cost of service model as approved by the Commission in the previous tariff orders for each category of consumers.

APERC proposes draft fifth amendment to the APERC (Terms and Conditions for Determination of Tariff for Wheeling and Retail Sale of Electricity) Regulation, 2005

- The Draft Amendment proposes to add new sub-clause 7.4 (d) and 7.4(e) after sub-clause 7.4 (c) of the Principal Tariff Regulations as follows:
 - a) Sub-clause 7.4(d) proposes that the Distribution Licensee shall furnish such additional information, particulars and documents as the Commission may require from time to time after filing of revenue calculations and tariff proposals,
 - b) Sub-clause 7.4 (e) proposes that the Commission may issue, from time to time, guidelines for filing of statements of revenue calculations and tariff proposals and the licensee shall follow such guidelines unless specifically waived by the Commission.

- The Draft Amendment proposes to substitute sub-clause 10.4 of the Principal Tariff Regulation by adding the following items to the tables providing for the treatment of ARR items as controllable or uncontrollable as follows:

| Distribution Business | |
|--|--|
| ARR Item | “Controllable” / “Uncontrollable” |
| Force Majeure | Uncontrollable |
| Change in Law | Uncontrollable |
| AT&C losses | Controllable |
| Contingency reserves | Uncontrollable |
| Retail Supply Business | |
| ARR Item | “Controllable” / “Uncontrollable” |
| Sale of Electricity to the Consumers | Uncontrollable |
| Revenue from Sale of Electricity to Consumers | Uncontrollable |
| Inter-state and Intra-state Transmission & Load Despatch Charges | Uncontrollable |
| Interest on Consumer Security Deposits | Uncontrollable |
| Taxes on Income | Uncontrollable |
| Bad Debts | Controllable |

- The Draft Amendment proposes to substitute sub-clause 10.5 of the Principal Tariff Regulations to provide that the aggregate gain/loss of the nth year in all uncontrollable items of distribution and retail supply business shall be pass-through in the ARR of (n+2) year of the retail supply business in case the filings are done on annual basis and the aggregate gains/loss in all uncontrollable items shall be pass through to consumers as true down/up in separate proceedings either in a petition filed by the licensees or suo-motu by the Commission on annual basis. Commission shall allow the financing costs on account of the time gap between the time when the true-up becomes due and when it is actually allowed.
- The draft Amendment proposes to substitute sub-clause 10.6, 10.7 and 10.8 of the Principal Tariff Regulation with sub-clause 10.6 of the Draft Amendment. Sub Clause 10.6 of the Draft Amendment proposes that the Distribution Licensees shall present variations in each controllable item with detailed reasoning. The aggregate gains/loss of the nth control period in controllable items of distribution and retail supply business shall be pass-through in respective ARR of (n+1) control period of distribution and retail supply businesses at the appropriate ratio for each item as decided by the Commission. The licensees are required to submit the gains/losses in each controllable items of the distribution business for 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 distribution licensees shall be passthrough to the consumers similar to controllable items as stated in Clause 10.5.
- The draft Amendment proposes to add new sub-clause 12.6 after sub-clause 12.5 of the Principal Tariff Regulations. Sub-Clause 12.6 proposes that the bad and doubtful debts in the ARR shall be allowed based on actual written off bad debts in the past 5 years as per the audited financial statements to the extent the Commission considers them appropriate subject to a ceiling limit of 1% of the yearly revenue. It further provides that the cumulative bad debts shall not exceed 3% of the yearly revenue for the ARR. Subsequent to the write off of a particular bad-debt, if revenue is realized from such a bad debt, the same shall be as income under non-tariff income.

- The draft Amendment proposes to substitute Clause 20 of the Principal Tariff Regulations to provide that the Commission shall determine full cost tariffs for Distribution and Retail Supply Businesses to enable the Distribution Licensees to recover the ARR approved by the Commission based on the application made by it in accordance with the principles laid down in this Regulation. The proposed sub-clause 20.2 (a) provides that the Commission shall determine the ARR and tariff without considering subsidy. If the Government declares subsidy in advance or during tariff filing proceedings and if the distribution licensee incorporates the subsidy in the petition, the Commission shall notify two tariff schedules, one with subsidy and the other without subsidy. The subsidy provided by the Government shall be supported by documentary evidence of time schedule of payment, mode of payment and break up of subsidy amount into different subsidized consumer categories. The proposed sub-clause 20.2(b) provides that the Commission shall state in the tariff order, post the declaration from the Government, the quantum of Government's subsidy applicable to the consumers category wise, mode of payment, schedule of payment etc. The proposed sub-clause 20.2(c) provides that in case of no disbursement or delayed disbursement of subsidy by the Government, the distribution licensee shall charge consumers as per the full cost tariff schedule approved by the Commission without considering the subsidy. The proposed sub-clause 20.2(d) provides that the distribution licensee shall submit a quarterly report to the Commission regarding the information on subsidy due, subsidy overdue and subsidy realized based on actual energy supplied to the subsidized category of consumers and the report shall be hosted on the website of the distribution licensee.

APERC has invited comments/suggestions/objections on the Draft Amendment, if any, from all the stakeholders and interested parties. The same may be submitted on or before 14.08.2023.

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