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Legal Updates

Supreme Court strikes down Clause 6 of the Notification dated 28.03.2020 and 30.08.2023 issued by MoEF&CC.

The Supreme Court, vide Judgment dated 21.03.2024 in Civil Appeal 1628-1629 of 2021 titled *Noble M. Paikada vs. Union of India*, has allowed the appeals challenging the Order dated 28.10.2020 (“**Impugned Judgment**”) passed by the National Green Tribunal (“**NGT**”).

The Notification dated 14.09.2006 issued by Ministry of Environment, Forest & Climate Change (“**MoEF&CC**”) provided that the projects falling under Categories A and B set out in Schedule to the notification will require prior Environmental Clearance (“**EC**”) from concerned Regulatory Authority i.e. Central Government for Category A and State Environment Impact Assessment Authority (“**SEIAA**”) for Category B (“**Impugned Notification**”). Subsequently, notification dated 15.01.2016 (“**second EC Notification**”) was issued by which the first EC Notification was partly modified providing for exemption to specific categories of projects from requirement of obtaining EC. The impugned notification was further amended vide notification dated 13.08.2023 (“**Amended Notification**”) during the pendency of the Appeal amending Clause 6 and 7 of the Impugned Notification.

Clause 6 to the Appendix-IX of the Impugned Notification was challenged before the NGT by way of an Original Application on various grounds including that the notification was arbitrary and violative of Article 14 of the Constitution of India and as such the notification was issued contrary to directions given by the Supreme Court in *Deepak Kumar vs State of Haryana (2012) 4 SCC 629*. Clause 6 exempted the following activities for which prior EC was not required:

(6) Dredging and de-silting of dams, reservoirs, weirs, barrages, rivers, and canals for the purpose of their maintenance, upkeep and disaster management.

The NGT in the Impugned Judgment observed that Clause 6 of the Impugned Notification should strike a balance and accordingly matter was remanded back to MoEF&CC to decide afresh.

The Appellants before the Supreme Court prayed for quashing of Clause 6 of Impugned Notification as being violative of Article 14 and 21 of the Constitution of India, being ultra vires to the provisions of Environment Protection Act, 1986 (“**EP Act**”).

The Supreme Court observed the Impugned Notification was published in haste and the Central Government failed to fulfil the requirement of prior publication of public notice in terms with Rule 5 (3) of the EP Act. The Court further observed that the exception under Clause 6 was completely unguided and blanket which was, per se, arbitrary and violative of Article 15 and the Constitution. The Amended Notification does not elaborate on concept of linear projects. The only addition to Clause 6 is that the extraction, sourcing or borrowing shall be subject to compliance with SOP and environmental safeguards issued in this regard. The authority to issue the SOP and environmental safeguards has not been specified. No provision has been made to enforce the SOP and environmental safeguards. No restriction is imposed on quantum of ordinary earth which can be extracted for linear projects. Therefore, even the amended Clause 6 continues to suffer from the same vices of arbitrariness which Article 14 of the Constitution of India, prohibits. Accordingly, the Supreme Court struck down Clause 6 Impugned Notification dated 28.03.2020 and Clause 6 of the Amended Impugned Notification dated 30.08.2023.

The Ministry of New and Renewable Energy (“**MNRE**”), vide notification bearing F No. 353/7/2024-NT dated 15.03.2024, has issued Scheme Guidelines for setting up of Hydrogen Hubs under the National Green Hydrogen Mission (“**Scheme Guidelines**”). The Scheme Guidelines has been issued in pursuance to the National Green Hydrogen Mission (“**NGHM**”) that was launched in January 2023 with an aim to make India a global hub for production, usage, and export of green hydrogen and to decarbonize the economy. Some of the salient features of the Scheme Guidelines:

- NGHM and the Scheme Guidelines envisage a nationwide hydrogen ecosystem comprising large scale ‘Green Hydrogen Hubs’ in a cluster-based production and utilization model. A Hydrogen Hub has been defined as “an identified geographical region where there exists a network of hydrogen producers, end use (domestic or export) with sufficient supporting infrastructure of hydrogen storage, processing and transportation”.
1. Hydrogen Hubs may be located inland or near ports and potential locations would also be regions having clusters of end use industries such as refineries and fertilizer plants. Minimum capacity of Hydrogen Hubs is set at 1,00,000 MTPA and higher capacity projects will get priority. Currently, it has been planned to set up at least two such Green Hydrogen Hubs by FY 2025-26 with a budgetary outlay of Rs. 200 crores.
 2. It envisages development of core infrastructure at Hydrogen Hubs, including storage and transportation, Pipeline infrastructure, Vehicular re-fuelling, Hydrogen compaction and liquefaction, Water and effluent treatment, Port and shipping infrastructure, Power transmission infrastructure, Land redevelopment etc.
 3. MNRE will nominate a scheme implementing agency that will issue call for proposals for the projects. The eligible agencies for sending project proposals include public sector undertakings, private sector, state corporations, autonomous bodies, joint ventures, partnerships, and consortiums of such entities. Evaluation criteria of the call for proposals will include planned production capacity, natural resource and existing infrastructure availability, location of end use industries/demand centres, financial viability of hubs, etc.
 4. Overall monitoring of the Scheme Guidelines shall be undertaken by a steering committee under MNRE, and the individual projects shall be evaluated by a project appraisal committee under NGHM.

MNRE issues Scheme Guidelines for setting up of Hydrogen Hubs under the National Green Hydrogen Mission

The Ministry of Coal, vide order dated 07.03.2024, in exercise of power under Section 6 (1) of the Mines and Mineral (Development and Regulation) Act, 1957, has increased the area limits for obtaining one or more mining lease(s) in the following states in following manners:

State	One or more mining lease(s)		One or more prospecting license	
	Area limits prior to Order	Area limits post the Order	Area limits prior to Order	Area limits post the Order
Maharashtra	10 sq. km.	40 sq. km.	25 sq. km.	40 sq. km.
Chhattisgarh	10 sq. km.	90 sq. km.	25 sq. km.	90 sq. km.
Madhya Pradesh	10 sq. km.	35 sq. km.	25 sq. km.	35 sq. km.
West Bengal	10 sq. km.	25 sq. km.	25 sq. km.	-----
Jharkhand	10 sq. km.	75 sq. km.	25 sq. km.	75 sq. km.
Odisha	10 sq. km.	45 sq. km.	25 sq. km.	45 sq. km.

The order has been passed keeping in view the overall development of coal industry due to liberalisation of auction process and commencement of commercial mining.

The Ministry of Power (“MOP”), vide notification dated 15.03.2024, has issued Guidelines for coal or lignite based Thermal Power Plants (“TPPs”) to utilize ash by providing it to the ‘user agencies’ as stipulated in the MOEF&CC notification dated 31.12.2021 and its subsequent amendments. In view of the same, all coal and lignite based TPPs (Central/State/Private) have been advised to provide ash to the user agencies for all their new commitments as per the following guidelines in accordance with MoEF&CC Notification dated 31.12.2021 and its amendments on 30.12.2022 and 01.01.2024.

Procedure for disposal of ash by TPPs:

A. General Procedure for disposal of ash:

- i. The TPPs shall declare the quantity of ash available for issue in a year subject to technical restrictions, safety and current or future ash generation and the same shall be declared by the TPPs prior to the start of annual ash disposal process.
- ii. The TPPs shall provide ash to user agencies for eco-friendly purposes as stipulated in the MoEF&CC Notification dated 31.12.2021 and amendments thereto through a transparent bidding process.
- iii. TPPs are advised to invite bids on annual basis or for longer period but not more than three years specifying issuable quantity on per annum basis. TPPs shall start the bidding process well in advance, i.e at least 4 months before the end of current financial year so that all tie-ups are available before the commencement of the next financial year.
- iv. TPPs shall conduct ‘Limited Auction’ for Micro and Small Enterprises and ‘Open Auction’ for all users of ash separately.
- v. The bid threshold may be higher for Open Auction.

B. Procedure for ‘Limited Auction’ for sale of Dry Fly Ash to Micro and Small Enterprises engaged in ash-based product manufacturing:

- i. The reserved quantity shall be 1.10 times of the highest quantity issued up to previous three years to the Micro and Small enterprises by the TPP. If a previously issued quantity is not available, TPP shall reserve 20% of the issuable quantity for the first year of limited auction.

Ministry of Coal passes Order increasing the area limits under Section 6 (1) of the Mines and Minerals (Development and Regulation) Act, 1957

MOP issues Guidelines for coal or lignite based TPPs to utilize ash by providing it to the ‘user agencies’ as stipulated in the MoFE&CC Notification dated 31.12.2021 and its subsequent amendments.



- ii. The floor price (reserved price) for the limited auction for the Micro and Small Enterprises shall be 50% of the lowest price of the ash discovered by the TPP in the last Open Auction of the dry fly ash among all users subject to minimum floor price of Rs. 1 per Metric Tonne.
- iii. Based on the reserved quantity and the reserved price, TPPs shall conduct limited auction annually exclusively for Micro and Small Enterprises engaged in ash-based products manufacturing.
- iv. Limited Auction of reserved quantity shall be conducted among Micro and Small Enterprises having valid consent to operate issued by CPCB/SPCB as applicable or with a valid MSE registration.
- v. The concerned pollution control board shall verify that the ash issued to Micro and Small Enterprises is being utilized to make ash-based products as per MoEF&CC Notification.
- vi. The balance quantity untied in the limited auction shall be included in the quantity for open auction for all users.

C. Procedure for ‘Open Auction’ for sale of ash among all users of ash as per MoEF&CC Notification:

- i. The balance dry fly ash quantity arrived after excluding the reserve quantity and untied quantity in the limited auction sale, bottom ash and pond ash shall be put up for open auction process among all user agencies as per the MoEF&CC Notification.
- ii. If after auction some quantities of ash still remains unutilized, then it shall be offered through open Express of Interest for lifting ash on ‘as is where is’ basis to be given free of cost on first come first serve basis subject to the user agency willing to bear transportation cost.
- iii. If after taking the above steps, ash remains unutilized, the TPPs shall serve notices as per MoEF&CC Notification and amendments thereto, to the nearest user agencies engaged in construction activities such as road laying, road and flyover embankment, shoreline protection structures in coastal districts and dams and mine owners located within 300 km radius from TPPs to use the ash mandatorily in their projects and deliver ash free of cost and transportation charge shall be borne by the TPPs. In case the nearest user agency refuses to utilize the ash, the TPP shall serve notice to the next nearest user agency within 300 km radius as per MoEF&CC Notification and amendments thereto.
- iv. Even after taking the above steps if the ash remains unutilized and the TPPs assess that it may not be able to comply with the MoEF&CC target timelines on ash utilization and have to pay environment compensation on the unutilized ash, the TPPs may apply their best business practices/financial prudence in assessing at their plant level to give the ash on mutually agreed terms to the user agencies in transparent manner to comply with the extant provisions of the MoEF&CC Notification to meet full utilization of ash.
- v. The user agency to whom ash is provided free of cost and free transportation shall be obliged to source the ash from the nearest TPP to reduce transportation costs. If the nearest TPP refuses to do so, the user agency shall approach MOP for appropriate directions.

D. Procedure to be followed for transportation cost to be borne by TPPs: TPPs shall prepare a panel of transportation agencies every year based on competitive bidding for transportation to road projects/embankments/mines etc. in slabs of 50 kms which may be used for the period.

These guidelines are in supersession to the guidelines issued on 22.02.2022 and shall be followed by every coal and lignite based TPPs. These guidelines shall apply prospectively.

The MOP, vide Order No. 23/05/2024-R&R dated 12.04.2024, issued directions to the Gas based Generating Stations (“GBGSs”) under Sec. 11 of the Electricity Act, 2003 to ensure that they are running with capacity on bar to cater to increased demand during peak demands in the months of May and June. The Order dictates as followings:

1. The Order aims to utilise the operational capacity of GBGSs to cater to peak demand. Based on monthly demand assessment, GRID-INDIA will inform the GBGSs at least 14 days in advance

of the expected high demand to meet such demand. The notified GBSs scheduled on D-1 basis will be required to despatch at a minimum of 50% capacity round a clock during the high demand period.

2. GBGSs shall first offer their power to the Power Purchase Agreement (“PPA”) holders. In cases where there are PPAs with multiple distribution licensees, and if one of them fails to schedule any portion of the power, the unutilized power will be offered to other PPA holders. If the power is not scheduled by any PPA holder, any distribution licensee may schedule such capacity. In case no distribution licensee schedules the power, the GBGSs shall offer the power in the power market and any surplus capacity shall be made available to GRID-INDIA for grid support.
3. GBGSs holding PPAs with distribution licensees shall offer their capacity based on the Energy Change Rate (“ECR”) determined by the Appropriate Commission. In absence of PPA, power shall be offered basis the benchmark ECR determined by a committee headed by Chairman, Central Electricity Authority. Power offered in the power exchanges and other market segments or dispatched by GRID-INDIA for grid support shall be at a rate not more than 120% of the ECR plus inter-state transmission charges as applicable.
4. In cases of GBGSs with PPAs, any realization above the ECR shall first be accounted towards Fixed Costs and hence the PPA holders shall not be required to pay the Fixed Cost for power sold in the market or utilized for grid support. In cases where the GBGSs are scheduled for grid support, compensation shall be at the offer price.
5. All the payments to the GBGSs shall be made on weekly basis and the Payment Security Mechanism under the Late Payment Surcharge Rules, 2022 shall be applicable. The GBSs shall be bound by this order notwithstanding any prior outstanding dues that will be dealt with separately. Similarly, this Order shall be applicable notwithstanding any contrary provision in any PPA or any other agreement.

The validity of the Order is from 01.05.2024 to 30.06.2024.

The Telecom Regulatory Authority of India (“TRAI”), vide notification dated 02.04.2024, has released a Consultation Paper on 'Inputs for formulation of National Broadcasting Policy-2024' and has solicited comments from stakeholders.

The Consultation Paper aims at making India a 'Global Content Hub'. It addresses issues linked with policies and regulatory measures which are and might be faced while working towards the said objective. The Consultation Paper also proposes strategies to be adopted for increasing the contribution to the economy through universal reach, fostering innovation with focus on research and development, facilitating job creation, skill development and start-up promotion. Lastly, the paper proposes strengthening the public service broadcasting and deals with issues on various segments of media and entertainment sector, combatting piracy and ensuring content security, robust audience measurement system, terrestrial broadcasting and socio-environmental responsibilities.

The last date for submission of comments is 30.04.2024.

The Telangana State Electricity Regulatory Commission (“TSERC”), vide order dated 27.03.2024, has allowed Renewable Energy Certificates (“RECs”) to meet the requirement of Renewable Power Purchase Obligations (“RPPO”) across any renewable energy (“RE”) technology as per Clause 3 of Regulation No 7 of 2022 (TSERC Renewable Power purchase Obligation (Compliance by purchase of Renewable Energy/Renewable Energy Certificates) Regulation, 2022) (“REC Regulations”). The order states the followings for compliance of RPPO by obligated entities for FY 2022-23 to FY 2026-27:

MOP issues directions to Gas Based Generating Stations to mandatorily operate till 30.06.2024.

TRAI issues Consultation Paper on ‘Inputs for formulation of National Broadcasting Policy-2024’.

TSERC Vide order dated 27.03.2024 has allowed RECs to meet the requirement of RPPO across any RE Technology.

1. Every Obligated Entity is mandated to purchase from RE sources a minimum quantity (in kWh) of electricity expressed as a percentage of its total consumption of energy, during FY 2022-23 to FY 2026-27 as specified in the table below:

Year/RPPO	2022-23	2023-24	2024-25	2025-26	2026-27
Solar	7.50	8.00	9.00	10.00	11.00
Non- Solar	1.00	1.25	1.50	1.75	2.00
Total	8.50	9.25	10.50	11.75	13.00

2. The obligation will be on total consumption of electricity by an Obligated Entity excluding consumption met from RE sources and Large Hydel.
3. On achievement of Solar RPPO compliance to the extent of 85% and above, remaining shortfall if any, can be met by excess Non-Solar energy purchased beyond specified Non-Solar RPPO for that particular year.
4. On achievement of Non-Solar RPPO compliance to the extent of 85% and above, remaining shortfall if any, can be met by excess Solar Energy purchased beyond specified Solar RPPO for that particular year.”
5. The TSERC in exercising its power under Clause 12 which deals with the ‘power to relax’ and Clause 13 which deals with ‘power to remove difficulties’ of the REC Regulations has allowed the Obligated Entity to fulfil any category of RPO by procuring REC certificates as per REC Regulations, 2022.

TSERC extends the period of applicability of the variable cost existing as on 31.03.2024 vide Sua Motu Order dated 28.08.2020 in O.P.No.21 of 2020 for existing Biomass based, Bagasse based and Industrial Waste based power projects in the State of Telangana

The TSERC, vide its Sua-Motu Order dated 28.08.2020 in O.P.No.21 of 2020, notified Variable Cost for the period from FY 2020-21 to FY 2023-24 for existing Biomass, Bagasse and Industrial waste projects in the State of Telangana having PPAs with the distribution licensees.

The TSERC is initiating the process for reviewing the operating norms for determination of Variable Cost for the next Control Period i.e., from FY 2024-25 to FY 2028-29. The revised operating norms for determination of Variable cost shall be notified after undertaking the due regulatory process. Therefore, the TSERC has extended the period of applicability of the Variable Cost existing as on 31.03.2024 determined vide Sua Motu Order dated 28.08.2020 in O.P.No.21 of 2020, to be applicable from 01.04.2024 onwards till the TSERC notifies operating norms and determines the Variable Cost.

The Variable Cost existing as on 31.03.2024 vide Sua Motu Order dated 28.08.2020 in O.P.No.21 of 2020 is as follows:

1. For Biomass based power projects – Rs. 5.7957/kWh
2. For Bagasse based co-generation power projects – Rs. 3.8224/kWh
3. For Industrial waste-based power projects – Rs. 5.7957/kWh

MPERC issues the Madhya Pradesh Electricity Grid Code (Revision-111), 2024, {RG-14 (III) of 2024}.

The Madhya Pradesh Electricity Regulatory Commission (“MPERC”), vide notification dated 13.03.2024, has issued the Madhya Pradesh Electricity Grid Code (Revision-111), 2024, {RG-14 (III) of 2024}, which provides for the followings:

1. Management Code which covers the establishment of a procedure for review of Grid Code to cater to inadvertent omissions and the modifications needed from time to time.
2. Planning Code which covers the following aspects:
 - a) Resource Adequacy Code which covers Demand Forecasting, Generation Resource Adequacy Planning and Transmission System Planning, required for secure grid operation. It also provides that the STU shall bear the planning responsibilities.
 - b) System Planning Code which inter alia provides for the procedures to be applied by STU in the planning and development of the State Transmission System and by other Users connected or seeking connection to the State Transmission System.
 - c) Connection Code specifying the technical requirements.
 - d) System Security Code which provides for the security aspects to be followed by Intra-State Transmission System Users for grid security and safety of electrical equipment.

- e) Commissioning and Commercial Operation Code which inter alia provides for aspects related to drawl of start-up power from the grid and injection of infirm power.
3. Load Despatch & System Operation Code which provides for the following:
 - a) Operational Planning Code describes the conditions under which STU shall operate the State Transmission System, the Generating Companies shall operate their plants, and the Distribution Licensees shall operate their Distribution Systems in so far as necessary to protect the security and quality of supply and safe operation of the State Transmission System under both normal and abnormal operating conditions.
 - b) Schedule and Despatch Code specifies the procedure for scheduling, injection and drawal of power by the Users through Intra-State Transmission System and the modalities for exchange of information and sets out the responsibilities of each User and SLDC in Scheduling and Despatch of energy.
 - c) Frequency and Voltage Management Code describes the method by which all Users of the State Transmission System shall co-operate with SLDC and STU in contributing towards effective control of the system frequency and managing the EHV voltage of the State Transmission System.
 - d) Monitoring of Generation and Drawal Code defines the responsibilities of all SSGS, IPPs, JVs and REGS in the monitoring of Generating Unit reliability and performance, and STU's/ DISCOMs compliance towards improving system performance and observing grid discipline.
 - e) Outage Planning Code specifies the procedures relating to co-ordination among Users, STU, Generating Stations, and Distribution Licensees in case of outages.
 - f) Contingency Planning Code describes the steps to be followed during the recovery process by all Users in the event of total or partial blackout of State Transmission System or Regional Transmission System.
 - g) Inter-User Boundary Safety Code sets down the requirements for maintaining safe working practices associated with inter-user boundary operations and lays down the procedure to be followed when work is required to be carried out on electrical equipment that is connected to another User's system.
4. Protection Code which specifies the protection protocol, protection settings and protection audit plan of electrical systems to be adopted to safeguard the State Transmission System and User's system from faults.
5. Metering Code specifies the minimum operational and commercial metering to be provided for each User. It also sets out the requirement and procedures for metering.
6. Cyber Security Code deals with measures to be taken to safeguard the State grid from spyware, malware, cyber-attacks, network hacking, procedure for security audit from time to time, upgradation of system requirements and keeping abreast of latest developments in the area of cyber-attacks and cyber security requirements.
7. Data Registration Code contains the details of all the data required by STU, which is to be provided by the Users and vice-versa.

MPERC proposes Second Amendment to Madhya Pradesh Electricity Regulatory Commission (Methodology For Determination of Open Access Charges and Banking Charges For Green Energy Open Access Consumers) Regulations, 2023

The MPERC, vide notification dated 13.03.2024, has proposed amendments to the Madhya Pradesh Electricity Regulatory Commission (Methodology For Determination of Open Access Charges and Banking Charges For Green Energy Open Access Consumers) Regulations, 2023.

Provisions pertaining to additional surcharge have been amended stipulating that the additional surcharge in case of green energy open access consumer shall not be applicable, if the power from green energy open access is availed within his contract demand with Distribution Licensee and fixed charges thereof are paid to the Distribution Licensee. However, the additional surcharge shall be levied in case green energy open access consumer is availing power from open access over and above his contract demand with Distribution Licensee and further that additional surcharge shall be applicable only for the green energy open access consumers who are or have been consumers of the concerned Distribution Licensee.

The MPERC has invited comments from the stakeholders by 12.04.2024.

MPERC proposes draft Madhya Pradesh Electricity Regulatory Commission (Terms and Conditions for Intra-State Open Access in Madhya Pradesh) (Revision-I) Regulations

The MPERC, vide notification dated 13.03.2024, has issued draft amendments to the Madhya Pradesh Electricity Regulatory Commission (Terms and Conditions for Intra-State Open Access in Madhya Pradesh) (Revision-I) Regulations, 2021 {RG-24(I) of 2021}.

Provisions pertaining to additional surcharge have been amended. Accordingly, it is proposed that additional surcharge shall not be levied in case a person is availing power from open access within his contract demand with Distribution Licensee and fixed charges thereof are paid to the Distribution Licensee. MPERC has also proposed that such additional surcharge shall be levied in case a person is availing power from open access over and above his contract demand with Distribution Licensee and further that additional surcharge shall be applicable only for the open access consumers who are or have been consumers of the concerned Distribution Licensee. [Regulation 13.1] The Ld. Commission has also proposed that additional surcharge shall not be applicable in case of green energy open access consumer, if the power from green energy open access is availed within the contract demand with Distribution Licensee and fixed charges are paid to the Distribution Licensee: Provided also that such additional surcharge shall be levied in case green energy open access consumer is availing power from open access over and above his contract demand with Distribution Licensee. Lastly, it is proposed that additional surcharge shall be applicable only for the green energy open access consumers who are or have been consumers of the concerned Distribution Licensee.

MPERC has now invited the comments of stakeholders by 12.04.2024. The said draft amendment Regulations can be accessed on the website of MPERC.

MERC issues Draft Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) (First Amendment) Regulations, 2024

The Maharashtra Electricity Regulatory Commission (“**MERC**”) issued the Draft Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) (First Amendment) Regulations, 2024 (“**Draft Regulations**”) to amend Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2020 (“**the Principal Regulations**”). Vide the Draft Regulations, the following amendments have been proposed:

1. Regulation 3.3 of the Principal Regulation which provided for one forum for each distribution zone shall be substituted by the following –

“3.3 A Distribution Licensee shall establish one (1) Forum in each distribution Circle falling within its area of supply:

Provided that where the area of supply is the city of Greater Mumbai and adjoining areas, each Distribution Licensee shall have at least one (1) Forum for such area of supply:

Provided further that the area of jurisdiction of the Forum shall be decided by the Distribution Licensee subject to any guidelines or directions that may be issued by the Commission, from time to time.

Provided also that Forum established under Principal Regulations with jurisdiction of more than one Circle shall henceforth function as Forum for the Circle in which it is located. However, all pending grievances as on date of notification of these Regulations before such Forum shall be decided by such Forum only without transferring it to Forum to be set up for respective Circle.

Explanation – for the purpose of this Regulation 3.3, the term “distribution Circle” shall mean the geographical area falling within the jurisdiction of a Circle office of the successor entities of the Board as may be vested with the functions of distributing electricity pursuant to re-organisation of the Board.”

2. Regulation 3.4 of the Principal Regulations which dealt with location of approved list of Forum of Distribution Licensees in the State of Maharashtra stands deleted.

Sub-clause (a) of Regulation 4.1 of the Principal Regulation which deals with the constitution of the Forum of the Distribution Licensee shall be substituted by the following:

“(a) The Chairperson of the Forum shall be a retired senior judicial officer; or a retired civil servant not below the rank of an additional Collector or equivalent; or a retired Principal of a reputed Engineering college; or a retired Professor of the Electrical Engineering Department of a reputed institute; or a retired senior electrical engineer of the Government.

Provided that the Chairperson shall preferably have working knowledge of the vernacular language of the State of Maharashtra.

Provided further that the Chairperson shall be nominated by the Commission after inviting applications from interested persons and selecting from shortlisted candidates.

Provided also that the Commission may specifically direct the Licensee to conduct such selection process under the guidance of the Commission. In such case, the Commission shall nominate the selection committee.

Provided also that the Commission shall verify the integrity and background of such applicants;”

3. Regulation 16.1 of the principal Regulations has been amended to provide that the Electricity Ombudsman shall be constituted from amongst a retired judge of a High Court or District Court, a retired Secretary to the Government or equivalent officer.

The MERC has issued Maharashtra Electricity Regulatory Commission (Framework for Resource Adequacy) Regulations, 2024. (**“Draft Regulations”**). The objective of the Regulations is to enable the implementation of Resource Adequacy framework by outlining a mechanism for planning of generation and transmission resources for reliably meeting the projected demand in compliance with specified reliability standards for serving the load with an optimum generation mix. The Resource Adequacy framework shall cover a mechanism for demand assessment and forecasting, generation resource planning, procurement planning, and monitoring and compliance. The Regulations shall apply to the generating companies, distribution licensees, State Load Despatch Centre, State Transmission Utility, and other grid connected entities and stakeholders within Maharashtra.

Regulation 5 of the draft Regulations provides for the resource adequacy framework. Resource Adequacy framework entails the planning of generation and transmission resources for reliably meeting the projected demand in compliance with specified reliability standards for serving the load with an optimum generation mix. Resource Adequacy framework shall cover following important steps:

MERC issues draft regulations for framework for Resource Adequacy.

- a. Demand assessment and forecasting.
- b. Generation resource planning
- c. Procurement planning
- d. Monitoring and compliance

The medium and short term for the purpose of these Regulations shall be considered as:

- a. Medium term procurement plan for a period up to five years; and
- b. Short-term procurement plan for a period up to one year.

Further, the distribution licensee shall develop and prepare Medium-Term Distribution Resource Adequacy Plan (MT-DRAP) and Short-Term Distribution Resource Adequacy Plan (ST-DRAP).

Regulation 6 of the draft Regulations provides for long term and medium-term demand forecast. As per the regulations it shall entail at least hourly, or sub-hourly as may be decided by the Commission from time to time, assessment and forecasts of demand within the distribution area of distribution licensee for multiple horizons (short/medium/long-term) using comprehensive input data and policies and drivers and scientific mathematical modelling tools.

The distribution licensee shall be responsible for the assessment and forecasting of demand (MW) and energy (MWh) within its own control area. The distribution licensee shall be responsible for

providing the category wise consumption data and assessed consumption data of particular class of consumers such as agricultural, domestic etc. to various agencies such as MSLDC and/or STU for purpose of state level demand forecasts. The distribution licensee shall submit the category wise consumption information of previous financial years and any other information as may be required by MSLDC/STU by 21st April of each year as per format to be prescribed by MSLDC/STU.

Regulation 9 of the draft Regulations provides for key contours and important steps in Generation Resource Planning. Generation resource planning shall entail the following steps namely:

- a. capacity crediting of generation resources
- b. assessment of planning reserve margin, and
- c. ascertaining resource adequacy requirement and allocation for obligated entities within control area (state/distribution licensee).

The distribution licensee shall map all its contracted existing resources, upcoming resources, and retiring resources to develop the existing resource map in MW for the long term and medium term. The mapping shall include critical characteristics and parameters of the generating machines, such as heat rate, auxiliary consumption, ramp-up rate, ramp-down rate, etc., for thermal machines; hydrology and machine characteristics, etc., for hydro machines; and renewable resources, their capacity factors (CUFs), etc. for renewable resource-based power plants to be considered in the resource plan.

Regulation 14 of the draft regulations provides for procurement resource mix. The distribution license as per the draft regulations in its power procurement strategy shall identify an optimal procurement generation resource mix that shall enable smooth RE integration in its portfolio of power procurement resource options while meeting reliability standards. For identification of the optimal generation procurement resource mix, optimization techniques and least-cost modelling shall be employed to avoid stranding of assets. As per the draft regulations the distribution licensee shall engage in adoption of least cost modelling and optimization techniques and demonstrate the same in its overall power procurement planning exercise to be submitted to Commission for approval.

Regulation 19 of the draft regulations provides for monitoring and compliance. Based on the MT-DRAP and ST-DRAP, STU and MSLDC shall communicate the state-aggregated capacity shortfall to the Commission by 15th September of each year for the ensuring year(s) and advise the distribution licensees to commit additional capacities. The Commission shall approve RA plans by 30th September of each year.

KERC, vide Notification dated 22.03.2024, has issued Revised Draft KERC (Verification of Captive Status of Generating Plants/Consumers in the State of Karnataka) Regulations, 2024 (“**Draft Regulations**”) in the view of the Supreme Court Order dated 09.10.2023 passed in the case of M/S. Dakshin Gujarat Vij Company Limited versus M/s. Gayatri Shakti Paper and Board Limited and another, thereby revoking the earlier draft.

KERC issues the Revised Draft KERC (Verification of Captive Status of Generating Plants/Consumers in the State of Karnataka) Regulations, 2024.

Following are the major provisions of the Draft Regulation:

1. Captive Generating Plant is defined as a power plant set up by any person to generate electricity primarily for his own use and includes a power plant set up by any co-operative society or association of persons for generating electricity primarily for the use of members of such cooperative society or association.
2. Captive User is defined as the end user of the electricity generated from its own Captive Generating Plant and the term ‘Captive Use’ shall be construed accordingly;
3. Person is defined as to include any company or body corporate or association or body of individuals, whether incorporated or not, or artificial juridical person;
4. Monitoring of the captive status with respect to the criteria of consumption and equity share-holding shall be done annually by the Commission after the end of a Financial Year (“FY”).

For a newly commissioned plant, for the first year, the date of open access i.e., the date of receipt of the wheeling agreement or the date of commissioning of the project or the units, whichever is later, shall be considered as the starting date for that financial year. For the subsequent years, generation from 1st April to 31st March of a financial year shall be considered for determining captive status. In the previous draft the monitoring was based on the shareholding pattern existing as on 31st March of a particular financial year, and consumption details are also assessed after the end of the financial year. In the previous draft for a newly commissioned plant, the starting date for the first year is determined by the date of grant of open access.

5. In case only few generating units in a generating station/pooling station are identified for captive use, the captive status of generator/consumer(s) shall be determined considering the net energy generated from units identified for the captive use, energy from those generating units to the intending captive consumers, and the actual energy consumed by the intending captive consumers.
6. In case of any change in the share-holding pattern or the ownership during a financial year, the generator/consumers shall provide the details of the change in the equity share-holding pattern or the ownership to the distribution company as well as the Commission. In case of any change in the share-holding pattern during a financial year, the principle of weighted average shall be applied for the determination of the share-holding percentage for the financial year, which will be considered to ensure compliance of the proportional electricity consumption requirement as stipulated under the second proviso to Rule 3(1)(a).
7. In case of a single captive user, minimum 26% of the equity shares of the generation unit shall be held by the captive user. The single captive user shall consume minimum 51% of the total net generation annually by the generating unit(s) either directly or through Energy Storage System. Consumption by a subsidiary company or a holding company of a company which is a captive user, shall also be admissible as captive consumption by the captive user. The Previous draft provided for consumption by affiliate company wherein if the Captive Generating plant is set up by an affiliate company, not less than fifty-one percent of the ownership must be held by the captive user in that affiliate company.
8. In case of a registered Co-operative society, 26% share-holding pattern and 51% consumption pattern shall be satisfied collectively by the members of the co-operative society.
9. In case of Group Captive consumers (Partnership firm / Limited Liability Partnership (LLP)/ Association of persons/ Special Purpose Vehicle), the captive users shall hold not less than twenty-six percent of the ownership of the plant in aggregate and such consumers shall consume not less than 51% of the net electricity generated on an annual basis in proportion to their shares in ownership of the power plant within a variation not exceeding +10 percent. The Draft Regulation also provide a formula to calculate the proportionate consumption and shareholding. As per the previous draft each partner must hold not less than 26% proprietary interest in the captive plant, and their consumption must not be less than 51% of the net electricity generated annually, same was the case with the Association of person. The previous draft did not explicitly mention any variation limit in consumption for partnership, LLP or Association of person.
10. The intending captive consumers (other than single captive user and co-operative society) consuming energy more or less than their proportion (with a variation exceeding +_10%), will lose their captive status. Captive status of the other consumers/generating station shall be verified excluding such consumers.
11. The Distribution Licensee shall verify the captive status of the consumers at the end of the financial year to compute the surcharges. In case during a financial year any new captive user is added, then the generator/user shall submit the documents to the Distribution Licensee illustrating the date of purchase of equity shares by the new consumer within 15 days of such change along with proof of documents.
12. In case a generator wants to supply power under the captive mode during middle of a financial year, he shall identify the generating units entering into captive mode and shall submit the details illustrating the date of transfer of equity shares with voting right to the intending captive consumers along with other details with regards to generation and consumption of

energy to the distribution licensee (before the onset of wheeling under captive mode) and to the Commission (at the end of the financial year).

13. The minimum ownership criterion is required to be maintained continuously throughout the financial year. However, as regards energy consumption criterion, minimum 51% of the net energy generated by the captive plant/ units during a year must be consumed by the intending captive consumers.
14. The intending captive consumers (other than single captive user and co-operative society) consuming energy more or less than their proportion (with a variation exceeding +_10%), will lose their captive status. Captive status of the other consumers/generating station shall be verified excluding such consumers.

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