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Legal Updates

In terms of Office Memorandum dated 01.07.2024, the Ministry of Power has invited comments on the Draft Revised Guidelines on Electric Vehicle Charging Infrastructure (“Draft Guidelines”).

The objective of the Draft Guidelines is to enable faster adoption of electric vehicles, provide rationality in the service charges, support creation of a charging infrastructure and to facilitate the distribution system to adopt the infrastructure.

The Draft Guidelines shall be applicable to owners/operators of EV charging Infrastructure installed in privately owned parking spaces, semi restricted places like office buildings, educational institutions, hospitals, Group Housing Societies, e-bus depots and in public places like commercial complexes, railway stations, petrol pumps, airports, metro stations, shopping arcades, municipal parking and on highways, expressways etc.

Comments can be addressed to Bureau of Energy Efficiency within 30 days of the issuance of the Draft Guidelines.

The Ld. Telangana Electricity Regulatory Commission (“TGERC”) has issued an order dated 03.07.2024, regarding the proposals submitted by the Telangana State Load Despatch Centre (TGS LDC) seeking approval of remuneration and charges payable to the state agency for the discharge of its functions under the TGERC Renewable Power Purchase Obligation (Compliance by Purchase of Renewable Energy/ Renewable Energy Certificates) Regulations, 2022 (“RPO Regulations”).

Under the RPO Regulations, TGS LDC is allowed to collect remuneration and charges as decided by the Ld. TGERC towards discharges of its functions under the RPO Regulations as

MoP issues Draft Revised Guidelines on Electric Vehicle Charging Infrastructure

TGERC: O.P. No. 5 of 2024 - In the matter of approval of remuneration and charges payable to the state agency for discharge of its functions under

**RPPO Regulation No. 07
of 2022.**

a state agency. The said functions have been detailed under Regulation 6 of the RPO Regulations. Accordingly, on 23.06.2023, TGS LDC requested approval for these charges based on current rates for REC accreditation, proposing a one-time charge of INR 30,000 and an annual charge of INR 10,000 per Obligated Entity, with non-payment affecting RPPO compliance status.

The Ld. TGERC after reviewing the proposal filed by TGS LDC and comments received from various stakeholders held that the charges proposed by TGS LDC were inappropriate and excessive since the obligated entities were already paying annual fee and operating charges as fixed earlier by the Ld. TGERC. It was further, held, that the RPO Regulations do not make it mandatory on the commission to determine the remuneration and charges since the same is an option as the provision uses "may" instead of "shall,".

**KERC issues Suo-Moto
Order dated 18.07.2024
for Issuance of Bills to
Open Access Consumers**

The Ld. Karnataka Electricity Regulatory Commission ("KERC") vide order dated 18.07.2024, has issued directions to the ESCOMs to follow the guidelines on meter reading and billing as laid down by the Ld. KERC in order dated 29.03.2023 in OP No. 52/2021. Before issuing the bills to consumers, the ESCOMs shall necessarily account for Open Access ("OA") /Wheeling Energy. OA consumers are not required to pay bills if they are issued without accounting for OA/Wheeled energy, and the ESCOMs cannot disconnect electricity for such consumers for non-payment.

**MERC notifies
Maharashtra Electricity
Regulatory Commission
(Framework for Resource
Adequacy) Regulations,
2024**

In exercise of the powers conferred under the Electricity Act, 2003 (EA 2003), the Ld. Maharashtra Electricity Regulatory Commission ("MERC") has notified the Maharashtra Electricity Regulatory Commission (Framework for Resource Adequacy) Regulations, 2024 ("Regulations") with an objective 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. These Regulations shall apply to the generating companies, distribution licensee, State Load Despatch Centre (SLDC), State Transmission Utility (STU), full transmission Open Access participants and other grid connected entities and stakeholders within Maharashtra.

Under the said Regulations, the term Resource Adequacy/ RA has been defined as a *"mechanism to ensure adequate supply of generation to serve expected demand (including peak, off peak and in all operating conditions) reliably in compliance with specified reliability standards for serving the load with an optimum generation mix with a focus on integration of environmentally benign technologies after taking into account the need, inter alia, for flexible resources, storage systems for energy shift, and demand response measures for managing the intermittency and variability of renewable energy sources."*

Clause 5.2 of the Regulations provides that the Resource Adequacy framework shall cover the important steps of Demand assessment and forecasting, Generation resource planning, Procurement planning and Monitoring and compliance.

Chapter 3 of the Regulations deals with the provisions relating to Demand assessment and forecasting. For short term demand forecast, the Demand assessment shall entail at least hourly or sub-hourly assessment and forecasts of demand within the distribution areas of the distribution licensee using comprehensive input data and policies and drivers and scientific mathematical modelling tools. For medium term demand forecast, hourly load assessment and forecasts, while for the long term, it shall entail the monthly peak/off peak load assessment and forecasts along with category wise energy forecasts. The responsibility for assessment and forecasting of demand (MW) and energy (MWh) for the short term, medium term and long term shall be of the distribution licensee of the area.

Chapter 4 of the Regulations deals with the provisions relating to Generation resource planning which entails capacity crediting of generation resources, assessment of planning reserve margin

and ascertaining resource adequacy requirement and allocation for obligated entities within control area. The Distribution licensee is responsible for mapping 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. It further provides that the distribution licensee shall compute capacity credit factors for their contracted generation resources by applying the net load-based approach. It further provides for assessment of Planning Reserve Management (PRM) which represents the excess generation resource or planning reserve required to be considered for the purpose of generation resource planning.

Chapter 5 deals with Power Procurement Planning. Clause 13 of the said Regulations provides that Procurement planning shall consist of (a) determining the optimal power procurement resource mix, (b) deciding on the modalities of the procurement type and tenure, and (c) engaging in the capacity trading or sharing to minimize risk of resource shortfall and to maximize rewards of avoiding stranded capacity or contracted generation. It further provides that for the identification of optimum procurement resource mix, optimization techniques and least cost modelling shall be employed to avoid stranding of resources. The power capacity procurement for renewable energy sources for fulfilling the Renewable Purchase Obligation (RPO) targets shall be carried out as per the MERC (Renewable Purchase Obligation, its Compliance and Implementation of Renewable Energy Certificate Framework), Regulations, 2019 and amendments thereof. The power procurement for Wind, Solar PV, Wind Solar Hybrid, Round the Clock (RTC) generations shall be carried out as per the guidelines for tariff based competitive bidding process notified by the Ministry of Power.

Chapter 6 deals with Monitoring and Compliance. Clause 19.1 provides that MSLDC and the STU shall communicate the state aggregated capacity shortfall to the Ld. MERC by 15th September of each year and advise the distribution licensees to commit additional capacities. The Ld. MERC shall approve RA plans by 30th September of each year. Clause 19.2 of the Regulations provides for treatment for shortfall in RA compliance which includes MSLDC levying and collecting non-compliance charge from the concerned distribution licensee. The distribution licensee shall not be allowed to recover such non-compliance charge as part of its ARR.

Madhya Pradesh Electricity Regulatory Commission (“MPERC”) has issued detailed procedure for verification of the status of captive generating plants (‘CGP’) and captive users (‘CU’) in consonance with Regulation 8 of MPERC (Verification of Captive Generating Plants and Captive Users) Regulations, 2023. The commission after considering the difficulties faced by consumers and based on the recommendation from the designated authority i.e. State Load Despatch Centre (‘SLDC’) and Madhya Pradesh Power Transmission Company Limited (‘MPPTCL’) had allowed for a detailed revision of the procedure for verification of the status of a captive plant and captive user.

1. Rule 3 of the Electricity Rules, 2005 provides for the general conditions required to be met to be classified as a CGP or CU. It includes the minimum threshold of the voting rights to resemble control upon the owning entity and the minimum annual self-consumption that is to be maintained.
2. The procedural requirements laid down by sub clause(i) of clause(a) of sub rule 1 of Rule 3 state that the authorised signatory of CGP or CU under the MPERC (Verification of CGP & CA) Regulations 2023 should provide details of the ownership of the plant and submit documents to verify such composition and accordingly its claim will be accessed for CGP or CU.
3. The ownership composition that can be classified as CGP or CU include the plants owned by company set up under the Companies Act 2013, Partnership firm or LLP, association of persons, special purpose vehicles and co-operative societies.
4. The requirement to fulfil the minimum threshold of self-consumption by plant is essential. To be categorized as a captive user of the plant, the self-consumption should not be less than 51% of the total production.
5. This MPERC procedure for CGP or CU verification also emphasises upon speedy review of disputes and dispute resolution for which it has introduced “the CGP Status Dispute Resolution

MPERC issues revised detailed procedure for verification of status of Captive Generating Plants and Captive users

Committee”. Further, for transparent metering, the CGPs or CUs are obligated to install their own special energy metering facilities.

6. The new procedure also addresses the question of defaulting CGPs, it categorically states that in case of default in fulfilling any of the criterias under Rule 3 of the Electricity Rules or clause 3.1 or 3.1 on an annual assessment basis, the CGP shall become liable to pay cross subsidy charges and additional surcharges and will be charged at an interest rate of 1.25% per month in case of delay in payment.

The National Company Law Tribunal (‘Tribunal’) Mumbai vide its order dated 25.06.2024 in the case of State Bank of India Vs. Navjeevan Tyres Private Limited CP(IB) No. 1282/MB/2022 has held that notice to Corporate Debtor recalling loan facility does not constitute Demand on Corporate Guarantor.

The brief factual matrix of the case is that State Bank of India, the (‘Financial Creditor’) on 22.11.2022 filed an application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (‘IBC Code’) initiating Corporate Insolvency Resolution Process (‘CIRP’) in respect of Navjeevan Tyres Pvt. Ltd (‘Corporate Debtor’). From 2007 to 2018, the Financial Creditor provided several credit facilities to the Principal Borrower, M/s. Deogiri Infrastructure Private Limited and various financial documents and security documents were executed between the parties from time to time. The Corporate Debtor tendered corporate guarantee to the Financial Creditor for the repayment of total outstanding dues payable by the Principal Borrower. Owing to irregularity in repayment of the debt, the Financial Creditor declared the loan account of the Principal Borrower as a Non-Performing Asset (NPA) in accordance with RBI guidelines and Notice under Section 13(2) of the SARFAESI Act, 2002 was issued to the Principal Borrower for repayment of the outstanding amount in full within sixty days from the date of said notice.

The Tribunal determined that the CIRP petition is not maintainable as the Financial Creditor had not made any demand for repayment of debt or invoked the guarantee towards the Corporate Debtor. Further, relying on the Supreme Court's decision in *Syndicate Bank vs. Channaveerappa Beleri & Ors.*, it noted that a guarantor's liability depends on the terms of their contract. Tribunal relied on Clause 1 of the Guarantee Agreement which provided that *“if at anytime default shall be made by the Borrower(s) in payment of the principal sum and /or other monies for the time being due to the Bank in respect of or under the said facilities, the Guarantors shall forthwith pay unconditionally to the Bank merely on demand by the Bank, the whole of such principal sum together with interest, costs, charges, expenses, fees, commission and or any other monies as may be then due to the bank without any demur or protest...”*. Tribunal further observed that the guarantee in question was unconditionally payable to the Financial Creditor merely on demand. In other words, the guarantee agreement in question encompassed a guarantee on demand and the liability of the Corporate Debtor should arise only when demand is made by the Financial Creditor on the Corporate Debtor/ Guarantor. In view of the clear stipulation in the Guarantee Agreement, default on the part of the Corporate Debtor/ Guarantor could not be said to have occurred when Principal Borrower committed default or when the loan accounts of the Principal Borrower were declared as NPA. The subsequently issued Legal Notice demanding payment within 10 days did not refer to the guarantee agreements, nor was it sent to the correct address, resulting in improper service and non-invocation of the guarantee.

The Tribunal thus observed that the Financial Creditor had failed to establish the occurrence of default on part of the Corporate Debtor, which was the pre-requisite condition for triggering CIRP under Section 7 of the Code.

National Company Law Tribunal, Hyderabad Bench (‘NCLT, Hyderabad’), vide its order dated 08.07.2024 in matter of *Central bank of India v. Mr. P. K. Iyer*, has held that the ‘duty’ to ‘examine’ petition under Section 99 of the IBC Code is not a mere formality/procedural but a legal obligation to verify the due compliances/requirements by the Creditor.

The Central Bank of India (‘CBI’) filed a petition under Section 95 of the IBC, seeking to initiate the Insolvency Resolution Process against Mr. P.K. Iyer, the personal guarantor of Deccan

NCLT Mumbai holds that Notice to Corporate Debtor recalling Loan Facility does not constitute as a “Demand” on the Corporate Guarantor

NCLT, Hyderabad holds that duty under Section 99 of IBC is not a mere formality/procedural but a legal obligation to verify the due compliances

Chronicle Holdings Limited (“Principal Borrower”). When the accounts of Principal Borrower were classified as Non-Performing Assets, CBI had pursued remedies under various legal frameworks, including obtaining a recovery certificate from the Debt Recovery Tribunal (“DRT”).

The issue before the NCLT, Hyderabad was whether the petition deserved admission or rejection, particularly considering the procedural requirements under Section 99 of IBC. CBI presented evidence of the debt and default, claiming they followed all necessary procedures, including those prescribed under Section 99. On the other hand, Principal Borrower objected that the notice demanding payment was not properly served.

The NCLT, Hyderabad observed that under Section 99(1) of IBC, the ‘duty’ to ‘examine’ the petition filed under Section 95 of IBC, and to submit a report to the Adjudicating Authority (Debt Recovery Tribunal) recommending for approval or rejection of the petition, cast upon the Resolution Professional is to avoid frivolous petitions. This ‘duty’ is not a ‘mere’ formality/procedural but a legal obligation to verify the due compliances/ requirements by the Creditor which are mandated in terms of sections 95 to 97 of IBC, more particularly the compliance of subsection 4 (b) & (c) of Section 95 IBC.

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