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Explanatory Memorandum

For

Draft Maharashtra Electricity Regulatory Commission (Specific Conditions of Distribution Licence applicable to Indian Railways for its Distribution Operations in Maharashtra) Regulations, 2019

Dated: 9 December, 2019

Introduction

The Indian Railways, had filed a Petition before the Central Electricity Regulatory Commission (CERC) seeking directions inter alia, that all the State Transmission Utilities and the State Load Despatch Centers should provide connectivity to it and to process its application for Open Access treating the Indian Railways as an entity akin to a person who has been granted a Distribution Licence in their State and to allow the use of the Intra-State transmission facilities of Central Transmission Utility (CTU) and State Transmission Utilities (STUs) as incidental to Inter-State transmission of electricity from the place of generation.

CERC by its Order dated 5 November, 2015 allowed the Petition and ruled that:

“ (b) The petitioner is a deemed licensee under third proviso to Section 14 of the Electricity Act and no separate declaration to that effect is required from the Appropriate Commission. The petitioner as a deemed licensee shall be bound by the terms and conditions of licence specified or to be specified by the Appropriate Commission under proviso to Section 16 of the Electricity Act.”

In view of above CERC Order, Indian Railways was expected to approach the Commission for issuance of the Specific Conditions of Licence. The Indian Railways had been appearing before the Commission in various other proceedings, however, it did not approach the Commission for issuance of the Specific Conditions of Licence. Due to its connectivity with Transmission network in terms of CERC Order mentioned above, it had already started drawing power in the capacity of Distribution Licensee.

Against this background, as the Indian Railways did not file the Petition even after passage of more than 3 years of the CERC Order, the Commission initiated a suo moto proceeding (Case No. 149 of 2017) for taking on record the Deemed Distribution Licensee status of Indian Railways and issuing the Specific Conditions of Distribution Licence.

After providing the necessary opportunity to Indian Railways for making its detailed written submission and hearing Indian Railways, the Commission passed the Order in Case No. 149 of 2017 on 21 December, 2018 confirming that Indian Railways is a Deemed Distribution Licensee under the Electricity Act, 2003 and it would be necessary to specify the specific conditions of Distribution Licence for Indian Railways.

The Commission in its aforesaid Order directed Indian Railways to adhere to and comply with following Regulations with immediate effect on provisional basis:

- i. MERC (State Grid Code Regulations) 2006;
- ii. MERC (Transmission Open Access) Regulations, 2016;
- iii. MERC (Renewable Purchase Obligation, its Compliance and Implementation of Renewable Energy Certificate Framework) Regulations, 2016
- iv. MERC (Fees and Charges) Regulations, 2017;
- v. Order issued by the Commission in Case No. 42 of 2007 (ABT) Order and FBSM mechanism;
- vi. Transmission Pricing framework as specified under Multi-Year Tariff Regulations (InSTS Order dated 12 September, 2018 passed by the Commission and other relevant Orders/Directions issued by the Commission in respect of Indian Railways);

- vii. Commission's Orders/Practice directions/amendments, if any in the Regulations mentioned above in relating to Indian Railways.

With regard to applicability and/or exemption of other Regulations, Indian Railways was directed to examine other Regulations notified by the Commission and submit its separate Petition within six months of the Order, proposing the Specific Conditions of its Distribution Licence considering peculiarity of operations of the Indian Railways and covering the aspects such as the area of operations for the Indian Railways in the State of Maharashtra and any other additional condition applicable to Indian Railways etc.

Accordingly, Indian Railways filed its Petition (Case No. 154 of 2019) on 21 June 2019 under Section 16 of the Electricity Act, 2003 (EA) for issuing Specific Conditions with regard to distribution activities of Indian Railways as Deemed Distribution Licensee.

Vide its Order dated 5 September, 2019 in Case No. 154 of 2019, the Commission disposed of the Petition of Indian Railways addressing the various issues/ contentions raised by Indian Railways regarding applicability of various Regulations notified by the Commission. The Commission shall separately notify the Regulations specifying the Specific Conditions of Licence applicable to Indian Railways.

Against this background, the Commission hereby publishes a draft (Specific Conditions of Distribution Licence applicable to Indian Railways for its Distribution Operations in Maharashtra) ('Proposed draft Regulations') seeking comments from stake-holders and the general public. The rationale behind specifying various Regulations in the Proposed draft Regulations are explained below.

1. Short Title, Extent and Commencement

Proposed Regulation

"1. 2 These Regulations shall extend to the Area of Supply of Indian Railways in the State of Maharashtra under jurisdiction and operational control of Central Zone, Western Zone, South Central Zone and South East Central Zone of Indian Railways. "

Rationale

Indian Railways is operating in the State of Maharashtra through its four zones, namely, Central Zone, Western Zone, South Central Zone and South East Central Zone. Hence, the proposed Specific Conditions shall govern its distribution activities in the State of Maharashtra covering its jurisdictional area under these four zones.

2. Area of Distribution

Proposed Regulation

“4.1 The Area of Distribution within which Indian Railways is authorized to undertake distribution of electricity shall be the area in the State of Maharashtra under jurisdiction and operational control of Central Zone, Western Zone, South Central Zone and South East Central Zone of Indian Railway.

*4.2 The said area is more particularly delineated upon the map of the area of supply and deposited by Indian Railways with the Commission. **The map is annexed at Schedule I.***

4.3 The Distribution Licensee is authorized to distribute electricity for its self-use in accordance with the provisions of the Act. However, it shall not undertake trading of electricity or supply to other entities under Open Access arrangement.”

Rationale

Indian Railways in its Petition in Case No. 154 of 2019 had stated that its Area of Distribution may be defined as the Area within which Indian Railways is authorized to supply electricity which shall be restricted to the undertaking of activities stated in Section 11 of the Railways Act. In this context, the Commission noted that Section 11 of the Railways Act, does not provide the specific geographical area for its operations rather it describes the activities that Indian Railways is permitted to undertake under the Railways Act. The same does not serve the purpose as far as specifying an area of operations for a Distribution

Licensee is concerned. Accordingly, the Area of supply as suggested by Indian Railways cannot be specified. In the State of Maharashtra, four zones of Indian Railways are operating viz. Central Zone, Western Zone, South Central Zone and South East Central Zone and all these zones cover the area of other States also. In view of the above, the Area of operation of Indian Railways has been specified as the area in the State of Maharashtra under jurisdiction and operational control of Central Zone, Western Zone, South Central Zone and South East Central Zone of Indian Railway.

The Commission in its Order in Case No. 154 of 2019 has directed Indian Railways to submit a duly certified map indicating the geographical areas for all the aforesaid four zones within the State of Maharashtra within fifteen days of the Order.

However, Indian Railways has still not submitted the duly certified map inspite of the follow up.. In view of the above, the maps (as per records available with the Commission) submitted by Indian Railways in earlier proceeding in Case No. 194 of 2014, for Central and Western Zone, have been enclosed as Annexures to the draft Regulations. Indian Railways is once again directed to submit the duly certified map indicating the geographical areas for all the zones.

Further, since Indian Railways has stated that it is not supplying the electricity to consumers at large, the conditions have been specified that Indian Railways is authorized to distribute electricity for its self-use in accordance with the provisions of the Act.

Under 9th proviso to Section 14 of the Electricity Act, 2003, the Distribution Licensee does not require a Licence to undertake Trading in electricity. Thus, under the provisions of Electricity Act, 2003, Indian Railways is a Deemed Trading Licensee. However, Trading has been defined under the Electricity Act, 2003 as purchase of electricity for resale thereof. The intention behind this provision is to allow the Distribution Licensees to sell its surplus power after supplying its consumers and allow the benefits thereof to consumers in terms of Tariff reduction. Indian Railways is not supplying the electricity to consumers at large and consumes it for self-use. Hence, the Commission deems it fit to specify a condition that

Indian Railways shall not undertake trading of electricity or supply to other entities under Open Access arrangement.

3. Term of Licence

Proposed Regulation

“5. Term of Licence

Subject to the provisions of the Act, Indian Railways shall be deemed to be a licensee for a period of twenty-five (25) years with effect from 5 November, 2015 (i.e., the date of Order passed by the Central Electricity Regulatory Commission in Petition No. 197/MP/2015 pursuant to which Indian Railways has operationalized its Deemed Distribution Licensee status and has started drawing power from the grid in the capacity of Distribution Licensee under Open Access) or until such Licence is revoked, whichever is earlier.”

Rationale

Indian Railways, in its Petition had stated that the concept of Deemed Licensee is that it is not required to obtain any Licence for the purposes of distribution of electricity. Therefore, till such time the Railways Act or the EA recognises Indian Railways as Deemed Licensee, there cannot be any determination of the duration of the Licence or there cannot be any process for amendment or revocation etc. of the Licence or any change in the authority vested in the Indian Railways.

The Commission notes that under Section 15(8) of EA, the term of Licence has been specified as 25 years. Since, Indian Railways is a deemed Distribution Licensee under EA, the term of its Licence would necessarily be 25 years. Pursuant to the Order dated 5 November, 2015 of CERC, Indian Railways has already taken necessary steps for operationalizing its Deemed Distribution Licensee status and has started drawing power from the grid in the capacity of Distribution Licensee by obtaining grid connectivity with the State Transmission Network and Transmission open access. In light of the above, the term of

Distribution Licence for Indian Railways has been specified as 25 years with effect from 5 November, 2015 and the same shall be valid till 4 November, 2040, unless revoked by the Commission.

4. Applicability of MERC (General Conditions of Distribution Licence) Regulations, 2006

Proposed Regulation

“ Regulation 6 Inspection of Specific Conditions and Licence

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Regulation 7 Amendment of Specific Licence Conditions

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Regulation 8 Compliance with Laws, Rules And Regulations

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Regulation 9 Provision of information to the Commission

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Regulation 10 Payment of Licence Fees

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Regulation 11 Revocation of Licence

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Regulation 12 Compliance with the State Grid Code

Rationale

Under Section 16 of the Electricity Act, 2003, the Commission has notified MERC (General Conditions of Distribution Licence) Regulations, 2006 which are applicable to all distribution Licensees in the State. Hence, ideally these Regulations would have been applicable to Indian Railways also. However, considering the fact that Indian Railways does not supply to the consumers at large, it would not be appropriate to enforce all Regulations mentioned in the MERC (General Conditions of Distribution Licence) Regulations, 2006. Applicability of

various Regulations of MERC (General Conditions of Distribution Licence) Regulations, 2006 for Indian Railways is tabulated below:

Sr. No.	Regulation in MERC (General Conditions of Distribution Licence) Regulations, 2006	Applicability and its rational
1.	Regulation 4 <i>ELIGIBILITY CONDITIONS/DISQUALIFICATIONS</i>	<u>Not applicable</u> as this Regulation deals with the eligibility condition to be fulfilled at the time of grant of Licence.
2	Regulation 5.1, 5.2 and 5.3 <i>PROCEDURE FOR GRANT OF LICENCE</i>	<u>Not applicable</u> as this Regulation deals with the procedure to be followed at the time of grant of Licence.
3	Regulation 5.4 <i>INSPECTION OF LICENSE AND SUPPLY OF COPIES THEREOF</i>	<u>Applicable</u> for transparency purpose. Incorporated in the draft Regulations (Regulation Sr. No. 6)
4	Regulation 6 <i>AMENDMENT OF LICENCE</i>	<u>Applicable.</u> Since the Commission has powers under Section 18 of Electricity Act, 2003 to amend the Licences of Distribution Licensees including the Deemed Distribution Licensees, the relevant procedure needs to be stipulated in the Regulations. Incorporated in the draft Regulations (Regulation Sr. No. 7)
5	Regulation 7 <i>PROCESSING OF APPLICATIONS</i>	<u>Applicable</u> since amendment Application of any Distribution Licensee has to be processed as per MERC (Conduct of Business) Regulation, 2004. Incorporated in the draft Regulations (Regulation Sr. No. 7.6)
6	Regulation 8.1 <i>TERM</i>	<u>Applicable</u> since the Electricity Act, 2003 specifies the term of Licence as 25 years. Incorporated in draft Regulations (Regulation Sr. No. 5)
7	Regulation 8.2 <i>COMPLIANCE WITH LAWS, RULES AND REGULATIONS</i>	<u>Applicable</u> since Indian Railways as deemed Distribution Licensee has to adhere relevant provisions of the Act, Rules, Regulations, Orders and Directions issued by the Commission. Incorporated in draft Regulations (Regulation Sr. No. 8)
	FUNCTIONS / ACTIVITIES OF THE DISTRIBUTION LICENSEE	
8	Regulation 8.3.1 and 8.3.2	<u>Not applicable.</u> These Regulations require the Distribution Licensees to supply to the

		consumers by adhering the Standards of Performance Regulations notified by the Commission. which is not relevant for Indian Railways. Considering the fact that Indian Railways does not supply the power to the consumers at large and consumes the same for self-use, these Regulations are not relevant for Indian Railways.
9	Regulation 8.3.3	<u>Not applicable.</u> This Regulation requires the power procurement by Distribution Licensee to be regulated by the Commission which is not relevant for Indian Railways.
10	Regulation 8.3.4	<u>Not applicable.</u> This Regulation allows the Distribution Licensee to recover the Tariff by selling electricity which is not relevant for Indian Railways.
11	Regulation 8.3.5	<u>Not applicable.</u> This Regulation mandates the Distribution Licensee to provide Non discriminatory Open Access” to its Distribution Systems to other eligible users. <u>Since, for Indian Railways, the Commission is not required to undertake Tariff determination, Indian Railways has to build its distribution network though its own funds without any recovery from electricity consumers in the State. Also, through this distribution system, the critical railway operations are to be effected. It is therefore not intended to interfere with the flow of power which is sourced by Indian Railways for self use.</u>
12	Regulation 8.3.6	<u>Not applicable.</u> This Regulation mandates the Distribution Licensee to provide to other licensees the intervening distribution facilities to the extent of surplus capacity available. The rationale given for Regulation 8.3.5 equally applies to this Regulation also.
13	Regulation 8.3.7 (a)	<u>Not applicable.</u> This Regulation allows the Distribution Licensee to appoint Franchisees to distribute and/or supply electricity within his area of supply. Since Indian Railways does not supply to consumers at large, same may not be

		relevant to Indian Railways.
14	Regulation 8.3.7 (b)	<u>Not applicable.</u> As mentioned earlier, Indian Railways shall not undertake trading of electricity.
15	Regulation 8.3.8	<u>Not applicable.</u> This Regulation requires the Distribution Licensee to seek the Commission's prior approval for making any loan except for the loans made for the Licensed business. Since, Indian Railways' loan arrangement would not impact the electricity consumers, this Regulation is not relevant to Indian Railways.
16	Regulation 8.3.9	<u>Not applicable.</u> This Regulation allows the Distribution Licensee with prior intimation to the Commission, engage any of its affiliates to provide any goods or services to the Licensee in connection with the Licensed Business with certain conditions such as arm length basis transaction, consistency with the law relating to the provision of goods and services, providing all details of the arrangement in ARR Petition, submission of certificate from a Chartered Accountant for each year. Considering the fact that Indian Railways does not supply the power to the consumers at large and consumes the same for self-use, the responsibility to ensure the competitiveness in availing the goods and services lies with Indian Railways itself.
17	Regulation 8.3.10	<u>Applicable.</u> This Regulation prohibits the Distribution Licensee to transfer or assign the Licence to any other person without the prior approval of the Commission. However, such restrictions are already stipulated under Section 17(3) of the Electricity Act, 2003 and hence the Commission is not inclined to repeat the same restriction in the draft Regulations.
18	Regulation 8.3.11	<u>Not applicable.</u> This Regulation requires the Distribution Licensee to provide the details of Distribution Franchisee to the Commission. The rationale given for Regulation 8.3.7(a)

		equally applies to this Regulation also.
19	Regulation 8.3.12 (a)	Applicable. This Regulation prohibits the Distribution Licensee to undertake any transaction to acquire the utility of any other Licensee without the Commission's prior approval. However, such restrictions are already stipulated under Section 17(3) of the Electricity Act, 2003 and hence the Commission is not inclined to repeat the same restriction in the draft Regulations.
20	Regulation 8.3.13 and 8.3.14	Not applicable. These Regulations puts certain conditions when the assets of the licensed business are proposed to be utilized for other business/s of the Distribution Licensee. Since, such utilization of assets would not have any impact on the electricity consumers, hence the Commission is not inclined to impose any conditions on such asset utilization.
21	Regulation 8.4	Not applicable. These Regulations requires the Distribution Licensee to maintain separate accounts for Licensed and non-licensed business, the purpose of which is to clearly identify the expenses and revenue for licensed business at the time of ARR and Tariff determination. Since, in case of Indian Railways, Tariff determination is not to be undertaken, these Regulations are not relevant to it.
22	Regulation 8.5 PROHIBITION OF UNDUE PREFERENCE	Not applicable. This Regulation prohibits the Distribution Licensee to show undue preference to any Person in the Distribution or Supply of Electricity or rendering of services in the area of supply. Since Indian Railways is not supplying electricity to the consumers at large, this Regulation would not be applicable to Indian Railways.
23	Regulation 8.6 PROVISION OF INFORMATION TO THE COMMISSION	Applicable. These Regulations mandate the Distribution Licensee to provide the information as and when sought by the Commission, to inform the Commission about the major incidents occurred to its Distribution

		system, to undertake study as per directions of the Commission post occurrence of any incident. Considering the safety involved, these Regulations are incorporated in the draft Regulation 9. However, submission of business plan and submission of quarterly data related to Standards of Performance are not relevant to Indian Railways.
24	Regulation 8.7 CAPITAL INVESTMENTS	<u>Not applicable.</u> This Regulation requires the Distribution Licence to obtain prior approval of the Commission for schemes involving capital investments. For Indian Railways, the Commission is not required to undertake Tariff determination, Indian Railways has to build its distribution network through its own funds without any recovery from electricity consumers in the State. Hence, such prior approval is not necessary.
25	Regulation 8.8 TRANSFER OF ASSETS	<u>Applicable.</u> This Regulation prohibits the Distribution Licensee to transfer or relinquish Operational Control over certain value without intimation to the Commission. However, such restrictions are already stipulated under Section 17(3) of the Electricity Act, 2003 and hence the Commission is not inclined to repeat the same restriction in the draft Regulations.
26	Regulation 8.9 PAYMENT OF LICENCE FEES	<u>Applicable.</u> All Distribution Licensees including the Deemed Distribution Licensee are required to pay the Annual Licence Fees. Incorporated in draft Regulations (Regulation Sr. No. 10)
27	Regulation 8.10 REVOCAION OF LICENCE	<u>Applicable.</u> Section 19 of the Electricity Act, 2003 related to Licence revocation is equally applicable to Indian Railways as no distinction /exclusions has been made in this provision for Deemed Licensees. Incorporated in draft Regulations (Regulation Sr. No. 11)
28	Regulation 8.11 AMENDMENT OF LICENCE CONDITIONS	<u>Applicable.</u> Section 18 of the Electricity Act, 2003 related to Licence amendment is equally applicable to Indian Railways as no distinction /exclusions has been made in this provision for Deemed Licensees. Incorporated in the draft

		Regulations (Regulation Sr. No. 7)
29	Regulation 8.12 DISPUTE RESOLUTION	Applicable. However, under Section 86(1)(f) of the Electricity Act, 2003, the Commission has powers to adjudicate the disputes between Licensees and the Generating Companies, hence the Commission is not inclined to repeat the same restriction in the draft Regulations.
30	Regulation 8.13 COMPLIANCE WITH THE STATE GRID CODE	Applicable. Indian Railways, being the user of Intra-State Transmission System, is required to comply with the MERC (State Grid Code Regulations) 2006 and amendments, if any thereof. Incorporated in the draft Regulations (Regulation Sr. No. 12)
31	Regulation 8.14 ELECTRICITY SUPPLY CODE AND OTHER CODES Regulation 8.15 CONSUMER RELATED MATTERS	Not applicable. Since Indian Railways is not engaged in supply to consumers at large, these Regulations are not relevant to it.

5. Standby Arrangement

Proposed Regulation

“ 13. Standby arrangement

- i. Indian Railways shall enter into a suitable and adequate standby supply arrangement/agreement within three months of the Notification of these Regulations in the official gazette.*
- ii. Standby capacity of such standby supply arrangement/agreement shall be equivalent to the largest Unit size of the Generating Unit contracted by Indian Railways on long term basis.*
- iii. Before entering into such arrangement/agreement, Indian Railways shall have due consultation with Maharashtra State Load Dispatch Centre and seek its written consent about the arrangement. ”*

Rationale

While, the Commission, in its Order dated 21 December, 2018, has already directed Indian Railways to adhere to the State Grid Code, a Petition in Case No. 2 of 2019 had been filed by Maharashtra State Electricity Distribution Co. Ltd. seeking directions to Indian Railways to sign Standby Agreement as per directions issued by the Commission in its Order dated 19 March, 2018 in Case No. 114 of 2016. In that proceeding, it was pointed out to the Commission, that in events of tripping of Generators contracted by Indian Railways (i.e. Ratnagiri Gas and Power Pvt. Ltd. (RGPPL) or Bhartiya Rail Bijlee Co. Ltd. (BRBCL) Units), it continued to overdraw from the grid. On each and every occasion of tripping of RGPPL or BRBCL Units, MSLDC directed Indian Railways to curtail its load to match the reduced availability/schedule of its contracted generators and also to make standby arrangement to maintain the grid discipline. In light of the above background and also considering the importance of uninterrupted supply to the operations of Railways for Mumbai as well as rest of Maharashtra, the Commission deems it appropriate to specify the Specific Conditions mandating Indian Railways to enter into a suitable and adequate standby supply arrangement within three months of the Notification of the Regulations in the official gazette

6. Power Procurement Plan

Proposed Regulation

“14. Power Procurement Plan

Indian Railways is required to submit its Power Procurement Plan along with proposed location of Traction Substations to State Transmission Utility of Maharashtra and Maharashtra State Load Dispatch Centre. The Power Procurement Plan shall be submitted within one month of the Notification of these Regulations in the official gazette. Also, in case of any change in the plan in future, the revised plan shall also be submitted by the Indian Railways.”

Rationale

Indian Railways, in its Petition had stated that it is not engaged in the activities of distribution or supply of electricity to the public at large and as such has no consumers and hence, the provisions related to Tariff determination in the MERC (Multi Year Tariff) Regulations, 2019 would not be applicable to it.

Considering the fact that Indian Railways does not supply the power to the consumers at large and consumes the same for self-use, the Commission is of the opinion that the responsibility to ensure the competitiveness of the power procurement automatically lies with Indian Railways itself and the Commission does not find any reason to interfere with it. Hence, the Commission is of the opinion that the provisions in MYT Regulations related to Tariff determination would not be applicable to Indian Railways and also the Commission is not required to regulate the power procurement of Indian Railways as required under these Regulations.

However, under State Grid Code, in order to enable State Transmission Utility of Maharashtra (STU) to prepare five year Transmission System Plan for Intra-State Transmission System, the Distribution Licensees are required to provide their long term load forecasts and proposed locations of Traction Sub-stations (TSS) to the STU. Indian Railways being the State Pool Participant, has the primary responsibility for developing long term load forecasts for its operations in the State of Maharashtra.

Further, in recent past, the issue of over-drawal by Indian Railways from State Grid during the interruption of its contracted generators had arisen. Considering the nature of operations of Indian Railways, uninterrupted power supply to its TSS is of utmost importance. Also, there are transmission constraints in certain parts of Intra-State Transmission System which needs to be taken into consideration by MSLDC while scheduling power to various Distribution Licensees including Indian Railways.

Considering the aforesaid facts, MSLDC needs to be aware of the various aspects of power procurement of Indian Railways such as quantum of tied up capacity, whether short term or long term, details of injection points and drawal points, standby power etc. Hence, the Commission deems it fit to mandate Indian Railways to submit its Power Procurement Plan along with proposed location of TSS to STU and SLDC within one month of the notification

of these Regulations. Also, in case of any change in the plan in future, the revised plan shall also be submitted by the Indian Railways.

7. Payment of Open Access Charges

Proposed Regulation

“ 15. Payment of Open Access Charges

Indian Railways shall pay Cross Subsidy Surcharge (CSS) and such other charges as may be applicable under the Open Access Regulations to the incumbent Licensee. ”

Rationale

Since Indian Railways, in its Petition in Case No. 154 of 2019 had repeatedly stated that it is not engaged in the distribution or supply of electricity to the public at large and as such has no consumers, the Commission had examined the issue of applicability of cross subsidy surcharge to Indian Railways in Case No. 154 of 2019.

In its Judgment dated 25 April, 2014 in Civil Appeal No. 5479 of 2013 (M/s. Sesa Sterlite Ltd. v/s. Orissa Electricity Regulatory Commission & Ors.) Hon’ble Supreme Court has dealt with the issue of liability of Deemed Distribution Licensee (SEZ developer) to pay cross subsidy surcharge to the incumbent Distribution Licensee. The Hon’ble Supreme Court has analyzed the issue of cross subsidy surcharge and held as follows:

“.....A fortiori, even a licensee which purchases electricity for its own consumption either through a “dedicated transmission line” or through “open access” would be liable to pay Cross Subsidy Surcharge under the Act.. ”

It is an admitted fact that Indian Railways is procuring power for self-consumption. Therefore, the Commission is of the opinion that above Judgment is applicable to Indian Railways.

The Commission further notes that under Section 173 of EA, the Railways Act is considered as a special enactment applicable to Indian Railways. However, Indian Railways Act does

not have any provision related to Open Access. The Open Access sought by the Indian Railways falls squarely under the provisions of EA.

Section 173 of the Electricity Act, 2003 does not create any bar against the levy of Cross Subsidy Surcharge on the Indian Railways, in view of the lack of any inconsistency on the Open Access aspect with the provision of the Railways Act.

In light of the above, Indian Railways would be required to pay cross subsidy surcharge and such other charges as may be applicable under the Open Access Regulations to the incumbent Licensee and the Specific Conditions mandating the same has been incorporated in the Regulations. Further, these Open Access Charges shall be applicable immediately upon notification of these Regulations in official Gazette and hence on prospective basis.

8. Applicability of Regulations specified by the Commission

Proposed Regulation

“ 16. Applicability of various Regulations notified by the Commission

Indian Railways would have to adhere to the following Regulations and the amendments thereof and Rules/Procedures/Guidelines made thereunder:

- i. MERC (State Grid Code Regulations) 2006;*
- ii. MERC (Transmission Open Access) Regulations, 2016;*
- iii. MERC (Renewable Purchase Obligation, its Compliance and Implementation of Renewable Energy Certificate Framework) Regulations, 2016*
- iv. MERC (Fees and Charges) Regulations, 2017;*
- v. MERC (Forecasting, Scheduling and Deviation Settlement for Solar and Wind Generation) Regulations, 2018 ;*
- vi. MERC (Net Metering for Roof-top Solar Photo Voltaic Systems) Regulations, 2015 ;*
- vii. MERC (Terms and Conditions for Determination of Renewable Energy Tariff) Regulations, 2015 ;*

- viii. *MERC Guidelines for operation of merit order despatch under availability based Tariff Order ;*
- ix. *MERC (Deviation Settlement Mechanism & related matters) Regulations, 2019 ;*
- x. *Order issued by the Commission in Case No. 42 of 2007 (ABT) Order and FBSM mechanism;*
- xi. *Transmission Pricing framework as specified under Multi-Year Tariff Regulations (InSTS Order dated 12 September, 2018 passed by the Commission and other relevant Orders/Directions issued by the Commission in respect of Indian Railways);*
- xii. *Commission's Orders/Practice directions/amendments, if any in the Regulations mentioned above in relating to Indian Railways.*

Rationale

A] Rationale for applicability of various Regulations notified by the Commission is as follows:

- i. MERC (State Grid Code) Regulations, 2006
- ii. MERC (Transmission Open Access) Regulations, 2016
- iii. MERC (Renewable Purchase Obligation, its Compliance and Implementation of Renewable Energy Certificate Framework) Regulations, 2016

Indian Railways being a Deemed Distribution Licensee and also a State Pool Participant utilizing Intra-State Transmission System under Open Access, needs to adhere to the above-mentioned Regulations.

- iv. MERC (Fees and Charges) Regulations, 2017

Indian Railways is required to be regulated by the Commission on certain aspects of its Distribution activities, hence, Indian Railways would have to adhere to MERC (Fees and Charges) Regulations, 2017.

v. MERC (Forecasting, Scheduling and Deviation Settlement for Solar and Wind Generation) Regulations, 2018

vi. MERC (Net Metering for Roof-top Solar Photo Voltaic Systems) Regulations, 2015

vii. MERC (Terms and Conditions for Determination of Renewable Energy Tariff) Regulations, 2015

Indian Railways is required to adhere to the applicable provisions of these Regulations.

viii. MERC Guidelines for operation of merit order despatch under availability based Tariff Order

ix. MERC (Deviation Settlement Mechanism & related matters) Regulations, 2019

x. Order issued by the Commission in Case No. 42 of 2007 (ABT) Order and FBSM mechanism;

xi. Transmission Pricing framework as specified under Multi-Year Tariff Regulations (InSTS Order dated 12 September, 2018 passed by the Commission and other relevant Orders/Directions issued by the Commission in respect of Indian Railways);

xii. Commission's Orders/Practice directions/amendments, if any in the Regulations mentioned above in relating to Indian Railways.

Indian Railways being a Deemed Distribution Licensee and also a State Pool Participant utilizing Intra-State Transmission System under Open Access, needs to adhere to the above-mentioned Regulations.

B] Other Regulations shall not be applicable to Indian Railways for the rationale given:

i. MERC (Electricity Supply Code and Other Conditions of Supply) Regulations, 2005;

ii. MERC (Standard of Performance of Distribution Licensees, Period of Giving Supply and Determination of Compensation) Regulations, 2014;

iii. MERC (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2006;

iv. MERC (Multi Year Tariff) Regulations, 2019

The Commission notes the submission of Indian Railways that it is not engaged in the activities of distribution or supply of electricity to the public at large and as such has no consumers. In view of this, the above mentioned Regulations would not be applicable to Indian Railways.

v. MERC (Distribution Open Access) Regulations, 2016

As mentioned earlier, Indian Railways has to build its distribution network through its own funds without any recovery from electricity consumers in the State. Also, through this distribution system, the critical railway operations are to be effected. It is therefore not intended to interfere with the flow of power which is sourced by Indian Railways for self use. Hence, this Regulation would not be applicable to Indian Railways.

**Sd/-
(Mukesh Khullar)
Member**

**Sd/-
(I.M. Bohari)
Member**

**Sd/-
(Anand B. Kulkarni)
Chairperson**