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# MAHARASHTRA ELECTRICITY REGULATORY COMMISSION (MULTI YEAR TARIFF) REGULATIONS, 2019 (SECOND AMENDMENT)

## STATEMENT OF REASONS

Dated: 8 June 2023

### Introduction

The Maharashtra Electricity Regulatory Commission ("MERC" or "the Commission") has notified the Maharashtra Electricity Regulatory Commission (Multi Year Tariff) Regulations, 2019 ["MERC MYT Regulations, 2019"] for the period from April 1, 2020 to March 31, 2025 on August 1, 2019. In accordance with Section 61(a) of the Act, the Commission has been guided by the principles and methodologies specified by the CERC for determination of the tariff applicable to Generating Companies and Transmission Licensees, while framing the Tariff Regulations for the next Control Period. Also, the Commission has continued the approach of Multi-Year Tariffs, which have been in force in the State of Maharashtra from August 2005, in accordance with Section 61(f) of the Act.

The Commission has notified the MERC (MYT) (First Amendment) Regulations, 2023 on 10th February, 2023 regarding Threshold Limit of TBCB for Intra-State Transmission System projects under Section 63 of the Electricity Act, 2003.

The Commission proposed the Draft MERC MYT (Second Amendment) Regulations, 2022 with the rationale for the various provisions proposed in the Draft Second Amendment Regulations, 2022 elaborated in the Explanatory Memorandum (EM) published along with the Draft Second Amendment Regulations, 2022.

Accordingly, the Draft Second Amendment Regulations, 2022 and the associated Explanatory Memorandum were published on the Commission's website *www.merc.gov.in* in downloadable format on 29th October, 2022. A Public Notice was also published in daily newspapers Marathi

(Maharashtra Times and Loksatta) and English (Indian Express and Times of India), inviting comments, objections and suggestions from all stakeholders to be submitted to the office of Commission on or before 19th November, 2022, which was subsequently extended till 5th December, 2022.

A total of 7 stakeholders have submitted their comments/suggestions/objections on the Draft Second Amendment to MERC MYT Regulations, 2019. The list of stakeholders who offered their comments/suggestions/ objections on the Draft Second Amendment to MERC MYT Regulations, 2019, which have been considered by the Commission while finalising the Regulations, is placed at **Annexure-I**.

The main comments/suggestions/objections and views expressed by the stakeholders through their written submissions and the Commission's views thereon have been summarized in the following paragraphs. It may be noted that all the suggestions given by the stakeholders have been considered and the Commission has attempted to elaborate all the suggestions as well as the Commission's decisions on each suggestion in the Statement of Reasons (**SOR**). However, in case any suggestion is not specifically elaborated, it does not mean that the same has not been considered. Further, some stakeholders have suggested changes on Syntax/phrase/addition of word(s)/rewording related changes, etc., which have been suitably incorporated, wherever necessary.

Wherever possible, the comments and suggestions or objections have been summarised clause-wise, along with the Commission's analysis and ruling on the same. However, in some cases, due to overlapping of the issues/comments, the clauses have been combined in order to minimise repetition.

Some comments and suggestions were not directly related to the Draft Regulations on which inputs were invited. While the Commission has summarised such comments and suggestions or objections briefly in this Statement of Reasons (SOR), specific rulings on the same have not been provided, as the same are outside the scope of these Regulations.

The SOR is organised in the following Chapters, along the same lines as the Draft MERC MYT (Second Amendment) Regulations, 2019, summarising the main issues raised during the public consultation process, and the Commission's analysis and decisions on them which underlie the Regulations as finally notified:

**Chapter 1:** STU Petition Seeking Removal of Difficulties in Implementation of MYT Regulations (Amendments related to levy of transmission charges).

**Chapter 2:** Amendments in accordance with provisions of MERC (Approval of Capital Investment Schemes) Regulations, 2022.

**Chapter 3:** Amendments in accordance with CERC Tariff Regulations, 2019-24.

**Chapter 4:** Ministry of Power (MoP) revised policy for co-firing of biomass in coal-based power plants.

**Chapter 5:** Electricity (Late Payment Surcharge and Related Matters) Rules, 2022 issued by MoP.

**Chapter 6:** Additional Points.

# 1 STU Petition Seeking Removal of Difficulties in Implementation of MYT Regulations

## 1.1 Regulation 66: Usage of Intra-State Transmission System

### *1.1.1 Amendment Proposed in Draft Second Amendment Regulations, 2022*

The Regulation 66 was proposed to be substituted by the following:

*"The charges for intra-State transmission usage shall be shared among various TSUs in the following manner:*

*a) Long-Term TSU with Recorded Demand in any 15-minute time block up to Base TCR shall not be subjected to payment of Short-Term Transmission Charges.*

*b) Long-Term TSU with Recorded Demand in any 15-minute time block greater than Base TCR but lower than Contracted Capacity shall make payment of Short-Term Transmission Charges for the recorded demand in excess of Base TCR.*

*c) Long-Term TSU with Recorded Demand in any 15-minute time block lower than Base TCR and greater than Contracted Capacity shall not be subjected to payment of Short-term Transmission Charges.*

*d) Long-Term TSU with Recorded Demand in any 15-minute time block greater than Contracted Capacity, where Contracted Capacity is greater than Base TCR, shall make payment of Short-Term Transmission Charges for the Recorded Demand in excess of Base TCR and shall also make payment of Additional Regulatory Charge for Recorded Demand in excess of Contacted Capacity as specified in Regulation 14.5 of the Maharashtra Electricity Regulatory Commission (Transmission Open Access) Regulations, 2016, as amended time to time.*

*e) Long-Term TSU with Recorded Demand in any 15-minute time block greater than Base TCR, where Contracted Capacity is less than Base TCR, shall make payment of Short-Term Transmission Charges for the Recorded Demand in excess of Base TCR and shall also make payment of an Additional Regulatory Charge for Recorded Demand in excess of Base TCR as specified in Regulation 14.5 of the Maharashtra Electricity Regulatory Commission (Transmission Open Access) Regulations, 2016 as amended time to time:*

*Provided that the calculation of the Short-Term Transmission Charges and Additional Regulatory Charge shall be based on the 15-minute time block basis or as amended time to time:*

*Provided further that the applicability and calculation of the Short-Term Transmission Charges and Additional Regulatory Charge shall be as shown in the Table below:*

| *Sl. No.* | *Scenario* | *Applicable Charges* | *Calculations of charges on 15-minute time block basis* |
|---|---|---|---|
| *a)* | ***RD*** *< Base TCR < CC* | *Only Monthly Transmission Charges (MTC)* | *STTC will not apply as RD is within Base TCR. TSU pays Transmission charges upto Base TCR.* |
| *b)* | *Base TCR <* ***RD*** *< CC* | *STTC as per Regulation 66(b) of MYT Regulations, 2019* | *STTC = (RD– Base TCR) in kW x S.T. Rate (Rs./kWh)* |
| *c(i)* | *CC <* ***RD*** *< Base TCR* | *Only MTC* | *STTC will not apply as RD is within Base TCR. TSU pays Transmission charges upto Base TCR.* |
| *c(ii)* | *Base TCR < CC <* ***RD*** | *STTC as per Regulation 66 (b)*<br><br>*ARC equal to 25% of the LTTC for the use of InSTS in excess of its CC as per Regulation 66 (c) and Regulation 14.5 of TOAR, 2016.* | *STTC = (RD – Base TCR) in kW x S.T. Rate (Rs./kWh)*<br><br>*ARC = (RD – CC) in kW x 0.25 x LTTC (Rs/kW/month)* |
| *C (iii)* | *CC< Base TCR <* ***RD*** | *STTC as per Regulation 66 (b) of MYT Regulations 2019*<br><br>*ARC=25% of the LTTC for the use of an InSTS in excess of its Base TCR. Regulation 14.5 of TOA,2016* | *STTC = (RD – Base TCR) in kW x S.T. Rate (Rs./kWh)*<br><br>*ARC = (RD – Base TCR) in kW x 0.25 x LTTC (Rs/kW/month)* |

### *1.1.2 Comments Received*

The Maharashtra State Electricity Distribution Company Limited (MSEDCL) submitted that the amendment is in line with the Order dated 18 October 2020 in Case No. 52 of 2020 for removal of difficulty on Petition filed by the STU, wherein the Commission clarified the

methodology for computation of Intra-State Transmission Charges under different circumstances.

MSEDCL submitted that the computation of Base Transmission Capacity Rights should continue to be in accordance with the average of Coincident Peak Demand and Non-Coincident Peak Demand as defined in Regulation 64.2 of MERC MYT Regulations, 2019.

#### *1.1.3 Analysis and Commission's Decision*

As elaborated in the Explanatory Memorandum, the State Transmission Utility (STU) vide its Petition in Case No. 52 of 2020 sought clarification on the methodology to be adopted for levying Transmission Charges as per the Regulation 66 (a), (b) and (c) of the MYT Regulations 2019, read with Regulations 14.1 and 14.5 of the MERC (Transmission Open Access) Regulations, 2016.

The Commission, vide Order dated 18 October 2020 in Case No. 52 of 2020, inter-alia ruled as under:

> *"vii. As highlighted above, the Regulation 63 was framed with the expectation that CC shall be always greater than or at least equal to Base TCR but not less than Base TCR. However, as cited above, subsequent to notification of these Regulations, over the period, it is noted that cases different to those envisaged in the normal course have emerged. Implementation of Regulation 63 in the present form to these cases emerged over the period would lead to undue burden or undue benefit to some of the TSUs in terms of double Transmission Charges, which is not the intention of the MYT Regulations. Hence,* ***it is necessary to remove the difficulty that has arisen in the implementation of the provision of Regulation 63 of the MYT, 2015 (and 66 of MYT Regulation, 2019) so as to avoid the double charging of Transmission Charges if RMD>Base TCR >CC.*** *This has been reiterated by some of the TSU's.*
>
> *viii. However, the Commission notes that the MYT Regulations, 2015 were applicable from FY 2016-17 and only up to FY 2019-20. It means these Regulations are repealed now and applicability of these Regulations, 2015 is over. Hence, MYT Regulations, 2015 cannot be amended either retrospectively or prospectively. That being the constraint,* ***the only option available is to remove the difficulty that has arisen in the implementation of the MYT Regulations, 2019 which are applicable for FY 2020-21 to FY 2024-25, i.e., 4th Control Period****.*
>
> ...

*xvii. Based on the above discussion,* ***the Table for LTTC, STTC and ARC as per the provisions of the Regulation 66 of the MYT Regulations, 2019 is as under****:*

...

*xviii.* ***Application of charges as per Regulation 66 (a) (b) (c) of MYT Regulations, 2019 shall be as shown in the Table 6 above from 1 April, 2020 on 15-minute time block basis as per data submitted by SLDC i.e. for 4th Control Period till the amendment of the MYT Regulations, 2019****".* ***(emphasis added)***

Thus, this clause has already been implemented based on the Commission's Order as reproduced above. The proposed clause in the Draft Second Amendment Regulations, 2022 is exactly in accordance with the above Order of the Commission, and is intended to ensure consistency in the Regulations.

Also, MSEDCL has not submitted any rationale or justification for not amending the Regulations as proposed, and for continuing the dispensation as originally proposed in the MERC MYT Regulations, 2019.

The Commission has therefore, not made any modifications in the Draft Second Amendment Regulations, 2022 in this regard.

# 2 Amendments in accordance with provisions of MERC (Approval of Capital Investment Schemes) Regulations, 2022

## 2.1 Introduction of 3rd proviso to Regulations 24.7: Allow capitalisation against Non-DPR Schemes

### *2.1.1 Additional Proviso Proposed in Draft Second Amendment Regulations, 2022*

*"Provided also that the Commission shall allow capitalisation against non-DPR schemes for any Year in excess of 20% or such other limit as may have been stipulated by the Commission through Order, in case the limit of Non-DPR Schemes has been exceeded on account of increase in the limit for consideration as DPR Scheme from Rs. 10 Crore to Rs. 25 Crore, as specified in Regulation 4.1 of the Maharashtra (Approval of Capital Investment) Regulations, 2022, as amended from time to time."*

### *2.1.2 Comments Received*

Adani Power Maharashtra Limited (APML) and Maharashtra Eastern Grid Power Transmission Company Limited (MEGPTCL) submitted that the Commission should also consider allowing capitalisation in case of project-specific Transmission Licensees. The stakeholders submitted that in case of project-specific Transmission Licensees, the limit of capitalization of non-DPR scheme as % of DPR schemes should not be applied and the same should be allowed up to 0.2% of project cost per annum.

The stakeholders added that every Transmission Licensee requires to incur certain periodic capital expenditure to run its business on heads like furniture and fixtures, computers, software, etc. Project-specific Transmission Licensees are hardly required to implement DPR schemes post commercial operation and hence, may not qualify for undertaking any non-DPR scheme as % of DPR scheme under this Clause. Therefore, only providing relaxation for non-DPR schemes as % of DPR scheme may not serve the purpose and project-specific Transmission Licensees should be allowed to incur capital expenditure against non-DPR schemes with reference to their total project cost.

### *2.1.3 Analysis and Commission's Decision*

The situation referred to by the stakeholders is squarely covered under the provisions of Regulation 25 of the MERC MYT Regulations, 2019 regarding Additional Capitalisation. The project-specific Transmission Licensees are allowed to undertake additional capital expenditure after the cut-off date only in accordance with the above-stated provisions. Further, the MERC (Approval of Capital Investment Schemes) Regulations, 2022 clearly specify the various

scenarios under which the Utilities can undertake Capital expenditure schemes under the DPR and Non-DPR route, and the requirements to be fulfilled for the same.

In such cases, the project-specific Transmission Licensees may approach the Commission for approval of such Non-DPR capital expenditure at the time of tariff determination, along with the appropriate justification, irrespective of the fact that the Capital expenditure approved against DPR Schemes may be Nil. In the past also, the Commission has allowed Non-DPR capital expenditure for Utilities, whose DPR capex has been Nil.

The Commission has therefore, not made any modifications in the Draft Second Amendment Regulations, 2022 in this regard.

## 2.2 Introduction of Regulation 28.4 (a) and (b) after Regulation 28.4: Depreciation on Capital Investment Scheme

### *2.2.1 Additional Clauses Proposed in Draft Second Amendment Regulations, 2022*

*"28.4 (A) The depreciation on capital investment schemes undertaken by Generating Companies or Generating Businesses shall be allowed proportionately corelated to the remaining tenure of the Power Purchase Agreement with the Distribution Licensee.*

*28.4 (B) Depreciation on capital investment schemes shall be computed annually from the date of operation of such capital investment based on straight line method, with salvage value of 10%, over a period of –*

*(i) Twenty-five years, in case the principal asset is in operation for fifteen years or less as on the date of operation of the capital investment; or*

*(ii) balance useful life of the principal asset plus fifteen years, in case the principal asset is in operation for more than fifteen years as on the date of operation of the capital investment."*

### *2.2.2 Comments Received*

The Tata Power Company Limited (TPC) submitted that Regulation 28.4 (b) may be deleted as its purpose is not clear and it may not be required, in view of Regulation 28.4 (a).

MSEDCL submitted that any investment (including emission control system) that is proposed to be taken up by Generating Companies should always be linked to useful life of the Plant rather than the tenure of the Power Purchase Agreement (PPA) with the Distribution Licensee. MSEDCL added that the capital expenditure, which is incurred, gives benefit to the generating Unit till its useful life, which can be beyond the tenure of its PPA with the Distribution Licensee. Hence, it would not be appropriate to recover the cost of such capital expenditure within the PPA tenure, as it would lead to burdening of additional cost on the consumers.

### *2.2.3 Analysis and Commission's Decision*

The Commission clarifies that there is no inconsistency between Regulations 28.4 (A) and 28.4 (B). Regulation 28.4 (A) specifies that recovery of depreciation is linked to balance tenure of PPA with the Distribution Licensee, while Regulation 28.4 (B) specifies the method for computation of depreciation on the additional capital investment, based on the balance Useful Life of the principal asset.

As regards MSEDCL's submission, it is clarified that MSEDCL's concern is already addressed, as the Draft Regulations specify that depreciation shall be allowed proportionately corelated to the remaining tenure of the PPA with the Distribution Licensee. Hence, the Generating Company will be allowed to recover the depreciation proportionately only till the tenure of the PPA, as after expiry of the PPA, the Generator is free to sell power to any entity and such cost shall be recovered from such new beneficiaries. Thus, there shall not be any additional burden on the consumers on this account.

The Commission has therefore, not made any modifications in the Draft Second Amendment Regulations, 2022 in this regard.

## 2.3 Modification of First Proviso and Introduction of Second Proviso to Regulation 29.3: Return on Equity with respect to Additional Capitalisation

### *2.3.1 Amendments Proposed in Draft Second Amendment Regulations, 2022*

*"29.3 The Base Return on Equity shall be computed in the following manner:*

*(a) Return at the allowable rate as per this Regulation, applied on the amount of equity capital at the commencement of the Year; plus*

*(b) Return at the allowable rate as per this Regulation, applied on 50 per cent of the equity capital portion of the allowable capital cost, for the investments put to use in Generation Business or Transmission Business or Distribution Business or MSLDC, for such Year:*

*Provided that Base Return on Equity in respect of additional capitalization after cut-off date beyond the original scope excluding additional capitalization due to Change in Law or revised emission standards, shall be computed at the weighted average rate of interest on actual loan portfolio of the Generating Station or* ***Generating Company*** *or the transmission system or the* ***Transmission Licensee, as the case may be, subject to ceiling of 14 per cent:***

***Provided further that the Return on Equity in respect of additional capitalization on account of emission control system shall be computed at the base rate of one-year marginal cost of lending rate (MCLR) of the State Bank of India as on 1st April of***

***the year in which the date of commercial operation (COD) occurs plus 350 basis points, subject to ceiling of 14 per cent."***

### *2.3.2 Comments Received*

APML submitted that the Emission Control System (ECS) project is a standalone financial project, which would not be completely funded by debt financing from Banks/other Financial Institutions, and would require equity infusion by the Generating Company. Under these circumstances, infusion of equity expecting return at less than 15.5% would make the financial closure very difficult. APML added that there is no rationale nor any incentive for the developers to infuse equity at the price of debt. If the developers are required to inject equity, then they would expect risk adjusted returns, which would be in excess to that being granted to debt.

TPC submitted that the RoE on additional capitalization after the cut-off date beyond the original scope should be allowed, if such additional capitalization has already been approved by the Commission as per the MYT Regulations, 2019, and that RoE should be allowed at the base rate of main plant/asset to which the emission control system is attached.

MSEDCL submitted that the Commission should specify a ceiling limit in case of additional expenditure incurred after cut-off date for emission control system beyond the original scope of work. MSEDCL added that additional capital expenditure may be allowed only under the condition of 'Change in Law' and 'Force Majeure'.

### *2.3.3 Analysis and Commission's Decision*

The Commission is of the view that there cannot be an expectation of return on equity for mandatory investments, which are required to be undertaken as per statutory requirements. The installation of ECS is a mandatory investment, to meet the stipulated emission norms, and hence, the return on such investments have been linked to base rate of one-year marginal cost of lending rate (MCLR) of the State Bank of India as on 1st April of the year in which the COD occurs plus 350 basis points, subject to a ceiling of 14 per cent.

Further, the Commission is of the view that capital investment beyond the original scope of work and beyond cut-off date should not be encouraged. Hence, the return on such investments have been linked to the weighted average rate of interest on actual loan portfolio of the Generating Station or Generating Company or the transmission system or the Transmission Licensee, as the case may be, subject to a ceiling of 14 per cent.

It is clarified that additional capital expenditure may be allowed only in accordance with the relevant provisions of the MYT Regulations, 2019 and the Capex Approval Regulations, 2022.

The Commission has therefore, not made any modifications in the Draft Second Amendment Regulations, 2022 in this regard.

## 2.4 Introduction of Regulation 29.10: Disallowed capitalisation claimed against DPR Schemes

### *2.4.1 Amendments Proposed in Draft Second Amendment Regulations, 2022*

*"29.10 The Commission may either disallow the capitalisation claimed against the respective DPR Scheme, in part or in full, as appropriate, or allow lower Return on Equity on such investment in the following cases:*

*(a) If the in-principle approval has not been obtained for the Capital Investment Scheme in accordance with Regulation 4.3 of the Maharashtra Electricity Regulatory Commission (Approval of Capital Investment Schemes) Regulations, 2022; or*

*(b) If the Applicant is unable to establish the benefits as submitted in the Application for in-principle approval either fully or partly; or*

*(c) If asset replacement has been permitted despite not meeting criteria specified in Regulation 3.23 of Maharashtra Electricity Regulatory Commission (Approval of Capital Investment Schemes) Regulations, 2022."*

### *2.4.2 Comments*

TPC submitted that the very concept of in-principle clearance is that the benefits envisaged are expected to happen. Once in-principle clearance is given after prudence check considering all aspects, a post-facto reduction in RoE should not be done. Further, no limit has been specified for the reduction of RoE; such open-ended lowering of RoE will be detrimental to future investments when there is no clarity about the exact return expected out of investment.

MSEDCL requested the Commission to remove this clause for distribution and retail tariff of electricity for this Control Period, as the Commission has guaranteed the Return on Equity, and effectuating of this provision in the present form in the middle of the Control Period may not be in the right spirit of the MYT framework.

### *2.4.3 Analysis and Commission's Decision*

The Commission is of the view that the Utility has to ensure that the envisaged benefits are achieved. If such restriction is not imposed, then capex will happen with projected benefits and there will be no pressure on the Utility to ensure that the benefits are realised. The capex has received in-principle approval based on the projected benefits. The extent of reduction of RoE would depend on the extent of under-achievement and would have to be determined on a case-to-case basis and cannot be specified in the Regulations. If the Utility ensures that the envisaged

benefits are achieved, which it is supposed to as per the approved Capex proposal, then there would be no reduction of the RoE and hence, no risk to the Utility.

As regards the contention that this provision should not be effectuated in the middle of the Control Period, it is clarified that the amendment is applicable prospectively for all capital investments being undertaken hereafter.

The Commission has therefore, not made any modifications in the Draft Second Amendment Regulations, 2022 in this regard.

## 2.5 Introduction of Regulation 30.5 (A): Rate of Interest on Loan for ECS

### *2.5.1 Amendments Proposed in Draft Second Amendment Regulations, 2022*

> *"30.5 (A) The rate of interest on loan for installation of Emission Control System shall be the weighted average rate of interest of actual loan portfolio of the Emission Control System or in the absence of actual loan portfolio, the weighted average rate of interest computed in accordance with Regulation 30.5 shall be considered."*

### *2.5.2 Comments*

MSEDCL submitted that Generating Stations may approach the Ministry of Power for funding of the capital cost on Grant basis in line with various grants/funds provided to Distribution Companies under APDRP/ IPDS/ DDUGJY / UDAY, etc. The Government of India (GoI) is already collecting Rs. 400/MT of Green Cess (Clean Environment Cess) on coal from thermal generator from 1st March 2016. The corpus collected through such cess may be utilized for funding of ECS.

MSEDCL further submitted that the beneficiaries and subsequently the consumer should not be overburdened due to cost incurred for compliance of emission norms and the Commission should fix ceiling limit for Capital Cost and Supplementary Charges as well.

### *2.5.3 Analysis and Commission's Decision*

This suggestion is beyond the purview of the Commission. In case grant funding is availed, then the appropriate treatment of Debt and Equity and returns thereon shall be allowed in accordance with the Regulations.

The Commission shall be approving the capital cost of the ECS in accordance with the MYT Regulations, 2019 and the MERC Capex Regulations, 2022. However, it is not feasible to specify a ceiling limit for Capital Cost for the ECS.

Further, it is clarified that cost recovery of ECS is not proposed through a separate charge, and will be recovered as part of the Generation Tariff, hence, the issue of ceiling for Supplementary

Charges is not relevant.

The Commission has therefore, not made any modifications in the Draft Second Amendment Regulations, 2022 in this regard.

## 2.6 Introduction of Regulation 31.4 and 31.5: Foreign exchange rate variation on imported material

### *2.6.1 Amendments Proposed in Draft Second Amendment Regulations, 2022*

*"31.4 The Generating Company or Licensee shall follow prudent contract practice by incorporating necessary safeguard clauses against risk of price increment on account of Foreign Exchange Rate Variation on imported material.*

*31.5 Any extra rupee liability towards Foreign Exchange Rate Variation on import of material may be disallowed."*

***Explanation:*** *The incidence of Foreign Exchange Rate Variation is invariably expected to be negligible, unless such equipment is not available in India."*

### *2.6.2 Comments*

TPC submitted that the foreign exchange rate variation on import of material is beyond the Licensee's control. Therefore, either actual hedging cost should be allowed as capital expenditure or exchange variation should be allowed.

### *2.6.3 Analysis and Commission's Decision*

It is clarified that the actual hedging cost shall be allowed in accordance with Regulation 31.2 of the MYT Regulations, 2019, while Regulation 31.3 allows recovery of the actual exchange rate variation to the extent that the foreign exchange exposure is not hedged, provided that it is not attributable to such Generating Company or the Licensee or its suppliers or contractors.

The additional Regulation 31.4 proposed in the Draft Regulations require the Utility to exercise more diligence in case of use of imported material using foreign currency. The additional Regulation 31.5 specifies that any extra rupee liability towards Foreign Exchange Rate Variation (FERV) may be disallowed in case prudent contract practice has not been followed, and the Explanation clarifies that the incidence of FERV is invariably expected to be negligible, unless such equipment is not available in India. The

The Commission has therefore, not made any modifications in the Draft Second Amendment Regulations, 2022 in this regard.

## 2.7 Introduction of Regulation 47.1 (h) and 49.1 (g): Amendment to relevant Regulations for O&M Expenses

### *2.7.1 Amendments Proposed in Draft Second Amendment Regulations, 2022*

***Additional Clause 47.1 (h) is proposed as under:***

*"h) The Commission may consider any request for revision of the normative O&M expenses on account of consideration of some Schemes under O&M rather than Capital Investment on case-to-case basis, depending on the justification to be submitted by the Applicant and the life-cycle cost analysis:*

*Provided that if actual O&M expenses are lower than normative O&M expenses on this account, then no sharing of efficiency gains shall be done to that extent".*

***Additional Clause 49.1 (g) is proposed as under:***

*"g) The Commission may consider any request for revision of the normative O&M expenses on account of consideration of some Schemes under O&M rather than Capital Investment on case-to-case basis, depending on the justification to be submitted by the Applicant and the life-cycle cost analysis:*

*Provided that if actual O&M expenses are lower than normative O&M expenses on this account, then no sharing of efficiency gains shall be done to that extent".*

### *2.7.2 Comments*

MSPGCL reiterated the comments submitted by it on 18.04.2022 on the draft MERC Capex Regulations, 2022 to highlight specific difficulties faced by MSPGCL regarding consideration of some typical expenses under Capex.

MSPGCL submitted that it appears that the Commission expects schemes for complete replacement of system/equipment. However, in case of generating plants especially thermal plants, there are some specific different needs for replacement of assets. Though the generally expected life of Thermal /Gas plant is 25 years, life of certain specific parts of main equipment, which forms total plant is different from 25 years. These assets need to be replaced after completion of useful life of these particular assets, which is lower than the life of the complete thermal /gas plants, e.g., Reheater coils, LTSH Coils, Economizer Coils, Coal mill gear boxes, BFP Cartridges, etc. These components are of high value and are to be replaced after particular operating hours/operating cycle/certain years ranging from 5 to 10 year but less than 25 years. As their replacement cycle is more than 5 years, these components are called capital spares or insurance spares. Previously, MSPGCL has applied for in-principle approval for capex scheme for procurement of such capital spares. Factually, during last 7 years, approx. 40% of approved capex schemes for regulated plant related renovation and modernization/replacement works

from MSPGCL stations (Schemes excluding new system installation like FGD /DSP/Pipe-conveyor etc.) are procurement and replacement of capital spares.

MSPGCL submitted that a Special Allowance in lieu of Renovation & Modernization capital expenditure may be allowed for thermal Units that have completed their Useful Life, in line with CERC Regulations. This will result in lower number of Capex Schemes and optimal expenditure by Generators, and tariff burden will be minimised as no RoE will be claimed.

#### *2.7.3 Analysis and Commission's Decision*

The issue of part replacement of equipment has been addressed in the MERC Capex Regulations, 2022.

As regards the request to provide to Special Allowance in lieu of Renovation & Modernization capital expenditure for thermal Units that have completed their Useful Life, the Commission is of the view that the Utility has to seek approval for such expenditure in accordance with the Capex Approval Regulations. Regulation 3.1 of the Capex Regulations provided that Renovation and Modernisation schemes for life extension of Generation and Transmission shall be in accordance with relevant Guidelines notified by CEA. Also, in Regulation 3.19 of the Capex Approval Regulations, the Commission has specified the negative list of items for consideration under Capex, which includes "Expenditure that should be taken up under O&M expenses".

The Commission has therefore, not made any modifications in the Draft Second Amendment Regulations, 2022 in this regard.

### 2.8 Introduction of Regulation 61.9: Sharing of efficiency gains in case of revision of normative O&M expenses

#### *2.8.1 Amendments Proposed in Draft Second Amendment Regulations, 2022*

> *"61.9 The Commission may consider any request for revision of the normative O&M expenses of the Transmission Licensee on account of consideration of some Schemes under O&M rather than Capital Investment on case-to-case basis, depending on the justification to be submitted by the Applicant and the life-cycle cost analysis:*
>
> *Provided that if actual O&M expenses are lower than normative O&M expenses on this account, then no sharing of efficiency gains shall be done to that extent".*

#### *2.8.2 Comments*

APML and MEGPTCL submitted that the proposed amendment is a step in the right direction. However, it would adversely impact the efficiently performing Transmission Licensees who have lower actual O&M as compared to normative O&M as they will not opt for such scheme

as it will reduce their gain by 1/3rd, which is shared with the beneficiaries in the present scenario. Restricting better performing Transmission Licensee to opt for such schemes (which itself has benefits over its life cycle) can never be the intention of any Regulation.

They requested the Commission to frame Regulations having provisions of equal incentive/ penalty to all Transmission Licensees across the State irrespective of their efficiency level. In view of the same, it is proposed that additional O&M expenses due to consideration of some schemes under O&M expenses rather than Capital Investment should be kept out of calculation of sharing of gains/ losses of O&M expenses, by incorporating the following proviso:

> *"Provided that for Schemes considered under O&M rather than Capital Investment will be allowed at actuals over and above the otherwise allowable O&M expenses and shall not form part of sharing of gains/ losses of O&M expenses."*

### *2.8.3 Analysis and Commission's Decision*

The Commission in the SOR to the Capex Regulations 2022 has stated that the Commission may consider on case-to-case basis the request for revision of the normative O&M expenses on account of consideration of some Schemes under O&M rather than treating them as Capital Investment, depending on the justification to be submitted by the Applicant and the life-cycle cost analysis, as may be allowed under the applicable MERC (Multi-Year Tariff) Regulations.

Based on the above, the Commission has explained the rationale for the proposed amendment in the Explanatory Memorandum, as under:

> *"Further, it may be that certain expenses have not been considered under O&M expenses, while approving the normative O&M expenses based on past trends, or while framing the norms for O&M expenses. With the added clarity regarding treatment as O&M expenses rather than capital investment, the actual O&M expenses incurred by Utilities may be higher than the normative O&M expenses determined based on past actual O&M expenses. The Commission has proposed to incorporate certain enabling clauses, while at the same time, ensuring that the Utilities do not get the normative O&M expenses revised and then seek pass through of efficiency gains based on lower actual O&M expenses."*

Thus, sharing of losses of O&M expenses shall not be done in case actual O&M expenses are higher than normative O&M expenses on account of consideration of some Schemes under O&M rather than Capital Investment. However, in case the actual O&M expenses including the cost of some schemes taken up under O&M rather than Capital Investment is lower than the normative O&M expenses, sharing of gains shall be done in accordance with the provisions of Regulations. In other words, sharing of gains shall be computed after adding the O&M expenses on account of consideration of some Schemes under O&M rather than Capital Investment under

actual O&M expenses and comparing the same with the approved normative O&M expenses. Hence, for greater clarity, the first proviso proposed in the Draft Regulations, 2022 has been modified as under:

> *"Provided that if actual O&M expenses including the cost of some schemes considered under O&M rather than Capital Investment are lower than normative O&M expenses, then sharing of efficiency gains shall be done."*

Further, an additional proviso has been included after the first proviso, as under:

> *"Provided further that if actual O&M expenses including the cost of some schemes considered under O&M rather than Capital Investment are higher than normative O&M expenses on this account, then no sharing of efficiency losses shall be done".*

## 2.9 Amendment of Regulations 75.7 and 75.9 and Regulations 84.7 and 84.9: Operation and Maintenance Expenses for Wires Business and Retail Supply Business

### *2.9.1 Amendments Proposed in Draft Second Amendment Regulations, 2022*

> "*75.7 A Distribution Licensee may undertake OPEX schemes for system automation, new technology and IT implementation, etc., and, such expenses may be allowed over and above normative O&M Expenses, subject to prudence check by the Commission:*
>
> *Provided that the Distribution Licensee shall submit detailed justification, cost benefit analysis, and life-cycle cost analysis of such schemes as against capex schemes, and savings in O&M expenses, if any."*
>
> *"75.9 The Commission may consider any request for revision of the normative O&M expenses of the Distribution Licensee on account of consideration of some Schemes under O&M rather than Capital Investment on case-to-case basis, depending on the justification to be submitted by the Applicant and the life-cycle cost analysis:*
>
> *Provided that if actual O&M expenses are lower than normative O&M expenses on this account, then no sharing of efficiency gains shall be done to that extent".*
>
> *"84.7 A Distribution Licensee may undertake OPEX schemes for system automation, new technology and IT implementation, etc., and, such expenses may be allowed over and above normative O&M Expenses, subject to prudence check by the Commission:*
>
> *Provided that the Distribution Licensee shall submit detailed justification, cost benefit analysis, and life-cycle cost analysis of such schemes as against capex schemes, and savings in O&M expenses, if any."*

*"84.9 The Commission may consider any request for revision of the normative O&M expenses of the Distribution Licensee on account of consideration of some Schemes under O&M rather than Capital Investment on case-to-case basis, depending on the justification to be submitted by the Applicant and the life-cycle cost analysis:*

*Provided that if actual O&M expenses are lower than normative O&M expenses on this account, then no sharing of efficiency gains shall be done to that extent".*

### *2.9.2 Comments*

MSEDCL requested the Commission to provide detailed template for submission of life cycle cost analysis, so that specific information can be submitted and also there would be uniformity in submission.

MSEDCL added that the Regulation needs to clarify that the sharing of efficiency gain shall not be allowed only to the extent of revision in normative O&M expenses due to consideration of some capex schemes under opex. However, for any other gain on account of efforts taken by the Licensees to reduce O&M cost, the Licensee should be allowed such gain as pass through in accordance with the Regulations.

### *2.9.3 Analysis and Commission's Decision*

The Commission has considered this submission and has prepared the Format for submission of life-cycle cost analysis, so that the desired analysis can be submitted uniformly by all Utilities. The Format for the same is provided at **Annexure - II** of this SOR and has been incorporated as **Annexure IV** of the MERC MYT (Second Amendment) Regulations, 2023.

The Commission has explained the rationale for the proposed amendment in the Explanatory Memorandum, as under:

*"Further, it may be that certain expenses have not been considered under O&M expenses, while approving the normative O&M expenses based on past trends, or while framing the norms for O&M expenses. With the added clarity regarding treatment as O&M expenses rather than capital investment, the actual O&M expenses incurred by Utilities may be higher than the normative O&M expenses determined based on past actual O&M expenses. The Commission has proposed to incorporate certain enabling clauses, while at the same time, ensuring that the Utilities do not get the normative O&M expenses revised and then seek pass through of efficiency gains based on lower actual O&M expenses."*

Thus, sharing of losses of O&M expenses shall not be done only in case actual O&M expenses are higher than normative O&M expenses on account of consideration of some Schemes under O&M rather than Capital Investment. However, in case the actual O&M expenses including

the cost of some schemes under O&M rather than Capital Investment is lower than the normative O&M expenses, sharing of gains shall be done in accordance with the provisions of Regulations. In other words, sharing of gains shall be computed after adding the O&M expenses on account of consideration of some Schemes under O&M rather than Capital Investment under actual O&M expenses and comparing the same with the approved normative O&M expenses. Hence, for greater clarity, the first proviso has been modified and an additional proviso has been included after the first proviso, as elaborated in the earlier issue.

## 2.10 Incorporation of Illustration after Regulation 91.2

### *2.10.1 Amendments Proposed in Draft Second Amendment Regulations, 2022*

***"Illustration:***

*Total Capital Investment against all Schemes in FY 2021-22 in a local area = Rs. 500 Crore;*

*Total RI Charges included in above Capital Investment = Rs. 250 Crore;*

*Total expenditure recoverable as Capital Investment = Rs. 375 Crore (i.e., Rs. 250 Crore + 50% of Rs. 250 Crore of RI);*

*Balance expenditure recoverable as Additional Charges from concerned Local Area on account of RI in FY 2022-23 = Rs. 125 Crore (i.e., 50% of Rs. 250 Crore of RI);*

*Total Sales of concerned Local Area in FY 2022-23 = 5000 million Units;*

*Additional Energy Charges for all categories of consumers in concerned Local Area on account of RI in FY 2022-23 = Rs. 0.25 per kWh (125*10/5000)"*

### *2.10.2 Comments*

TPC submitted that the said Regulations and Illustration should be applicable only if the RI Charges are paid above Rs 100 Crore for Capex Scheme. Alternatively, if the RI Charges are below Rs 100 Crore, then sharing should be applicable.

TPC submitted that the interest on loan /RoE for funding of RI charges paid by the Licensee have not been considered in the Illustration proposed in Draft Regulations, 2022, as RI charges paid during previous year financial year are proposed to be recovered in the subsequent year.

TPC added that the capitalisation of the asset in any area has a certain Useful Life and in case of cable laying, RI charges are thus recovered over more than 35 Years. However, in the proposed Draft Regulations, 2022, 50% of RI Charges paid by the Licensee during previous

financial year is allowed to be recovered from the consumer in the concerned local area in the next financial year. This may amount to a tariff shock in any financial year where major replacement work is done or augmentation takes place. Therefore, recovery of RI Charges through additional energy charges should also be commensurate with the life of the asset or any period as deemed fit by the Commission to avoid tariff shock to the consumer in that area.

MSEDCL submitted that in the Illustration, capital investment against all schemes in FY 2021-22 has been considered, whereas additional charges on account of RI as well as sales of concerned area for FY 2022-23 have been considered.

MSEDCL submitted that as per Regulation 3.15(g)(ii) of the MERC Capex Approval Regulations, 2022, recovery of cost of funding investment is as under:

> *"Recovered from the consumers located in that area through additional charges to be determined separately and shall not be socialised over the Aggregate Revenue Requirement (ARR) of the concerned Distribution Licensee"*

MSEDCL submitted that the proposed Illustration raises concerns regarding the periodicity and manner of tariff determination as the Capex Approval Regulations, 2022 specifies that the cost shall not be socialized over the entire ARR. Further, Capex Approval Regulations, 2022 have been framed with intention of streamlining the process of filing and approval of Capex Schemes. Hence, MSEDCL requested clarification regarding whether the Commission would be approving such schemes at periodic intervals or only at the time of Multi-Year Tariff/ Mid-Term Review Petition process, i.e., only twice during the five-year Control Period.

### *2.10.3 Analysis and Commission's Decision*

The Commission does not find merit in the suggestion that the said Regulations and Illustration should be applicable only if the RI Charges are paid above Rs 100 Crore for Capex Scheme.

The Commission is of the view that it is not practical to spread the additional recovery of RI Charges over the Useful Life of each asset, as there will be multiple such other RI charge recoveries. However, the Commission does find merit in the suggestion that recovery of 50% of the RI Charges over a single year may result in tariff shock for the consumers in the concerned local area. At the same time, the Commission is of the view that no carrying cost should be allowed in case the recovery of such additional RI Charges are spread over more than one year, as presently, the same are recovered over the life of the asset through interest, depreciation and Return on Equity.

Hence, based on the comments received on the Draft Regulations, the Commission has incorporated the following provisos to Regulation 91.2 of the MERC MYT Regulations (Second Amendment) Regulations, 2023 after the first proviso and before the Illustration:

*"Provided further that the recovery of Road Reinstatement (RI) charges shall commence only after the concerned asset is put to use:*

*Provided also that the period of recovery of additional RI Charges from the consumers of the local area shall be one year or such additional period as may be approved by the Commission in the relevant Order:*

*Provided also that no carrying cost shall be allowed in case recovery of additional RI Charges is spread over more than 1 year."*

Regulation 3.15(g)(ii) of the MERC Capex Approval Regulations, 2022 cited by MSEDCL is applicable only in case of Capex proposals for conversion of Overhead Lines to Underground Cables, and in case such Scheme is to be undertaken despite not meeting the criteria specified in the MERC Capex Approval Regulations, 2022. Thus, this Regulation 3.15(g)(ii) of the MERC Capex Approval Regulations, 2022 is not related to the Illustration proposed after Regulation 91.2 in the Draft Regulations, 2022.

It is clarified that the Illustration is only to clarify the recovery of the RI charges and does not limit the approval for Capex to MYT/MTR Order occasions.

# 3 Amendments in accordance with CERC Tariff Regulations, 2019-2024

## 3.1 Introduction of Regulation 2.1 (14): Definition of Capital Cost

### *3.1.1 Amendments Proposed in Draft Second Amendment Regulations, 2022*

*"(14)(a) "Capital Cost" means the capital cost as determined in Regulation 24 of these Regulations in respect of generating station or transmission system or distribution system, as the case may be, and Regulation 55 (D) in respect of integrated mine(s)."*

### *3.1.2 Comments*

MSEDCL submitted that the definition of "Capital Cost" is in line with the Second Amendment to CERC Tariff Regulations, 2019-24 issued by CERC on 19$^{th}$ February 2021. MSEDCL submitted that the Commission should come up with a benchmark capital cost for integrated mine based on detailed study of costing of integrated mines. This would bring a standard and equal tolerance for all the integrated mines irrespective of the scale and capital cost.

### *3.1.3 Analysis and Commission's Decision*

The Commission is of the view that determination of benchmark capital cost for integrated mines is not feasible as the same would depend upon large number of factors.

The Commission has therefore, not made any modifications in the Draft Second Amendment Regulations, 2022 in this regard.

## 3.2 Introduction of Clause 2 (25) (d): Definition of Commercial Operation Date for ECS

### *3.2.1 Amendments Proposed in Draft Second Amendment Regulations, 2022*

*"2 (25)(d) In respect of emission control system, the date of putting the emission control system into use after meeting all applicable technical and environmental standards, certified through the management certificate duly signed by authorized person, not below the level of Director of Generating Company or Generating Business"*

### *3.2.2 Comments*

TPC submitted that "authorised person" in the above definition should include the "Competent Authority" as designated by the Board of Directors of the Company as per the MERC Capex Approval Regulations, 2022.

### *3.2.3 Analysis and Commission's Decision*

The Commission has accepted TPC's submission and replaced the term "authorised person" with the term "Competent Authority as designated by the Board of Directors of the Company", as under:

*"2 (25)(d) In respect of emission control system, the date of putting the emission control system into use after meeting all applicable technical and environmental standards, certified through the management certificate duly signed by Competent Authority as designated by the Board of Directors of the Company, not below the level of Director of Generating Company or Generating Business".*

## 3.3 Introduction of Regulation 28.1 (c) and (d): Depreciation for Emission Control Systems

### *3.3.1 Amendments Proposed in Draft Second Amendment Regulations, 2022*

*"(c) Where the Emission Control System is implemented within the original scope of the generating station and the date of commercial operation of the generating station or unit thereof and the date of operation of the Emission Control System are the same, depreciation of the generating station or unit thereof including the Emission Control System shall be computed in accordance with Clauses (a) to (c) of this Regulation.*

*(d) Depreciation of the Emission Control System of an existing or a new generating station or unit thereof where the date of operation of the emission control system is subsequent to the date of commercial operation of the generating station or unit thereof, shall be computed annually from the date of operation of such emission control system based on straight line method, with salvage value of 10%, over a period of –*

*i. Twenty-five years, in case the generating station or unit thereof is in operation for fifteen years or less as on the date of operation of the emission control system; or*

*ii. balance useful life of the generating station or unit thereof plus fifteen years, in case the generating station or unit thereof is in operation for more than fifteen years as on the date of operation of the emission control system; or*

*iii. ten years or a period mutually agreed by the generating company and the beneficiaries, whichever is higher, in case the generating station or unit thereof has completed its useful life."*

### *3.3.2 Comments received.*

APML submitted that in the Draft Regulations, the Commission has standardized the useful life

of the Emission Control System (ECS) as 25 Years for all the generating projects on the erroneous assumption that all the generating projects shall continue to operate efficiently for 25 years post installation of ECS, irrespective of completed years of operation of the power plant at the time of start of operation of the ECS. Most of the competitively bid plants are already operational for more than 5-10 years and their balance life is significantly less than 25 years.

APML added that even if the Companies Act, 2013 recognizes 40 years of plant life, the Commission after due consideration has still approved Useful Life of the Generating Plant as 25 years in its Regulations and therefore, it follows that the ECS cannot operate without the main plant being useful for more than 25 years.

APML added that for competitively bid projects, there are no provisions for any additional capex except for the provision of Change in Law events in the contracts. Thus, it would be unreasonable to expect that the main plant and Balance of Plants (BoP) will continue to operate beyond 25 years solely based on efficient O&M practices and especially considering the fact that there is huge surplus in the country and technological transformation by moving away from thermal towards Renewable Energy (RE) and Energy Storage Systems.

Therefore, recovery of Depreciation on ECS Capex cannot be standardized across the board and has to be linked to and recovered over the balance useful life or balance extended life of the generating station or the balance long-term PPA tenure, whichever is lower, in order to ensure that the compensation on account of this “Change in Law” event adequately restores the affected Generating Company to the same economic position as if such “Change in Law” had not occurred, a principle enshrined under the PPAs upheld by both APTEL and Hon’ble Supreme Court.

TPC submitted that depreciation on ECS of an existing or a new generating station or the unit thereof where the date of operation of the ECS is subsequent to the date of commercial operation of the generating station or unit thereof, should be computed up to 90% for the balance useful life of generating station as per Regulation 2.1 (89) of the MYT Regulations, 2019 or the remaining period of PPA.

TPC submitted that the ECS are installed based on specific requirement of the plant and the system is not usable if the plant is not in service after the stipulated life as per the applicable Regulations. TPC added that while the Commission is guided by the CERC Regulations, it may be noted and considered that the useful life of 40 years as per Companies Act, 2013 is not in line with the MYT Regulations, 2019. Therefore, the Commission should consider amending the instant clause in Regulations to extent of 25 years, i.e., the useful life of main asset, as defined in the MYT Regulations, 2019.

### *3.3.3 Analysis and Commission's Decision*

It is clarified that Regulations 28.1(c) and (d) were proposed in accordance with the CERC Tariff Regulations, 2019-24. The recovery of depreciation has been linked to 3 scenarios of completed useful life of main plant.

It is also clarified that the proposed Regulations 28.1(c) and (d) are applicable to Section 62 projects, where the generation tariff is determined by the Commission.

The Commission has therefore, not made any modifications in the Draft Second Amendment Regulations, 2022 in this regard.

## 3.4 Introduction of Regulation 32.1(aa): Working Capital computation for ECS

### *3.4.1 Amendments Proposed in Draft Second Amendment Regulations, 2022*

*"(aa) In case of Emission Control System of coal or lignite based thermal generating stations, working capital in additional to working capital computed in accordance with Regulation 32.1 (a) shall be allowed covering:*

*(i) Cost of limestone or reagent towards stock for 20 days for generation corresponding to the target availability;*

*(ii) Advance payment for 30 days towards cost of reagent for generation corresponding to the target availability;*

*(iii) Normative Operation and maintenance expenses in respect of emission control system for one month;*

*(iv) Maintenance spares at one per cent of the opening Gross Fixed Assets in respect of emission control system."*

### *3.4.2 Comments received*

APML submitted that sub-clause (v) should be added as under:

*"(v) Receivables equivalent to 45 days of Annual Fixed Charge and Energy Charge in respect of the emission control system."*

### *3.4.3 Analysis and Commission's Decision*

It is clarified that unlike the mechanism adopted by CERC, the cost recovery of ECS under MYT (Second Amendment) Regulations, 2023 is not proposed through a separate charge, and will be recovered as part of the Generation Tariff. Hence, there will not be any separately identifiable receivables in respect of the emission control system. The working capital

requirement corresponding to receivables of the ECS will thus, get addressed in the working capital requirement of the generating station.

The Commission has therefore, not made any modifications in the Draft Second Amendment Regulations, 2022 in this regard.

## 3.5 Amendment of Regulation 41.1: Pass through of costs due to ECS should be contingent on adherence to norms

### *3.5.1 Amendments Proposed in Draft Second Amendment Regulations, 2022*

*"41.1 The Tariff for sale of electricity from a thermal power Generating Station including Emission Control System shall comprise two parts, namely, Annual Fixed Charge and Energy Charge".*

### *3.5.2 Comments received*

APML submitted that the Commission should declare the Provisional Tariff for ECS prior to the Commercial Operation Date, which the developers can start to recover immediately upon COD and subject to actual / final trued up tariff in order for them to be able to service the debt and so also prevent Late Payment Surcharge / Carrying Cost burden on the Beneficiaries / Discoms and end consumers.

The Prayas Energy Group (Prayas) submitted that the proposed amendment is a step in the right direction towards introducing regulatory clarity with regard to compliance with the revised emission norms stipulated by the Ministry of Environment, Forest and Climate Change (MoEFCC).

Prayas submitted that in order to ensure adherence to the emission norms, the Commission should ensure that the pass-through of any ECS related cost is not only prudent, but is also contingent on the actual operation of the ECS and proof of adherence to the norms. Prayas submitted that the ECS related capacity charge and energy charge should be passed through only if the said plant can produce a certificate issued by the Maharashtra Pollution Control Board (MPCB), validating that the environmental norms have been complied with for a minimum threshold duration, say 95%, of the period that the plant was operational.

### *3.5.3 Analysis and Commission's Decision*

It is clarified that unlike the mechanism adopted by CERC, the cost recovery of ECS under MYT (Second Amendment) Regulations, 2023 is not proposed through a separate charge, and will be recovered as part of the Generation Tariff, to be revised at the time of next MYT/MTR Order. Hence, there is no requirement of approval of provisional tariff as proposed by APML.

The Commission is of the view that ensuring compliance with the environmental norms is within the jurisdiction of other agencies, and is not inclined to link the recovery of cost related to ECS only on production of any certificate issued by MPCB.

## 3.6 Introduction of Regulation 46.17 (a): Normative Auxiliary Energy Consumption for ECS

### *3.6.1 Amendments Proposed in Draft Second Amendment Regulations, 2022*

*"46.17 (A) Normative Auxiliary Energy Consumption for Emission Control System (AUXen) of thermal generating stations shall be:*

| ***Sl.*** | ***Name of Technology*** | ***$AUX_{en}$ (as per cent of gross generation)*** |
|---|---|---|
| ***(1)*** | ***For reduction of emission of sulphur dioxide*** | |
| *a)* | *Wet Limestone based FGD system (without Gas to Gas heater)* | *1.0%* |
| *b)* | *Lime Spray Dryer or Semi dry FGD System* | *1.0%* |
| *c)* | *Dry Sorbent Injection System (using Sodium bicarbonate)* | *NIL* |
| *d)* | *For CBFC Power plant (furnace injection)* | *NIL* |
| *e)* | *Sea water based FGD system (without Gas to Gas heater)* | *0.7%* |
| ***(2)*** | ***For reduction of emission of oxide of nitrogen*** | |
| *a)* | *Selective Non-Catalytic Reduction system* | *NIL* |
| *b)* | *Selective Catalytic Reduction system* | *0.2%* |

*Provided that where the technology is installed with "Gas to Gas" heater, AUXen specified above shall be increased by 0.3% of gross generation."*

### *3.6.2 Comments received*

MSPGCL submitted that the normative auxiliary energy consumption for ECS systems should be revised as under:

a) For Wet Limestone based FGD System (without gas-to-gas heater), normative auxiliary energy consumption should be increased to 1.5% instead of proposed 1%;

b) For dry sorbent injection system (using sodium bicarbonate), normative auxiliary consumption should be allowed at 0.25% instead of 0% as proposed, considering the Power requirement of sorbent crushing mills, Sorbent unloading system, Compressor & Dehumidifier System, etc.

MSPGCL submitted that the FGD System is handling chemical sorbent, which may affect the availability of FGD System. The sorbent chemical may cause wear and tear of FGD System due to erosion. So, the FGD plants may not be available at 100%, similar to main power plant.

Hence, it is suggested that for consideration of all FGD related norms, the normative availability of FGD system should be considered at 85%, as is being done in case of main power plant availability.

MSPGCL submitted that the auxiliary energy consumption norms should be derived based on average of actuals for first four years for Wet limestone FGD system for respective Unit size or design value of FGD manufacturer, whichever is less.

#### *3.6.3 Analysis and Commission's Decision*

The normative auxiliary energy consumption for ECS systems proposed in the Draft Regulations, 2022 are in accordance with the norms specified in the CERC Tariff Regulations 2019-24. MSPGCL has also not submitted any data to substantiate its claims for higher normative auxiliary energy consumption for ECS systems. MSPGCL may always approach the Commission for necessary relief at the time of truing up based on actual data, which may be considered based on prudence check.

The Commission does not find any merit in the suggestion regarding consideration of all FGD related norms based on the normative availability of FGD system to be considered at 85%. It is clarified that the amended Regulation 51.4 of the Draft Regulations, 2022 already addresses the issue of auxiliary energy consumption of ECS systems, while computing the Plant Availability Factor (PAF) of the Generating Unit/Station.

The Commission has therefore, not made any modifications in the Draft Second Amendment Regulations, 2022 in this regard.

### 3.7 Amendment of Regulation 47.1 (d): Water Charges For Generating Units

#### *3.7.1 Amendments Proposed in Draft Second Amendment Regulations, 2022*

> *"d) Water Charges shall be allowed separately as per actuals, based on water consumption depending upon type of plant, type of cooling water system etc., subject to prudence check* ***and considering the norms of specific water consumption notified by the Ministry of Environment, Forest and Climate Change…"***

#### *3.7.2 Comments received*

MSPGCL submitted that water is a scarce and critical resource and the thermal power generation plants are highly intensive water consumers. Thus, it is obvious to expect the thermal power plant to be alert on its water consumption. MSPGCL is already monitoring the specific water consumption at all its thermal units on regular basis with MPCB. However, as regards the proposed amendment for approving the water costs in the context of the norms of specific water consumption notified by the MoEFCC, MSPGCL's submitted as under:

a. For most of the stations, the water allocation is from Water Resource Department (WRD), Government of Maharashtra (GoM) and the charges to be paid are for the allocated quantum rather than the consumed quantum. On many occasions, the actual consumed quantum is lower than the quantum for which charges are paid.

b. At some of the power stations, the allocated water received from WRD sources (Dam/Reservoir) is through natural river stream or canals. In such cases, there are losses in water quantity received at power stations from the quantity released at WRD end, on account of normal losses like evaporation, seepage, transpiration, deep percolation, surface runoff, etc., and also on account of water lifting by farmer on the way. Such loss is beyond the control of MSPGCL. Thus, there is a mismatch between water released and water utilisation. However, WRD charges for the water released.

c. In line with the Tariff Policy, 2016 to thermal generating stations to use water from sewage treatment plants within periphery pf 50 km, MSPGCL has undertaken initiatives to use (Sewage Treatment Plant) STP water at its power plant in collaboration with municipality/local bodies/similar organisations in the vicinity of plant locations. Already, such STP water is being used at Koradi TPS and Khaperkheda TPS and usage is expected to commence in the next year at Chandrapur TPS. Under the Agreements with Municipal Corporation at these locations, there are various components of charges to be paid for STP water. There are quantity-based charges as well as some fixed charges. Also, in some cases, MSPGCL is sharing some capital costs for the STP. Moreover, as the STP water is not always suitable for direct use in the power generation process, these are costs that need to be incurred after the water is received at power stations. Presently, MSPGCL is considering all such costs under the water charges.

MSPGCL submitted that there is a need to consider all the above-mentioned aspects regarding water usage and water charges while approving water costs, rather than allowing the same merely on normative basis.

### *3.7.3 Analysis and Commission's Decision*

The amendment proposed in the Draft Regulations, 2022 is in accordance with the CERC Tariff Regulations 2019-24. It is clarified that all prudent costs incurred by the Generating Company are recoverable through the tariff. MSPGCL may approach the Commission for necessary relief at the time of truing up based on actual data, which may be considered based on prudence check.

The Commission has therefore, not made any modifications in the Draft Second Amendment Regulations, 2022 in this regard.

## 3.8 Introduction of Regulation 47.3: O&M Expenses on account of ECS

### *3.8.1 Amendments Proposed in Draft Second Amendment Regulations, 2022*

*"47.3 The operation and maintenance expenses on account of Emission Control System in coal or lignite based thermal generating station shall be 2% of the admitted capital expenditure (excluding interest during construction) as on its date of commercial operation, which shall be escalated annually @3.5% during the Control Period ending on 31st March 2025: Provided that income generated from sale of gypsum or other by-products shall be reduced from the operation and maintenance expenses."*

### *3.8.2 Comments received*

MSEDCL submitted that the O&M expenses would be on lower side considering installation of new ECS and further, the existing O&M facilities can also be utilized for same. MSEDCL suggested that the O&M expenses and escalation considered in future years can be reduced further based on current market conditions and maintenance cost of the system.

### *3.8.3 Analysis and Commission's Decision*

The amendment proposed in the Draft Regulations, 2022 is in accordance with the CERC Tariff Regulations 2019-24. The Commission is of the view that separate O&M expenses would be required for the ECS. Further, no data has been submitted to substantiate the suggestion.

The Commission has therefore, not made any modifications in the Draft Second Amendment Regulations, 2022 in this regard.

## 3.9 Introduction of Regulation 46.17 (B): Norms for consumption of reagent

### *3.9.1 Amendments Proposed in Draft Second Amendment Regulations, 2022*

*"46.17 (B) Norms for consumption of reagent:*

*(1) The normative consumption of specific reagent for various technologies for reduction of emission of sulphur dioxide shall be as under:*

*(a) For Wet Limestone based Flue Gas De-sulphurisation (FGD) system: The specific limestone consumption (g/kWh) shall be worked out by following formula:*

*[K x SHR x S/CVPF] x [85/LP]*

*Whereas,*

*S = Sulphur content in percentage;*

*LP= Limestone Purity in percentage;*

*SHR= Gross station heat rate, in kcal per kWh;*

*CVPF = (a) Weighted Average Gross calorific value of coal as received, in kcal per kg for coal based thermal generating stations less 85 kcal/kg on account of variation during storage at generating station;*

*(b) Weighted Average Gross calorific value of lignite as received, in kcal per kg, as applicable for lignite based thermal generating stations:*

*Provided that value of K shall be equivalent to (35.2 x Design $SO_2$ Removal Efficiency/96%) for units to comply with $SO_2$ emission norm of 100/200 mg/$Nm^3$ or (26.8 x Design $SO_2$ Removal Efficiency/73%) for units to comply with $SO_2$ emission norm of 600 mg/$Nm^3$; Provided further that the limestone purity shall not be less than 85%.*

*(b) For Lime Spray Dryer or Semi-dry Flue Gas Desulphurisation (FGD) system: The specific lime consumption shall be worked out based on minimum purity of lime (LP) as at 90% or more by applying formula [ 6 x 90 / LP] g/kWh;*

*(c) For Dry Sorbent Injection System (using sodium bicarbonate): The specific consumption of sodium bicarbonate shall be 12 g per kWh at 100% purity.*

*(d) For CFBC Technology (furnace injection) based generating station: The specific limestone consumption for CFBC based generating station (furnace injection) shall be computed with the following formula:*

*[62.9 x S x SHR /CVPF] x [ 85/ LP]*

*Where S = Sulphur content in percentage;*

*LP = Limestone Purity in percentage;*

*SHR = Gross station heat rate, in kcal per kWh;*

*CVPF = (a) Weighted Average Gross calorific value of coal as received, in kcal per kg for coal based thermal generating stations less 85 kcal/kg on account of variation during storage at generating station;*

*(b) Weighted Average Gross calorific value of lignite as received, in kCal per kg as applicable for lignite based thermal generating stations;*

*(e) For Sea Water based Flue Gas Desulphurisation (FGD) system: The reagent used in sea water-based Flue Gas Desulphurisation (FGD) system shall be NIL*

*(2) The normative consumption of specific reagent for various technologies for reduction of emission of oxide of nitrogen shall be as below:*

*(a) For Selective Non-Catalytic Reduction (SNCR) System: The specific urea consumption of SNCR system shall be 1.2 g per kWh at 100% purity of urea.*

*(b) For Selective Catalytic Reduction (SCR) System: The specific ammonia consumption of SCR system shall be 0.6 g per kWh at 100% purity of ammonia."*

### *3.9.2 Comments received*

MSPGCL submitted that the reagent consumption should be allowed at acuals rather than on normative basis, on account of the following reasons:

a) The norms for consumption of reagent for Wet Limestone based FGD system are applicable in case of limestone purity of 85%. However, in case limestone purity is below 85%, as is the case in Maharashtra, the reagent consumption needs to be allowed as per actuals, as the reduction of purity is an uncontrollable factor, considering scarce availability of limestone in Maharashtra.

b) The norms for dry sorbent injection system proposed as 12 gm of sodium bi-carbonate per kWh is applicable at 100% purity. However, the purity of sodium bi-carbonate shall remain @95%, as indicated by prospective sodium bi-carbonate suppliers. Hence, in case sodium bi-carbonate purity is less than 100%, sodium bi-carbonate consumption may be allowed as per actuals.

### *3.9.3 Analysis and Commission's Decision*

The Commission is of the view that it is for the Utility to select the appropriate technology considering all aspects including availability of quality raw material. The Utility has to also ensure continued supply of quality raw material.

The Commission is of the view that the desired dispensation will protect the Utility even in case of procurement of inferior quality raw material, which is not desirable. Further, the amendment proposed in the Draft Regulations, 2022 is in accordance with the CERC Tariff Regulations 2019-24.

The Commission has therefore, not made any modifications in the Draft Second Amendment Regulations, 2022 in this regard.

## 3.10 Modification of Proviso to Regulation 50.2: Recovery of expenses under shutdown

### *3.10.1 Amendments Proposed in Draft Second Amendment Regulations, 2022*

> *"Provided that in case of generating station or unit thereof under shutdown due to Renovation and Modernisation* ***or installation of Emission Control System, as the case may be****, the Generating Company shall be allowed to recover O&M expenses and interest on loan only."*

### *3.10.2 Comments received*

Prayas Group submitted that the draft Regulations do not take into account continuing cost impacts due to delays in installation of ECS. The Commission has recorded MSPGCL's statement in its Order in Case No. 196 of 2017 as under:

> *"There is no adverse impact of availability of the generating Units as the implementation works of emission control system mainly FGD installation shall be carried out during the annual overhaul of the Unit. The approximate period of commissioning of FGD is about 3 weeks".*

Prayas submitted that in view of the above, the Commission should ensure that ECS installation happens with minimal delays and that the plant is not shutdown unduly for longer duration. Further, if the period of shut down exceeds the annual shutdown period factored in the normative availability, either on account of delay in timely completion of activities for interconnection of ECS or lack of coordination, the consequential cost for the same should not be passed on to the consumers.

APML submitted that the time and duration of annual shutdown / overhaul is governed by various factors such as demand-supply scenario, grid security, etc., and is regulated by the Load Despatch Centres (LDCs). The overhauling plan in case of multiple Units is staggered based on the OEM recommendations, maintenance requirements and as per the agreed overhaul plan with LDCs. Therefore, while the developers may endeavour to carry out the interconnection of the ECS for one Unit during the annual shutdown / overhaul, the balance Units should be deemed available during the period of ECS installation subject to prudence check on the feasibility of synchronization with annual shutdown by the Commission.

APML accordingly suggested that the plant/unit should be considered as "Deemed Available" during the extent of actual number of days of shutdown (subject to prudence check by the Commission), during which the plant/unit should be compensated for the following:

(i) Complete defrayment of Fixed Capacity Charges.

(ii) Recovery of LTOA Charges.

(iii) Waiver/reimbursement of penalty under PPA, if any, for lower availability.

(iv) Waiver/reimbursement of any additional charges for short / no lifting of coal under the FSA with coal companies.

This will be in consonance with the principle of Restitution upheld by the Hon'ble Supreme Court.

### *3.10.3 Analysis and Commission's Decision*

Firstly, it is clarified that the proposed amended proviso to Regulation 50.2 is applicable to Section 62 projects only, where the generation tariff is determined by the Commission. Hence, the concerns expressed by APML are not relevant, to that extent.

As regards the suggestion that timelines for ECS installation should be limited to annual shut-down period, CERC in its Order dated 13th August 2021 in Petition No. 06/SM/2021 has decided to deal with this issue on case-to-case basis. CERC, in its Order, also ruled that the Generating Company should plan interconnection of ECS with Generating Station during annual overhaul and any claims of costs associated with such shutdown would be considered by the Commission based on prudence check after installation of ECS. It is proposed to adopt the same approach in the MYT Regulations also, and accordingly, the following additional provisos have been incorporated after the first proviso to Regulation 50.2 in the MYT (Second Amendment) Regulations, 2023 as under:

> *"Provided further that the Generating Company should plan interconnection of ECS with Generating Station during annual overhaul:*
>
> *Provided also that the Commission shall consider the costs associated with shutdown due to ECS based on prudence check after installation of ECS on case-to-case basis."*

## 3.11 Introduction of Regulation 2.1 (50) (a): Definition of "Investment Approval"

### *3.11.1 Amendments Proposed in Draft Second Amendment Regulations, 2022*

> *"(50 a) "**Investment Approval**" means approval by the Board of the Generating Company or the Transmission Licensee or the Distribution Licensee for the project including funding of the project and the timeline for the implementation of the project:*
>
> *Provided that the date of Investment Approval shall be reckoned from the date of the resolution of the Board of the Generating Company or the Transmission Licensee or the Distribution Licensee:*
>
> *Provided further that in respect of the integrated mine(s), funding and timeline for implementation shall be indicated separately and distinctly in the Investment Approval:*

*Provided also that where Investment Approval includes both the generating station and the integrated mine(s), the funding and timeline for implementation of the integrated mine(s) shall be worked out and indicated separately and distinctly in the Investment Approval."*

### *3.11.2 Comments received*

Prayas Group submitted that in the interest of clarity, the Commission should also mandate that Distribution Licensees should submit this critical information regarding board resolutions for all projects in the pipeline as part of their MYT/MTR submissions or host it on their websites. This will aid tracking of future investments, delays, etc.

### *3.11.3 Analysis and Commission's Decision*

The Commission is of the view that these documents do not need to be a part of the MYT/MTR Petitions to be submitted by the Distribution Licensees or be hosted on the website of the Distribution Licensees. These documents shall need to be submitted to the Commission in accordance with the requirements specified in the Capex Approval Regulations, 2022 and for approval of Capital Cost of the integrated mines, etc.

The Commission has therefore, not made any modifications in the Draft Second Amendment Regulations, 2022 in this regard.

## 3.12 Introduction of Clause 2. (5)(a): Definition of Annual Target Quantity

### *3.12.1 Amendments Proposed in Draft Second Amendment Regulations, 2022*

*"(5) (a) "**Annual Target Quantity**" or "**ATQ**" in respect of an integrated mine(s) means the quantity of coal or lignite to be extracted during a year from such integrated mine(s) as specified in the Mining Plan:*

*Provided that in case the integrated mine(s) of coal or lignite is ready for supply of coal or lignite as per the Mining Plan but is prevented due to reasons not attributable to the Generating Company, the Commission may relax the Annual Target Quantity up to a maximum of 15% of the quantity of coal or lignite to be extracted during a year as specified in the Mining Plan."*

### *3.12.2 Comments received*

MSPGCL submitted that it has already signed the Coal Mining Agreement (CMA) with the Mine Developer and Operator (MDO) based on the Model Contract Agreement published by Ministry of Coal, GoI. Clause No. 21.2.2 of the CMA allows reduction of up to 20% and increase of up to 10% based on notice delivered 3 months prior to commencement of an Accounting year. Further, for the 1st and 2nd accounting year, MSPGCL may modify the annual

production programme by up to 25% thereof, instead of 20% decrease or 10% increase mentioned above.

MSPGCL hence, requested the Commission to add this alternate proviso so that MSPGCL can follow CMA provisions in this regard.

#### *3.12.3 Analysis and Commission's Decision*

The Commission has accepted MSPGCL submission and incorporated an additional proviso to Regulation 2 (5)(a), as under:

> *"Provided further that the quantum of relaxation of Annual Target Quantity shall be allowed in accordance with the provisions of the Coal Mining Agreements already signed by the Generating Companies before the date of notification of these Regulations".*

### 3.13 Introduction of Clause 2. (25)(e): Definition of Date of Commercial Operation in case of integrated mine

#### *3.13.1 Amendments Proposed in Draft Second Amendment Regulations, 2022*

*"(25) e. The date of commercial operation in case of integrated mine(s), shall mean the earliest of —*

- *i. the first date of the year succeeding the year in which 25% of the Peak Rated Capacity as per the Mining Plan is achieved; or*
- *ii. the first date of the year succeeding the year in which the value of production estimated in accordance with Regulation 24.9 (A) of these Regulations, exceeds total expenditure in that year; or*
- *iii. the date of two years from the date of commencement of production:*

*Provided that on earliest occurrence of any of the events under sub-clauses (i) to (iii) of Clause (e) of this Regulation, the Generating Company shall declare the date of commercial operation of the integrated mine(s) under the relevant sub-clause with one week prior intimation to the beneficiaries of the end-use or associated generating station(s):*

*Provided further that in case the integrated mine(s) is ready for commercial operation but is prevented from declaration of the date of commercial operation for reasons not attributable to the Generating Company or its suppliers or contractors or the Mine Developer and Operator, the Commission, on an application made by the Generating Company, may approve such other date as the date of commercial operation as may be considered appropriate after considering the relevant reasons that prevented the*

*declaration of the date of commercial operation under any of the sub-clauses of Clause (e) of this Regulation:*

*Provided also that the Generating Company seeking the approval of the date of commercial operation under the preceding proviso shall give prior notice of one month to the beneficiaries of the end-use or associated generating station(s) of the integrated mine(s) regarding the date of commercial operation."*

### *3.13.2 Comments received*

MSPGCL submitted that it has already signed the Coal Mining Agreement (CMA) with the Mine Developer and Operator (MDO) based on the Model Contract Agreement published by Ministry of Coal, GoI. The definition of Commercial Operation Date of the integrated mine under the CMA is different from the definition proposed in the Draft Regulations, 2022. MSPGCL hence, requested the Commission to add this alternate proviso so that MSPGCL can follow CMA provisions in this regard.

MSEDCL submitted that the proposed Regulation is as per CIL's practice of COD declaration. However, while CIL's mines are designed to serve Peak Rated Capacity irrespective of the capacity of power plants it is selling to, integrated mines may or may not be in a position to supply coal required for power plant operations even before or after reaching 25% of the peak rated capacity. Hence, it should be ideally co-related with the plant's requirement from such integrated mine rather than the Peak Rated Capacity of the mine itself.

### *3.13.3 Analysis and Commission's Decision*

The Commission does not see any reason to modify the definition of COD of integrated mine based on MSEDCL's submission, as the premise of achieving 25% of Peak Rated Capacity shall be applicable for CIL or integrated mine.

The Commission has accepted MSPGCL submission and incorporated an additional proviso to Regulation 2. (25) (e), as under:

*"Provided also that the Date of Commercial Operation in case of integrated mine shall be considered in accordance with the provisions of the Coal Mining Agreements already signed by the Generating Companies before the date of notification of these Regulations".*

## 3.14 Introduction of Part E (A) and introduction of Regulations 55 (A) to 55 (S): Determination of input price of coal and lignite from integrated mine

### *3.14.1 Amendments Proposed in Draft Second Amendment Regulations, 2022*

***"55 (A). Input Price of coal or Lignite***

*55 (A).1 Input price of coal or lignite from the integrated mine(s) shall be determined based on the following components:*

*I) Run of Mine (ROM) Cost; and*

*II) Additional charges:*

a. *a. crushing charges;*

b. *transportation charge within the mine up to the washery end or coal handling plant associated with the integrated mine, as the case may be;*

c. *handling charges at mine end;*

d. *washing charges; and*

e. *transportation charges beyond the washery end or coal handling plant, as the case may be, and up to the loading point:*

*Provided that one or more components of additional charges may be applicable in case of the integrated mine(s), based on the scope and nature of the mining activities:*

*Provided further that the input price of lignite shall be computed based on Run of Mine (ROM) based on the technology such as bucket excavator-conveyor or belt-spreader or its combination and handling charges, if any.*

*Provided also that Statutory Charges, as applicable, shall be allowed as pass-through expenses.*

***55 (B). Run of Mine (ROM) Cost***

*55 (B).1 Run of Mine Cost of coal in case of integrated mine(s) allocated through auction route under Coal Mines (Special Provisions) Act, 2015 shall be worked out as under:*

*ROM Cost = (Quoted Price of coal) + (Fixed Reserve Price)*

*Where,*

i. *Quoted Price of coal is the Final Price Offer of coal in respect of the concerned coal block or mine, along with subsequent escalation, if any, as provided in the Coal Mine Development and Production Agreement:*

   *Provided that additional premium, if any, quoted by the generating company during auction, shall not be considered in the Run of Mine Cost;*

*ii. Fixed Reserve Price is the fixed reserve price per tonne along with subsequent escalation, if any, as provided in the Coal Mine Development and Production Agreement: and*

*iii. Capital cost under Regulation 36D and additional capital expenditure under Regulation 36E shall not be admissible for the purpose of ROM cost in respect of integrated mine(s) allocated through auction route.*

*55 (B).2 Run of Mine Cost of coal in case of integrated mine allocated through allotment route under Coal Mines (Special Provisions) Act, 2015 shall be worked out as under:*

*ROM Cost = [(Annual Extraction Cost / ATQ) + Mining Charge] + (Fixed Reserve Price).*

*Where,*

*i. Annual Extraction Cost is the cost of extraction of coal as computed in accordance with Regulation 55 (F) of these Regulations;*

*ii. Mining Charge is the charge per tonne of coal paid by the generating company to the Mine Developer and Operator engaged by the Generating Company for mining, wherever applicable; and*

*iii. Fixed Reserve Price is the fixed reserve price per tonne along with subsequent escalation, if any, as provided in the Coal Mine Development and Production Agreement.*

…

***55 (G). Capital Structure, Return on Equity and Interest on Loan***

…

*55 (G).3 Return on equity shall be computed in rupee terms on the equity base arrived under Regulation 55 (G).1 at the base rate of 14%.*

…

***55 (J). Interest on Working Capital***

*55 (J).1 The working capital of the integrated mine(s) of coal shall cover:*

*(i) Input cost of coal stock for 7 days of production corresponding to the Annual Target Quantity for the relevant year;*

*(ii) Consumption of stores and spares including explosives, lubricants and fuel @ 15% of operation and maintenance expenses, excluding mining charge of Mine*

*Developer and Operator and annual charges of the agency other than Mine Developer and Operator, engaged by the Generating Company; and*

*(iii)* *Operation and maintenance expenses for one month, excluding mining charge of Mine Developer and Operator and annual charges of the agency other than Mine Developer and Operator, engaged by the Generating Company.*

…

***55 (M). Recovery of Input Charges***

*55 (M).1* *The input charges of coal or lignite shall be recovered as under:*

Input Charges = [Input Price x Quantity of coal or lignite supplied] + Statutory *charges, as applicable:*

*Provided that where energy charge rate based on input price of coal from integrated mine(s) exceeds by 20% of energy charge rate based on notified price of Coal India Limited for the commensurate grade of coal in a month, prior consent of the beneficiary(ies) shall be required to be obtained by the Generating Company:*

*Provided further that where such consents of beneficiaries are not available, input price of coal from such integrated mine(s) shall be so fixed that energy charge rate based on input price of coal from integrated mine(s) does not exceed by more than 20% the energy charge rate based on notified price of Coal India Limited for the commensurate grade of coal in a month:*

*Provided also that energy charge rate based on input price of coal does not lead to higher energy charge rate throughout the tenure of power purchase agreement than that, which would have been obtained as per terms and conditions of the existing power purchase agreement.*

***55 (P). Adjustment on account of Non-Tariff Income (NTI Adjustment)***

*55 (P).1* *Adjustment on account of Non-Tariff Income (NTI Adjustment) for any year, such as income from sale of washery rejects in case of integrated mine of coal and profit, if any, from supply of coal to the Coal India Limited or merchant sale of coal as allowed under the Coal Mines (Special Provisions) Act, 2015 shall be worked out as under:*

*NTI Adjustment = (All Non-Tariff Income during the year)/ (Actual quantity of coal or lignite extracted during the year)*

*55 (P).2 The adjustment on account of Non-Tariff Income worked out in accordance with this Regulation shall not be applicable in case of the integrated mine(s) allocated through auction route under Coal Mines (Special Provisions) Act, 2015.*

***55 (Q). Credit Adjustment Note***

*55 (Q).1 The credit arising on account of OB Adjustment, GCV Adjustment and NTI Adjustment shall be dealt through Credit Adjustment Note for any year.*

*55 (Q).2 The Credit Adjustment Note shall be issued in favour of the specified end use generating stations on account of OB Adjustment, GCV Adjustment or NTI Adjustment, as the case may be, for that year as under:*

*i. OB Adjustment for the year X Quantity of coal or lignite supplied in that year;*

*ii. GCV Adjustment for the year X Quantity of coal or lignite supplied in that year; and*

*iii. NTI Adjustment in the year X Quantity of coal or lignite supplied in that year.*

*55 (Q).3 The amount in Credit Adjustment Note shall be adjusted against the charges of coal or lignite supplied after the date of issue of Credit Adjustment Note and the integrated mine(s) shall prepare an annual reconciliation statement of such adjustment and furnish the same to all the end use plants and also publish the same on its website."*

***3.14.2 Comments received***

MSPGCL submitted that it has signed the Allotment Agreement with Ministry of Coal (MoC), wherein Clause No. 1.1.42 of the Allotment Agreement stipulates that Reserve price shall mean INR 100/tonne and escalation thereon as described at Clause No. 9.2 of the Allotment Agreement.

MSPGCL submitted that hence, the term "Coal Mine Development and Production Agreement" in Regulation 55 (B). 2 of the Draft Regulations, 2022 needs to be replaced by the term "Coal Mine Development and Production Agreement or Allotment Agreement".

Prayas Group submitted that the proposed method for calculation of Run of Mine cost of coal/lignite in case of allotted integrated mines, as proposed under Regulation 55 (B). 2, is the sum of the annual extraction cost and mining charge. The mining charge is to be paid by the Generating Company to the Mine Developer and Operator (MDO) engaged for mining, wherever applicable. Prayas submitted that if the arrangement with the MDO includes extraction of coal, the annual extraction cost should be zero for such mines. Hence, in order to

avoid double counting of costs, the final Regulations should specify that annual extraction cost and mining charges payable to the MDO are applicable for mutually exclusive sets of activities.

Prayas submitted that as per the proposed Regulation 55 (G). 3, the Return on Equity is to be computed at the base rate of 14%. However, these integrated projects have assured coal offtake and power purchase, and are thus, practically risk-free investments. Hence, Return on Equity of 14% is not justified and the Return on Equity should be computed at a base rate not exceeding 10%.

Prayas submitted that Regulation 55 (A) of the Draft Regulations, 2022 proposes that the input price of coal and lignite from an integrated mine be computed based on Run of Mine cost and additional charges. This input price is used to determine the input charges to be recovered, as per the proposed Regulation 55 (M). The proposed Regulations do not impose any ceiling on the input price and merely require consent from the beneficiaries if the input charges are such that the "energy charge rate based on input price of coal from integrated mine exceeds by 20% of energy charge rate based on notified price of Coal India Limited" (first proviso of proposed Regulation 55(M)).

In this regard, Prayas submitted that the price would be eventually passed on to consumers and, therefore, the beneficiary will not be a loser even if energy charges increase. This formulation of computing the input price is not consistent with the objectives of offering coal mines for captive use to power plants through allotments and auctions under the Coal Mines (Special Provisions) Act, 2015 and related Rules. If coal from a captive mine were to be more expensive than CIL notified price for the same Grade, then it would be better for consumers that the coal is procured from CIL. The reason for allotting captive coal mines 'free' to Power Companies is so that they can obtain coal at a lower price. The following official communications reinforce this point that the objective of allocating captive mines to power generators was to reduce power tariffs:

As per 3.2(e) of the Directive dated 16.4.2015 from the Ministry of Power to CERC on supply of electricity by generating companies where the coal is being sourced from coal mines allocated under CMSP, Second Ordinance, 2014:

*"The revision of tariff undertaken by the Central Electricity Regulatory Commission as above shall not lead to higher energy charges and total tariff throughout the tenure of Power Purchase Agreement than that which would have been obtained as per terms and conditions of the existing Power Purchase Agreement."*

The methodology for fixing floor/reserve price for auction and allotment of coal mines/blocks, prescribed by the Ministry of Coal, states in Clause (3) with regard to coal mines/blocks allotted for specific end-uses, that *"This would ensure that there is no adverse impact on power tariff."*

Prayas submitted that in view of the above, the input price of coal proposed in Regulation 55 (A) should be capped to at least (say) 10% below the Coal India Limited (CIL) notified price for the corresponding Grade of coal, to be consistent with the objectives of allotting coal mines for captive consumption. Regulation 55 (M) should also be suitably worded to place a corresponding ceiling on the Energy Charges.

With respect to the proposed Regulation 55 (J). 2, MSEDCL requested the Commission to consider 15% of Operation and Maintenance expenses for consumption of stores and spares including explosives, lubricants and fuel, for computation of Working Capital requirement for the Captive mines. MSEDCL submitted that 20% is too high as there is no need to provide Working Capital for consumption of stores and spares. Funding is already available for some of the spares of capital nature. Further, O&M expenses of 1 month is also provided under Working Capital requirement.

With respect to the proposed Regulation 55 (A), MSPGCL submitted that there is no mention of Transportation Charges from loading point (at mine end) to TPS end (unloading point) in the Draft Regulations, 2022. Hence, it is presumed that freight charges between mine end loading point to power station end unloading point will be considered under the landed cost of coal as is done for coal from other sources.

With respect to the proposed Regulation 55 (P), MSPGCL submitted that at present, MSPGCL has envisaged to use washery rejects in reject-based power plant. As per the CMA, such plant is either to be installed by Mine Owner (i.e., MSPGCL) or the same can be installed by MDO, but the responsibility for sale of power from the reject-based plants will be with MSPGCL. In such case, there will be need for Guidelines for transfer price of such coal.

Further, MSPGCL submitted that from the given formula under proposed Regulation 55 (P), it appears that adjustment of Non-Tariff Income is to be done on annual basis through credit adjustment note against total charges of coal for the year, at the end of year. However, all the three components covered under Credit Adjustment Note, namely OB Adjustment, GCV Adjustment and NTI Adjustment, may vary from period to period within the year.

### *3.14.3 Analysis and Commission's Decision*

The Commission has accepted MSPGCL's submission regarding the inclusion of reference to Allotment Agreement, and hence, the term "Coal Mine Development and Production Agreement" in all relevant Clauses under Regulation 55 of the Draft Regulations, 2022 has been replaced by the term "Coal Mine Development and Production Agreement or Allotment Agreement", as under:

*"55 (B).1 Run of Mine Cost of coal in case of integrated mine(s) allocated through auction route under Coal Mines (Special Provisions) Act, 2015 shall be worked out as under:*

*…*

*Where,*

i. *Quoted Price of coal is the Final Price Offer of coal in respect of the concerned coal block or mine, along with subsequent escalation, if any, as provided in the Coal Mine Development and Production Agreement **or Allotment Agreement**: Provided that additional premium, if any, quoted by the generating company during auction, shall not be considered in the Run of Mine Cost;*
ii. *Fixed Reserve Price is the fixed reserve price per tonne along with subsequent escalation, if any, as provided in the Coal Mine Development and Production Agreement **or Allotment Agreement**: …"*

*"55 (B).2 Run of Mine Cost of coal in case of integrated mine allocated through allotment route under Coal Mines (Special Provisions) Act, 2015 shall be worked out as under:*

*…*

*Where,*

*…*

iii. *Fixed Reserve Price is the fixed reserve price per tonne along with subsequent escalation, if any, as provided in the Coal Mine Development and Production Agreement **or Allotment Agreement**."*

*"55 (O).2 In case the weighted average GCV of coal extracted from the integrated mine(s) in a year is lower than the declared GCV of coal of such mine(s), the GCV adjustment in that year shall be worked out as under:*

*…*

*Where,*

i. *Quoted Price of coal is the Final Price Offer of coal in respect of the concerned coal Block or Mine, along with subsequent escalation, if any, as provided in the Coal Mine Development and Production Agreement **or Allotment Agreement**:…"*

For greater clarity, the Commission has incorporated a proviso under Regulation 55 (B).2 to the effect that in case the Mining Charge includes the Annual Extraction Cost payable to the MDO, then the Annual Extraction Cost shall not be payable separately, as under:

> *"Provided that in case the Mining Charge includes the Annual Extraction Cost payable to the MDO, then the Annual Extraction Cost shall not be payable separately."*

As regards the suggestion that Return on Equity should be computed at a base rate not exceeding 10% for capital investment related to integrated mines, the Commission is of the view that 14% RoE specified by CERC in the Tariff Regulations 2019-24 and proposed in the Draft Regulations, 2022 are appropriate. As and when the rate of RoE for power sector investments are revisited, then the rate of RoE for capital investment related to integrated mines shall also be revisited. The Commission has therefore, not made any modifications in the Draft Second Amendment Regulations, 2022 in this regard.

The Commission finds merit in the suggestion that if coal from a captive mine were to be more expensive than CIL notified price for the same Grade, then it would be better for consumers that the coal is procured from CIL, as the same philosophy is in accordance with the Directives of the Ministry of Power, GoI and Ministry of Coal, GoI, to the effect that there should not be any adverse impact on the tariff. Accordingly, the Commission has included an additional proviso to this effect under Regulation 55 (A). 1 and modified Regulation 55 (M).1 of the Draft Regulations, 2022, as under:

> *"55 (A).1 Input price of coal or lignite from the integrated mine(s) shall be determined based on the following components:*
>
> *...*
>
> *Provided also that the Input Price of coal or lignite determined above shall be capped to the delivered price of coal at the upper price band notified by Coal India Limited for the same Grade of coal from time to time."*

The Commission has deleted the first 2 provisos of Regulation 55 (M).1 of the Draft Regulations, 2022 and the third proviso has been renumbered as the first proviso as under:

> *"55 (M).1 The input charges of coal or lignite shall be recovered as under:*
>
> *Input Charges = [Input Price x Quantity of coal or lignite supplied] + Statutory charges, as applicable:*
>
> *Provided that energy charge rate based on input price of coal does not lead to higher energy charge rate throughout the tenure of power purchase*

*agreement than that, which would have been obtained as per terms and conditions of the existing power purchase agreement."*

As regards the suggestion to consider 15% of O&M expenses for consumption of stores and spares including explosives, lubricants and fuel, rather than 20% for computation of Working Capital requirement for the Captive mines, the proposed sub-clause in in accordance with the CERC Tariff Regulations, 2019-24. Further, there is no data to substantiate the suggestion. The Commission has therefore, not made any modifications in the Draft Second Amendment Regulations, 2022 in this regard.

It is clarified that freight charges between mine end loading point to power station end unloading point will be considered under the landed cost of coal as is done for coal received from other sources, in accordance with Regulation 50.6 of the Principal Regulations.

As regards the clarity desired on transfer price for washery rejects, the Commission is of the view that there would only be transportation cost for coal rejects, as they are a natural by-product of the coal washing process. If the coal rejects generated out of the coal washery are used in own/captive generating plant, then the basic cost of coal rejects would be considered as Nil, and actual transportation charges, subject to prudence check, shall be considered as input cost. Further, if such coal rejects are sold to third-party, then the sale price shall not be lesser than actual transport cost.

The Commission has hence, included an additional proviso to this effect under Regulation 55 (A). 1 of the MYT (Second Amendment) Regulations, 2023 as under:

*"Provided also that if the coal rejects generated out of the coal washery are used in own/captive generating plant, then the basic cost of coal rejects shall be considered as Nil, and actual transportation charges, subject to prudence check, shall be considered as input cost."*

The Commission has also included a proviso to this effect under Regulation 55 (P). 1 of the MYT (Second Amendment) Regulations, 2023 as under:

*"Provided that the price of sale of washery rejects shall not be lesser than actual transport cost incurred".*

As regards the comment that all the three components covered under Credit Adjustment Note may vary from period to period within the year, the proposed Clause is in accordance with the CERC Tariff Regulations, 2019-24. Further, there is no hindrance to undertaking annual adjustment of NTI, merely because the components of NTI may vary during the year. The Commission has therefore, not made any modifications in the Draft Second Amendment Regulations, 2022 in this regard.

# 4 Ministry of Power (MoP) revised policy for co-firing of biomass in coal-based power plants

## 4.1 Introduction of 6th and 7th proviso to Regulation 50.6: Landed Cost and Energy Charge for blended fuel

### *4.1.1 Amendments Proposed in Draft Second Amendment Regulations, 2022*

*"50.6 Energy Charge Rate (ECR) in Rs/kWh shall be computed up to three decimal places and shall be the sum of the cost of normative quantities of primary and secondary fuel for delivering ex-bus one kWh of electricity, and shall be computed as per the following formula: ...*

*Provided also that where biomass fuel is used for blending with coal, the landed cost of biomass fuel shall be worked out based on the delivered cost of biomass at the unloading point of the generating station, inclusive of taxes and duties as applicable:*

*Provided also that the energy charge rate of the blended fuel shall be worked out considering consumption of biomass based on blending ratio as specified by Authority or actual consumption of biomass, whichever is lower."*

### *4.1.2 Comments received*

MSEDCL submitted that the benefit in energy charge rate due to actual higher blending over and above the percentage blending specified by the Authority should be passed on to the beneficiary.

### *4.1.3 Analysis and Commission's Decision*

As regards MSEDCL's comment, neither the CERC Tariff Regulations, 2019-24 nor the Draft Regulations, 2022 provide for a situation where the actual blending ratio may be higher than the percentage blending stipulated by the Authority.

The Commission is the view that there could be implementation issues as well as increase in tariff in case the actual blending ratio may be higher than the percentage blending stipulated by the Authority. However, the Commission would not like to restrict the usage of biomass for blending of coal to the percentage rate stipulated by the Authority. At the same time, the feasibility of using higher percentage of biomass needs to be kept into consideration, and the end-consumers should not be subjected to the risk of tariff increase due to higher percentage usage of biomass. Hence, the Commission has included a proviso to the effect that the Generator may opt for higher blending ratio subject to techno-economic viability and the benefits in terms

of lower tariff being entirely passed through to the beneficiaries; however, loss, if any, shall be entirely borne by the Generator, as under:

*"Provided also that the Generating Company may opt for higher blending ratio subject to techno-economic viability and the benefits in terms of lower tariff being entirely passed through to the beneficiaries, and loss, if any, being entirely borne by the Generating Company."*

# 5 Electricity (Late Payment Surcharge and Related Matters) Rules, 2022 issued by MoP

## 5.1 Introduction of Regulation 2 (11)(a): Definition of Base Rate of Delayed Payment Charge

### *5.1.1 Amendments Proposed in Draft Second Amendment Regulations, 2022*

*"(11)(a) "Base Rate of Delayed Payment Charge" shall mean the one-year Marginal Cost of Funds-based Lending Rate ('MCLR') as declared by the State Bank of India, as applicable on the 1st April of the financial year in which the period lies, plus five percent and in the absence of MCLR, any other arrangement that substitutes it, which the Central Government may, by notification, in the Official Gazette, specify:"*

*Provided that if the period of default lies in two or more financial years, the Base Rate of Delayed Payment Charge shall be calculated separately for the periods falling in different years;"*

### *5.1.2 Comments Received*

APML and MEGPTCL requested the Commission to revise the definition of "Base Rate of Delayed Payment Charge" to 1.25% per month or part thereof as stipulated in the Bulk Power Transmission Agreement (BPTA) entered into by the Transmission Licensee with Transmission Service Users (TSUs).

MSEDCL submitted that the effective rate of Delayed Payment Charge (DPC) shall be MCLR [(as on 1st April of every Financial Year (FY)] + 5% spread. The proposed rate of DPS, i.e., 5% above the SBI MCLR is beyond the reasonable rate of interest in the current market conditions. MSEDCL added that that there is no logical justification for considering 5% above SBI MCLR for computation of rate of DPC. Also, the increase in rates in subsequent months takes the overall rate to a very high level. DISCOMs are in financial stress due to severe impact of COVID-19.

MSEDCL, therefore, requested the Commission to adhere to the prevailing market rate of Working Capital for consideration of Base Rate for DPC. MSEDCL submitted that the rate of DPC may be equated to MCLR notified by State Bank of India (SBI) without any markup of 5%, which would be in line with the MYT Regulations, 2019. MSEDCL submitted that MCLR itself is the correct reflection of prevailing market conditions for definition of Base Rate. Hence, no additional spread may be levied over and above MCLR for defining Base Rate.

### *5.1.3 Analysis and Commission's Decision*

The amendment proposed in the Draft Regulations, 2022 is in accordance with the Electricity (Late Payment Surcharge and Related Matter) Rules, 2022. Hence, there is no scope for modification of the rate of DPC, as suggested by the stakeholders. The Commission has therefore, not made any modifications in the Draft Second Amendment Regulations, 2022 in this regard.

## 5.2 Introduction of Regulation 2.1 (64)(a): Definition of Outstanding Dues

### *5.2.1 Amendments Proposed in Draft Second Amendment Regulations, 2022*

> *"(64)(a) "**outstanding dues**" means the dues of a Generating Company or a Transmission Licensee, not stayed by a competent court or Tribunal or Dispute Resolution Agency as designated in the Agreement, which remains unpaid by the beneficiary beyond the due date and includes the amount of instalment not paid after the redetermined due date under Regulation 37.6.*

### *5.2.2 Comments*

MSEDCL submitted that the newly added definition of outstanding dues has an exhaustive definition and included dues, which are not stayed by any Court or Tribunal or Dispute Resolution Agency. This makes it necessary for the Distribution Licensee to pay outstanding dues, which are disputed but not stayed by any Court. However, in very few disputed cases, Stay Order is granted. Paying disputed dues will be burdensome for Distribution Licensees. Moreover, Distribution Licensees are paying carrying cost as per the Orders of respective Courts when the outcome of the dispute is against the Distribution Licensee.

MSEDCL, therefore, submitted that the outstanding dues may also exclude the amount disputed between the Parties and where either Party has filed before, or the case is pending before the Appropriate Authority/Forum/Regulator/Court/Tribunal for Dispute Resolution.

### *5.2.3 Analysis and Commission's Decision*

The Commission is of the view that unless any Court grants a Stay Order, the disputed amount is payable by the Party concerned, irrespective of the fact that the Distribution Licensee has disputed the payment and the Distribution Licensees pays carrying cost when the outcome of the dispute is against the Distribution Licensee. Further, the amendment proposed in the Draft Regulations, 2022 is in accordance with the Electricity (Late Payment Surcharge and Related Matter) Rules, 2022.

The Commission has therefore, not made any modifications in the Draft Second Amendment Regulations, 2022 in this regard.

### 5.3 Substitution of Regulation 37.1: Delayed Payment Charges

#### *5.3.1 Amendments Proposed in Draft Second Amendment Regulations, 2022*

*"37.1 In case the payment of bills of Generation Tariff or Transmission Charges or MSLDC Fees and Charges by the Beneficiary is delayed beyond the due date, Delayed Payment Charge at the Base Rate of Delayed Payment Charge shall be payable on the payment outstanding for the first month of default, notwithstanding anything to the contrary as may have been stipulated in the Agreement or Arrangement with the Beneficiaries:*

*Provided that the rate of Delayed Payment Charge for the successive months of default shall increase by 0.5 percent for every month of delay subject to the condition that the Delayed Payment Charge shall not be more than three percent higher than the Base Rate of Delayed Payment Charge at any time:*

*Provided further that the rate at which Delayed Payment Charge shall be payable, shall not be higher than the rate of Late Payment Surcharge specified in the Agreement, if any."*

#### *5.3.2 Comments*

APML and MEGPTCL submitted that the proposed second proviso to the Regulations should be deleted. They submitted that DPC is levied as a penalty in order to promote payment discipline among the TSUs. Therefore, in order to have uniformity in rate of DPC, it is desirable that DPC not be capped at the rate specified in the Agreements, if any, and a uniform rate as per Regulations is applied so as to ensure payment discipline and financial health of the Transmission Licensees.

MSEDCL submitted that the Commission has made the clauses of LPS Rules applicable to all intra-State entities, which is not the intent of the LPS Rules, 2022. MSEDCL requested that the proposed clauses related to LPS Rules, 2022 should be excluded from the Draft Regulations, 2022, as the existing MYT Regulations, 2019 already provide for rate of DPC as MCLR plus 350 basis points.

#### *5.3.3 Analysis and Commission's Decision*

The amendment proposed in the Draft Regulations, 2022 is in accordance with the Electricity (Late Payment Surcharge and Related Matter) Rules, 2022. Hence, there is no scope for modification of the rate of DPC, as suggested by the stakeholders. As regards the submission that the Commission has made the LPS Rules applicable to all intra-*S*tate entities, which is not the intent of the LPS Rules, 2022, the Commission has extended the provisions of the LPS Rules to intra-*S*tate entities, for ensuring uniformity and greater discipline in payments.

The Commission has therefore, not made any modifications in the Draft Second Amendment Regulations, 2022 in this regard.

## 5.4 Introduction of Regulation 37.5, 37.6 and 37.7: Delayed Payment Charges

### *5.4.1 Amendments Proposed in Draft Second Amendment Regulations, 2022*

*"37.5 All payments by a Distribution Licensee to a Generating Company for power procured from it or by a user of a transmission system to a Transmission Licensee shall be first adjusted towards Delayed Payment Charge and thereafter, towards monthly charges, starting from the longest overdue bill."*

*"37.6 (1) In case the Distribution Licensee has communicated, in writing, to the Generating Company or Transmission Licensee, as the case may be, the outstanding dues and number of instalments in which, the outstanding dues would be paid, within thirty days of the notification of the Late Payment Surcharge Rules, 2022, the following conditions shall be applicable:*

*(a) The Distribution Licensee may make payment in a month more than the equated monthly instalment for the month;*

*(b) The payment of instalment shall be done to all the concerned Generating Companies and Transmission Licensees, as the case may be, on pro-rata basis, depending upon the proportion of their individual outstanding dues.*

*(2) Notwithstanding anything contained in Regulation 37.1, if the Distribution Licensee agrees to payment of the arrears dues as per the instalment fixed under the Late Payment Surcharge Rules, 2022, and makes timely payment of these instalments, then the Delayed Payment Charge shall not be payable on the outstanding dues.*

*(3) In case of delay in payment of an instalment under Clause (1), Delayed Payment Charge shall be payable on the entire outstanding dues as on the date of notification of the Late Payment Surcharge Rules, 2022.*

*"37.7 All the bills payable by a Distribution Licensee to a Generating Company or a Transmission Company shall be time tagged with respect to the date and time of submission of the bill and the payment made by the Distribution Licensee shall be adjusted first against the oldest bill and then to the second oldest bill and so on, so as to ensure that payment against a bill is not adjusted unless and until all bills older than it have been paid for:*

*Provided that any adjustment towards Delayed Payment Charge shall be done in the manner as specified in Regulation 37.5."*

### *5.4.2 Comments*

APML submitted that in terms of the Order dated 28.10.2022 in Case No. 97 of 2022, the MoP Electricity (Late Payment Surcharge and Related Matter) Rules, 2022 [LPS Rules, 2022] notified on 03.06.2022 were not applicable to intra-State Transmission Licensees and the same are proposed to be made applicable vide the Draft Regulations, 2022. Therefore, the timeline for a Distribution Licensee to communicate its intention to pay the outstanding dues in instalments, i.e., 30 days from notification of LPS Rules, 2022 is already over. Accordingly, the said clause may be suitably reworded to make it applicable prospectively.

MSEDCL submitted that the Commission has ruled in the Order in Case No. 97 of 2022 that there are adequate provisions in the MYT Regulations, 2019 and Transmission Open Access (TOA) Regulations, 2016 to deal with the Monthly Transmission Charges, Late Payment Charges and Payment Security Mechanism. In the same Order, the Commission has also ruled that the LPS Rules are not applicable to intra-State entities. The Commission has now proposed to adopt the clauses of LPS Rules, 2022 in the MYT Regulations for intra-State entities, which is contradictory and conflicting to the above ruling made by the Commission in Case No. 97 of 2022. Further, the Commission vide its Order dated 20$^{th}$ March, 2018 in Case No. 162 of 2016, has ruled that the methodology adopted by MSEDCL for adjustment of DPS is in line with MYT Regulations, 2019. Therefore, requested to kindly remove this clause from the Regulation. Hence, MSEDCL submitted that all the clauses related to LPS Rules, 2022 should not be incorporated in the MYT Regulations, 2019.

MSEDCL submitted that there is no specific methodology provided in the existing PPAs and MYT Regulations, 2019 regarding appropriation of payment towards the principal amount first and thereafter DPC or vice-versa. Hence, this Regulation for appropriation of payment towards DPC and balance if any towards longest overdue bill amount is not consistent with the existing practice of appropriation of payment. MSEDCL submitted that the proposed change may create confusion along with conflict in the cases of delayed payment or billing disputes and it gives undue benefits to Generators/Transmission Licensees while further distressing the Distribution Licensees and will result in increase in tariffs to consumers.

MSPGCL submitted that it welcomed the proposed alignment of the MYT Regulations, 2019 with the LPS Rules, 2022 as it will provide clarity on various aspects like method to be adopted for LPS Billing, additional rates to be applied in case of continual delays, etc. The measure will remove all the ambiguities that were prevailing in absence of specific guidelines in previous Regulations. Further, MSPGCL and MSEDCL have already undertaken an exercise for reconciliation of billing dues and finalization of outstanding dues as on 3$^{rd}$ June, 2022 and working out DPC as per LPS Rules, 2022.

#### *5.4.3 Analysis and Commission's Decision*

The Commission has extended the provisions of the LPS Rules, 2022 to intra-State Transmission Licensees in the Draft Regulations, 2022. However, the timeline of 30 days to communicate its intention to pay the outstanding dues in instalments, which was applicable for Generating Companies and inter-State Transmission Licensees as per the LPS Rules, 2022, is already over. Hence, the Commission has not made such timeline applicable for intra-State Transmission Licensees prospectively, from the date of the notification of the MYT Regulations, 2023.

As regards the contention that the amendment proposed in the Draft Regulations, 2022 is contradictory to the Commission's earlier Order, it is clarified that the earlier Orders were based on the extant Regulations, whereas the Commission has now proposed to amend the Regulations. On similar lines, the Commission has also aligned the MYT Regulations with the LPS Rules, 2022 by specifying the appropriation of payment towards DPC first and balance if any towards longest overdue bill amount.

Thus, the amendment proposed in the Draft Regulations, 2022 is in accordance with the LPS Rules, 2022. Hence, there is no inconsistency in the proposed Draft Regulations, 2022.

The Commission has therefore, not made any modifications in the Draft Second Amendment Regulations, 2022 in this regard.

# 6 Additional Points

## 6.1 Amendments proposed in the middle of the Control Period

### *6.1.1 Comments*

MSEDCL submitted that introduction of amendment to MYT Regulations, 2019 on important matters and effectuating it in the present form in the middle (3rd year) of the Control Period may not be in the right spirit of Multi Year Tariff (MYT) framework. Hence, MSEDCL requested the Commission to consider the proposed amendments while framing the MYT Regulations for the next Control Period.

### *6.1.2 Analysis and Commission's Decision*

The Commission has followed the due process of prior publication and inviting comments before finalising the MYT (Second Amendment) Regulations, 2023. Further, the amendments shall come into force prospectively. Hence, the concern that the amendments are being effectuated in the middle of the Control Period are not relevant.

The Commission has therefore, not made any modifications in the Draft Second Amendment Regulations, 2022 in this regard.

## 6.2 Benchmark Capital Cost for ECS

### *6.2.1 Comments*

MSEDCL submitted that the Commission should come up with a benchmark capital cost based on prevailing prices for ECS with technical specifications in the Draft Regulations, 2022 so that the Generators can adhere to this benchmark cost while installing ECS. Any capital cost incurred above the benchmark cost may be disallowed by the Commission.

### *6.2.2 Analysis and Commission's Decision*

The Commission is of the view that determination of benchmark capital cost for ECS is not feasible as the same would depend upon large number for factors.

The Commission has therefore, not made any modifications in the Draft Second Amendment Regulations, 2022 in this regard.

## 6.3 Separation of accounts and clear reporting for thermal power plant and integrated mine

### *6.3.1 Comments*

Prayas Group submitted that the final Regulations should clearly mention that the accounts of

the integrated mine be fully separated from that of the related thermal power plant. For example, the equity considered for the power plant should not include the equity considered for the coal mine, to avoid double counting.

#### *6.3.2 Analysis and Commission's Decision*

The Commission is of the view that as the captive mine is being developed under the same Balance Sheet, it cannot be made mandatory to have separate Accounts. However, Regulatory Accounts would continue to be separate, and separate equity amounts would be known. The Commission has therefore, not made any modifications in the Draft Second Amendment Regulations, 2022 in this regard.

| Sd- | Sd/- | Sd- |
|---|---|---|
| **(Mukesh Khullar)**<br>**Member** | **(I.M. Bohari)**<br>**Member** | **(Sanjay Kumar)**<br>**Chairperson** |

**Annexure - I**

| Sl. No. | Name of Stakeholders |
|---|---|
| 1 | Maharashtra Eastern Grid Power Transmission Company Ltd. (MEGPTCL) |
| 2 | Maharashtra State Electricity Distribution Company Ltd. (MSEDCL) |
| 3 | The Tata Power Company Ltd. (TPC) |
| 4 | Maharashtra State Power Generation Company Ltd. (MSPGCL) |
| 5 | Brihanmumbai Electric Supply and Transport (BEST) |
| 6 | Prayas Energy Group |
| 7 | Adani Power Maharashtra Limited (APML) |

# Annexure - II

## Annexure IV - Format for Life Cycle Cost Analysis

"**Life-cycle Cost Analysis**" means the process of assessing the total cost of ownership of an asset over its entire Useful Life, after taking into account all costs of acquiring, owning, maintaining and disposing of such asset;"

**Name of Applicant:** ____________________

**Project Detail/Code:** ____________________

**Discounted Factor (%):** ____________________

| Summary | NPV |
|---|---|
| O&M Expense | ₹ - |
| Capital Investment | ₹ - |
| Difference | ₹ - |

**Life Cycle Cost Analysis**

| | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| **Year** | 0 | 1 | 2 | 3 | 4 | 5 | 6 | 7 | ... | ... | ... | ... | ... |
| **Discount Factor** | | | | | | | | | | | | | |

| **Operations and Maintenance** | | | ₹ - | NPV | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| ***Generation, Transmission and Distribution Businesses*** | | | | | | | | | | | | | | | |
| | **Unit** | | | | | | | | | | | | | | |
| *Employee Expenses* | Rs. | | | | | | | | | | | | | | |
| *R&M Expenses* | Rs. | | | | | | | | | | | | | | |
| *A&G Expenses* | Rs. | | | | | | | | | | | | | | |
| ***Total*** | Rs. | | | | | | | | | | | | | | |

| **Capital Investment** | | | ₹ - | NPV | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| ***Generation, Transmission and Distribution Businesses*** | | | | | | | | | | | | | | | |
| | **Unit** | | | | | | | | | | | | | | |
| *Return on Equity Capital* | Rs. | | | | | | | | | | | | | | |
| *Depreciation* | Rs. | | | | | | | | | | | | | | |
| *Interest on Loan Capital* | Rs. | | | | | | | | | | | | | | |
| ***Total*** | Rs. | | | | | | | | | | | | | | |