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**MAHARASHTRA ELECTRICITY REGULATORY COMMISSION (TRANSACTION
OF BUSINESS AND FEES AND CHARGES) REGULATIONS, 2022**

STATEMENT OF REASONS

Dated: 18 October, 2022

Introduction

- 1.1. The Commission has notified (No. MERC/Legal/111/2004/1084) the Maharashtra Electricity Regulatory Commission (Conduct of Business) Regulations, 2004 (herein after referred to as “**CBR 2004**”), which came into effect from 10 June, 2004 which governs the procedure for the transaction of business of the Commission. The Commission has also notified the “Maharashtra Electricity Regulatory Commission (Fees and Charges) Regulations, 2017” (hereinafter “**Fees and Charges Regulation**”).
- 1.2. Subsequently, over the years, the Commission has issued various Practice Directions relating to the CBR, 2004 from time to time. Further, significant changes in the functioning of the Commission considering various technological initiatives that have permeated the industry are required to be considered to conduct the business in efficient, just and fair manner with greater transparency.
- 1.3. In this changing scenario, the need of the Commission is to develop and update the regulatory framework so that it enables and facilitates digital transformation, adapt and apply technologies and communication tools making the justice delivery system more efficient and thus benefitting its various stakeholders.
- 1.4. The Fees and Charges Regulations specify the Fees and Charges payable to the Commission for different types of Applications made and Licences sought or granted by the Commission under the provisions of the Act and the relevant Rules and Regulations. CBR 2004 deal with procedure in respect of filing of Petitions/Applications etc and Fees and Charges Regulations deals with fee payable for filing such Petitions/Applications. Accordingly, the Commission has combined the two Regulations. Also, it is easier for all stakeholders to refer to one comprehensive Regulation

- 1.5. Accordingly, to update the Regulations to the present context, merging the various practice directions into main Regulation and generally to make the whole regulatory framework more operationally relevant, efficient and achieve greater transparency, the draft MERC (Transaction of Business and Fees and Charges) Regulations, 2022 (hereinafter “**draft Transaction of Business Regulations, 2022**”) and the associated Explanatory Memorandum (**EM**) were published on the Commission’s website *www.merc.gov.in* in downloadable format on 18 June, 2022. A Public Notice was also published in daily newspapers Marathi (Maharashtra Times, Lokmat 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 11 July, 2022. A total of 10 stakeholders submitted their comments/suggestions on the draft Transaction of Business Regulations, 2022. The list of stakeholders who offered their comments/suggestions on the draft Regulations and EM, which have been considered by the Commission while finalising the Regulations, is placed at **Annexure “A”**.
- 1.6. The main comments 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 discuss 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 discussed, 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, cross-references, etc., which have been suitably incorporated, wherever necessary.
- 1.7. Wherever possible, the comments and suggestions 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, two clauses have been combined in order to minimise repetition.
- 1.8. Some comments and suggestions were not directly related to the draft Transaction of Business Regulations, 2022, on which inputs were invited. While the Commission has summarised such comments and suggestions briefly in this SOR, specific rulings on the same have not been provided, as the same are outside the scope of these Regulations. The Commission has also made certain suo-motu consequential changes in order to ensure consistency between clauses. Also, it may be noted that the Regulation numbers given in this Statement of Reasons are those mentioned in the draft Transaction of Business Regulations, 2022.

The SOR is organised in Chapters as per the individual Regulations, on which comments have been received from stakeholders, 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. Some comments may not have been included as also explained above, but that does not mean that the comments have not been considered.

1 Adjudication Proceedings

1.1 Regulation 11 (b):

1.1.1 Proposed in Draft Transaction of Business Regulations, 2022

“11.

(b) The bench of the Commission shall be the full strength of the Commission or as per the quorum, unless otherwise required under the Act:

Provided that quorum for the Proceedings before the Commission shall be Two (2):

Provided further that quorum could be One (1) in the event only one Member is functional due to vacancies in the Commission or unavailability of Member for any reason or in case any Member(s) has recused himself from a proceeding due to reasons stated by such Member:

.....”

1.1.2 Comments Received

Adani Electricity Mumbai Limited (**AEML**) has submitted that it may be clarified that the presence of a legal/ judicial member is mandatory in order to constitute a quorum for the purpose of hearing the petition and passing the orders as per judgment dated 12 April 2018 of Hon’ble Supreme Court in State of Gujarat Vs. Utility User’s Welfare Association.

Prayas Energy Group (**Prayas**) has suggested that the intent of having a multi-member Commission is to decide critical matters of the sector and to ensure that multiple perspectives are considered in the decision-making process. It also submitted that the quorum of the for any proceedings should be full strength of the Commission or three, whichever is less. It is also suggested that in case there is unavailability of member or in case member/s have recused themselves from particular proceedings, it is crucial that the reason for non-participation in proceedings is given in writing and the same is made public on the website of the commission

1.1.3 Analysis and Commission’s Decision

The Electricity Act, 2003 (**EA03**) does not specify or define the term legal/judicial member and hence the Commission in its draft Transaction of Business Regulations, 2022 has not specified the term legal/judicial member. The Judgement of the Hon’ble Supreme Court is otherwise binding on all the State Commissions and has to be complied with and is being done by the Maharashtra Electricity Regulatory Commission.

The Commission notes that it is necessary to have a minimum number of Members who are mandatorily required to be present in the Bench to hear any matter. Section 82(4) of the EA03 states that the maximum number of Members can be three (3) Members. Accordingly, as per

the suggestion made by Prayas of having quorum of three (3), the Commission will be dysfunctional and disabled to hear any case, even if one single Member is absent on the day of the hearing. This will grossly result in failure to dispense with justice and Parties will be adversely affected, as they will not be able to secure relief, if the Commission is not hearing the case for absence of one Member. Further, as explained in EM, the Hon'ble Appellate Tribunal for Electricity in its judgment dated 2 December, 2013 in OP No 1 of 2011 has held that even single Member of the Commission can conduct proceedings. In view of the aforesaid, the existing clause in the draft Transaction of Business Regulations, 2022 is being retained by the Commission.

2 Presentation and scrutiny of the pleadings, etc.

2.1 Regulation 18 (a):

2.1.1 Proposed in Draft Transaction of Business Regulations, 2022

“18(a) The Petition shall be filed through ‘E-filing Portal’ only and the same shall be applicable mutatis mutandis to the Respondents / impleaded parties to file their Reply / Rejoinder etc. to the Petition:”

2.1.2 Comments Received

MSEDCL has sought clarification in respect of filing of hard copy of the Tariff and Schedule of Charges Petition.

2.1.3 Analysis and Commission’s Decision

The Commission in the EM has elaborately explained the fact that it is adopting digital technologies in its functioning for easy, user friendly and improved working, transparency, and efficiency. The Commission has developed ‘E-filing Application’ for online filing of petitions and other documents and the said system is operational and is smoothly functioning giving a big relief to the stake holders in terms of convenience and time saving. Accordingly, the Commission has proposed to remove the requirement of filing one hard copy of the Petition as mentioned in the Practice Directions. However, the parties while filing the Petition through e-filing portal are required to file the complete scanned copy of the Petition including summary/synopsis of Petition, facts and grounds of the case, Annexures along with Affidavit as per Forms specified in the Regulations. Thus, the draft Transaction of Business Regulations, 2022 and EM accompanying the draft Regulations are amply clear on non-filing of hard copy.

2.2 Regulations 18(b):

2.2.1 Proposed in Draft Transaction of Business Regulations, 2022

“18(b) The fees as may be specified by the Commission or prescribed by the State Government, as the case may be, from time to time, shall be payable along with the Petition:

.....

Provided further that fee once paid shall not be refunded under any circumstances except in case of excess payment made thereto.

.....”

2.2.2 Comments Received

Prayas has submitted that it is unclear as to why the State Government would prescribe the fees of the Commission and accordingly suggested that the reference be removed to reiterate the independent nature of functioning of the Commission.

MSEDCL has submitted that as per the Maharashtra Court-fees Act, 1959, where court reverses or modifies its former decision on ground of mistake refund is permitted.

2.2.3 Analysis and Commission’s Decision

Section 180 of the EA03 specifies that State Government may by notification make rules, inter alia, for the payment of fees for application for grant of licence under subsection (1) of Section 15. Also, the State Government vide its notification dated 23 March, 2009 has specified fees of Rs. 5,00,000 for application for grant of Licence under Section 15 of EA03 . The relevant clause of EA03 is reproduced herein below:

“Section 180. Powers of State Governments to make rules:

(1) The State Government may, by notification, make rules for carrying out the provisions of this Act.

(2) In particular and without prejudice to the generality of foregoing power, such rules may provide for all or any of the following matters, namely: -

(a) the payment of fees for application for grant of licence under subsection (1) of section 15;

.....” (Emphasis Added)

Accordingly, no change is required in the draft Transaction of Business Regulations, 2022.

Further, in respect of refund of fees, the Commission is of the view that Section 86 (1) (g) has conferred powers to the Commission to determine the fees. The EA03 being a complete code,

which is self-contained and comprehensive, the provisions of Maharashtra Court-fees Act, 1959 will not apply. Section 174 of EA03 clearly states that the provision of the EA03 shall have effect notwithstanding anything inconsistent contained in any other law. Accordingly, the Commission has retained the clause in the draft Transaction of Business Regulations, 2022.

2.3 Regulations 18 (e):

2.3.1 Proposed in Draft Transaction of Business Regulations, 2022

“18(e) On receiving any application or complaint other than the Petition or Interlocutory Applications, the Commission may at its sole discretion only forward such application/complaint received to concerned utility for appropriate action at their level. No other action will be taken by the Commission on these communications”

2.3.2 Comments Received

MSEDCL has suggested to remove the ‘for appropriate action at their level’ in the aforesaid Regulation as it creates misleading sense of urgency on MSEDCL to act upon and is also likely to create perception among consumers that grievances routed through the Commission is likely to get preference. This will also lead to injustice to other consumers of MSEDCL who are following the laid down mechanisms/procedure. It has suggested to include that no action will be taken by the Commission on the communication received from Consumers.

2.3.3 Analysis and Commission’s Decision

The Commission notes that one of the mandates of EA03 is to safeguard the interest of the Consumers. In view thereof, the Commission is duty bound to forward consumer grievances, as may be received, to the utility concerned. Further, MSEDCL is expected to act without any discrimination on all the complaints received either directly from the Consumers or from the Commission as per applicable rules, regulations and procedure laid down thereunder which are framed specifically for the Consumers so as to raise the complaints before the respective Distribution Licensees and if the same are not addressed by them, the Consumer can also approach CGRF. Accordingly, the Commission has retained the clause as per draft Transaction of Business Regulations, 2022.

3 Admission of the Petition

3.1 Regulation 19 (a):

3.1.1 Proposed in Draft Transaction of Business Regulations, 2022

“19(a) As and when the Petition and all necessary documents are lodged and the defects and objections, if any, are removed by the party concerned, and the Petition has been scrutinised

and numbered, the Petition shall, as far as possible, within a period of Thirty (30) working days be put up before the Commission for further directions:

Provided that the Commission under its discretionary powers may either hear the Petition for admission/maintainability or commence the hearing in the matter and decide the Petition on admission/maintainability and on merits together

3.1.2 Comments Received

The Tata Power Company Limited (TPC) has submitted that the Commission may consider the time period of Fourteen (14) working days to put up the matter before the Commission for further directions to ensure early and expeditious relief to the Petitioners/Applicants and each Petition would not have to be supplemented with an application for early listing.

In respect of proviso to Regulation 19(a), TPC has submitted that it is only in the Petition/Application that the Petitioner/Applicant specifies the legal injury for which the Petition/Application is instituted along with the remedy or relief which the Petitioner/Application has approached the Hon'ble Commission for. It has further submitted that the Commission to hear the matter on merits before deciding the maintainability of the case. Unless the Commission scrutinizes the averments/submission/merits provided in the Petition/Application, it will not be able to ascertain the maintainability of the Petition/Application.

3.1.3 Analysis and Commission's Decision

The contention of TPC that to hear the matter on merits before deciding the maintainability would not only be contrary to the established practices of Courts in India, provisions of CPC, but will also result in colossal waste of time of the Commission. Without a matter being maintainable, the merits of the matter cannot be heard. As explained in EM, as per judgment of Hon'ble Supreme Court in Civil Appeal No. 7524 of 2012, each matter filed before the Commission need not be compulsorily first decided on admissibility, the Commission can hear the admissibility and merits together. Hence, no change is required.

Further, the matters are put up before the Commission once defects, if any are rectified by Petitioner/Applicants. It has been endeavor of the Commission to list the matters after completion of administrative formalities of listing the matter as soon as possible. However, considering the suggestion of TPC, the Commission has revised the time period to Fourteen (14) working days to put up the matter before the Commission for further directions instead of Thirty (30) working days.

4. Service of notices and processes issued by the Commission

4.1 Regulation 20(a):

4.1.1 Proposed in Draft Transaction of Business Regulations, 2022

“20 (a) Any notice or process to be issued by the Commission to any person may be served on him by delivering the same after obtaining signed acknowledgement receipt thereof or by registered post or such other means of delivery as may be prescribed by the State Government under Section 171 and clause (n) of sub-section (2) of section 180 of the Act:

Provided that any person can serve notice through digital mode such as Whatsapp message, e-mail, SMS on registered email ID and/or Mobile number:

Provided further that it shall be responsibility of the person serving the notice to ensure the delivery of notice through digital mode is complete.”

4.1.2 Comments received

TPC has sought clarification whether the proviso to Clause 20(a) is only for serving notices issued by the Commission and no other submissions/documents in any Petition can be served by way of Whatsapp message, e-mail, SMS.

MSEDCL has submitted that the Commission may consider incorporating wordings for serving notices as per MERC (Electricity Supply Code and Standards of Performance of Distribution Licensees including Power Quality) Regulations, 2021 as the construction of proposed proviso in these draft regulations is somewhat different as it restricts to limited platform. The relevant clause as per MERC (Electricity Supply Code and Standards of Performance of Distribution Licensees including Power Quality) Regulations, 2021 is as given below:

“Provided that Distribution Licensee can serve notice under Section 56 of the Act through Digital Mode such as Whatsapp message, e-mail, SMS etc.”

4.1.3 Analysis and Commission’s Decision

The proviso to Clause 20(a) relates to service of notice only which is clear from the construct of the language of the said clause. Further, in respect of submission by MSEDCL, the Commission is of the view that since this clause relates to serving of notice of the Case before the Commission and hence the mode of serving notice cannot be left to the discretion of the any person. Accordingly, to include any other mode of service in future, the Commission has modified the proviso as given below:

“Provided that any person can serve notice through digital mode such as Whatsapp message, e-mail, SMS on registered email ID and/or Mobile number or any other mode as may be specified by the Commission.”

4.2 Regulation 20 (e):

4.2.1 Proposed in Draft Transaction of Business Regulations, 2022

“20 (e) Where a party is not found at the address furnished by him to the Commission and after making a reasonable enquiry, a notice shall be deemed to have been received if it is sent to the addressee’s last known place of business or work, habitual residence or mailing address by registered letter or by any other means including digital mode such as Whatsapp message, e-mail, SMS etc, which provides a record of the attempt to deliver the notice by the Commission, the communication is deemed to have been received on the day it is so delivered.”

4.2.2 Comments received

Prayas has submitted that to ensure certain and fail-proof communication protocols for serving notice, communication should be deemed as delivered only when the attempt to deliver is recorded via at least two of the modes of communication specified.

4.2.3 Analysis and Commission’s Decision

The Commission is of the opinion that there is no Such provision to serve the notice by two modes in any judicial fora. Further, the present clause specified is sufficient for ensuring the service of the notice. Accordingly, the suggestion is not accepted by the Commission and the clause as given in the draft Business of Transaction Regulations, 2022 is being retained.

5 Filing of reply, opposition, objections, etc.

5.1 Regulation 21 (d):

5.1.1 Proposed in Draft Transaction of Business Regulations, 2022

“21 (d) Any person who intends to file objection or comments with regard to a matter pending before the Commission, (and who is not a party to the pending proceedings), pursuant to notice (or public notice) published for the purpose, shall file its objections/comments through the link provided on the E-filing Portal on the website of the Commission and evidence in support thereof within the time period fixed by the Commission, which shall not normally be less than Three (3) weeks from the date when objections or comments are invited.”

5.1.2 Comments Received

TPC has sought clarification whether a person who is not a party to the pending proceeding will get access to the Petition and other pleadings in the proceeding to file its objection or comments.

MSEDCL has suggested that the process of submission of reply to objections may be exempted from proposed E-filing portal in case of objections or comments on MSEDCL Tariff Petition and its reply.

Prayas has submitted that to ensure greater participation, the Commission should allow all persons to submit comments and suggestions for all matters before the Commission, especially matters filed by licensees and generators with PPAs with licensees.

5.1.3 Analysis and Commission's Decision

The Commission is of the view that the aforesaid clause is in respect of objections/comments which are sought pursuant to specific notice/public notice issued by the Commission for any particular case/s before it and is not applicable to all the proceedings before the Commission. However, if any person who is not party in any particular matter/pending proceedings and wants to intervene will have to file an Intervention Application as per established practice of law and procedures of the Courts of India. Further, the Commission is also of the view that once the E-filing portal is developed for filing objections/comments, the response to same will also have to be filed on the said portal and there can be no exemption to any party.

6 Hearing of the matter

6.1 Regulation 22 (a):

6.1.1 Proposed in Draft Transaction of Business Regulations, 2022

“22(a) The Commission shall conduct proceedings by remote access (e-hearing) through video conferencing as a default option using Designated Video Conferencing Software

Provided that any party can opt for physical hearing and remain present in the Court Room of the Commission or at any other venue as mentioned in the notice for hearing:

Provided further that all hearing in cases filed before the Commission may be Live-streamed to the extent possible, through the link to be provided on the website of the Commission:”

6.1.2 Comments Received

MSEDCL has sought clarification in respect of mode of hearing in the matter involving MSEDCL Tariff Petition at other places in State of Maharashtra.

TPC has suggested that in case the Petitioner requires physical hearing then the same should be allowed without asking for any justification

TPC has further submitted that may continue to have the e-hearings also open to public without any restrictions.

6.1.3 Analysis and Commission's Decision

As explained in EM, the Commission has successfully conducted E-Hearings with Parties able to participate in these hearing and present their matters effectively. Considering successful adoption of digital technology in proceedings before the Commission, the Commission apart from continuing the Remote Access (E-Hearing) as the default option, has enabled the HYBRID (combination of In Person (Physical) and Remote Access (Digital)). The proviso to Clause 22(a) provides option for the party to opt for in person hearing.

As far as Tariff Proceedings are concerned, since the Regulations are sufficient, the Commission will decide as per the circumstances prevailing at a given point in time, whether to hold a complete e-hearing or a hybrid hearing and/or a physical hearing. Hence, no change is required.

Live streaming is already being done by the Commission. However, the enabling provision is provided for restricting the live hearing if required to be done in extraordinary circumstances. Also, e-Committee appointed by Hon'ble Supreme Court has also included such provision for restriction. Accordingly, no modification is required in draft Transaction of Business Regulations, 2022.

6.2 Regulation 22 (l) and 22 (m):

6.2.1 Proposed in Draft Transaction of Business Regulations, 2022

“22 (l) The Commission may at any stage of the proceedings order, that any matter in any pleadings to be struck out or amended;

i. which may be unnecessary, frivolous or vexatious or

ii. which may tend to prejudice, embarrass or delay the proceedings or,

iii. which is otherwise an abuse of the process of the Commission.

(m) The Commission may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Commission to be just, order that the name of any party improperly joined, whether as Petitioner or Respondent(s), be struck out, and that the name of any person who ought to have been joined, whether as Petitioner or Respondent(s), or whose presence before the Commission may be necessary in order to enable the Commission effectually and completely to adjudicate upon and settle all the questions involved in the matter, be added.”

6.2.2 Comments Received

TPC has submitted that the Commission shall record its reasons in writing either by way of an order or in the final order, for striking out/amending the pleadings and joining/non-joinder of parties and accordingly modify the clause to include the same.

6.2.3 Analysis and Commission's Decision

The Commission's actions are through its Orders which are reasoned. Hence, there is no need to spell it out in Regulations. Accordingly, no modification is required in the draft Transaction of Business Regulations, 2022.

7 Orders of the Commission

7.1 Regulation 27 (b):

7.1.1 Proposed in Draft Transaction of Business Regulations, 2022

"27(b) The Daily Orders, as far as possible, may be uploaded on the website of the Commission soon after the hearing but not later than Three (3) working days from the date of the hearing: Provided that the Daily Order/s may be uploaded on the website of the Commission later than Three (3) working days from the date of hearing in exceptional or unavoidable circumstances of the particular Case."

7.1.2 Comments Received

TPC has submitted that if the case is being adjourned for further proceedings, as far as possible the next date of hearing to be fixed then and there in the presence of the parties instead of date of further hearing being fixed separately and intimate the parties.

MSEDCL has submitted that Daily Orders to be issued specifically if any directions are issued by the Commission during the Hearing.

7.1.3 Analysis and Commission's Decision

The Commission has included the aforesaid clauses, as explained in EM, as per the Judgment of the Hon'ble Appellate Tribunal for Electricity in its judgment dated 27 September, 2011 in Appeal No 88 of 2011. The Hon'ble Tribunal in the said judgment has issued directions for issuance of Daily Orders to all the Commissions by invoking power under Section 121 of EA03 in respect of hearings held before the Commission. Further, the Daily Order would certainly incorporate the directions issued by the Commission during the hearing. Accordingly, no change is required.

8 Commission's records – documentation, inspection, confidentiality and accessibility

8.1 Regulation 30(f):

8.1.1 Proposed in draft Transaction of Business Regulations, 2022

“30 (f) The office record of the Commission may be destroyed after it is converted to electronic form in accordance with Section 7 of the Information Technology Act, 2000 as per operational procedure and protocol approved by the Commission from time to time:

Provided that the officer as may be designated by the Commission shall supervise the conversion of records into electronic form and destruction of physical records:

Provided further that office record to be destroyed shall be effectively shredded:

Provided also that a register of records in electronic form shall be maintained by the officer designated by the Commission and all entries regarding destruction shall be made therein.

8.1.2 Comments received

TPC has suggested that Maker-Checker system to be in place to ensure that before the actual destruction of the physical records, the documents have been converted into electronic form and corresponding entry in made in the register of records.

Prayas has submitted that as the destruction is final, to maintain authenticity and safety from probable data loss, the documents should be preserved in its original / physical format for at least 5 years from digitization

8.1.3 Analysis and Commission's Decision

The Commission is of the view that various provisos to Clause 30 (f) clearly provide that for entry in the Register and officer to be designated by the Commission to supervise the conversion of records. Further, once the data in electronic form is verified, the hard copy of the office record can be destroyed as per procedure and protocol approved by the Commission. Also, the procedure to be approved by the Commission will specify adequate checks and balances so as to ensure that hard copies of office record are destroyed only after conversion to electronic form. The Commission in the procedure/protocol will also incorporate/ capture the audit trail in respect of access to the documents, sufficient safeguards to prevent alteration of data once same is verified in electronic form, authentication of responsible officers in secure manner

preferably Digital Signatures, indexing of documents etc. Hence, the Commission has not made any changes to the Regulations in this regard.

9 Arbitration of Disputes

9.1 Regulation 31 (b):

“31 (b)Notwithstanding the generality of the foregoing provisions, the Commission, before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party to the arbitration agreement or any person claiming through or under him, so applies not later than the date of submitting his first statement on the substance of the dispute, then, notwithstanding any judgment, decree or order of the Supreme Court or any Court, refer the parties to arbitration unless it finds that prima facie no valid arbitration agreement exists”

9.1.1 Comments received

AEML has submitted that Disputes relating to procurement and supply of power between the generating company and the licensee, having implication in rem, are non-arbitrable by virtue of such disputes falling under the exclusive regulatory powers attributable to the State Commission under Section 86 (1) of the Act. Accordingly, Regulations should provide the demarcation of disputes which require exclusive adjudication by the Commission and/ or disputes which could be subject matter of arbitration under the applicable law.

9.1.2 Analysis and Commission’s Decision

The aforesaid clause has been included as per Section 8 of the Arbitration and Conciliation Act, 1996 and provisions of CPC. Clause 31(b) of the draft Transaction of Business Regulations, 2022 only applies to arbitral disputes and will not apply to non-arbitral disputes. Accordingly, the apprehensions of AEML is unfounded. The words *“notwithstanding any judgment decree or order of the Supreme Court or any Court”*, does not mean that Clause 31(b) applies to non-arbitral disputes. Hence, the Commission has not made any changes to the Regulation in this regard.

10 Publication of Petition

10.1 Regulation 35 (a):

10.1.1 Proposed in draft Transaction of Business Regulations, 2022

“35(a) Where any application, Petition, or other matter is required to be published under the Act or these Regulations as per the directions of the Commission, it shall, unless the Commission otherwise orders or directs or the Act or Regulations otherwise provides, be advertised normally atleast Three (3) weeks before the date fixed for hearing in not less than

Two (2) daily newspapers in the English Language and Two (2) daily newspapers in the Marathi language having circulation in the area, in such form as directed by the Commission”

10.1.2 Comments received

EON Kharadi Infrastructure Private Limited (**EON**) has submitted that in case of SEZ as a Deemed Distribution Licensee, the consumers are restricted in number and hence it has requested to provide for relaxation in publication in newspapers, as the consumers may be approached directly by the Deemed distribution Licensee, for publication of any application of petition.

10.1.3 Analysis and Commission’s Decision

Section 64 (2) of EA03 mandates that every applicant shall publish the application. The Commission is of the view that the word publish has been included in the said section means to make the content of any application available to the general public for which the Commission has specified the publication in not less than Two (2) daily newspapers in the English Language and Two (2) daily newspapers in the Marathi language having circulation in the area. Hence, the Commission has not made any changes to the Regulation in this regard.

11 Framing of Regulations

11.1 Regulation 36:

11.1.1 Comments received

MSEDCL has submitted that that in case of introduction of provision in the final regulations which is neither mentioned in the draft regulations nor raised by any of the stakeholders, then the Commission may re-initiate stakeholder’s consultation on such limited issues which the Commission may intend to incorporate. This would limit the future litigation.

11.1.2 Analysis and Commission’s Decision

The Commission is of the view that the Regulations are finalised and are also accompanied with SoR. The Commission has right to modify the existing draft or incorporate the new clause based on the comments/suggestions from stakeholders. Further, the legislative process cannot be a reiterative exercise. Hence, the Commission has not made any change to the Regulations in this regard.

12 Fees for Applications and Petitions

12.1 Regulation 37:

12.1.1 Comments received

EON has submitted that Deemed Distribution Licensees are given power to supply electricity by some other acts or laws for example; developer of SEZ under SEZ Act, 2005. Such Licensees need not go through application for grant of Licence as they are Deemed Distribution Licensees. As the application by Distribution Licensee is merely for taking on record it's already existing Licensee status, the fees of Rs. 5,00,000 shall burden the consumers of Deemed Distribution Licensee as against Rs. 10,000 currently. Hence it is requested to kindly retain the current fees of Rs. 10,000.

NUPLLP has submitted that there are many small Deemed Distribution Licensee operating in Maharashtra and their estimated load is well below 50 MW per year. In initial years of operation, load is in the range of 2 MW to 20 MW. Small Distribution Licensee are frequently approaching the Commission for approval of PPA, and adoption of Tariff as and when load is increased. Further, the Petition fee for approval of the PPA and adoption of tariff is not linked to quantum of the PPA. Accordingly, NUPLLP has requested to notify fee for PPA approval and adoption of tariff under Section 63 of the EA03 for PPA less than 50 MW for Conventional fuel based Generating Plant as Rs. 1,50,000 and Non-conventional and Renewable Energy Plant including co-generation plant for PPA less than 20 MW as Rs. 75,000.

In respect of fees for FAC approval, AEML has submitted that prior approval of FAC is for the variation in power purchase cost to be recovered by the licensee from the consumers. Accordingly, the fees may also be treated as part of power purchase cost since the fees is towards the FAC approval process and the same may be recovered as part of FAC. MSEDCL has submitted that fees paid towards approval of Capital Expenditure to be removed as it will burden the Consumers.

AEML has submitted that Commission may amend the draft Regulations to state that a new Transmission Licensee shall pay an annual License fee of Rs. 2,00,000 till the COD instead of next two financial years following the grant of such Licence of the project as mentioned in the draft Regulations, considering the fact that commissioning of large transmission projects may extend beyond two years.

MSEDCL has submitted that increase in Distribution Licence Fees will burden the Consumers, hence the limit of Annual Fees to be capped to Rs 15 Crore. AEML has submitted that increase in License fee may be considered as uncontrollable expense and allowed over and above the normative allowance of O&M cost. Nidar Utilities Panvel LLP (NUPLLP) has submitted that

the Commission may increase the fees gradually from 0.02 percent to 0.05 percent on yearly basis (0.01 percent increase annually up to maximum of 0.05 percent).

MSEDCL has submitted that increase in fees for review Petition (25% of the original fees) will burden the consumers and hence existing fees of 10% of original fees to be retained. Prayas has submitted that applications by Consumer representatives does not have a separate fees and the fees itself has been increased to a prohibitive Rs. 10 Lakh. Increasing the fees would severely limit participation before the Commission. Writ Petitions before High Court will increase.

TPC has submitted that the Commission may consider retaining the fees of Rs. 5,000 applicable to consumers making an application for adjudication of disputes as prescribed under the MERC (Fees and Charges) Regulations, 2017, as Ministry of Power has already notified the rules allowing Open Access for procurement from Renewable Energy sources by reducing the eligibility limit from 1 MW to 100 kW. A 100 kW consumer may find it difficult to pay the fees of Rs. 50000/-. An increase from Rs. 5,000 to Rs. 50,000 is an exponential increase for the consumers to approach the Hon'ble Commission for adjudication of disputes.

Prayas, Mumbai Grahak Panchayat and EON have submitted that increase in fees for Miscellaneous Applications has been increased multi fold for entities other than individual. The increase is unreasonably high for small consumers like proprietorships, partnerships, cooperatives, associations etc. The fees is prohibitive in nature and will deprive small entities their right to seek redressal. Hence the existing fees be retained by the Commission.

AEML has submitted that fees paid towards approval of Capital Expenditure is akin to any other statutory fee / charges paid for various clearances and approvals as required by the Licensees for execution of the project. All such fees, charges and statutory levies are capitalised along with the project. AEML has further submitted that in the event the DPR is referred back, the fees paid also may be refunded back, since there will be no execution of the DPR. MSEDCL has submitted that fees paid towards approval of Capital Expenditure to be removed as it will burden the Consumers.

12.1.2 Analysis and Commission's Decision

The submission by EON in relation to the application by Deemed Distribution Licensee (SEZ) is merely for taking on record already existing Licensee status is not the procedure followed by the Commission. The Commission issues detailed reasoned order after having hearing in the matter and takes on record the Deemed Distribution Licensee of SEZ. Further, before issuing Specific Conditions of Distribution License, public notice is issued in 4 newspapers inviting comments and thereafter the said specific conditions are issued. Hence, the Commission is not inclined to make any changes in the Fees proposed in the draft Transaction of Business Regulations, 2022.

NULLP has sought reduction in fees for small distribution licensee in respect of adoption of tariff for small distribution licensees as in initial years of operation, load is in the range of 2 MW to 20 MW. These small licensees are frequently approaching the Commission for approval of PPA, and adoption of Tariff as and when load is increased. The Commission observes that the distribution licensees are expected to enter into long term or medium term contracts to ensure reliable and continuous power to its consumers. In such a scenario, there would be no need to approach the Commission frequently. Further, the Commission notes that the short term contracts tied up are generally for one year. Hence, such licensees are approaching the Commission once in a year. Hence, the Commission has not made any changes in the fees.

AEML's submission in respect of allowance of fees paid for approval of FAC to be allowed in FAC approval is completely bereft of any logic as FAC is levied towards any change in fuel and power purchase cost and does not include any legal fees paid towards the same. Any fees paid as per the Schedule of the Commission shall be allowed as an expense in the determination of its Tariff as per Regulation 37 of the draft Transaction of Business Regulations, 2022. Hence, the Commission is not inclined to make any change in this regard.

The Commission has accepted the AEML's suggestion to allow payment of Annual Licence fees for a Transmission Licensee up to the the financial year in which Date of Commercial Operation is declared instead of two financial years, provided such declaration is after two financial years following the grant of such Licence.

There are transmission projects which are being set up under Tariff Based Competitive Bidding in the State. Such licensees/successful bidders will approach the Commission for adoption of tariff under Section 63 of EA03. Accordingly, the Commission has included the fees of Rs 3,00,000 for such Petitions likely to be filed before the Commission.

Further, as already explained in the EM, the Commission has taken various digital initiatives for effective functioning of the Commission As part of effective regulation, the Commission has to appoint independent third party agencies for studies on many financial and technical issues on the licensees. Further, the increase in litigation has also increased the expenses. Also, as per Regulation 29 of Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2020, the Commission has decided to fund the Electricity Ombudsman's office for capacity building of Consumer Representatives and Consumer Grievance Redressal Forum by conducting workshops, training, seminars and issue of quarterly magazines for enhancing consumer awareness. In addition, as per the Regulation 17 of the said Regulations, the remuneration and other allowances payable to the Electricity Ombudsman shall be paid out of the fund constituted under Section 103 of the Act. Further, Salaries of Chairperson and independent Member of the Consumer Grievance Redressal Forum is now being reimbursed by the Commission as per Regulation 4.9 of the of Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum &

Electricity Ombudsman) Regulations, 2020. In view of the aforesaid, the Commission has proposed to revise the Fees and Charges payable to the Commission as specified in the Schedule to the draft Transaction of Business Regulations, 2022. However, considering the comments received from the stakeholders, the Commission has rationalised the fees proposed in the draft Transaction of Business Regulations, 2022 as given below:

S.No	Description	Fees (as per Draft Regulations)	Revised Fees (as per Final Regulations)
15	Miscellaneous Applications including Applications for clarification, i.e. Applications not covered elsewhere in these Regulations: (i) Applications by Licensees, Generating Companies and entities other than individuals; (ii) Applications by individuals	(i) Rs. 1,00,000 (ii) Rs. 500	(i) Applications by Licensees and Generating Companies – Rs 1,00,000 (ii) Application by entities other than Licensees, Generating Companies and individuals - Rs 1000 (iii) Application by individuals – Rs 500
17	Proposal for in principle / post facto approval of capital expenditure scheme	0.10 per cent of the DPR cost subject to maximum of Rs. 3,00,000	Deleted

In respect of suggestion related to reduction of fees for review Petitions, the Commission notes that many a time, the review petitions filed before the Commission are under the guise of the appeal. Further, the scope of review before the Commission is very limited. It is expected that parties would thoroughly do their due diligence before deciding to file the review or appeal. Hence, the Commission has retained the fees for review Petitions as proposed in the draft Transaction of Business Regulations, 2022.

The Commission, as seen from the aforesaid table, has reduced the fees of Application filed before the Commission by entities other than Licensees and Generating Companies from Rs 1,00,000 as proposed in the draft to Rs 1,000. Further, it has also removed the fees payable for approval of capex expenditure schemes as the said cost would be capitalised and entitle licensee to claim RoE and interest on equity and debt component respectively thereby burdening the consumers. Considering the reduction in the aforesaid fees and as explained in EM as well as herein above in relation to increase in expenses, the Commission has decided to retain the Annual Licence Fees and fees payable by Consumer who has opted for Open Access for adjudication of dispute as proposed in the draft Transaction of Business Regulations, 2022. The annual Licence Fees has already been paid by the Licensees as per existing Regulations and hence the revised annual Licence Fees shall be payable from FY2023-24 onwards. The Licensee or Generating Company shall be entitled to include the amount of Fee or Charge paid by it under these Regulations as an expense in the determination of its Tariff.

13 General Comments and Suggestions

13.1 Issuance of Order

13.1.1 Comments received

TPC and Prayas have submitted that the Commission to include the Clause 74 of the CBR 2004 which states as follows:

“74. Every order made by the Commission shall be a reasoned order”

It is submitted that regulation is critical such that the prayers, objections and suggestions provided by parties are addressed and to ensure that the rationale for Commission’s decisions are clearly stated. It will also ensure transparency, deliberate decision making it is crucial that cryptic orders are not issued by the Commission.

13.1.2 Analysis and Commission’s Decision

The Commission has always been issuing order which are reasoned orders. However, based on the suggestions received, the Commission has included the aforesaid provision under Regulation 27 – Orders of the Commission.

13.2 Provisions related to the Meetings

13.2.1 Comments received

Prayas has submitted that Regulation 22 to 27 of the CBR 2004 dealt with the manner of conducting meetings of the Commission and associated need for transparency. The regulations spelt out quorum for meetings, procedure for voting on decisions, process for recording minutes of the meetings and record of decisions of the Commission. These meetings refer to matters other than adjudicatory proceedings of the Commission. In that sense, these are not merely administrative (as stated in the Explanatory Memorandum) but are proceedings where critical decisions of the Commission are taken. Accordingly, it is suggested that Regulations 22 to 27 of the CBR 2004 be retained.

13.2.2 Analysis and Commission’s Decision

Regulation 22 of CBR 2004 clearly states that the section related to Meetings shall be applicable for “other than adjudicatory proceedings of the Commission”. Further, Regulations 28 and 29 of CBR 2004 related to Adjudication Proceedings states that it “shall be applicable to the adjudicatory proceedings of the Commission”. Hence, Regulations 22 to 27 were only administrative in nature, which are not required to be incorporated in the Transaction of Business Regulations, because ‘Business’ means proceedings which are not administrative in nature. Hence, no change is required.

13.3 Applicability of Regulations for Filing of approval Capex and FAC

13.3.1 Comments received

MSEDCL has submitted that clarify regarding which regulations shall be applicable on procedural aspects while filing proposal of Capex scheme and FAC approval.

13.3.2 Analysis and Commission's Decision

Since the Commission has combined Fees and Charges Regulations with Conduct of Business Regulations, Fees is being prescribed in the present Regulations. However, for procedural aspects for approval of Capex Schemes, MERC (Approval of Capital Investment Schemes) Regulations, 2022 will be applicable and FAC Approval will continue to approved as per present procedure. The Commission is in process of having web-based portal for approval of capex as well as FAC. Accordingly, as and when the portal is ready, the licensees will be notified about the procedure to be followed for approval.

Annexure – A

Sr.No	Name of Stakeholders
1	EON Kharadi Infrastructure Private Limited
2	Grahak Panchayat, Ratnagiri
3	Swapnil Bagade
4	Maharashtra Electricity State Distribution Company Limited
5	Prayas (Energy Group), Pune
6	Ulhas Chaudhari
7	Nidar Utilities Panvel LLP
8	BEST
9	Tata Power Company Ltd
10	Adani Electricity Mumbai Ltd