

MAHARASHTRA ELECTRICITY REGULATORY COMMISSION

13th Floor, Centre No.1, World Trade Centre,

Cuffe Parade, Mumbai 400 005

Tel. No. 022 22163964/65/69

E-mail: mercindia@merc.gov.in

Website: www.merc.gov.in

Maharashtra Electricity Regulatory Commission (Specific Conditions of Distribution Licence applicable to AEML SEEPZ Limited for SEZ at Santacruz Electronic Export Processing Zone, Andheri (East) Mumbai) Regulations, 2023

STATEMENT OF REASON

Date: 12 June, 2023

Vide the Co-Developer Agreement dated 8 September, 2021 with the SEEPZ SEZ Authority and the letter No. K-43014(22)/13/2021-SEZ dated as 26 October 2021, issued by the Government of India, Ministry of Commerce and Industry, Department of Commerce (SEZ Section) AEML SEEPZ Ltd. (ASL) has been notified as the Co-Developer for the SEEPZ SEZ admeasuring 103 Acres of area, Andheri (East), Mumbai - 400096, Maharashtra.

The Electricity Act, 2003 has been amended through Notification dated 3 March, 2010 and as per the amendment, the SEZ developer is the deemed Distribution Licensee for the respective notified SEZ area. Further, as per the definition in Section 2(g) of the SEZ Act 2005, the term 'Developer' also includes the Co-Developer.

On a Petition filed by ASL, the Commission, vide its Order dated 6 June 2022 in Case No. 2 of 2022, has taken on record its Deemed Distribution Licensee status in respect of the above SEZ in terms of the proviso to Section 14(b) of the Electricity Act, 2003, and stated that the process of specifying the Specific Conditions of Distribution Licence applicable to ASL would be undertaken separately.

Accordingly, the Draft MERC (Specific Conditions of Distribution Licence applicable to M/s AEML SEEPZ Limited for SEZ at Santacruz Electronic Export Processing Zone, Andheri (East) Mumbai, Regulations, 2022 were prepared specifying the draft Licence Conditions applicable to ASL such as the term of Licence, area of Licence and other conditions. A Public Notice inviting suggestions and objections on the draft Regulations was published in four daily newspapers (Times of India, Indian Express, Maharashtra Times and Loksatta) on 28 February 2023, and the draft Regulations were made available on the Commission's website. The last date for receipt of comments was 30 March 2023.

In response to this, no suggestion / objection has been received except for the suggestions from the Petitioner, M/s. AEML SEEPZ Ltd. (ASL). ASL has submitted its comment about Regulation No. 4.2, 4.3 and 4.4 of the Draft Specific conditions Regulations. Regulation 4.2, 4.3 and 4.4 of the draft Specific conditions read as under:

“ 4.2 The deemed licensee status of ASL shall be co-terminus with the approval of the

developer of the SEZ i.e. if the SEZ area gets de-notified either partially or fully, ASL shall lose its status as a Deemed Distribution Licensee for the corresponding area from the date of such notification.

4.3 Similarly, in case of events such as suspension /termination of ASL as the co-developer for the SEZ or expiry of the lease period etc., ASL shall lose its status as a deemed licensee status from date of such event.

4.4 In the event of future SEZ notifications or de-notifications by the Ministry of Commerce and Industry, Government of India, resulting into change in the SEZ area, or in case of events such as suspension /termination of ASL as the co-developer for the SEZ or expiry of the lease period etc, the Deemed Distribution Licensee shall approach the Commission within 15 days of such event for seeking amendment of these Specific Conditions with respect to ASL and seeking directions from the Commission regarding an interim arrangement of supply in the interest of the consumers in the said area.”

Following three issues have been raised by ASL:

- i. ASL has stated that there is no need for the Regulation No. 4.2. and 4.3 claiming that the concerned conditions are already covered under Regulation 4.4.
- ii. The Regulation Nos. 4.2 and 4.3 are contrary to the Regulation 4.4.
- iii. ASL has also suggested that instead of Regulation 4.4, the existing clause in the GEPL's specific conditions Regulations should be incorporated in the ASL's specific conditions Regulations. As per ASL, the Commission should permit ASL to supply consumers within the SEZ area till alternative arrangement of supply is made available to those consumers.

The issues raised by ASL are discussed below along with the Commission's view in the following paragraphs.

Issue I- No need of Regulation 4.2 and 4.3

ASL's submissions

ASL has stated that the conditions subsequent to which ASL shall lose its status as a deemed licensee is already covered in Regulation 4.4. Hence, separate Regulations 4.2 and 4.3 is not required.

Commission's view

It is true that events such as suspension /termination of ASL as the co-developer for the SEZ or expiry of the lease period or SEZ denotification are also covered under Regulation 4.4, however, the Regulation 4.4 only provides that the Distribution Licensee shall approach the Commission seeking licence amendment and seeking directions regarding interim arrangement in the SEZ. However, the Regulations 4.2 and 4.3 clearly provides the eventualities after occurrence of these events as these Regulations state that post such events, ASL shall lose its deemed licensee status. Such eventualities are not provided in Regulation 4.4. Hence, the Regulations 4.2 and 4.3 needs to be a part the specific conditions along with the Regulation 4.4.

Issue II- The Regulation Nos. 4.2 and 4.3 are contrary to the Regulation 4.4

ASL's submissions

The Regulation Nos. 4.2 and 4.3 are contrary to the Regulation 4.4 i.e. Regulations 4.2 and 4.3 state that on the happening of the conditions mentioned therein, ASL shall lose its status as a deemed licensee from the date of the happening of the event. However, Regulation 4.4 state that on the happening of the above events, ASL shall approach the Commission within 15 days for seeking amendment of the specific conditions. But, if ASL stops to being a licensee form the date of happening of the event as mentioned in Regulations 4.2 and 4.3, then ASL will not be an able licensee to approach the Commission for seeking amendment. This creates a circular reference. Hence, Regulations 4.2 and 4.3 are not required.

Commission's view

The Commission is of the view that the Regulation Nos. 4.2 and 4.3 are not contrary to that mentioned in Regulation 4.4. The Commission notes that in the event of suspension/termination of the co-developer status of the deemed distribution licensee, there cannot be an amendment to the Licence conditions Regulations for the Deemed Distribution licensee, however, as can be seen from the draft Regulations, the Regulation also states that deemed distribution licensee has to approach the Commission seeking directions from the Commission regarding an interim arrangement of supply in the said area if such events happen. Therefore, there is already a clarity on this issue, however, for better clarity, the Commission is of the view that a word “*revocation/repeal*” can also be inserted in Regulation 4.4 which will clarify that in the event of suspension/termination of the co-developer status of the deemed distribution licensee, the licensee has to approach the Commission seeking revocation and repeal of the licence conditions Regulations and for seeking directions from the Commission regarding an interim arrangement of supply in the said area.

The revised clause is as under:

“ 4.4 In the event of future SEZ notifications or de-notifications by the Ministry of Commerce and Industry, Government of India, resulting into change in the SEZ area, or in case of events such as suspension /termination of ASL as the co-developer for the SEZ or expiry of the lease period etc., the Deemed Distribution Licensee shall approach the Commission within 15 days of such event for seeking amendment/revocation/repeal of these Specific Conditions with respect to ASL and seeking directions from the Commission regarding an interim arrangement of supply in the interest of the consumers in the said area.”

The Commission is of the view that above minor change would bring more clarity.

Issue II- The Commission should permit ASL to supply consumers within the SEZ area till alternative arrangement of supply is made available and Regulation 4.4 should be replaced with the corresponding Regulation existing in the GEPL's' Licence conditions

ASL's submissions

In the event that ASL losses its status as a licensee as envisaged under Regulation 4.4, the Commission ought to mention a condition that would permit ASL to supply consumers within the SEZ area till alternative arrangement of supply is made available to those consumers. In this

regard, ASL would like to extract a similar section from the Specific Conditions of Distribution License applicable to M/s. Gigaplex Estate Pvt. Ltd. issued on 17-12-2015, which ASL is suggesting as above.

“ 4.2 In the event of future SEZ notifications or de-notifications by the Ministry of Commerce and Industry, Government of India, resulting into change in the SEZ area, the Deemed Distribution Licensee, within 15 days of such notifications/de-notifications, shall approach the Commission for seeking amendment of these Specific Conditions with respect to GEPL.

4.3 In the event of de-notification, the Deemed Distribution Licensee shall continue to supply the consumers within the SEZ area till alternative arrangement of supply is made available to those consumers in the de-notified area.”

Thus, a similar para can be included in ASL license as well, including the event of suspension /termination of ASL as the co-developer or expiry of lease period.

Commission's view

ASL has quoted the licence conditions Regulations issued to GEPL in 2015 and has requested to include the corresponding clause as a part of its Licence conditions instead of Regulation 4.4. The Commission notes that under the EA, supply of electricity without licence is prohibited. Hence, supply of electricity post such events (i.e. after SEZ denotification or suspension /termination of ASL as the co-developer for the SEZ or expiry of the lease period etc.) needs to be for a limited timebound period and that too with appropriate directions issued by the Commission to ensure that there is a smooth transition of supply arrangement from the SEZ deemed Distribution License to the incumbent distribution licence. Hence, the Commission is of the view that the Regulation 4.4 of the draft specific conditions should be retained which requires that the distribution licensee has to approach the Commission within 15 days of such event for seeking amendment/revocation and repeal of the Specific Conditions and seeking directions from the Commission regarding an interim arrangement of supply in the said area.

While finalizing the draft Regulations, the minor change has been incorporated and the draft specific conditions Regulations for ASL are finalized accordingly.

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

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

**Sd/-
(Sanjay Kumar)
Chairperson**