



Ref: AENML/Case 173 of 2022/31122022

31 December 2022

To,

The Secretary

Maharashtra Electricity Regulatory Commission
World Trade Centre, Centre No.1,
13th Floor, Cuffe Parade,
Colaba, Mumbai- 400005

Subject: Response to the clarification as sought by the Hon'ble Commission vide email dated 22.12.2022 in relation to the '*minimum area of supply*' in terms of Distribution of Electricity, License (Additional Requirements of Capital Adequacy, Credit worthiness and Code of Conduct) Rules 2005 readwith Ministry of Power Notification No. G.S.R. 852(E) dated 28.11.2022

Dear Sir,

1. The Petitioner No. 1 i.e., Adani Electricity Navi Mumbai Limited ("**AENML**") alongwith its parent company Adani Transmission Ltd./ Petitioner No. 2 ("**ATL**") approached this Hon'ble Commission by way of filing a Petition being Case No. 173 of 2022, under 6th proviso of Section 14 and Section 15 of the Electricity Act, 2003 ("**the Act**") readwith Maharashtra Electricity Regulatory Commission (General Conditions of Distribution License) Regulations, 2006 and Distribution of Electricity License (Additional Requirements of Capital Adequacy, Creditworthiness and Code of Conduct) Rules, 2005 (as amended on 28.11.2022) for grant of Distribution License for the entire geographically contiguous area comprising of Mulund, Bhandup, part of Thane District, Navi-Mumbai, Panvel, Kharghar, Taloja and Uran ("**Proposed License Area**").
2. That the Act statutorily envisages and lays down a mechanism for multiple distribution licensees to operate and function within the *same area* of supply. This is evident from 6th proviso to Section 14 of the Act, which empowers the Hon'ble Commission to grant license to 2 (two) or more persons for distribution of electricity within the same area

of supply, subject to the compliance of the 'additional requirements' relating to the capital adequacy, credit-worthiness, or code of conduct as prescribed by the Central Government.

In this regard, the Central Government promulgated the Distribution of Electricity License (Additional Requirements of Capital Adequacy, Creditworthiness and Code of Conduct) Rules, 2005 ("**Distribution License Rules**") wherein the aforesaid additional requirements contemplated under the 6th Proviso of Section 14 of the Act, were specified.

3. That AENML by means of its petition being Case No. 173 of 2022, duly and elaborately established the fulfilment of the aforesaid three criterion of capital adequacy, credit worthiness and code of conduct in terms of the Rules 3 of Distribution License Rules.
4. Pursuant to the filing of the said petition (as amended) on 10.11.2022, the '**Explanation**' to Rule 3 of Distribution License Rules, was amended vide a Notification No. G.S.R. 852(E) dated 28.11.2022 issued by the Ministry of Power ("**MOP Notification**"). Accordingly, the amended Rule 3 reads as following:

"3. Requirements of capital adequacy and creditworthiness

*(1) The Appropriate Commission shall, upon receipt of an application for grant of licence for distribution of electricity under sub-section (1) of section 15 of the Electricity Act, 2003, decide the **requirement of capital investment for distribution network after hearing the applicant and keeping in view the size of the area of supply** and the service obligation within that area in terms of section 43.*

(2) The applicant for grant of licence shall be required to satisfy the Appropriate Commission that on a norm of 30% equity on cost of investment as determined under sub-rule (1), he including the promoters, in case the applicant is a company, would be in a position to make available resources for such equity of the project on the basis of networth and generation of internal resources of his business including of promoters in the preceding three years after excluding his other committed investments.

Explanation. - For the purposes of this sub-rule, it is hereby clarified that for grant of a license for distribution of electricity within the same area in terms of sixth proviso to section 14 of the Act, the entire area covering either a Municipal Corporation as defined in article 243Q of the Constitution or three adjoining revenue districts, or a smaller area as may be notified by the Appropriate Government shall be the minimum area of supply.

5. In view of the amendment carried out in the Rule 3, this Hon'ble Commission vide an email communication dated 22.12.2022 sought a clarification from AENML to the effect that how the Proposed License Area of AENML complies with the requirement of 'minimum area of supply' as provided under amended 'Explanation' to Rule 3.

Re: Response to the clarification sought by this Hon'ble Commission

6. At the outset, the following submissions are made for the purpose of demonstrating that the Proposed License Area of AENML duly complies with the requirement of 'minimum area of supply' as provided under amended Explanation to Rule 3:
- (i) For grant of distribution license under 6th proviso to section 14, the requirement of 'minimum area of supply' as per amended Explanation to Rule 3, shall be satisfied if the proposed distribution area, at the minimum, covers any of the following;
 - a) the '*entire area*' covering a Municipal Corporation as defined in Article 243Q of the Constitution; or
 - b) three adjoining revenue districts; or
 - c) a smaller area as may be notified by the Appropriate Government.
 - (ii) As a matter of fact, the proposed distribution area of AENML comprises of the areas of Navi-Mumbai, Mulund, Bhandup, part of Thane District, Panvel, Kharghar, Taloja and Uran (collectively referred as 'Proposed License Area'). The aforementioned areas involve the following municipalities/authorities:

- a) Navi Mumbai Municipal Corporation;
- b) Municipal Corporation of Panvel/ CIDCO;
- c) Municipal Corporation of Greater Mumbai (MCGM);
- d) Thane Municipal Corporation;
- e) Jawaharlal Nehru Port Trust (JNPT);
- f) Navi Mumbai Special Economic Zone (NMSEZ);
- g) Maharashtra Industrial Development Corporation (MIDC).

The map delineating the Proposed License Area of AENML, has been annexed with the Petition (Annexure-12 of Case No. 173/2022).

- (iii) In view of the above it is submitted that the Proposed License Area of AENML *inter-alia* covers the "entire" geographical area covering the municipal corporations of Navi Mumbai and Panvel, as required under the aforesaid Explanation. Therefore, the said Proposed License Area duly qualifies the 'minimum area' requirement of the '*entire area covering a Municipal Corporation as defined in Article 243Q of the Constitution*'.
- (iv) At this stage, it is pertinent to highlight that the 'minimum area' under Explanation to Rule 3 is satisfied if an Applicant establishes that the entire area covering one Municipal Corporation, is forming part of the total proposed license area. In case of AENML, the Proposed License Area covers more than one 'municipal corporation' (such as Navi Mumbai, Panvel).

Hence, the case of AENML stands on a much greater footing as the Proposed License Area is much more than a municipal corporation, and in fact includes more than one municipal corporation. Thus, AENML satisfies the requirement of 'minimum area of supply' provided under the amended Explanation to Rule 3.

- 7. *Without prejudice to the aforesaid*, while AENML satisfies the conditions mentioned under the aforesaid Explanation to Rule 3, AENML also submits that the said



Explanation has to be also seen in the context of the 6th proviso to Section 14 of the Act as envisioned by the Legislature, and whether the same is binding as the requirement of '*minimum area of supply*' is not mentioned in the said proviso.

8. In view of the above and the submissions made in the Petition, it is submitted that the Petitioners duly comply with all the requirements of *capital adequacy, credit-worthiness, or code of conduct* as specified under 6th proviso to Section 14 of the Act read with Distribution Licence Rules and the Explanation contained therein. Once the Applicant complies with the requirements under the aforementioned Rules, it is the mandate of 6th proviso that no Applicant shall be denied of the distribution license. Therefore, AENML qualifies for grant of Distribution License by this Hon'ble Commission in terms of 6th proviso to Section 14 of the Act.

Regards,

For **Adani Electricity Navi Mumbai Limited**

A handwritten signature in purple ink, which appears to read "K. Patil", is written over a horizontal line.

(Kishor Patil)

Authorised Signatory