

Explanatory Memorandum for the proposed amendments to the Maharashtra Electricity Regulatory Commission (Multi Year Tariff) Regulations, 2011

Background

The Maharashtra Electricity Regulatory Commission (Multi Year Tariff) Regulations, 2011 (hereinafter referred to as MERC MYT Regulations, 2011) were notified by the Maharashtra Electricity Regulatory Commission (hereinafter referred to as MERC or the Commission) on February 4, 2011.

Amendment through Regulation No.s 2, 3, 4 and 5:-

Some of the Generating Companies and Licensees have submitted applications for exemption /deferment from the MYT framework for certain period, under the proviso to Regulation 4.1 of the MERC MYT Regulations, 2011. These applications are pending. Since, the MERC (Terms and Conditions of Tariff) Regulations, 2005 stood repealed under the MERC MYT Regulations, 2011 an issue arose as to under which regulations therefore the ARR and Tariff of those Generating Companies and Licensees would be determined if the Commission invokes its powers under Regulation 4.1 of the MERC MYT Regulations, 2011 to exempt Generating Companies and Licensees from determination of tariff under the Multi Year Tariff framework. In this regard, the Maharashtra State Power Generation Company Limited (MSPGCL) has forwarded the opinion of the Learned Advocate General, Government of Maharashtra. The Learned Advocate General, Government of Maharashtra, has opined as *inter alia* as under:

- "9. Accordingly, the queries raised are answered as follows:
- a) Yes. The MERC has power under the Regulation 4.1 to exempt the applicability of the MYT Regulations, 2011 to a party which is entitled to such exemption.
 - b) After the exemption, the MERC may proceed to determine tariff in accordance with the provisions of the Act even in the absence of said MYT Regulations. The legislative mandate contained in Section 64 to determine tariff must be carried out and cannot be ignored or diluted because of the absence of regulations.
 - c) The source of power of exercising jurisdiction in the absence of MYT Regulations 2011, will be the Electricity Act, 2003. The previous tariff orders and the procedure under Section 64 read with the principles enumerated in Section 61 would provide sufficient guidance to enable determination of tariff."

Learned Advocate General, Government of Maharashtra, has opined that in such a situation the Commission could determine the ARR and the tariff by referring to the previous tariff orders and the procedure under Section 64 read with the principles enumerated in Section 61 as the source of power of exercising jurisdiction in the absence of MYT Regulations 2011, will be the Electricity Act, 2003.

While it is true that absence of Regulations do not prevent determination of tariff under the EA 2003, the Commission is of the view that as an abundant caution, it is advisable to lay down specific provisions in the MYT Regulations, 2011, to avoid any ambiguity and regulatory uncertainty for the Generating Companies and Licensees. Accordingly, it is proposed to insert the following proviso after the proviso to Regulation 4.1 of the Maharashtra Electricity Regulatory Commission (Multi Year Tariff) Regulations, 2011:

“Provided further that in case the determination of ARR and/or tariff of a Generating Company or Transmission Licensee or Distribution Licensee or category of Transmission Licensee or Distribution Licensee is exempted for a particular period from the Multi-Year Tariff framework under the above proviso, then in all such cases, the following conditions shall apply:

- a) Business Plan shall be required to be submitted under the Multi-Year Tariff framework specified in these Regulations;
- b) Annual Petitions for approval of ARR and tariff shall be filed during the period of exemption, in accordance with the MERC (Terms and Conditions of Tariff) Regulations, 2005.”

The proposed proviso clarifies that even though exemption may be granted from filing the MYT Petition under the MERC MYT Regulations, 2011, the concerned Generating Companies or Licensee would be required to submit the Business Plan under the MERC MYT Regulations, 2011. And during the period of exemption ARR and tariff would be determined in accordance with the MERC (Terms and Conditions of Tariff) Regulations, 2005. In this regard, it was felt necessary to provide in a newly inserted Regulation No. 102 that in case an order of exemption has been issued under Regulation 4.1 then the concerned Generating Company or Transmission Licensee or Distribution Licensee shall file Annual Petitions for approval of ARR and tariff during the period of exemption, in accordance with the MERC (Terms and Conditions of Tariff) Regulations, 2005.

Further, in case exemption is granted to any Transmission Licensee under the proviso to Regulation 4.1 of the MERC MYT Regulations, 2011, then it becomes necessary to introduce

provisos under the appropriate Regulations to enable annual determination of intra-State transmission tariff for the period of such exemption. Accordingly, it is proposed to insert the following proviso after the proviso to Regulation 64.1.1 of the Maharashtra Electricity Regulatory Commission (Multi Year Tariff) Regulations, 2011:

“Provided further that in case the determination of ARR of a Transmission Licensee is exempted for a particular period from the Multi-Year Tariff framework under the first proviso to Regulation 4.1 of these Regulations, then for the period of such exemption, the above proviso shall not be applicable”.

The proposed proviso clarifies that in case exemption is granted from filing the MYT Petition under the MERC MYT Regulations, 2011, the revenue from short-term open access charges for each year need not be taken same as that prevalent during the yearly period before commencement of the Control Period, since the data for the previous year would be available, at the time of determination of intra-State transmission tariff for each yearly period during the period of exemption, and there may not be any need for mid-term review.

Similarly, after the third proviso to Regulation 64.2.1 of the Maharashtra Electricity Regulatory Commission (Multi Year Tariff) Regulations, 2011, it is proposed to insert the following proviso:

“Provided further that in case the determination of ARR of a Transmission Licensee is exempted for a particular period from the Multi-Year Tariff framework under the first proviso to Regulation 4.1 of these Regulations, then for the period of such exemption, the Base Transmission Capacity Rights for all long term Transmission System Users shall be determined based on average monthly CPD and NCPD of the long term TSUs prevalent during the 12 months prior to the period of such exemption”

The proposed proviso clarifies that in case exemption is granted from filing the MYT Petition under the MERC MYT Regulations, 2011, the Base Transmission Capacity Rights for each year need not be computed at the beginning of the Control Period based on the past trend, since the average monthly CPD and NCPD of the long-term TSUs prevalent during the 12 months prior to the period for which intra-State transmission tariff is being determined for each yearly period, and there may not be any need for mid-term review.

Further, since provisos are being introduced for annual determination of tariff in case exemption is granted to any transmission licensee, it is felt that a similar proviso should be introduced to address the possibility of grant of new transmission licensees during the

Control Period, which were hitherto intended to be addressed at the time of mid-term performance review. Accordingly, it is proposed to amend the second proviso to Regulation 64.3.1 of the Maharashtra Electricity Regulatory Commission (Multi Year Tariff) Regulations, 2011 to omit the words “or due to addition of new Transmission Licensees to the system” , and add a third proviso, respectively, as under:

"Provided further that any revisions in Base Transmission Capacity Rights and Base Transmission Tariff as determined in Regulations 64.2 and 64.3 due to the variation in the actual and approved CPD and NCPD ~~or due to addition of new Transmission Licensees to the system~~ shall be made at the time of Mid-term Performance Review and at the end of the Control Period."

"Provided further that in case new Transmission Licensees are added to the intra-State transmission network during the Control Period, then the Base Transmission Capacity Rights and Base Transmission Tariff as referred under Regulations 64.2 and 64.3 shall be determined for each year of the Control Period".

Amendment through Regulation. 6

Since, some Generating Companies and Licensees have sought exemption / deferment of determination of ARR and tariff under the multi year framework, and have yet not submitted their Business Plans and MYT Petitions, there could be a situation that the tariff order issued by the Commission for the year ending on the 31st March, 2011 shall be required to continue to operate till the time a new tariff order is issued. However, notwithstanding the delay in filing Business Plan and MYT Petitions, and notwithstanding any order exempting / deferring the determination of ARR and Tariff under the MYT Regulations 2011, the filings required under the MYT Regulations 2011 must go on. However, this situation may pose difficulty in giving effect to the determination of tariff under the MYT Regulations 2011 in the immediate two years time horizon. Hence, during this time, ARR and Tariff will have to be determined under the MERC (Terms and Conditions of Tariff) Regulations, 2005.

In this regard, the Commission felt the need to add certain transitory provisions to amply clarify the matter. It is proposed to introduce the following transitory provisions after Regulation 101 of the Maharashtra Electricity Regulatory Commission (Multi Year Tariff) Regulations, 2011:

“102. Transitory provisions:

Notwithstanding anything to the contrary contained in these regulations –

(a) the tariff order issued by the Commission for the year ending on the 31st March, 2011 shall continue to operate;

and

(b) the Business Plan, and Petition for calculation of Aggregate Revenue Requirement and expected revenue from tariff and charges for determination of tariff in all cases covered under these Regulations from April 1, 2011 and onwards up to FY 2015-16 i.e., till March 31, 2016, shall continue to be filed and dealt with under the Maharashtra Electricity Regulatory Commission (Multi Year Tariff) Regulations, 2011.

Provided that in case an order of exemption has been issued under Regulation 4.1 then the concerned Generating Company or Transmission Licensee or Distribution Licensee shall file Annual Petitions for approval of ARR and tariff during the period of exemption, in accordance with the MERC (Terms and Conditions of Tariff) Regulations, 2005.

Provided also that where there is no order of exemption under Regulation 4.1 for a Generating Company or Transmission Licensee or Distribution Licensee and if the Commission is satisfied that there is a difficulty in giving effect to the determination of tariff with effect from April 1, 2011 under these Regulations and in the event the tariff is required to be determined from April 1, 2012 or any further period under these Regulations, the repealed regulations in respect of the said tariff determination shall continue to be in-force, and the provisions of these regulations shall not apply to the determination of tariff for the period till April 1, 2012 or such further period."