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**ODISHA ELECTRICITY REGULATORY COMMISSION
BIDYUT NIYAMAK BHAWAN
BHUBANESWAR – 751021**

NOTIFICATION

The 20th December 2022

No. 1472—OERC/RA/RST. REGU.–36/2021—In exercise of powers conferred under Sections 61, 62 and 86 read with Section 181 of the Electricity Act, 2003 (Act 36 of 2003) and all other powers enabling it in that behalf, the Odisha Electricity Regulatory Commission hereby makes the following Regulations, namely:

1. PRILIMINARY

1.1. Short Title, Applicability, Commencement and Extent

- 1.1.1. These Regulations shall be called “**Odisha Electricity Regulatory Commission (Terms and Conditions for Determination of Wheeling Tariff and Retail Supply Tariff) Regulations, 2022**”.
- 1.1.2. These Regulations shall come into effect from the date of their publication in the Official Gazette and shall remain in force till March 31, 2028, unless otherwise reviewed/extended by the Commission.

- 1.1.3. These Regulations shall extend to the whole of the State of Odisha.
- 1.1.4. The Commission in specifying these Regulations is guided by the principles contained in Section 61 to 65 of the Act.
- 1.1.5. These Regulations shall be applicable to all existing and future Distribution Licensees and their successors, if any, including GRIDCO.
- 1.1.6. The Orissa General Clauses Act, 1937 shall apply to the interpretation of these Regulations.
- 1.1.7. These Regulations shall supersede the OERC (Terms & Conditions for Determination of Wheeling Tariff and Retail Supply tariff) Regulations, 2014.

1.2. **Definitions and Interpretation**

1.2.1. In these Regulations, unless the context otherwise requires-

- 1) **“Act”** means the Electricity Act, 2003 as amended from time to time;
- 2) **“Aggregate Revenue Requirement” or “ARR”** means the annual revenue requirement comprising of allowable expenses and return for a Financial Year, pertaining to the Licensed business which are permitted, in accordance with these Regulations, to be recovered from the tariffs and charges determined by the Commission;
- 3) **“Allocation Statement”** means for each Financial Year, a statement in respect of each of the separate businesses of the Distribution Licensee for optimum utilization of its assets, showing the amounts of any revenue, cost, asset, liability, reserve or provision etc., which has been either:
 - i. charged from or to each such Other Business together with a description of the basis of that charge; or
 - ii. determined by apportionment or allocation between different businesses of the licensee including the Licensed Businesses, together with a description of the basis of the apportionment or allocation:

Provided that 'Allocation Statement' shall not be construed as a substitute for maintaining separate accounting statement for the regulated business and other businesses of the Distribution Licensees.

Provided that for the purpose of these Regulations, the licensed business of the Distribution Licensee for an area of supply would be separated as Wheeling business and Retail Supply business;

- 4) **“Applicant”** means a Distribution Licensee who has made an application for approval of Long-Term Business Plan, Capex Plan, True-Up and /or determination of Aggregate Revenue Requirement and tariff in accordance with the Act and these Regulations and includes a Distribution Licensee whose tariff is the subject of review by the Commission on Suo- motu basis;
- 5) **“Area of Supply”** means the area within which a Distribution Licensee is authorised by its license to supply electricity;
- 6) **“Auditor”** means an auditor appointed by the applicant, in accordance with the provisions of sections 224, 223B and 619 of the Companies Act, 1956 (1 of 1956), as amended from time to time or Chapter X of the Companies Act, 2013 (18 of 2013) or any other law for the time being in force;
- 7) **“Authority”** means Central Electricity Authority referred to in Section 70 of the Act;
- 8) **“Average Cost of Supply”** means cost approved by the Commission for supply of one (1) unit of electricity irrespective of consumer category by the Distribution Licensee to its consumers' metering point for respective years as mentioned in Para 8.3 of the Tariff Policy, 2016. The cross-subsidy at various voltage levels shall be calculated with respect to average cost of supply;
- 9) **“Bank Rate”** shall mean the Bank Rate declared by the Reserve Bank of India from time to time;
- 10) **“Base Rate”** shall mean the one-year Marginal Cost of Lending Rate ('MCLR') as declared by the State Bank of India (SBI) from time to time;
- 11) **“Base Year”** means the Financial Year immediately preceding the first year of the applicable Control Period;
- 12) **“Change in Law”** means occurrence of any of the following events:

- (i) the enactment, bringing into effect, adoption, promulgation, amendment, modification, repeal or enactment of any Indian law; or
 - (ii) change in interpretation or application of any Indian law by a competent court, Tribunal or Indian Governmental Instrumentality which is the final authority under law for such interpretation or application; or
 - (iii) change by any competent statutory authority, in any condition or covenant of any consent or clearances or approval or license available or granted for the project; or
 - (iv) any change in taxes or duties, or introduction of any taxes or duties levied by the Central or any State Government
- 13) **“Collection Efficiency”** for a period is defined as the ratio of actual revenue collected for sale of energy excluding arrear from the period prior to effective date and actual amount billed for sale of energy expressed as percentage;
- 14) **“Commission”** means the Odisha Electricity Regulatory Commission referred to in sub-section (1) of the Section 82 of the Act;
- 15) **“Competitive Bidding”** means a transparent process for procurement of power, equipment, services and works in which bids are invited by the procurer by open advertisement covering the scope and specifications of the power requirement, equipment, services and works required, and the terms and conditions of the proposed contract as well as the criteria by which bids shall be evaluated, and shall include domestic competitive bidding and international competitive bidding;
- 16) **“Control Period”** means a multi-year period comprising first five Years from FY 2023-24 to FY 2027-28, and as may be extended by the Commission from time to time;
- 17) **“Day”** means the 24-hour period starting at 00:00 hour;
- 18) **“Distribution Loss”** means the difference between the energy input (in units) and the energy sold (in units) as percentage of the total input energy (in units) measured through appropriate meter;
- 19) **“De-capitalisation”** means reduction in Gross Fixed Assets of the project corresponding to the permanent removal or replacement of asset on account of

obsolescence or shifting of asset from one project to another project as admitted by the Commission;

- 20) **“Deemed Distribution Licensee”** means a person deemed to be a Distribution Licensee under Section 14 of the Act;
- 21) **“Detailed Project Report Scheme”** (or "DPR Scheme") means a capital expenditure Scheme with projected capital cost for clearance of proposed investment schemes or any such amount stipulated by the Commission as per License Conditions or specified separately by the Commission from time to time, for which the Distribution licensee, as the case may be, is required to obtain prior approval by submitting a Detailed Project Report (DPR);
- 22) **“Distribution Business”** means the business of operating and maintaining a distribution system for wheeling and / or supply of electricity in the area of supply of the Distribution Licensee;
- 23) **“Distribution Licensee”** means a Licensee authorised to operate and maintain a distribution system for supplying electricity to consumers in its area of supply;
- 24) **“Distribution System User”** means a retail consumers of the Distribution licensee to whom the electricity is supplied by the Distribution licensee through their own distribution infrastructure along with the person who has been allowed open access to the distribution system of a distribution licensee and the consumer or a class of consumers allowed to receive supply from a person other than a distribution licensee;
- 25) **“Effective Date”** means date of vesting of erstwhile utilities i.e. Central Electricity Supply Utility (CESU), WESCO Utility, NESCO Utility and SOUTHCO Utility to TPCODL, TPWODL, TPNODL and TPSODL on 01.06.2020, 01.01.2021, 01.04.2021 and 01.01.2021 respectively as per the Vesting Orders;
- 26) **“Erstwhile DISCOMs / Distribution Licensees”** means Central Electricity Supply Utility (CESU), WESCO, NESCO, SOUTHCO and their utilities;
- 27) **“Expected Revenue from Tariff and Charges”** means the revenue estimated to accrue to the Distribution Licensee from the Regulated Business at the prevailing tariffs and charges;

- 28) **“Existing Project”** means a project declared under commercial operation on a date prior to April 01, 2023;
- 29) **"Extended Life"** means the life of a Distribution system or element thereof, beyond the period of Useful Life, as may be approved by the Commission on a case to case basis;
- 30) **“Financial statement”** means for each Financial Year, the following statements, namely-
- (i) balance sheet, prepared in accordance with the form contained in Part I of Schedule III to the Companies Act, 2013 as amended from time to time or Part I of Schedule VI to the Companies Act, 1956 as amended from time to time, whichever is applicable;
 - (ii) profit and loss account, complying with the requirements contained in Part II of Schedule III to the Companies Act, 2013 or Part II of Schedule VI to the Companies Act, 1956, as amended from time to time, whichever is applicable;
 - (iii) cash flow statement, prepared in accordance with the Accounting Standard on Cash Flow Statement (AS-3) of the Institute of Chartered Accountants of India and as per Section 2(40) of the Companies Act 2013;
 - (iv) report of the statutory auditors;
 - (v) reconciliation statement, duly certified by the statutory auditors, showing the accounting statement under Indian Accounting standard (IND AS) and Generally Accounting Accepted Principles (GAAP) for reconciliation between the total expenses, revenue, assets and liabilities, of the entity as per financial statement and Regulatory format;
 - (vi) cost records as reflected in the books of accounts defined in Section 2 (13) of the companies Act 2013 or Section 209(1)(d) of the Companies Act, 1956 along with Cost Audit Reports together with notes thereto, and such other supporting statements and information as the Commission may direct from time to time;

Provided that the revised schedules and forms as stipulated under the Companies Act, 2013 shall be applicable from the date as prescribed therein:

Provided also that in case of any local authority engaged in the business of distribution of electricity, the Accounting Statement shall mean the items, as mentioned above, prepared and maintained in accordance with the relevant Acts or Statutes as applicable to such local authority:

- 31) **“Financial Year”** means a period commencing on 1st April of a calendar year and ending on 31st March of the subsequent calendar year;
- 32) **“Fixed Asset”** means an asset held with the intention of being used for the purpose of producing or providing goods or services and is not held for sale in the normal course of business;
- 33) **“Fees”** means fees payable to the Commission for filing of Petitions and other applications as per Schedule of fees approved by the Commission;
- 34) **“Force Majeure”** for the purpose of these regulations means the event or circumstance or combination of events or circumstances including those stated below which partly or fully prevents the distribution company to discharge its function as per the Licence Conditions and only if such events or circumstances are not within the control the distribution company and could not have been avoided, had the distribution company taken reasonable care or complied with prudent utility practices:
 - a. Act of God including lightning, drought, fire and explosion, earthquake, volcanic eruption, landslide, flood, cyclone, typhoon, tornado, geological surprises, pandemic or exceptionally adverse weather conditions which are in excess of the statistical measures for the last hundred years; or
 - b. Any act of war, invasion, armed conflict or act of foreign enemy, blockade, embargo, revolution, riot, insurrection, terrorist or military action; or
 - c. Industry wide strikes and labour disturbances having a nationwide impact in India;
- 35) **“Fuel and Power Purchase Adjustment Surcharge (FPPAS)”** means the increase in cost of power supplied to the Distribution Licensee(s), due to increase in fuel cost, fixed cost, year-end charges, transmission charges etc. with respect to cost of power purchase approved by the Commission;

- 36) **“GRIDCO”** means GRIDCO Limited which is the “State Designated Entity” to sign Power Purchase Agreements (PPAs) with the developer(s) for procurement of power from different sources to meet the State demand, involved in business of bulk purchase and bulk sale of power to the four Distribution Companies inside the State and trading of surplus power through traders;
- 37) **“Gross Fixed Asset”** means historical cost of an asset or gross book value the company had to pay in order to possess the fixed asset or other amount substituted for historical cost in the books of account or financial statements;
- 38) **“Index Esc”** means the average Inflation escalation to be considered on the basis weightage specified for the Distribution licensee with respect to Consumer Price Index (CPI) respectively of the relevant year;
- 39) **“Licensed Business”** shall mean the functions and activities, which the Licensee is required to undertake in terms of the License granted by OERC or deemed to have been granted;
- 40) **“Licensee”** means a person who has been granted a License and shall include a deemed Licensee;
- 41) **“New DISCOMs / Distribution Licensees”** means TPCODL, TPWODL, TPNODL, TPSODL
- 42) **“Operation and Maintenance Expenses”** or **“O&M expenses”** means the expenditure incurred on operation and maintenance of the electricity Distribution System, or part thereof, and includes the expenditure on Employee Expense, Repair and Maintenance Expense and Administrative & General Expense;
- 43) **“OPTCL”** means Odisha Power Transmission Corporation Limited the Transmission Licensee. (a deemed Transmission Licensee under Section 14 of Electricity Act, 2003) notified as the State Transmission Utility (STU) by the State Government and discharging the State Load Dispatch functions;
- 44) **“Other Business”** means other businesses of the Distribution Licensee under Section 51 of the Electricity Act 2003;
- 45) **“Person”** means any company or body corporate or association or body of individuals, whether incorporated or not, or artificial juridical person as defined under Section 2(49) of the Electricity Act 2003;
- 46) **“Prudence Check”** means scrutiny of reasonableness of any cost or expenditure incurred or proposed to be incurred, financing plan, use of efficient technology, cost and time over-run and such other factors as may be considered appropriate

by the Commission for determination of tariff; in accordance with these regulations. While carrying out the Prudence Check, the Commission shall look into whether the distribution licensee has been careful in its judgments and decisions for executing the project or has been careful and vigilant in executing the project;

- 47) **“Regulated Business”** means any electricity business, which is regulated by the Commission;
- 48) **“Retail Supply Business”** means the business of sale of electricity by a Distribution Licensee to the category of consumers within its area of supply in accordance with the terms of the License for distribution of electricity;
- 49) **“Retail Supply Tariff”** is the tariff charged by the Distribution Licensee for supply of electricity to its consumers other than open access consumer;
- 50) **“Useful life”** in relation to distribution system from the date of commercial operation shall mean the following, namely:
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| i | AC and DC sub-station: | 25 years; |
| ii | Gas Insulated Sub-station (GIS)/Hybrid sub-station: | 35 years; |
| iii | Distribution line: | 35 years; |
| iv | Communication System | 15 years |
- 51) **“Vesting Orders”** shall individually and collectively mean the Orders issued by the Commission with respect to sale of erstwhile Distribution Utilities under Section 20 of the Electricity Act 2003 and for vesting of Utility to the intending purchaser under Section 21 of the said Act as under:
- i. Case No. 11/2020 dated 26.05.2020 of OERC pursuant to which the utility of CESU was vested and license of CESU was transferred to the Special Purpose Vehicle (SPV) Tata Power Central Odisha Distribution Limited (the “TPCODL”) in which the Tata Power Company Limited (TPCL) and Government of Odisha (“GoO”) through GRIDCO shall hold 51% and 49% of equity shares respectively after the completion of sale;
- ii. Case No. 82/2020 dated 28.12.2020 of OERC pursuant to which the utility of WESCO was vested and license of WESCO was transferred to

the SPV Tata Power Western Odisha Distribution Limited (the “TPWODL”) in which the Tata Power Company Limited (TPCL) and Government of Odisha (“GoO”) through GRIDCO shall hold 51% and 49% of equity shares respectively after the completion of sale;

iii. Case No. 9/2021 dated 25.03.2021 of OERC pursuance to which the utility of NESCO was vested and license of NESCO was transferred to the SPV, Tata Power Northern Odisha Distribution Limited (the “TPNODL”) in which the Tata Power Company Limited (TPCL) and Government of Odisha (“GoO”) through GRIDCO shall hold 51% and 49% of equity shares respectively after the completion of sale;

iv. Case No. 83/2020 dated 28.12.2020 of OERC pursuance to which the utility of SPUTHCO was vested and license of SOUTHCO was transferred to the SPV, Tata Power Southern Odisha Distribution Limited (the “TPSODL”) in which the Tata Power Company Limited (TPCL) and Government of Odisha (“GoO”) through GRIDCO shall hold 51% and 49% of equity shares respectively after the completion of sale;

52) **“Wheeling”** means the operation whereby the distribution system and associated facilities of a Distribution Licensee, are used by another person for the conveyance of electricity on payment of charges to be determined under these Regulations;

53) **“Wheeling Business”** means the business of operating and maintaining a distribution system for conveyance of electricity in the area of supply of the Distribution Licensee;

54) **“Wheeling Tariff”** is the tariff charged by the Distribution Licensee for operating and maintaining a distribution system for wheeling / supply of electricity to its consumers;

55) **“Year”** means a Financial Year (FY) i.e. starting from 1st April and ending on 31st March of the next year;

1.2.2. The words and expressions used in these regulations and not defined herein but defined in the Act or any other regulation of the Commission shall have the meaning assigned to them under the Act or any other regulation of the Commission.

1.2.3. All proceedings under these Regulations shall be governed by the OERC (Conduct of Business) Regulations, 2004 as amended from time to time.

1.3. Scope of Regulations and extent of their application

1.3.1. In accordance with the principles laid out in these Regulations, the Commission shall determine the Aggregate Revenue Requirement (ARR) and tariff for:

- i. Wheeling of electricity, i.e. Wheeling Tariff;
- ii. Retail sale of electricity, i.e. Retail Supply Tariff;

Provided that in case of distribution of electricity in the same area by two or more Distribution Licensees, the Commission may, for promoting competition among Distribution Licensees, fix only maximum ceiling of tariff for retail sale of electricity:

Provided further that where the Commission has permitted open access to any category of consumers under Section 42 of the Act, such consumers, notwithstanding the provisions of clause (d) of sub-section (1) of Section 62 of the Act, may enter into an agreement with any person for supply or purchase of electricity on such terms and conditions (including tariff) as may be agreed upon by them:

Provided also that the Commission shall determine the Wheeling Tariff, Cross-Subsidy Surcharge (CSS), additional surcharge and other open access related charges in accordance with these Regulations and OERC (Terms and Conditions of Intra-state Open Access) Regulations, 2020 as amended from time to time.

1.3.2. The Distribution Licensee shall file Petition containing details for determination of Aggregate Revenue Requirement for Wheeling Business and Retail Supply Business separately.

1.3.3. The ARR determined for the Wheeling Business shall be used to fix the Wheeling Tariff for wheeling of electricity.

1.3.4. The ARR determined for Retail Supply Business shall be used to fix the Retail Supply Tariff for retail sale of electricity.

1.3.5. The Commission shall also determine surcharge in addition to the charges for wheeling of electricity under the first proviso to sub-section (2) of Section 42 of the Act, in accordance with the OERC (Terms and Conditions of Intra-state Open Access) Regulations, 2020 and as amended by the Commission from time to time.

- 1.3.6. The Commission shall also determine additional surcharge on the charges for wheeling of electricity under subsection (4) of Section 42 of the Act, in accordance with the OERC (Terms and Conditions of Intra-state Open Access) Regulations, 2020 and as amended by the Commission from time to time.
- 1.3.7. Notwithstanding anything contained in these Regulations, the Commission shall adopt the tariff if such tariff has been determined through a transparent process of bidding in accordance with the guidelines issued by the Central Government pursuant to Section 63 of the Act.

1.4. Norms of operation:

- 1.4.1. The norms of operation specified under these Regulations are the ceiling norms and these shall not preclude the Distribution Licensee from accepting improved norms of operation as determined by the Commission and such improved norms shall be applicable for determination of tariff.

Where in case of distribution of electricity in the same area of operation by two or more Distribution Licensees, the Commission may, for promoting competition among Distribution Licensees, shall fix only maximum ceiling of tariff for retail sale of electricity.