

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)**

APPEAL NO. 301 OF 2018 & IA No.998 of 2018

&

APPEAL NO. 26 OF 2019 & IA No.77 of 2019

Dated: 22nd October, 2020

**Present: Hon'ble Mrs. Justice Manjula Chellur, Chairperson
Hon'ble Mr. S.D. Dubey, Technical Member**

APPEAL NO. 301 OF 2018 & IA No.998 of 2018

IN THE MATTER OF :

Indian Railways,
Represented through the General Manager,
Central Railways, Electrical Branch
Second Floor, Parcel Office Building,
Mumbai – 400 001

- Appellant

Versus

1. Tata Power Company Limited (Distribution)
Through its Managing Director,
Mumbai House, 21, Homi Modi Street,
Mumbai – 400 001
2. Maharashtra State Electricity Distribution Company Limited
Through its Managing Director,
Plot No. 9, Prakashgad,
Anant Kanethkar Marg,
Bandra East, Mumbai – 400 051
3. Reliance Infrastructure Limited (Distribution)
Through its Managing Director,
'H' Block, First Floor
Dhiru Bhai Ambani Knowledge City,
Navi Mumbai – 400 700

4. Brihan Mumbai Electricity Supply and Transport Undertaking
Through its Managing Director,
Best House, Best Marg,
Mumbai – 400 005

 5. Maharashtra Electricity Regulatory Commission
Through its Secretary,
World Trade Centre, Centre No. 1
13th Floor, Cuffe Parade,
Mumbai – 400 005

 6. Thane Belapur Industries Association (TBIA)
Through Dr. Ashok Pendse,
Rabale Village, Post Ghansoli,
Plot P-14, MIDC,
Navi Mumbai - 400 701
- Respondents

Counsel for the Appellant : Mr. M.G. Ramachandran Sr. Adv.
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Mr. Arvind Kumar Dubey
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Mr. Malcom Desai for R-1

Mr. Ravi Prakash
Mr. Nitish Gupta
Ms. Rimali Batra
Ms. Nikita Choukse
Ms. Saumya Sharma
Mr. Varun Agarwal for R-2

APPEAL NO. 26 OF 2019 & IA No.77 of 2019

IN THE MATTER OF :

Indian Railways,
Represented through the General Manager,
Central Railways, Electrical Branch,
Second Floor, Parcel Office Building,
Mumbai – 400 001

- Appellant

Versus

1. Maharashtra State Electricity Distribution Company Limited
Through its Managing Director,
Plot No. 9, Prakashgad,
Anant Kanethkar Marg,
Bandra East, Mumbai – 400 051
2. Maharashtra Electricity Regulatory Commission
Through its Secretary,
World Trade Centre, Centre No. 1
13th Floor, Cuffe Parade,
Mumbai – 400 005
3. Tata Power Company Limited (Distribution)
Through its Managing Director,
Mumbai House, 21, Homi Modi Street,
Mumbai – 400 001

- Respondents

Counsel for the Appellant : Mr. M.G. Ramachandran Sr. Adv.
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Mr. Amit Kapur
Mr. Kunal Kaul
Mr. Abhishek Ashok Munot
Mr. Tushar Nagar
Mr. Malcom Desai
Mr. Samikrith Rao Puskuri for R-3

JUDGMENT

PER HON'BLE MR. S. D. DUBEY, TECHNICAL MEMBER

1. The Appeal No.301 of 2018 has been filed by the Appellant – Indian Railways {hereinafter referred to as Indian Railways} under Section 111 of the Electricity Act, 2003 challenging the Order dated 23.03.2018 passed by the Maharashtra Electricity Regulatory Commission (herein after referred to as the '**State Commission**') in Case No. 53 of 2017 whereby the State Commission has decided on the aspects of the Standby Charges to be paid by the various Distribution Licensees/Entities to the Maharashtra State Electricity Distribution Company Limited (herein after referred to as '**MSEDCL**'). The limited aspects of challenge by the Indian Railways is in regard to the imposition of such charges on Indian Railways with consequential direction for furnishing of the segregated data related to the Indian Railways, drawal of power for the Mumbai System and for the rest of the Maharashtra for the Indian Railways from the time of the operation of the Indian Railways as a Distribution Licensee i.e. from December 2015 onwards and based on the data provided, the

quantification of the Standby Charges payable to MSEDCL including for the past period and in future.

- 1.1 The Appeal No.26 of 2019 has been preferred by the Appellant – Indian Railways challenging the Order dated 12.09.2018 passed by the Maharashtra Electricity Regulatory Commission in Case No. 195 of 2017 whereby the State Commission while deciding Mid-Term Review Petition of Maharashtra State Electricity Distribution Company Limited for Truing-up of Aggregate Revenue Requirement (ARR) of FY 2015-16 and FY 2016-17, Provisional Truing-up of ARR of FY 2017-18 and Revised Projections of ARR for FY 2018-19 and FY 2019-20, has also determined the Stand-by Charges of the Appellant for the past period from December 2015 to FY 2017-18. The State Commission has directed the Appellant to pay Rs.27.35 Crores to Tata Power Company Limited. In addition to the above, the State Commission has also determined the Stand-by Charges of the Appellant for FY 2018-2019 and FY 2019-2020 as Rs.1.03 crores and Rs.1.02 crores per month, respectively. The limited aspect of challenge by the Indian Railways is in regard to the imposition of such charges on Indian Railways payable to MSEDCL including for the past period and in future.

2. Brief Facts of the Case(s):-

Brief facts of the Appeals as submitted by the Appellant are as under:-

Appeal No. 301 of 2018 :-

- 2.1 The Petitioner, Indian Railways, is part of the Government of India and is represented by the Chief Electrical Distribution Engineer, Central

Railways. The Indian Railways operate the rail system in India as per the provisions of the Railways Act, 1989. Section 2 (31) of the Railways Act, 1989 defines the term 'Railways' and its assets in detail which also includes all electricity traction equipments, power supply and distribution installations used for the purpose of, or in connection with, a railway. Section 2 (32) of the Railways Act, 1989 defines the term 'Railway Administration'.

“(32) "railway administration", in relation to—

- (a) a Government railway, means the General Manager of a Zonal Railway; and*
- (b) a non-Government railway, means the person who is the owner or lessee of the railway or the person working the railway under an agreement;”*

Section 11 of the Railways Act, 1989 deals with the powers of Railway Administration to execute all necessary works of Railways which, among others, include electric supply lines under 11 (g).

2.2 In terms of the above, the powers of the Railways Administration includes the construction and establishment of Electric Supply Lines or Telegraph Lines as specifically provided for in sub-clause (a). Sub clause (g) of Section 11 provides for the powers of the Railway Administration to erect, operate, maintain, repair etc any electric traction equipment, power supply and distribution installation in connection with the working of the Railways. Besides the above, sub-clause (h) of Section 11 provides for the power in the Indian Railways to do all other acts necessary for making, maintaining, altering and repairing and using railways.

2.3 Section 12 of the Railways Act empowers the Railway to alter the Electric Supply Lines. Section 12 reads as under:

“12. Power to alter the position of pipe, electric supply line, drain or sewer, etc.-(1) A railway administration may, for the purpose of exercising the

powers conferred on it by this Act, alter the position of any pipe for the supply of gas, water, oil or compressed air, or the position of any electric supply line, drain or sewer:

Provided that before altering the position of any such pipe, electric supply line, drain or sewer, the railway administration shall give a notice indicating the time at which the work of such alteration shall commence, to the local authority or other person having control over the pipe, electric supply line, drain or sewer.

(2) The railway administration shall execute the work referred to in sub-section (1) to the reasonable satisfaction of the local authority or the person receiving the notice under the proviso to sub-section (1)."

2.4 The Hon'ble Supreme Court in Union of India v Chairman, UP State Electricity Board (2012) 3 SCC 329 decided on 9.2.2012 (Transferred Case No. 37 and 38 of 2001), considered the scope of Section 11 (a) and (g) of the Railways Act and has laid down as under:

" 16 That apart, Sections 11 (a) and (g) of the Railways Act, 1989 clearly authorise the Railways to construct necessary transmission lines, dedicated for their own purpose. It is not possible to read this Section in a restricted manner in which it was sought to be conveyed. This is because the principal part of Section 11 authorises the Railway Administration to execute all necessary works for the purpose of constructing or maintaining railways. Sub-section (a) of this Section authorises Railways to make or construct in or upon, across, under or over any lands electric supply lines.

17. Under sub-section (g), thereof, the Railways are authorised to erect, operate, maintain or repair any electric traction equipment, power supply and distribution installations in connection with working of the railways. This sub-section clearly empowers Railways to erect any electric traction equipment and power supply and distribution installation which is in connection with the work of the Railways. This will certainly include construction of transmission lines. That being so, there is no substance in this submission made by the UPSEB as well."

2.5 In terms of the provisions of Section 11 of the Railways Act, the Railway Administration is entitled to undertake electric supply and distribution. The said authority to the Indian Railways existed even during the period prior to the coming into force of the Electricity Act, 2003. The empowerment of the Railway Administration to undertake erection,

operate and maintain the electric traction equipment as well as power supply and distribution installation in connection with working of the railways has been specifically recognised under Section 11 (g) of the Railways Act. This statutory recognition is valid and effective and is not in any manner affected by the provisions of the Electricity Act, 2003 which came into force on 10.06.2003. In this regard, Section 173 of the Electricity Act, 2003 dealing with inconsistencies of the laws provides as under:

“173. Inconsistency in laws

Nothing contained in this Act or any rule or regulation made thereunder or any instrument having effect by virtue of this Act, rule or regulation shall have effect in so far as it is inconsistent with any other provisions of the Consumer Protection Act, 1986 or the Atomic Energy Act, 1962 or the Railways Act, 1989.”

2.6 Thus, the Railways Act is one of the three Acts which have been specifically saved in case of any inconsistency between the provisions of the Electricity Act, 2003 and the Railways Act, 1989. In view of the above, the Indian Railways have the full authority to undertake the electricity supply and distribution in every part of the country where the Railways have been functioning by virtue of the provisions contained in the Railways Act, 1989 and notwithstanding anything to the contrary contained under the Electricity Act, 2003.

2.7 In addition to the above, Section 14 of the Electricity Act, 2003 provides that the Central Government and the State Governments are deemed licensees. In this regard the third proviso to Section 14 of the Electricity Act, 2003 reads as under:

“Provided also that in case an Appropriate Government transmits electricity or distributes electricity or undertakes trading in electricity, whether before or after the commencement of this Act, such Government shall be deemed to be a licensee under this Act, but shall not, be required to obtain a licence under this Act.”

- 2.8 Again as per the above, the Indian Railways being a Department of the Government, it has the deemed licensee status to undertake the transmission of electricity and distribution of electricity as well as trading in electricity, without the need to obtain any licence.
- 2.9 Accordingly, both independent of the provisions of the Electricity Act, 2003 and also by virtue of Section 14 – Third Proviso of the Electricity Act, the Indian Railways has the full legal authority to undertake distribution and retail supply of electricity without the necessity to apply for and obtain a licence under the Electricity Act, 2003.
- 2.10 As mentioned herein above, in so far as the Indian Railways are concerned, the principal and governing provision is Section 11 of the Railways Act, 1989. The Indian Railways are entitled to erect, operate, maintain etc the distribution system in order to serve the purpose of the Railways. Accordingly, so long there is a nexus between the erection, distribution and use of electricity by Indian Railways in connection with the working of the Railways as envisaged in Section 11 of the Railways Act, 1989, the action of Railways will be within the scope of the authority vested under the Railways Act, 1989.
- 2.11 In terms of Section 11, the Indian Railways are also entitled to use the electricity for traction purposes and for purposes which are incidental and ancillary to discharge the functions of the Indian Railways. Accordingly, the area of operation of the Indian Railways to undertake distribution and supply of electricity gets identified in terms of the Railways Act, 1989, namely, the Indian Railways shall be entitled to distribute electricity through the Railway System, network, works and facilities as envisaged

in the definition of the term Railway and Section 11 and other applicable provisions of the Railways Act, 1989.

- 2.12 The Indian Railways are also entitled to procure electricity from any source of its choice including a Generating Company, a Captive Generating Plant, a Trader or through Power Exchange to meet the electricity requirements, as the Indian Railways may consider appropriate. In terms of the Authority vested under Section 11 of the Railways Act, 1989, it can also lay down Transmission Lines from the place of generation or the place Interconnection of any Network to the facilities where the electricity procured is to be injected. The Generating Companies and/or the Captive Generating Plants supplying electricity to the Indian Railways can also lay down Dedicated Transmission Lines as per the scheme envisaged under Sections 9 and 10 of the Electricity Act, 2003.
- 2.13 The power under Section 11 of the Railways Act is wide enough to empower the Indian Railways to undertake anything in connection with operating and maintaining railways. The operation and maintenance of Railways includes the need to procure electricity, get the electricity conveyed from the place of generation to the place where the Railway system, network, works and facilities exist to run railways and for meeting other requirements of Railways. Section 11 of the Railways Act, 1989 would apply notwithstanding anything contained under the Electricity Laws for the time being in force, namely, the requirement of the licence for transmission, distribution or supply of electricity under the Electricity Act.
- 2.14 In addition to the above, the Railways are also entitled to seek Open Access on the existing transmission and/or distribution line of the

licensee for getting the electricity from the place of generation to the Interconnection Point of the Railways Network. Since the Indian Railways will be using the electricity amongst others in the traction and such electricity will be consumed in more than one State and further as such the electricity will be procured mostly through the use of the Inter State Transmission System, the incidental use of any State Transmission System or the State Distribution System will also be considered as Inter State use of the system. In this regard, Section 2 (36) defines, Inter State Transmission System' as under:

“(36) "inter-State transmission system" includes

(i) any system for the conveyance of electricity by means of main transmission line from the territory of one State to another State;

(ii) the conveyance of electricity across the territory of an intervening State as well as conveyance within the State which is incidental to such inter-State transmission of electricity;

(iii) the transmission of electricity within the territory of a State on a system built, owned, operated, 'maintained' or controlled by a Central Transmission Utility;”

2.15 The Indian Railways as an entity authorised to distribute and supply electricity will be scheduling electricity from various sources and will be taking delivery of electricity at multiple point. Accordingly, for the scheduling and dispatch mechanism under the CERC [Deviation and Settlement Mechanism and related matters} Regulations, 2014 {hereinafter referred to as the DSM Regulations notified by the Central Electricity Regulatory Commission {hereinafter referred to as the Central Commission}, Indian Railways is to be considered as a separate participating entity. In the peculiar circumstances of the Indian Railways, it cannot be treated as an entity within a State to be governed as an embedded entity.

- 2.16 On a petition filed by the Indian Railways being No. 197/MP/2015, by Order dated 5.11.2015 the Central Commission, inter alia, decided on certain specific issues related to Indian Railways and Open Access sought for by the Indian Railways to the Transmission System.
- 2.17 The Central Commission held that the Indian Railways is an authorised entity to distribute and supply electricity in connection with the working of railways under the Railways Act, the Indian Railways shall be entitled for grant of Open Access in connection with the working of railways as per the provisions applicable to the distribution licensees. Further, the Central Commission held that the Indian Railways is a deemed licensee under the third Proviso to Section 14 of the Electricity Act, 2003 and there is no requirement for a declaration to that effect that it is the licensee. In addition, the Central Commission held as under:

“51. The Indian Railways can be connected with ISTS directly or through state network. The Commission is inclined to consider option "c" as provided in CEA Report with slight modification. The drawl points from ISTS located within a State shall be treated as a single entity for the purpose of scheduling. This arrangement according to CEA and POSOCO may lead to fragmented control area. Therefore, the group of TSSs situated in a State and connected directly with ISTS shall be treated as one „fragmented control area“ and the responsibility for the purpose of scheduling, metering, balancing, applicability of ISTS charges and losses etc, shall vest in the concerned RLDC. In so far as the TSSs of Indian Railways connected to State network are concerned, the responsibility for these functions shall vest in the concerned SLDC.”

- 2.18 Consequent to the above, the Central Commission granted the following relief:

“52. In view of the above discussion, the prayers of the petitioner are decided as under:

(a) In the light of the judgement of the Supreme Court in UOI Vs UPSEB supra, it is held that the petitioner is an authorized entity under the Railways Act to undertake transmission and distribution activities in connection with the working of the railways, independent of its status under the Electricity Act. Therefore, the information sought by MSETCL vide its letter dated 6.7.2015

are not relevant for grant of connectivity and concurrence to the petitioner for scheduling of power from RGPPL and GUVNL through the ISTS and State networks by availing long term access or medium term open access in terms of Connectivity Regulations.

(b) The petitioner is a deemed licensee under third proviso to Section 14 of the Electricity Act and no separate declaration to that effect is required from the Appropriate Commission. The petitioner as a deemed licensee shall be bound by the terms and conditions of licence specified or to be specified by the Appropriate Commission under proviso to Section 16 of the Electricity Act.

(c) The drawl points from ISTS located within a State shall be treated as a single entity for the purpose of scheduling. The group of TSSs situated in a State and connected directly with ISTS may be treated as one “fragmented control area” and the responsibility for scheduling, metering, balancing, applicability of ISTS charges and losses etc, shall vest in the concerned RLDC. For the TSSs situated in a State and connected to State network, these functions shall vest in the concerned SLDC.

(d) All concerned RLDCs, State Transmission Utilities and SLDCs are directed to facilitate long term access and medium term access in terms of Connectivity Regulations from the generating stations or other sources to the facilities and network of Indian Railways.”

2.19 The Indian Railways has number of Delivery Points, namely, Traction Substations in the Central, Western South Central, South East Central Railway Division situated in Maharashtra where the electricity is being sourced through Open Access. The electricity had been sourced for such Traction Substations from different generating companies such as Ratnagiri Gas and Power Private Limited and Tata Power Limited situated within the State of Maharashtra and also Bharatiya Rail Bijlee Company Limited (**BRBCL**) situated outside the State of Maharashtra.

2.20 Indian Railways had earlier entered into a Power Purchase Agreement with Tata Power Company Limited (Distribution), Respondent No. 1 herein on 2.2.2016 for a period of one year extendable by minimum of six months with mutual agreement.

- 2.21 In respect of the electricity sourced by the Indian Railways including from Ratnagiri Gas and Power Private Limited (**RGPPPL**), a generating station situated in the State of Maharashtra, the control area jurisdiction is of the Western Regional Load Despatch Centre (**WRLDC**) and not Maharashtra SLDC. The scheduling and despatch activities of the generating station are undertaken by WRLDC. The Maharashtra SLDC does not exercise control area jurisdiction in respect of the electricity sourced by the Indian Railways. The electricity sourced by Indian Railway in the State of Maharashtra and the electricity that may be sourced by the Indian Railways from the generating station outside in the State of Maharashtra as well as from other sources in the State of Maharashtra will also be under the control area jurisdiction of the WRLDC, the electricity shall be scheduled and despatched under the control of WRLDC.
- 2.22 On a petition being Case No. 114 of 2016 filed by the Maharashtra State Electricity Distribution Company Limited and vide Order dated 19.03.2018, the State Commission decided on some of the aspects relating to the drawal of power by the Railways as deemed distribution licensee.
- 2.23 The issue of over-drawal of power by the Indian Railways from the State Grid because of tripping of generating stations with whom Indian Railways have contracts to procure Electricity and arrangement of stand-by power decided by the State Commission in the said Order dated 19.03.2018 has substantially arisen only in view of the fact that the Open Access to Railways in the State of Maharashtra at different drawal points situated in different licensed area have not been clubbed for scheduling and despatch of electricity. In terms of the decision made by the Central

Commission in the Orders passed, in particular, in the Order dated 5.11.2016 passed in Petition No. 197/MP/2015 the drawal points of Indian Railways from ISTS located within the State as a single entity for the purpose of scheduling and drawal to be treated as one fragmented control area with the responsibility for scheduling, metering, balancing, applicability of ISTS Charges and Losses vested in WRLDC. Though the Central Commission stated that the Traction Substations situated in the State and connected to the State Network, the scheduling functions etc is by SLDC, the exercise of the said power by SLDC need to be consistent with the scheduling and despatch undertaken by WRLDC and more importantly the objective of a single entity and the fragmented control area decided by the Central Commission should be made applicable. This is particularly in the case of drawal of electricity from the Inter State Generating Stations such as RGPPL notwithstanding that the electricity is transferred through the Intra State Transmission Line within the State of Maharashtra.

- 2.24 The combined scheduling and despatch mechanism will not result in any adverse consequences to any of the other licensees or agencies in Maharashtra as the energy accounting at different Interconnection Points and each Traction Substations shall be available and the source of energy with regard to the generating station can also be identified with certainty. Accordingly, there shall be no implication on the adjustment of different loss level applicable to the conveyance of electricity based on the generation source from which electricity is being procured.
- 2.25 The electricity sourced by the Railways for its purpose in the State of Maharashtra is conveyed through the Inter State Transmission Line from Bihar to the periphery of the State of Maharashtra and thereafter through

the transmission line of the Maharashtra State Electricity Transmission Company Limited and then delivered to the Traction Substations. Some of the Traction Substations in Maharashtra are situated at places where they are connected to the transmission line of Tata Power Limited or other transmission licensees. The said lines of Maharashtra State Electricity Transmission Company Limited or other entities are being used incidental to the Inter State Transmission of Electricity from Bihar to the Traction Substation and, therefore, are to be considered as an activity of the Inter State Transmission of Electricity in so far as the Railways are concerned.

2.26 By its very nature the requirement of the electricity at different Traction Substations situated within the State of Maharashtra are consuming electricity at different quantum from time to time. In these circumstances the Central Commission in the Order dated 5.11.2015 directed that the group of Traction Substations of the Indian Railways situated in the State and shall be treated as one fragmented control area and the responsibility for the purpose of scheduling, metering, balancing applicability of the Inter State Transmission System Charges and Losses etc shall vest in the concerned Regional Load Despatch Centre. It has also been decided that the Traction Substations of the Indian Railways connected to the State Network are concerned, the responsibility for the above functions shall vest in the concerned State Load Despatch Centre.

2.27 In the circumstances mentioned above, the electricity sourced by the Indian Railways up to the Interconnection Point of the Inter State Transmission System and the Intra State Transmission System is to be considered as belonging to one control area entity and accounting for in the energy accounting as such. Accordingly, the quantum of electricity

sourced by the Indian Railways from BRBCL or any other generating station and conveyed through the Inter State Transmission Line reaching Maharashtra irrespective of whether such quantum is related to a particular Traction Substation of the Indian Railways shall be accounted for in aggregate. The energy accounting done at the Interconnection Point of the Inter State Transmission System and the intra State Transmission/Distribution System in the State of Maharashtra shall be summation of all energy reaching such Interconnection Point and account for in the said manner irrespective of the quantum of electricity flowing to different Traction Substations. It is, therefore, inherent in the above that the Intra State Transmission System or the Distribution System through which the electricity may flow after the Interconnection Point is to be considered with reference to the electricity sourced from the Interconnection Point in so far as the Traction Substations of Railways are concerned. The Maharashtra SLDC is required to proceed on the basis of the quantum of energy accounted for in the name of the Indian Railways as being available for conveyance through the Intra State Transmission System or Distribution System in the State of Maharashtra for reaching the Traction Substations irrespective of the quantum of electricity sourced by the Indian Railways from different generating companies.

- 2.28 Similarly, and on the same principle as mentioned herein above and further as the Intra State Transmission System or the Distribution System in the State of Maharashtra are being used for conveyance of electricity sourced through the Inter State Transmission System and such conveyance being incidental to the Inter State Transmission of Electricity, the same principle as would apply to an Inter State Transmission should be applied for such Intra State Transmission or

Distribution of Electricity also in regard to conveyance of electricity from the Interconnection Point to the Traction Substations.

- 2.29 In accordance with the above, any power sourced by the Indian Railways from the Generating or Distribution Companies such as Tata Power Company Limited is also required to be under the control area jurisdiction of WRLDC.
- 2.30 In the light of the facts and circumstances mentioned herein above concerning the Indian Railways and the drawal of electricity in the State of Maharashtra in terms of the decision taken by the Central Commission, the Indian Railways are required to be treated as an independent entity for scheduling and despatch and Deviation Settlement Mechanism. The drawal of electricity by the Indian Railways both from the generating station situated within the State of Maharashtra and generating stations situated outside the State of Maharashtra are to be accounted for under the Energy Accounting by WRLDC and the Western Regional Power Committee. Any deviation in the actual drawal by the Indian Railway viz-a-viz the scheduled quantum of electricity is settled under the Unscheduled Interchange Mechanism (UI Mechanism)/Deviation Settlement Mechanism implemented under the Regulations of the Central Commission. The Indian Railways are not represented by MSEDCL in regard to the Deviation Settlement Mechanism at the Inter State Level for its operation in the State of Maharashtra. The Indian Railways will be considered akin to another State such as the Maharashtra State or for that matter any other State in so far as its operation in the State of Maharashtra is concerned. The scheduling of electricity by the Indian Railways cannot, therefore, be

clubbed with any mismatch in the scheduling of electricity by MSEDCL or any other Distribution Licensees.

2.31 In the State of Maharashtra, the distribution and retail supply of electricity to the consumers at large have been undertaken for the past many years by four principal licensees, namely, MSEDCL, Tata Power Company Limited, Reliance Infrastructure Limited and Brihanmumbai Electricity Supply and Transport Undertaking (Respondents 1 to 4). Since October 2006 for meeting the demand of Mumbai Region up to 550 MVA serviced by three distribution licensees other than MSEDCL and to ensure uninterrupted supply in the Mumbai Region, an arrangement was entered into between the said three distribution licensees and MSEDCL. Under the said arrangement, the three distribution licensees other than MSEDCL undertook the liability to pay an aggregate fixed charges of a specified amount for the existing standby support from MSEDCL for the power drawn in the Mumbai Region in an uninterrupted manner which was at the cost of MSEDCL serving other parts of Maharashtra i.e. other than the Mumbai Region. The objective of the above liability assumed by the three distribution licensees other than the MSEDCL towards MSEDCL was the support which Mumbai Area gets for uninterrupted supply of power. The above arrangement was taken note by the State Commission while determining the revenue requirements and tariff for the period 2006-07 and in other Orders from time to time. The Indian Railways would crave leave to refer to the various Orders of the State Commission in regard to the above levy of Standby Charges at the time of the hearing.

2.32 The standby supply of power in the case of Indian Railways is only restricted to when the generating station with whom the Indian Railways

have contracted for procurement of power trips and the same is throughout the country and not restricted to Mumbai Region. The standby support, if any, which the Indian Railways gets is distinct and separate from the nature of the standby support envisaged under the arrangement between MSEDCL, Tata Power, Reliance Infrastructure and BEST.

2.33 On or about 11.07.2017 Tata Power Company Limited, Respondent No. 1 herein filed a petition before the State Commission seeking the review of the existing Standby Arrangement provided by MSEDCL to the Mumbai Distribution Areas.

2.34 After hearing the parties the State Commission decided the Case No. 53 of 2017 vide Order dated 23.3.2018, inter alia, holding as under:

“21. The present methodology for the sharing of the Stand-by Charges (apart from the payment of Energy Charges for the stand-by power actually availed) is based on the average of CPD and NCPD. In the last In STS Tariff Order dated 22 July, 2016 in Case No. 91 of 2016, the Commission has determined Indian Railways’ share of the Total Transmission System Cost (TTSC) in FY 2016-17 based on its allotted capacity as per the Bulk Power Transmission Agreement, i.e. 250 MW. The Base TCR of Indian Railways for the remaining years of the Control Period, i.e., FY 2017-18 to FY 2019-20, has been projected by escalating that capacity by the historical growth rate of consumption of Indian Railways. Indian Railways’ share in the average of CPD and NCPD in each year, which is the basis for its contribution to the TTSC, has been derived accordingly. However, in the In STS Tariff Order, the Indian Railways’ share in the average of CPD and NCPD has not been segregated as between the Mumbai System and the rest of Maharashtra.

22. In the absence of such segregation, in the present Order, the Commission has not determined Indian Railways’ share in the Stand-by Charges payable by the Mumbai Distribution Licensees to MSEDCL for its stand-by support. To enable the Commission to do so, MSLDC shall provide the segregated data for the Mumbai System and for the rest of Maharashtra for Indian Railways from the time of its operationalisation as a Distribution Licensee, i.e. from December, 2015, onwards. That differentiation would also be reflected in subsequent In STS Tariff Orders.

23. Based on the data provided by MSLDC, MSEDCL shall quantify the Stand-by Charges payable by the Mumbai Distribution Licensees, including Indian

Railways to the extent of its operations in the Mumbai System, and include its proposal in its Mid-Term Review (MTR) Petition. For the past period, Indian Railways shall pay its share of Stand-by Charges to MSEDCL within a month of its determination by the Commission, for adjustment against the amounts payable by the other Mumbai Distribution Licensees to MSEDCL or other modality as may be approved by the Commission in its forthcoming MTR Order. Considering the circumstances of the matter, this amount shall not attract interest.

24. SEEPZ-SEZ has not yet started operations as a deemed Distribution Licensee. As such, the question of its sharing in the Stand-by Charges payable to MSEDCL does not arise. However, the principles set in this Order shall apply to any deemed or other Distribution Licensee which becomes operational in the Mumbai System in future.

25. The Secretariat of the Commission shall send a copy of this Order to MSLDC.

The Petition of Tata Power Co. Ltd. (Distribution) in Case No. 53 of 2017 stands disposed of accordingly.”

2.35 Aggrieved by the Order dated 23.3.2018, to the extent it includes Indian Railways in regard to the payment of Standby Charges payable by the Mumbai Distribution Licensees to MSEDCL for standby support to Mumbai Area including for the past period from December 2015 onwards, the Indian Railways has filed the present appeal raising the facts in issue, questions of law and grounds of challenge as set out herein.

3. FACTS IN ISSUE (Appeal No. 301 of 2018):

- (i) Does the Indian Railways get any standby support from MSEDCL for its operation in the Mumbai Area in regard to the continuous supply of electricity at the cost of the area in the Maharashtra State other than the Mumbai Area to be subjected to payment of Standby Charges as envisaged in the Order dated 23.3.2018?

- (ii) Can the Standby Charges required to be paid to MSEDCL for support of operation of uninterrupted power in the Mumbai Area is applicable to Indian Railways when the Indian Railways is already subjected to the Deviation Settlement Mechanism/UI Mechanism under the Indian Electricity Grid Code in its capacity as a Deemed Distribution Licensee with control area jurisdiction being with WRLDC and the Indian Railways being treated as an independent State entity in terms of the Order dated 5.11.2015 passed by the Central Commission.

4. QUESTIONS OF LAW (Appeal No. 301 of 2018):

- (a) Whether in the facts and circumstances of the case, where Indian Railways are considered as an independent single entity as in the case of any other State in terms of the Order dated 05.11.2015 passed by the Central Commission with control area being with WRLDC, Indian Railways can at all be subjected to any Standby Support Charges on the assumption that MSEDCL is giving support to the Mumbai Area operation at the cost of other areas in the State of Maharashtra ?
- (b) Whether in the facts and circumstances relating to Indian Railways, the impugned Order dated 23.3.2018 can at all be implemented in regard to Indian Railways making it liable to pay the Standby Charges to MSEDCL when the Indian Railways are already subject to Deviation Settlement Mechanism and payment of UI Charges ?
- (c) Whether the State Commission is right in providing for the liability to Indian Railways for payment of Standby Charges to MSEDCL for its Mumbai Area Operation with retrospective effect from

December 2015 onwards when the Indian Railways had already organised its affairs without any imposition of such Standby Charges in the past?

5. FACTS OF THE CASE (Appeal No. 26 of 2019):

- 5.1 Tata Power Company Limited, had filed a petition being Petition No.53 of 2017 before the State Commission seeking the review of the existing Standby Arrangement provided by MSEDCL to the Mumbai Distribution Areas. In the said proceedings, the Indian Railways had also participated after being impleaded by the State Commission vide Record of Proceedings dated 20.7.2017. After hearing the parties the State Commission decided the Case No. 53 of 2017.
- 5.2 Indian Railways has filed an Appeal being No. 301 of 2018 before this Tribunal, challenging the Order dated 23.3.2018, to the extent it includes Indian Railways in regard to the payment of Standby Charges payable by the Mumbai Distribution Licensees to MSEDCL for standby support to Mumbai Area including for the past period from December 2015 onwards. An application for stay of the order dated 23.03.2018 was also filed along with the Appeal. The Appeal No. 301 of 2018 is pending before this Tribunal.
- 5.3 Pursuant to the above order dated 23.03.2018 in Petition No.53 of 2017, the State Commission in a petition being No. 197 of 2017 filed by MSEDCL for Mid-Term Review Petition for Truing-up of Aggregate Revenue Requirement (ARR) of FY 2015-16 and FY 2016-17, Provisional Truing-up of ARR of FY 2017-18 and Revised Projections of ARR for FY 2018-19 and FY 2019-20 has determined the Stand-by

Charges payable by the Indian Railways for the past period, i.e., for December 2015 to FY 2017-18 and has further determined the Stand-by Charges for FY 2018-19 and FY 2019-20.

- 5.4 Tata Power Company Limited has since issued a letter dated 26.09.2018 to the Indian Railways raising a demand of Rs.27.35 crores to be paid in three instalments till December 2018. It is on receipt of the above letter, it came into the knowledge of the Indian Railways that the above order has been passed by the State Commission.
- 5.5 Thereafter, MSEDCL has also raised an invoice dated 01.10.2018 demanding stand-by charges for the month of September, 2018 in view of the order dated 12.09.2018 passed by the State Commission. The order dated 12.09.2018 passed by the State Commission is a consequential order in pursuance of the Order dated 23.03.2018 passed in Petition No. 53 of 2017.
- 5.6 Aggrieved by said order, Indian Railways is filing the present Appeal against the Order dated 12.09.2018, to the extent it provides for payment of Standby Charges payable by the Indian Railways to MSEDCL for standby support to Mumbai Area including for the past period from December 2015 till FY 2017-18 and for FY 2018-19 and FY 2019-20, the Indian Railways has preferred the present appeal raising the facts in issue, questions of law and grounds of challenge as set out herein.

6. QUESTIONS OF LAW (Appeal No. 26 of 2019):

Whether in the facts and circumstances relating to Indian Railways, the State Commission is right in law to hold that the Indian Railways is liable to pay the Stand by charges.

7. The issue involved in both the appeals are common in nature, therefore, we decide to adjudicate the both the appeals by this common judgment.

8. **Learned senior counsel, Mr. M.G. Ramachandran, appearing for the Appellant has filed common written submissions in both the appeals for our consideration :-**

8.1 Following two orders are impugned in the Appeals:-

- a) Order Dated 23.03.2018 passed by the State Commission in Case No. 53 of 2017; and
- b) Order dated 12.09.2018 passed by the State Commission in Case No. 195 of 2017;

8.2 The State Commission in First Impugned Order dated 23.03.2018 has, inter alia, held as under:

“21. The present methodology for the sharing of the Stand-by Charges (apart from the payment of Energy Charges for the stand-by power actually availed) is based on the average of CPD and NCPD. In the last In STS Tariff Order dated 22 July, 2016 in Case No. 91 of 2016, the Commission has determined Indian Railways’ share of the Total Transmission System Cost (TTSC) in FY 2016-17 based on its allotted capacity as per the Bulk Power Transmission Agreement, i.e. 250 MW. The Base TCR of Indian Railways for the remaining years of the Control Period, i.e., FY 2017-18 to FY 2019-20, has been projected by escalating that capacity by the historical growth rate of consumption of Indian Railways. Indian Railways’ share in the average of CPD and NCPD in each year, which is the basis for its contribution to the TTSC, has been derived accordingly. However, in the In STS Tariff Order, the Indian Railways’ share in the average of CPD and NCPD has not been segregated as between the Mumbai System and the rest of Maharashtra.

22. In the absence of such segregation, in the present Order, the Commission has not determined Indian Railways’ share in the Stand-by Charges payable by the Mumbai Distribution Licensees to MSEDCL for its stand-by support. To enable the Commission to do so, MSLDC shall provide the segregated data for the Mumbai System and for the rest of Maharashtra for Indian Railways from the time of its operationalisation as a Distribution Licensee, i.e. from

December, 2015, onwards. That differentiation would also be reflected in subsequent In STS Tariff Orders.

23. Based on the data provided by MSLDC, MSEDCL shall quantify the Stand-by Charges payable by the Mumbai Distribution Licensees, including Indian Railways to the extent of its operations in the Mumbai System, and include its proposal in its Mid-Term Review (MTR) Petition. For the past period, Indian Railways shall pay its share of Stand-by Charges to MSEDCL within a month of its determination by the Commission, for adjustment against the amounts payable by the other Mumbai Distribution Licensees to MSEDCL or other modality as may be approved by the Commission in its forthcoming MTR Order. Considering the circumstances of the matter, this amount shall not attract interest.

24. SEEPZ-SEZ has not yet started operations as a deemed Distribution Licensee. As such, the question of its sharing in the Stand-by Charges payable to MSEDCL does not arise. However, the principles set in this Order shall apply to any deemed or other Distribution Licensee which becomes operational in the Mumbai System in future.

25. The Secretariat of the Commission shall send a copy of this Order to MSLDC.

The Petition of Tata Power Co. Ltd. (Distribution) in Case No. 53 of 2017 stands disposed of accordingly.”

- 8.3 In the second Impugned Order dated 12.09.2018, passed pursuant to the above order dated 23.03.2018, the State Commission has determined the amounts.
- 8.4 The matter in issue relates to the claim for standby charges. The nature of such stand by charges is the contribution to be made by the Distribution Licenses operating in the Mumbai Area to Maharashtra State Electricity Distribution Company Limited serving other parts in the State of Maharashtra. The purpose for imposing such charges is the consumers serviced by such Distribution Licensees are allowed to draw Electricity in the Mumbai Area without any interruption, whereas other

areas in the State of Maharashtra serviced by MSEDCL do not have uninterrupted supply as in Mumbai.

The issue which has arisen is the validity of extending the liability to pay such stand by charges to Indian Railways as deemed licensee when Indian Railways is not servicing any consumer in Mumbai Area with such special privilege of uninterrupted supply in comparison to consumers in other areas of the State of Maharashtra.

RE : ORDER DATED 19.03.2018 IN CASE 114 OF 2016

- 8.5 At the outset, it is submitted that the Respondents are mixing up the issues in another dated 19.03.2018 passed by the State Commission in another independent and unrelated petition being Case No. 114 of 2016. The order dated 19.03.2018 deals with the charges which is also called Stand by Charges. This Stand by charges is totally different, deals with different purpose and has nothing to do with the stand by order dealt in the impugned orders dated 23.03.2018 and 12.09.2018.
- 8.6 The Indian Railways has not challenged the order dated 19.03.2018 and Indian Railways is not raising any issue in the present appeals on the liability to pay the charges as per the order dated 19.03,2018 or any action including penal which may be taken for any alleged violation or contravention etc. of the order dated 19.03.2018 passed in Case No. 114 of 2016.
- 8.7 The entire submissions of the Respondents have proceeded on the fundamental wrong premise that the impugned orders dated 23.03.2018 and 12.09.2018 are in continuation or connected with the order dated 19.03.2018 passed by the State Commission in Case No.114 of 2016

and the Indian Railways having not challenged the order dated 19.03.2018, the present appeals are not maintainable.

- 8.8 The over drawl by Indian Railways is to be dealt under the DSM Regulations and the Order dated 19.03.2018. The Indian Railways has not filed any appeal against the 19.03.2018 Order. The Indian Railways accepts and acknowledges and there has to be an action as per the DSM Regulations for any over drawal or under drawal including the payment of UI Charges, penalties, action against the Indian Railways as may be admissible in accordance with law as applicable to over drawal and under drawal.
- 8.9 The over drawal and under drawal cannot be a subject matter under Order dated 23.03.2018 or any consequential Order passed pursuant to 23.03.2018, i.e., Order dated 12.09.2018.
- 8.10 The attempt made by the Respondents is to taint the Indian Railways as chronic defaulter in regard to over drawal and under drawal. If it is to be assumed so, Indian Railways should be legitimately proceeded with an action as admissible in law i.e. DSM Regulations. It cannot however lead to any claim under Order dated 23.03.2018 which is totally for a different subject and un-related. The above is contrary to any known law. The law cannot proceed against a person for some other thing other than what is provided as penalty under the applicable law.
- 8.11 It has been claimed by the Respondents that over drawal by Indian Railways is in Mumbai Region and is affecting MSEDCL. There is no such thing as over drawal by Indian Railways in Mumbai Area distinct from other parts of Maharashtra. Further, in case of overdrawl in parts other than the Mumbai Region say in Nagpur area, the Respondent

cannot claim application of 23.03.2018 order to the same. Such over drawal outside Mumbai Region has to be dealt only under the applicable DSM Regulations. There is therefore no rationale to proceed on the basis that for Mumbai Region there should be additional charges under the order stated 23.03.2018.

8.12 Further, negotiations took place with MSEDCL for the standby arrangement in regard to drawal covered under the DSM Regulations, i.e., order dated 19.03.2018 and not as per 23.03.2018 order. In the above context the Indian Railways reiterates that there is no such standby arrangement as in the Order dated 23.03.2018 anywhere in India applicable to Indian Railways.

RE : THERE HAS BEEN NO MISSTATMENT BY INDIAN RAILWAYS

8.13 The statement attributed to Indian Railways having mis-stated the issue is entirely wrong. The Indian Railways have correctly stated that the standby agreement of the nature contemplated under 23.03.2018 Order is not there anywhere in India.

8.14 The standby agreement by Indian Railways have been negotiated and have entered into in States such as Gujarat, Madhya Pradesh and is in regard to an arrangement to draw electricity over and above the quantum of electricity scheduled from the generator. The Indian Railways have always stated that it is willing to enter into similar arrangement with MSEDCL in the State of Maharashtra as a whole. The standby arrangement for Indian Railways is for extra power to be supplied in case of tripping of electricity available from the generators not only with MSEDCL but also with the generating companies like NVVN, NTPC etc.

- 8.15 The merits of the challenge made by the Indian Railways to the impugned order have to be considered on the basis of applicability of the said order to Indian Railways considering the nature of the charges covered by the Impugned Order independent of the order dated 19.03.2018.
- 8.16 The charges imposed under the Orders dated 19.3.2018 which are for a different purpose, namely on account of drawl of electricity by any distribution licensee in excess of those scheduled for drawl. These charges also termed as 'Standby Charges', are of different nature and for distinct purpose from the charges under the orders dated 23.03.2018 and 12.09.2018. The charges under the order dated 19.03.2018 is universal in nature and there is no such thing as Mumbai Area viz a viz other parts of Maharashtra. In other words, the contravention of the order dated 19.03.2018 in Case No 114 of 2018 is universally applicable whether it is in Mumbai Region or other parts of Maharashtra and the deviation of under drawl or over drawl by Indian Railways dealt in the order is to be considered in a composite manner for the entire Maharashtra treating Indian Railways as one State Entity as held in the order dated 05.11.2015 passed by the Central Electricity Regulatory Commission.

RE: NATURE AND PURPOSE OF CHARGES UNDER THE ORDERS DATED 23.03.2018 AND 12.09.2018 CAN HAVE NO APPLICATION TO INDIAN RAILWAYS

- 8.17 The charges claimed under the impugned Orders dated 23.3.2018 and 12.9.2018 related to the special privileges given to the consumers in the Mumbai Region of un-interrupted 24 x 7 electricity in comparison to the consumers in the State of Maharashtra outside the Mumbai Region who are not extended such privilege.

8.18 Accordingly, the charges dealt in the two impugned Orders relate to the amount payable by the distribution licensees (Tata Power Company – Distribution), Reliance Electricity/Adani Electricity etc) servicing the consumers in the Mumbai Region to MSEDCL which is serving the consumers in the entire State of Maharashtra outside the Mumbai Region. These charges under the Orders dated 23.3.2018 and 12.9.2018 are termed as ‘Standby Charges’ in the context of the special privilege given to the consumers in the Mumbai Region.

8.19 As mentioned above the impugned orders deal with a totally different aspect. The documents contained in the convenience compilation listed at numbers 1 to 12 and 18 including orders dated 23.3.2018 and 12.9.2018, excluding item no 13 dealing with the Order Dated 19.03.2018 relate to the subject matter with which the Indian Railways are not concerned at present. The charges dealt in these Orders have nothing to do with the liability of the Indian Railways to pay as a distribution licensee to either MSEDCL or to Tata Power Company – Distribution or to any other agency for the purpose mentioned in the said Orders.

8.20 The salient aspects which has been over-looked in the Impugned orders is that the Indian Railways is not supplying electricity to any consumers in the Mumbai Region who has been vested with the privilege of getting 24 x 7 electricity from its distribution licensee as compared to the consumers outside the Mumbai Region serviced by MSEDCL who has not been given the special privilege.

8.21 In the Impugned Order dated 23.03.2018, the State Commission has taken note of the submissions of Tata Power Company Limited (Distribution) (herein after referred to as ‘TPCL-D’) which brings out the objective and purpose of the standby charges as under:

“3.1. There is an Arrangement between MSEDCL and the three Distribution Licensees of Mumbai, viz., TPC-D, Reliance Infrastructure Ltd. (Distribution) (R/Infra-D) and Brihanmumbai Electric Supply and Transport Undertaking (BEST), since 1 October, 2006 for meeting the demand of Mumbai upto 550 MVA of the three Licensees to ensure uninterrupted power supply in Mumbai region. The three Distribution Licensees pay an aggregate Fixed Charge of Rs. 396 crore for the existing Stand-by arrangement, which is shared between them based on their respective share in the average of Coincident Peak Demand (CPD) and Non-Coincident Peak Demand (NCPD) of the Mumbai Energy Demand. The Distribution Licensee which avails such stand-by support from MSEDCL also has to pay energy charges at the rate of the weighted average system marginal price (WASMP) of power for actual power drawal.

8.22 The Order dated 3.10.2006 passed by the State Commission in Case Nos. 12 of 2005 and 56 of 2005, inter alia, stated about the nature and purpose of the recovery of standby charges as under:

*“
In view of the changed industry structure, the Commission does not agree with the views of TPC that MSEDCL is providing standby to TPC-G. The Commission is of the opinion that the standby charges needs to be recovered by MSEDCL from the three Distribution Licensees of Mumbai System, i.e., REL-D, TPC-D and BEST to ensure that all the consumers of Mumbai system contribute to standby charges. The Commission has allocated the total standby charges payable to MSEDCL in proportion to average non-coincident peak demand of Distribution Licensees in Mumbai system during FY 2005-06. The average non-coincident peak demand of Distribution Licensees in Mumbai System during FY 2005-06 and sharing of Standby Charges amongst Distribution Licensees is given in the Table below:
.....”*

8.23 Briefly stated, the basis for standby charges considered in the impugned Orders is that all consumers of Mumbai Region should contribute to standby charges as they are the beneficiaries of continuous supply of power as a preferential treatment as compared to the fellow consumers in areas outside the Mumbai Region.

8.24 In Para 3.18 of the impugned Order dated 23.03.2018 the State Commission takes note of the implication of the ABT Mechanism being established completely as under:

“3.18. The Commission was of the view that, once the ABT mechanism is stabilised completely, there will not be any need for separate compensation to MSEDCL through the existing Stand-by Arrangement.”

8.25 The State Commission has wrongly proceeded to conclude that the Indian Railways in its status as deemed distribution licensee drawing power at its traction sub stations in the Mumbai Region is required to pay standby charges. The status of Indian Railways as a deemed licensee by virtue of the provisions of the Indian Railways Act, 1968 and also Section 14 - proviso is a Settled position and there has been no issue on the same in the present proceedings.

RE: SOURCING OF ELECTRICITY BY INDIAN RAILWAYS FROM GENERATOR AND ISSUES ON DRAWAL, OVER OR UNDER HAVE TO BE DEALT SEPARATELY AS PER DSM REGULATIONS AND NOT UNDER ORDER DATED 23.03.2018

8.26 Indian Railways in its status as distribution licensee is entitled to source electricity from any generating company or Trader or any other person for its requirement. It is not necessary that the electricity requirements of Indian Railways are to be taken from other distribution licensee of the area where the Traction Substation of Indian Railways is situated namely as a consumer of electricity of a distribution licensee.

8.27 In so far as the State of Maharashtra is concerned, the Indian Railways have Traction Substations where the electricity is drawn through Open Access for both within the Mumbai Region and outside the Mumbai

Region. The nature of the drawal of electricity in all such Traction Substations is similar. The Indian Railways is sourcing electricity from generating stations and not from any distribution Licensees in the Maharashtra namely MSEDCL, TATA Power Distribution, Reliance Infra {now Adani Electricity} or BEST.

8.28 The Indian Railways while taking electricity through Open Access from persons other than the distribution licensees of the area concerned, is subjected to scheduling and dispatch requirements, deviation settlement/unscheduled interchange mechanism etc as notified by the Central Commission from time to time. In case of any under-drawal or over injection concerning the supply of electricity through Open Access to Indian Railways by persons other than the distribution licensees of the area, there is an unscheduled interchange charge or deviation settlement charge, namely, a standby charge of the nature which is payable by the Indian Railways. The State Commission in the Order dated 19.3.2018 passed in Case No. 114 of 2016 had considered such standby charges payable by Indian Railways.

8.29 In fact, the nature and scope of standby charges discussed by the State Commission in Impugned Order dated 23.03.2018 is distinct from the nature and scope of standby charges discussed in the Order dated 19.03.2018 in Case No.114 of 2016, namely:

- a) the standby charges payable in terms of the Order dated 19.3.2018 passed by the State Commission in Case No. 114 of 2016 deals with the mechanism for recovery of charges on account of over-drawal by the Indian Railways, as a distribution licensee.
- b) the standby charges payable in terms of the Impugned Order dated 23.3.2018 passed by the State Commission in Case No. 53 of 2017

deals with differential treatment of the consumers in the Mumbai Region viz-a-viz the consumers in other parts of Maharashtra.

- 8.30 The objective and purpose of the two charges are distinct. The standby charges provided in the Order dated 19.3.2018 relates to the over-drawal by the Indian Railways from the Grid i.e. drawal of electricity in excess of what is declared available and scheduled by the generating company supplying electricity to the Indian Railways through Open Access. These relates to the issue of Grid stability, management etc. The over-drawal charges are recovered in order to maintain the Grid stability. Such over-drawal charges are applicable both at the Intra State level and at the Inter State level in an integrated Grid. If there are actions on the part of Indian Railways which are violation as per the order dated 19.03.2018 the same need to be dealt as per the said order. The Indian Railways in these proceedings have not challenged the order dated 19.03.2018.
- 8.31 The standby charges specified in the Impugned Order dated 23.03.2018 relates to a compensatory payment to be made by the distribution licensees supplying electricity in the Mumbai Region to the benefit of the consumers of MSEDCL which is supplying electricity to the consumers in the State of Maharashtra other than the Mumbai Region. Since the consumers in the Mumbai Region serviced by the three distribution licensees are designated for un-interrupted supply i.e. 24 x 7 drawal of electricity from the Grid and the power supply to the consumers in the other parts of Maharashtra serviced by MSEDCL do not have the same privilege of getting 24 x 7 un-interrupted supply, a compensatory charge is provided as a standby charge payable by the distribution licensees in the Mumbai region to MSEDCL.

- 8.32 Thus, the purpose of the standby charges provided in the Impugned Order dated 23.03.2018 or in the earlier Orders of the State Commission for the same purpose have nothing to do with the Grid security or Grid instability etc. dealt in the Order dated 19.3.2018 relating to over-drawal of electricity.
- 8.33 The Indian Railways does not supply electricity to the consumers in the Mumbai region with such privileges as considered by the State Commission in the Order dated 23.3.2018. The Indian Railways has no such differential treatment for electricity drawn in the Traction Substation situated in the Mumbai Region as compared to the Traction Substation situated outside the Mumbai region in the State of Maharashtra. Both the Regions in so far as the Indian Railways as a distribution Licensee is concerned are treated alike. The Indian Railways does not have any consumer in the Mumbai Region to whom it supplies electricity, uninterrupted or interrupted for being required to pay compensatory charges as applicable to other three distribution licensees in the Mumbai Region, namely (i) Tata Power, (ii) Reliance Infra and (iii) BEST.
- 8.34 Thus, there is an essential distinction between the Indian Railways and other distribution licensees in so far as the Mumbai Region is concerned. While the distribution licensees such as TPCL-D are catering to the consumers at large in the Mumbai region, the Indian Railways is using the electricity for the purpose of railway administration as envisaged under the Railways Act, 1989. The Indian Railways is not distributing electricity to any public at large. The use and consumption of electricity by the Indian Railways for railway purpose is similar whether it is for the Mumbai Region or it is in other parts of the State of Maharashtra.

- 8.35 There is no special use or privilege given to anybody when the Indian Railways consumes electricity by drawing the same in the Mumbai Region as compared to other parts of Maharashtra. Thus, the very objective and purpose of imposing compensatory charge such as standby charge to be paid to MSEDCL serving consumers outside the Mumbai Region in other parts of the Maharashtra as compared to TPCL-D and other distribution licensees serving consumers in the Mumbai Region, has no application when the Indian Railways sources electricity as a distribution licensee for its Traction Substation situated in the Mumbai Region. In other words, there is no special privilege availed by the Indian Railways by drawing electricity through the Traction Substation in the Mumbai Region as compared to Traction Substation in other parts of Maharashtra.
- 8.36 As mentioned above, the Railways drawing electricity through Open Access for its activities in Mumbai region are governed by the Deviation Settlement Mechanism. The Railways draw electricity to the extent the generating company or other source of electricity makes declaration of its availability and a schedule is given by the Indian Railways. In case of deviation, the DSM Charges are payable. There cannot be an additional levy of standby charges of the nature contained in the impugned order.
- 8.37 The Railways while drawing electricity through Open Access are acting in the same manner, whether the Traction Substation where the electricity is drawn is situated in the Mumbai area or outside the Mumbai area. The above is the essential differentiation of Indian Railways from other distribution licensees like TPC-D, Reliance, BEST etc.
- 8.38 The State Commission has overlooked the above salient aspects and proceeded to treat Indian Railways akin to other distribution licensees in

the Mumbai area when the objective and purpose for which the standby charges are being imposed on such other distribution licensee has no application to Indian Railways.

RE: CLAIM FOR THE PERIOD PRIOR TO 11.02.2016

8.39 In the impugned order dated 23.03.2018, the State Commission has directed the Indian Railways to compensate TPCL-D for the stand by charges for the period commencing from December 2015. In this regard, without prejudice to the submissions made herein above it is submitted that no stand-by charges for the period from December 2015 to 11.02.2016 can be made payable by the Indian Railways as the Indian Railways started availing supply as a deemed distribution licensee in Mumbai Area only w.e.f. 11.02.2016 from TPCL-D and before that the Indian Railways was availing supply as a consumer of TPCL-D. The agreement between the Indian Railways and TPCL-D was in fact with 'Tata Power Company – Distribution', not with 'Tata Power Company – Generation'.

8.40 Therefore, the question of standby support for arranging power for Mumbai area Distribution licensee was not in place. TPCL-D had offered a fixed rate for energy per unit including transmission and wheeling charges. The rate offered was fixed and there was no clause whatsoever in the PPA that the Indian Railways would have to pay for stand by charges for the quantum of electricity being supplied to it by TPCL-D under the PPA. Thus, there could not be any liability fastened upon the Indian Railways for payment of standby charges or to compensate TPCL-D on account of stand by charges till such period, the electricity made available to the Indian Railways under the PPA, i.e., 11.02.2016.

8.41 The principal order which imposes the standby charges on Indian Railways for compensatory payment to MSEDCL by differentiating Mumbai Region and non-Mumbai Region is the Order dated 23.3.2018 {Impugned in Appeal No. 301 of 2018}. The Order dated 12.9.2018 {Impugned in Appeal No. 26 of 2019} is only a consequential Order providing for computation. If the Order dated 23.3.2018 is held to be erroneous as pointed out herein above in detail, the consequential Order cannot also be implemented and therefore the Impugned Order dated 12.09.2018 passed by the State Commission in Case No. 195 of 2017 is also liable to be set aside.

9. **Learned counsel, Mr. Amit Kapur, appearing on behalf of Tata Power Company Limited has filed common written submissions in both the appeals for our consideration :-**

9.1 It is noteworthy that on 19.03.2018, MERC passed its Order in Case No.114 of 2016 ("Liability Order") (filed by MSEDCL):-

- (a) *Directing Indian Railways to enter into a suitable Stand-by power arrangement with MSEDCL or any other generator/ entity of its choice.*
- (b) In the absence of such an arrangement, MSLDC was directed to take appropriate steps to curtail the drawal of Indian Railways and limit it to the availability of the generator(s) contracted by it. It is noteworthy that the said Liability Order dated 19.03.2018 has attained finality. Indian Railways had neither sought review nor challenged the same before this Tribunal. In fact, in the present proceedings, *Indian Railways has on Affidavit stated that it is not aggrieved by the Liability Order.*

9.2 In the said impugned Orders, MERC held that:-

- (i) Indian Railways being a Deemed Distribution Licensee having operations, *inter-alia*, within the Mumbai Distribution System is required to pay its share (of approx. Rs. 1 Crore per month) in the Stand-by Charges payable by all Mumbai Distribution Licensees to Maharashtra State Electricity Distribution Licensee to avail of uninterrupted power supply provided in the Mumbai area, during outage of their respective contracted generator(s); and
- (ii) Indian Railways is required to refund a sum of Rs. 27.35 Crores to The Tata Power Company Limited- Distribution (“TPC-D”) for the past period Stand-by Charges (i.e., for December 2015 to March 2018), in three equal monthly instalments without interest, no later than December 2018.

9.3 In these facts and circumstances, this Tribunal is called upon to adjudicate upon whether Indian Railways being a Deemed Distribution Licensee with a contract demand/ connected load within Mumbai, can:-

- (a) Refuse to share proportionate Stand-by Charges being paid by all the other Mumbai Distribution Licensees once the liability has been fastened by the Liability Order?
- (b) Continue to evade directions of MERC and the Maharashtra State Load Despatch Centre’s (“MSLDC”) to not overdraw power from the Grid, unless it has entered into a suitable stand-by supply arrangement and unless it pays its pro-rata share of the same?
- (c) Act in continued violation of Grid discipline under Indian Electricity Grid Code?

BACKGROUND OF STAND-BY CHARGES APPLICABLE IN MUMBAI

- 9.4 In the past, Mumbai was entirely dependent for its electricity supply on the embedded generation of Tata Power. In 1995, embedded generation of Rlnfra-G's Dahanu Thermal Power Station (DTPS) was added to the system. The Stand-by support provided by erstwhile Maharashtra State Electricity Board (MSEB), at that point in time, was in terms of outage or failure of this embedded generation (to the extent of 500 MW or 550 MVA - the capacity of the largest embedded Generating Unit in the Mumbai system), which was otherwise the only source of supply in the normal course. Thus, the share of payment of Stand-by Charges was linked to the maximum demand met by own generation.
- 9.5 A dispute arose between erstwhile BSES Ltd. / Rlnfra and Tata Power qua payment of Stand-by Charges to MSEB for the period 01.04.1999 to 30.09.2004. The Hon'ble Supreme Court of India by its Judgment dated 02.05.2019 has decided on the said historical issue. It is clarified that, *the Stand-by Arrangement as decided upon by the Hon'ble Supreme Court (which existed prior to 2006) is different and has no bearing on the present facts of the case*, which has been admitted by Indian Railways during the hearing.
- 9.6 On 03.10.2006, MERC while determining the Aggregate Revenue Requirement ("ARR") of TPC-D for 2005-06 and ARR and Tariff Petition for FY 2006-07 in Case Nos. 12 of 2005 and 56 of 2005, respectively, *inter alia*, qua Stand-by Charges held that:

"6.3.5 Standby Charges

.....

In view of the changed industry structure, the Commission does not agree with the views of TPC that MSEDCL is providing standby to TPC-G. The Commission is the opinion that the standby charges needs to be recovered by MSEDCL from the three Distribution Licensees of Mumbai System, i.e., REL-D, TPC-D and BEST to ensure that all the consumers of Mumbai system contribute to standby charges. The Commission has allocated the total standby charges payable to MSEDCL in

proportion to average non-coincident peak demand of Distribution Licensees in Mumbai system during FY 2005-06. The average non-coincident peak demand of Distribution Licensees in Mumbai System during FY 2005-06 and sharing of Standby Charges amongst Distribution Licensees is given in the Table below:....”

It is pertinent to note that, this Order *determining the principles of sharing the Stand-by Charges between all Distribution Licensees in proportion to their load has attained finality, as the same has not been challenged and all the Mumbai Distribution Licensees have been duly making payment to MSEDCL for the support received by them.*

- 9.7 The aforesaid Stand-by Arrangement and applicable Stand-by Charges were incorporated in the Tariff and ARR Petitions of the other two Distribution Licensees viz., RInfra-D (vide Order dated 03.10.2006 in Case Nos. 25 of 2005 & 53 of 2005) and BEST (vide Order dated 18.01.2007 in Case No.50 of 2005) as well. It was further incorporated in MSEDCL's Tariff Determination for FY 2006-07 vide Order dated 20.10.2006 in Case No.54 of 2005.
- 9.8 Accordingly, MERC, from time to time determined the share Stand-by Charges payable by all the Mumbai Distribution Licensees, on the basis of their respective shares in the Non-Coincident Peak Demand (“NCPD”).
- 9.9 On 28.06.2013, MERC in MSEDCL's Tariff Order (Case No.179 of 2011) *revised the methodology for sharing of Stand-by Charges by the Mumbai Licensees, in proportion to their average of Coincident Peak Demand (“CPD”) and NCPD.* The same principle of average of CPD and NCPD was applied in MSEDCL's MYT Order dated 03.11.2016 in Case No. 48 of 2016, as well and has continued thereafter.
- 9.10 The Mumbai Distribution Licensees availing this Stand-by support from MSEDCL, also pay Energy Charges at the rate of the ‘weighted average

system marginal price of power' for the actual power drawal under the Stand-by Arrangement. The Stand-by Charges payable form part of the ARR of each of the Distribution Licensee and accordingly, all Mumbai consumers bear the Stand-by Charges through retail Tariff approved by MERC.

9.11 As is evident from the foregoing factual background:-

- (a) To enable reliable and uninterrupted power supply in Mumbai (the financial capital of India), a Stand-by arrangement exists since 2006 between MSEDCL and the Distribution Utilities of Mumbai, duly approved by MERC from time to time.
- (b) As per this Stand-by arrangement, in case of any requirement of power by the Distribution Utilities of Mumbai arising out of shortfall of power on account of tripping or outage of the generation capacities from whom power is sourced, MSEDCL is to immediately make available power to the extent of 550 MVA/ 500 MW, till such time that the Distribution Utilities make alternative arrangement.
- (c) The objective behind such arrangement is continued uninterrupted power supply in the Mumbai System and avoid any power disturbance in the Licence areas of the Distribution Licensees.
- (d) These Stand-by Charges and the benefit of uninterrupted power supply is to be shared by all consumers in Mumbai through all the Distribution Licensees operating in the Mumbai system, which includes Indian Railways and other Deemed Distribution Licensees.
- (e) To meet this requirement, the Mumbai Distribution Licensees together pay a fixed sum of Rs. 396 Crores annually to MSEDCL as Stand-by

Charges determined by MERC as a part of the Retail Tariff. The share of this sum of Rs. 396 Crores payable to MSEDCL is allocated to each of the Distribution Licensee based on the average of CPD and NCPD of each of the Utility with respect to the total demand of these Distribution Licensees in the Base Transmission Capacity Rights (“TCR”). The TCR is approved in the Intra-State Transmission System (“InSTS”) Tariff Order dated 12.09.2018 passed by MERC in Case No. 265 of 2018 – determining the Intra-State Transmission Tariff.

9.12 Indian Railways was a retail consumer of TPC-D and as such was paying its share of the Stand-by Charges through the Tariff determined by MERC. In November 2015, Indian Railways was granted the status of a deemed Distribution Licensee. By virtue of Indian Railways becoming a Distribution Licensee, like any other Distribution Licensee, it became liable to pay its proportionate share in the Stand-by Charges payable which it was anyway paying as a consumer of TPC-D through Tariff. On 10.04.2017, TPC-D had filed Case No. 53 of 2017 (“Petition”) before MERC praying for: –

“b) Review the existing Standby Arrangement in totality in light of the many changes that the electricity industry in Mumbai Area has undergone since the eption (2006) of the existing Standby Arrangement;

c) Allocate the Standby Charges among the various beneficiaries in the Mumbai Distribution network including the deemed distribution licensees and the captive and open access consumers;

d) Reduce the total quantum of the Standby Charges being levied on the beneficiaries to the extent of allocation as per prayer (c) above;...”

9.13 On 05.11.2015, Central Electricity Regulatory Commission (“CERC”) recognized Indian Railways as a Deemed Distribution Licensee. Indian Railways has operations in the Mumbai System. As per the principles laid down by MERC, Indian Railways for its operations in Mumbai

system, like all other Distribution Licensees in the Mumbai System has been directed to contribute its share of the Stand-by Charges in proportion to its Demand (i.e., average of its CPD and NCPD).

CONSPECTUS OF THE APPEALS

- 9.14 The Stand-by Arrangement applicable since 03.10.2006, allocated the Stand-by Charges (Rs. 396 Crores) amongst the Mumbai Distribution Licensee viz., (i) Brihan-Mumbai Electricity Supply & Transport Undertaking (“BEST”) (Respondent No.4 in Appeal No. 301 of 2018); (ii) Adani Electricity Mumbai Ltd. (“AEML”) - earlier known as Reliance Infrastructure Ltd. (Distribution) (“R-Infra”) (Respondent No.3 in Appeal No. 301 of 2018); and (iii) TPC-D (Respondent No.1 in Appeal No. 301 of 2018 and Respondent No. 3 in Appeal No.26 of 2019). The Mumbai Distribution Licensees who avail this stand-by support from MSEDCL, also has to pay Energy Charges at the rate of the weighted average system marginal price (WASMP) of power for actual power drawal during such period.
- 9.15 During the pendency of Case No. 53 of 2017 (filed by TPC-D), MERC passed the Liability Order on 19.03.2018.
- 9.16 On 23.03.2018, MERC by its Order in Case No. 53 of 2017 (filed by TPC-D), held that Indian Railways being a Deemed Distribution Licensee is liable to pay its proportionate share in the Stand-by Charges payable by all Mumbai Distribution Licensees to MSEDCL. MERC accordingly directed MSEDCL to quantify the Stand-by Charges (based on data segregated from December 2015 onwards provided by MSLDC) of Indian Railways for the past and future period, and thereafter include the

same in its Mid-Term Review (“MTR”) Petition, for approval/determination by MERC. MERC’s aforesaid Order dated 23.03.2018 has been impugned by Indian Railways by way of Appeal No. 301 of 2018.

9.17 It is an undisputed fact that, during MSEDCL’s MTR proceedings before MERC, Indian Railways did not make any submissions whatsoever qua sharing of Stand-by Charges and/ or refunding the past dues to TPC-D.

9.18 On 12.09.2018, MERC passed the Implementation Order in MSEDCL’s MTR Petition i.e., Case No. 195 of 2017, wherein MERC:-

- (a) Considered the segregated data collated and submitted by MSLDC qua Indian Railway’s operations within the Mumbai System and rest of Maharashtra for determining the share in the Stand-by Charges payable by all Distribution Licensees (including Deemed Distribution Licensees) operating within the Mumbai System to MSEDCL, for the guaranteed uninterrupted power supply.
- (b) Computed Indian Railway’s share in Stand-by Charges for the past period, i.e. December 2015 to March 2018, aggregating Rs. 27.35 Crore. Considering the said sum had been borne by TPC-D/its consumers, since Indian Railways had been recognized as a Deemed Distribution Licensee since November 2015.
- (c) Directed Indian Railways to refund the said sum of Rs.27.35 Crores to TPC-D in three equal monthly instalments without interest, no later than December 2018.

9.19 In spite of lapse of over 1 year 4 months (i.e., 504 days) since the direction to refund, Indian Railways has acted in defiance of MERC’s

directions and refused to pay the said amount to TPC-D. In this regard, it is pertinent to note that by Order dated 14.06.2019 read with Errata dated 17.06.2019 in MSEDCL's Case No. 2 of 2019 ("Execution Order") seeking execution of the Liability Order dated 19.03.2018, MERC has held that:-

- (a) Indian Railways must enter into a suitable and adequate Stand-by supply arrangement within 3 months, after due consultation with MSLDC.
- (b) Indian Railways must pay its share of the fixed Stand-by Charges for Mumbai area (as determined by MERC) to MSEDCL within 15 days of the Order along with delayed payment charges @ 1.25% p.m.
- (c) Other Distribution Licensees in Mumbai are paying Stand-by Charges to MSEDCL for ensuring uninterrupted supply to their consumers in the event of tripping of their respective generating units/sources. Considering the Indian Railways' own submission that it should be given an identical treatment at par with the other Distribution Licensees, the arrangement of payment of Stand-by charges on the same terms as those determined for other Distribution licensees of Mumbai become inevitable for Indian Railways to ensure uninterrupted supply to its Traction sub-stations within Mumbai. Indian Railways has challenged MERC's aforesaid Execution Orders dated 14.06.2019 and 17.06.2019 vide Appeal No. 268 of 2019, which is pending adjudication before this Tribunal.

9.20 It is an admitted position that, Indian Railways has partly complied with the aforesaid Execution Order, vis-à-vis MSEDCL share by paying its share in the fixed Stand-by Charges for its operations in the Mumbai area to MSEDCL from January 2019 onwards. Having accepted that it is

obligated to have an adequate Stand-by supply arrangement, Indian Railways claimed identical treatment at par with the other Distribution Licensees. Indian Railways having paid the Stand-by Charges to MSEDCL as determined by MERC in the Implementation Order dated 12.09.2018, cannot refuse to refund the sum of Rs.27.35 Crores to TPC-D for the past period as owed to TPC-D had paid for the demand of Indian Railways since it was conferred as a deemed Distribution Licensee status.

INDIAN RAILWAY'S ARGUMENTS BEFORE THIS TRIBUNAL

9.21 Indian Railways is a Deemed Distribution Licensee and has contracted power with 2 generating companies [viz., (i) Bharatiya Rail Bijli Co. Ltd. - an Indian Railways subsidiary, situated outside Maharashtra; and (ii) Ratnagiri Gas and Power Pvt. Ltd. situated within Maharashtra], for supply of power within the State of Maharashtra, through Open Access. This power is:-

(a) Primarily for traction purposes (i.e., Railway administration purposes). Indian Railways does not supply power to consumers, like other Distribution Licensees. It has 'commuters' who use the trains and pay a fee for the same.

(b) Incidental supply to Book Stalls, canteens, etc. at the Railways Stations.

9.22 For the Railway Residential Colonies, housing quarters, etc. Indian Railways procures power from the local Distribution Licensee itself at the tariff determined by the Commission. If Stand-by are determined, the same would be built into such retail tariff.

9.23 Considering its importance, Indian Railways requires uninterrupted power supply for its railway operations. Being a Deemed Distribution Licensee, Indian Railways is governed by the Deviation Settlement Mechanism (“DSM”) and pays the applicable Unscheduled Interchange Charges (“UI Charges”) in the event it over draws power from the Grid. These UI Charges are paid to the SLDC and squared-off at the time of regional energy accounting. *This over-drawal and payment of UI Charges is kind of a Stand-by Arrangement* and Indian Railways not only avails of the same but also makes relevant payments.

9.24 MERC has dealt with the issue of over-drawal by Indian Railways in the Liability Order dated 19.03.2018 in Case No.114 of 2016. Indian Railways is not aggrieved by the same. Even the calculations made thereunder, are not in challenge before this Tribunal. The Liability Order does not deal with the issue of Stand-by Arrangement.

9.25 MERC in its Order dated 23.03.2018 in Case No. 53 of 2017 has wrongly held that Indian Railways is required to share in the Stand-by Charges paid by the 3 Mumbai Distribution Licensees to MSEDCL for the uninterrupted power supply provided to the consumers of Mumbai.

9.26 Since Indian Railways sources its entire power through Open Access from its contracted generators, Indian Railways is not availing any stand-by support from MSEDCL and is therefore not required to share in the Stand-by Charges payable to MSEDCL. Indian Railways has not entered into any such kind of Stand-by arrangement in other parts of the country.

RE : Contradictory submissions made by Indian Railways

9.27 The Indian Railways has made the following contradictory submissions before this Tribunal while challenging the Impugned Orders:-

- (a) Indian Railways has neither sought nor requires any Stand-by Arrangement, as is existing between the 3 Distribution Licensees (i.e., BEST, AEML and TPC-D) with MSEDCL for Mumbai area.
- (b) Indian Railways requires uninterrupted power supply, as its operations cannot be stopped during any outage of its contracted generators. Therefore, Stand-by power is required by Indian Railways in case of sudden outages of its generator.
- (c) Indian Railways has entered into Stand-by Arrangements with the Distribution Licensees in the State of Gujarat and Madhya Pradesh. This is contrary to the submission made during the hearing to a query raised by this Tribunal as to whether Indian Railways has entered into any other Stand-by Arrangement.
- (d) Whenever there is outage of its contracted generator, Indian Railways legally draws power directly from the Grid and pays the applicable charges under the DSM / Final Balancing and Settlement Mechanism ("FBSM") Code, which is adequate compensation. As such no other special Stand-by arrangement is required to be entered into.
- (e) On 18.04.2018, Central Railway has executed an agreement with M/s. NTPC Vidyut Vyapar Nigam (NVVN), to avail power from power exchange in the event of failure or reduction in generation of either of the sources (RGPPL/BRBCL) i.e., as a Stand-by Arrangement.
- (f) Indian Railways is not aggrieved and has therefore not challenged MERC's Liability Order dated 19.03.2018. However, Indian Railways had failed to comply with the directions given by MERC therein and continued

to over-draw large quantum of power from the grid without having any kind of standby arrangement. It is in light of Indian Railways said inaction / violation that MERC vide its Execution Order dated 14.06.2019 passed in Case No. 02 of 2019 once again directed MSLDC to curtail Indian Railways power load in case of tripping/ outage of its contracted generator in the absence of a Stand-by Arrangement. It is submitted that, Indian Railways has challenged the said Execution Order dated 14.06.2019 by way of Appeal No. 268 of 2019 before this Tribunal. It is submitted that, on one hand Indian Railways has submitted that it is not aggrieved by the Liability Order dated 19.03.2018 and on the other hand has challenged the Execution Order dated 14.06.2019. This fact has not been disclosed by Indian Railways in its Written Submissions dated 28.01.2020 filed before this Tribunal.

9.28 Indian Railways cannot be permitted to selectively implement part of an Order and it therefore, ought to be directed to refund the sum of Rs.27.35 Crores to TPC-D, being Indian Railway's share in Stand-by Charges for the past period (December 2015 to March 2018) along with interest from 01.01.2019 onwards, for its failure to pay this amount in three equal monthly instalments by December 2018, which was erroneously borne by TPC-D's consumers. In this regard, it is submitted that TPC-D has filed Case No. 04 of 2020 before MERC seeking necessary directions against Indian Railways for continued non-compliance of MERC's directions to refund the sum of Rs. 27.35 Crores to TPC-D. The said petition is pending adjudication before MERC.

RE : Nature of Indian Railways' Stand-by requirement and liability to share in the Stand-by Charges with other Mumbai Distribution Licensees.

9.29 In this regard, it is submitted that:

- (a) The Connectivity granted to Indian Railways by State Transmission Utility was, *inter alia*, subject to Indian Railways fulfilling any of the following:
- (i) making an alternate arrangement of power,
 - (ii) taking Stand-by support from MSEDCL, and
 - (iii) disconnecting the power supply.
- (b) On 25.11.2015, while approving Open Access to Indian Railways, MSLDC -the State Load Despatch Centre (being the Apex body to ensure integrated operation of the power system in the State – Section 32 of the Act) had categorically stated that, *Indian Railways had not made any arrangement for Stand-by support to deal with non-availability of contracted generator(s)*. It was therefore *required for Indian Railways to give a commitment of managing its load in the absence of such arrangement*. Subsequently, though various letters, MSLDC *requested Indian Railways to enter into a Stand-by arrangement, so as to refrain from over-drawing from the State Grid during outage of its contracted generator(s).*]
- (c) On 18.04.2019, pursuant to MERC's Liability Order, Indian Railways has entered into a (Stand-by) Agreement with NTPC Vidyut Vyapar Nigam Ltd. ("NVVNL") to avail power from the power exchange in the event of failure or reduction in generation of either of its contracted generator(s) (i.e., RGPPL or BRBCL). Evidently, Indian Railways has itself acknowledged the fact that as a State Pool Participant, it is obligated to maintain a Stand-by supply arrangement and cannot legally over draw

large quantum of power from the grid to meet its requirements during tripping or outage of its contracted generator(s).

- (d) It is pertinent to highlight that, MERC in the Execution Order dated 14.06.2019 has not considered to above arrangement between Indian Railways and NVVNL, as the same is not a 'firm arrangement', being valid only for a period of 6 months, is for a maximum quantum of 105 MW and is subject to availability of power and corridor through exchange.

9.30 It is an admitted position that Indian Railways requires uninterrupted power supply, as its traction and other operations cannot be stopped during outage/ tripping of its contracted generators. For this reason, when its contracted generators (RGPPL or BRBCL) trip or have an outage, Indian Railways over-draws the power from the Grid to the full contracted capacity of the tripped Generating Unit i.e., about 200 to 300 MW.

9.31 MERC in its various orders has time and again categorically held *that, Indian Railways act of over drawing its full contracted capacity (i.e., almost 200 to 300 MW) during outage of its contracted generator for an unlimited period amounts to Grid indiscipline and is contrary to the applicable law.* In this regard, it is pertinent to note that reproduce the relevant extracts of the Implementation Order dated 19.03.2018 passed in Case No. 114 of 2016, which is not challenged, as admitted by Indian Railways it is not aggrieved by the same:

"3.25

Indian Railways is over-drawing power on regular basis. All such over-drawals from the Grid attract Transmission Charges and Losses for which MSEDCL is paying Maharashtra State Electricity Transmission Co. Ltd. (MSETCL) through its Aggregate

Revenue Requirement (ARR). The details of tripping events of RGPPL Units are as below:

Table 4: Tripping of RGPPL Units

<u>Sr No</u>	<u>Tripped RGPPL unit No</u>	<u>Date and Time of tripping (mm/dd/yy time)</u>	<u>Installed Capacity (MW)</u>
1	2B	2/18/2016 4:25	210
2	2A	2/18/2016 4:25	210
3	2A	3/12/2016 1:39	210
4	2A	3/27/2016 8:33	210
5	2B	3/27/2016 8:59	210
6	2A	3/27/2016 19:25	210
7	3X	5/7/2016 18:40	240
8	2A	6/1/2016 17:50	210
9	2B	6/1/2016 17:50	210
10	2A	6/12/2016 19:58	210
11	2X	6/12/2016 19:59	240

3.26 In addition to above tripping, RGPPL also overdraws power during changeover of the Units. On some occasions of tripping, RGPPL is revising its generation schedule up to the actual generation and thereby the drawal schedule of Indian Railways is being revised. **However, Indian Railways is continuously over-drawing additional power from the Grid and such over-drawal attracts penalty through the DSM on other Utilities also who are marginally over-drawing power from the Grid.** The incidences of tripping of RGPPL's Units and over-drawal from the Grid by Indian Railways which attracted penalty through the DSM are as below:

Table 5: Tripping of RGPPL Units and over-drawal from the Grid by Indian Railways

.....

3.27 **Indian Railways is regularly over-drawing power from the Grid in normal situations as well** as during tripping of RGPPL Units and this over-drawn power is accounted on MSEDCL for payment of Transmission Charges through ARR of MSETCL. Thus, Indian Railways should reimburse the Transmission Charges to MSEDCL at the rate applicable to Short Term power. The month-wise over-drawal in MUs by Indian Railways is as below.

Table 6: Over-drawal (Provisional) by Railways during December, 2015 to May, 2016

<u>Month</u>	<u>Dec-15</u>	<u>Jan-16</u>	<u>Feb-16</u>	<u>Mar-16</u>	<u>Apr-16</u>	<u>May-16</u>	<u>Total</u>
Over-drawal by Railways for Dec-15 to May-16 (MUs)	4.74	8.79	9.39	13.45	13.16	11.13	60.66

[Emphasis supplied]

9.32 This action of Indian Railways in the absence of a firm Stand-by Arrangement, makes it difficult for the other State Pool Participants (such as the Distribution Licensees) to manage their respective real time deviations during such period of large quantum of power being over-drawn by Indian Railways without any sanction of law. As stated above, due to Indian Railways continuously over-drawing large quantum of power from the Grid (without any standby arrangement), the other Distribution Licensees who are marginally over-drawing power from the Grid are levied huge charges for the same. It is submitted that, Indian Railways is not legally permitted and therefore cannot be allowed to overdraw such quantum of power continuously or otherwise from the Grid, even though it may be willing to pay charges as per FBSM/ DSM regulations, which as per the Respondents is not applicable in the facts of the present case.

9.33 The powers relate to statutory provisions empowering Regulatory Commissions to notify Grid codes and enforce grid discipline through regulatory measures. In this regard reliance is placed on the Hon'ble Supreme Court's Judgment in the case of *Central Power Distribution Co. v. CERC* reported as (2007) 8 SCC 197.

9.34 It is submitted that, the Stand-by support required by Indian Railways is the same as that availed by the Mumbai Distribution Licensees from

MSEDCL. Indian Railways cannot be exempted from payment of the said charges without shifting the financial burden to other Distribution Licensees and their consumers. In fact, Indian Railways seeks a relief which will violate the provisions of Article 14 of the Constitution of India read with Sections 14, 61, 62 and 86 of the Electricity Act.

9.35 In the event Indian Railways is exempted from sharing in the Stand-by Charges payable by all Mumbai Distribution Licensees to MSEDCL (i.e., Rs.396 Crores), then the remaining Mumbai Distribution Licensees / their respective consumers will land up paying in excess of their TCR determined by MERC, and be adversely burdened to that extent. It is submitted that, there is parity amongst all Mumbai Distribution Licensees including Indian Railways qua availing Stand-by Arrangement for uninterrupted power supply.

9.36 As regards Indian Railways contention that it is not required to pay Stand-by Charges in terms of the Impugned Orders since the power procured by it is for self-consumption (primarily traction purpose) and it does not have any consumers such as the other Distribution Licensees who share in the Stand-by Charges paid to MSEDCL, it is submitted that:-

- (a) The said contention no longer holds ground considering Indian Railways has complied with MERC's Liability and Execution Orders and is paying its share in the fixed Stand-by Charges to MSEDCL as determined by MERC in the MTR Order dated 12.09.2018.
- (b) Even otherwise, the Stand-by Charges as held payable in the Impugned Orders form part of the ARR of each of the Distribution Licensee and *accordingly, all Mumbai consumers bear the Stand-by Charges through retail Tariff*. Non-payment of Stand-by Charges by Indian Railways will lead to increase in retail Tariff of the other Distribution Licensees thereby adversely impacting their consumers for no fault/ additional advantage.

- (c) Upto FY 2015-16, when Indian Railways was a direct consumer of TPC-D, Indian Railways was bearing the Stand-by Charges through retail Tariff paid by it to TPC-D, without any protest or demur. As such, Indian Railways submission that in the past it had never been subjected to Stand-by Charges is false and blatantly misleading.
- (d) Indian Railways was granted the status of a deemed Distribution Licensee in November 2015 which includes its operations in the Mumbai System. Accordingly, as per the principles laid down by MERC, Indian Railways to the extent of its operations in Mumbai system, like all other Distribution Licensees in the Mumbai System has been directed by MERC to contribute its share of the Stand-by Charges in proportion to its demand (i.e., average of its CPD and NCPD). It is pertinent to note that, the demand of Indian Railways as deemed Distribution Licensee has been segregated from TPC-D's demand.
- (e) The nature of activities undertaken by Indian Railways prior to 2015 and those being undertaken presently have not changed. Considering Stand-by Charges were always paid by Indian Railways (prior to 2015 – when it was a direct consumer availing supply of power from TPC-D), it would have formed part of its total expenditure in operating its railways and would undoubtedly be recovered from the commuters in the form of railway tariff. It is submitted that, this position has not changed pursuant to Indian Railways being recognized as a Deemed Distribution Licensee. Therefore, there is no occasion to exempt it from payment of Stand-by Charges for the support received by it. Once Indian Railways has been identified as a deemed Distribution Licensee, it is mandated to scrupulously implement provisions of the Electricity Act read with applicable rules, regulations and orders. In law, there is no differentiation

granted amongst Distribution Licensees basis the type and purpose of load served.

- (f) Apart from traction, Indian Railways operations includes various other commercial aspects such as offices, workshops, commercial shops, etc. Therefore, it is incorrect to state that Indian Railways does not have consumers, and/ or all the power is used for the purpose of traction.
- (g) Indian Railways is in the business of transporting commuters for which it recovers a charge/ fee covering all heads of expenditure (including electricity tariff, which would include Stand-by Charges), just like any other Distribution Licensee supplying electricity. Indian Railways carries approx. 2.64 billion commuters annually on the Mumbai suburban railway network alone. Sharing in the Stand-by Charges payable by all Mumbai Distribution Licensees and the one-time refund of the sum of Rs. 27.35 Crores to TPC-D, which was wrongly recovered from TPC-D for the past period, will have little or no impact on Indian Railways operations.
- (h) Considering Indian Railways is a deemed Distribution Licensee, its commuters/ passengers are deemed consumers of the appellant.

RE : Indian Railways cannot legally over-draw large quantum of power under FBSM / UI Mechanism

- 9.37 It is Indian Railways contention that, in case of over-drawal, Indian Railways has been paying the requisite charges to MSLDC as per the existing FBSM framed by MERC and these deviations have been appropriately dealt with under this mechanism. Indian Railways being a deemed distribution licensee is entitled to get the same treatment under FBSM/UI mechanism as the other Distribution Licensees get and no new mechanism is needed specifically in case of Indian Railways.

9.38 In this regard, it is pertinent to note that:-

- (a) *The objective of FBSM/ UI mechanism is to govern the functioning of the State Pool Participants (which includes Indian Railways) in a manner that Grid discipline is maintained with regard to the supply and drawal of energy by the State Pool Participants to ensure reliability and integrity of the power system* The objective of the FBSM Code is on the basic premise that, demand and supply has to be matched continuously by the State Pool Participants and immediate actions have to be taken in the event of any mismatch. Minor variations in demand and supply which are inevitable is what gets managed through FBSM / UI mechanism.
- (b) In terms of the FBSM Code/ UI mechanism and the Scheduling and Dispatch Code issued by MERC, *in case of forced outage/ tripping of the its contracted Generating Unit(s), Indian Railways as a Deemed Distribution Licensee is required to revise its demand / drawl schedule to match the reduced availability from its Generators or make alternate arrangements to meet its demand.*
- (c) As per FBSM Code/ UI mechanism, it is expected that there should be a load curtailment for the Distribution Licensee (whether deemed or otherwise) for shortfall beyond their available contracted capacity. Hence, in case of tripping of its RGPPL/ BRBCL Unit(s), Indian Railways is not expected to rely upon the grid over-drawal quantum for meeting its load requirement. Furthermore, payment of FBSM/ UI Charges does not absolve the responsibility of Indian Railways from following the Scheduling and Dispatch Code and also maintaining Grid discipline. Hence, there is no merit in the contention of Indian Railways that it can draw power from the State Grid during outage of its contracted generator(s) for an unlimited period, which would be appropriately dealt with under the existing FBSM/ UI mechanism. Further, *it is pertinent to*

note that, the same FBSM Code is applicable to the Mumbai Distribution Licensees, yet MERC has deemed it necessary for them to have a separate Stand-by arrangement with MSEDCL, which provides power in the eventuality of the tripping / non-availability of a contracted generation capacity. This is to avoid over drawl from the State Grid for long durations and is essential for maintaining Grid Stability and avoid catastrophic outcomes. In effect the purpose of the FBSM Code and Stand-by Arrangement are completely different and the FBSM Code cannot be used in lieu of a Stand-by Arrangement.

- (d) As a State Pool Participant, Indian Railways is duty bound to follow all the relevant provisions of the Electricity Act and Regulations framed thereunder in totality and make Stand-by arrangement, as it cannot rely on the FBSM / DSM mechanism to overdraw large quantum of power for unlimited periods during outage of its contracted generator. Indian Railways cannot be permitted to override the statutory and regulatory framework under the garb of being a deemed distribution licensee and a government entity engaged in the business of transporting people.
- (e) Indian Railways liability to enter into a Stand-by Arrangement and refrain from over-drawing power from the State Grid has been duly addressed by MERC in its Liability Order dated 19.03.2018 as well as Execution Order dated 14.06.2019.
- (f) Indian Railways reliance on the Liability Order dated 19.03.2018 to state that a charge, which is also referred to as Stand-by Charges but of a different nature, is blatantly false and misleading. It is submitted that, the Liability Order dated 19.03.2018 does not refer to any other Stand-by Charges.

9.39 The FBSM Code is provided to deal with over or under drawal of power for a short period/ duration. Clause 7.7(c) of the FBSM code provides that:-

“During real-time operations, in case of shortfall in ‘availability’, MSLDC shall take into account the available contracted capacity to each Distribution Licensee (or State Pool Participant) before issuing drawal/curtailment instructions for respective Distribution licensee. The load curtailment, as may be necessary, shall be applicable on all distribution licensees uniformly in proportion to their available contracted capacity’ and shall be applicable for shortfall beyond their available contracted capacity.”

9.40 Thus, as per FBSM Code, it is expected that there should be load curtailment for the Distribution Licensee for shortfall beyond its available contracted capacity. Hence, in case of tripping of RGPPL/ BRBCL Units, Indian Railways is legally mandated to curtail its load and not expected to rely upon Grid over-drawal quantum for meeting its load requirement on a continuous basis till its generation capacity is restored. Payment of FBSM charges does not absolve the responsibility of Indian Railways from following the Scheduling and Dispatch Code and also maintaining Grid Discipline. Hence, there is no merit in the contention of Indian Railways that over drawal is appropriately dealt with under the existing FBSM Code.

9.41 It is further submitted that, the FBSM Code which is currently applicable in the State of Maharashtra is different from the DSM / UI Mechanism prevalent at the central level. While the DSM / UI mechanism is “Frequency Based” i.e., relates the frequency of the grid to the value of shortage at that point in time; Settlement of Deviation as per the FBSM Code is done on the Weighted Average System Marginal Price in the Maharashtra System. Being a State Pool Participant, Indian Railways is mandated to follow the FBSM Code and cannot seek to rely on UI

mechanism as a means to avoid entering into a Stand-by Arrangement, as has been placed upon other Mumbai Distribution Licensees by MERC.

9.42 Furthermore, Indian Railways reliance on the FBSM Code to over-draw large quantum of power from the Grid during tripping/ outage of its contracted generators or even otherwise, has been specifically rejected by MERC in its recent Execution Order dated 14.06.2019.

RE: Refund of Stand-by Charges by Indian Railways

9.43 Indian Railways contention that MERC has retrospectively imposed Stand-by Charges upon it is false and misleading. Indian Railways while having enjoyed the benefit of Stand-by support for the period from 2015-16 to 2018 (as evident from MERC's findings in the Order dated 19.03.2018 and the Impugned Orders) now seeks to fasten its liability upon the consumers of the other Mumbai Distribution Licensees, particularly TPC-D.

9.44 As regards the direction for refund of the Stand-by Charges to TPC-D, it is submitted that:-

- (a) Upto FY 2015-16, the demand of Indian Railways to the extent it was drawing from TPC-D was part of the total demand of TPC-D and was thereby taken into account by MERC while calculating TPC-D's peak demand for the purpose of allocating the share of Stand-by Charges between the three Mumbai Distribution Licensees.
- (b) During the interregnum, and pendency of Petition No.53 of 2017 (in which the Impugned Order in Appeal No. 301 of 2018 is passed), TPC-D's consumers had been unduly bearing Indian Railways' share of the Stand-by Charges being paid to MSEDCL. This was in light of the fact

that, despite the reduction in demand of Indian Railways from TPC-D's total demand and despite reduced peak demand of TPC-D, its share in Stand-by Charges remained the same for FY 2015-16 to 2017-18.

- (c) In the Third Control Period, MERC had considered TPC-D's base TCR for FY 2016-17 inclusive of the demand of Indian Railways (i.e., TPC-D's Base TCR had to be reduced from FY 2016-17 onwards to the extent of the demand of Indian Railways, which was being met by TPC-D till FY 2015-16). However, the same had not been considered by MERC in the InSTS Order.
- (d) Evidently, the demand of Indian Railways had not been reduced from TPC-D's total demand. As the Stand-by Charges are determined in proportion to the CPD and NCPD of the Distribution Licensees, despite the reduced peak demand, TPC-D's share of Stand-by Charges remained the same for FY 2015-16 to 2017-18.
- (e) In light of the foregoing, MERC rightly directed Indian Railways to pay/refund to TPC-D its entire share of Stand-by Charges from the date its Deemed Distribution Licence became operational.

9.45 As regards, Indian Railways' reliance on the Power Purchase Agreement dated 02.02.2016 executed with TPC-D, so as to contend that it is not liable to pay its share in Stand-by Charges, it is submitted that:-

- (a) Indian Railways submission that the said Agreement was executed with TPC-D and not Tata Power-Generation is irrelevant qua applicability of Stand-by Charges, which are to be paid by the Distribution Licensees to MSEDCL, as settled by various orders of MERC referred to hereinabove.
- (b) The Stand-by arrangement is independent of the PPA between TPC-D and Indian Railways and would continue irrespective from whom Indian Railways sourced its power.

- (c) Even otherwise, Indian Railways had executed the said PPA in its capacity as a Deemed Distribution Licensee for procuring its entire power requirement from TPC-D, as a source of power supply. Indian Railways would have been liable to share in the aforesaid Stand-by Charges even had it contracted with any other generator/source.
- (d) Having availed power from TPC-D for a period of 1 year under the PPA and enjoyed the benefit of uninterrupted power supply provided by MSEDCL to all Mumbai Distribution Licensees, which includes Indian Railways, Indian Railways now cannot seek to burden the consumers of other Distribution Licensees (more particularly TPC-D) for payment of such support undisputedly enjoyed by it.
- (e) Having implemented MERC's Implementation (MTR) Order dated 12.09.2018 by making payment of its share in the fixed Stand-by Charges to MSEDCL, Indian Railways cannot be permitted by this Tribunal to withhold refunding the sum of Rs.27.35 Crores, now along with interest to the prejudice of TPC-D, thereby meting out differential treatment to similarly placed Distribution Licensees on the same issue.

9.46 The Indian Railways has failed to make out any case for the relief sought in the captioned Appeals. Indian Railways has also failed to show that the balance of convenience is in its favour. On the contrary, the balance of convenience is in the favour of TPC-D and the other Mumbai Distribution Licensees (i.e., Adani Electricity Mumbai Limited and BEST) who continue to share in proportion to their load/ share in the InSTS.

9.47 In the event this Tribunal holds that Indian Railways is not liable to share in the Stand-by Charges payable by all Mumbai Distribution Licensees to MSEDCL, then all the other Mumbai Distribution Licensees viz., Adani Electricity Mumbai Limited, BEST and TPC-D and their respective

consumers will be adversely affected as they shall be saddled with paying extra costs towards Stand-by Charges which shall be disproportionate to their share in the InSTS tariff order (i.e., their share in the TCR).

9.48 Without prejudice to the foregoing, it is submitted that should this *Tribunal hold that Indian Railways need not share in the Stand-by Charges payable by all other Distribution Licensees to MSEDCL and that it can draw power directly from the Grid under DSM/ FBSM, then Indian Railways shall be exempted from following the rules and regulations framed by MERC, which are otherwise being adhered to by all the other Distribution Licensees. There ought not to be any disparity between Distribution Licensees (whether deemed or otherwise).*

9.49 In light of the foregoing, it is most humbly submitted that the relief sought by Indian Railways in the instant Appeals and Interim Applications cannot be granted.

10. **Learned senior counsel, Mr. S.K.Rungta, appearing on behalf of Maharashtra Electricity Regulatory Commission has filed common written submissions in both the appeals for our consideration :-**

10.1 The Main ground of challenge to the impugned order is that the Appellant has no differential treatment for electricity drawn in the Traction substation situated at Mumbai region as compared to Traction Substation situated outside Mumbai region in the State of Maharashtra. This contention of the appellant is based on alleged distinction between other distribution licensees and the appellant on the ground that other distribution licensees have consumers in Mumbai area and rest of Maharashtra whereas the Appellant does not have any consumers. This

contention and distinction sought to be made by the appellant is wholly misconceived and is not in keeping with the purpose of imposition of stand by charges as contained in the order dated 07/12/2001 in case No. 7 of 2000 which is reproduced hereinbelow:

“Para 41- Standby charges are levied for the standby capacity that one utility, generally larger in size, provides to another utility, smaller in size, to meet emergent conditions. Standby capacity constitutes a special backup arrangement, which needs to be activated occasionally under certain special circumstances such as planned or forced closures or outages in power plants. The purpose behind having this kind of backup arrangement in the case under consideration is to ensure an uninterrupted supply of electricity in an important metropolitan city like Mumbai. A metropolis like Mumbai cannot afford to have any interruptions in the supply of electricity for the simple reason that the city is the economic and financial hub of the country.”

10.2 This imposition of stand by charges and the purpose for which it is imposed has never been a subject matter for any dispute. Hence, if the aforementioned contention of the appellant is tested on the touch stone of the definition and purpose of stand by charges, it would be evident that the same cannot withstand the test. It is submitted that in the first place, Railways has not disputed that they are deemed distribution licensees and secondly, it is also not in dispute that Railways have not benefited from the stand by capacity provided by MSEDCL for Mumbai area to ensure uninterrupted 24 x 7 supply of electricity. It is also not in dispute that the traction station in Mumbai is not using this stand by capacity of MSEDCL for uninterrupted supply. Therefore, on the basis of this admitted position alone no distinction can be drawn between the appellant and other distribution licensees towards the liability of payment of stand by charges.

10.3 Further, the Appellant has also contended that order dated 19/03/2018 in Case No. 114 of 2016 which has not been appealed against relates to over-drawal of electricity which is payable by every distribution licensee drawing electricity in excess of what is scheduled i.e. on account of

deviation from the schedule as per the deviation settlement mechanism and therefore, the impugned order dated 23/03/2018 is not in continuation of the said order of 19/03/2018. This contention is also untenable in view of the fact that the order dated 19/03/2018 also granted liberty to Indian Railways to source stand-by power through a separate arrangement with any other generator or entity which it considers to be more financially beneficial to it. Thus, the said order of 19/03/2018 while dealing with the issue of liability of Indian Railways to pay towards demand charges applicable to temporary category supply in terms of Section 62(3) of the Electricity Act, 2003.

10.4 The Indian Railways did not make any separate arrangement for ensuring uninterrupted supply and continued to over draw from the stand by capacity of MSEDCL making it liable to pay stand by charges on parity with other distribution licensees as determined by the Commission in its impugned orders.

10.5 Thus, it is clear from the said order dated 23.03.2018 that every consumer of Mumbai system who is availing benefit of uninterrupted supply on account of standby support is paying towards such support through its distribution licensee. As standby support is for Mumbai system, anyone who is connected to this system gets benefit of it. Therefore, the Respondent Commission in the above referred order has clarified that any new distribution licensee connected to Mumbai system has to share the cost of stand by support. Therefore, Appellant who has been recognized as a deemed distribution licensee by the CERC in its order dated 05/11/2015 in Petition No. 197/MP/2015 by virtue of being connected to Mumbai system is availing the benefit of standby support

provided by MSEDCL and hence will have to contribute towards cost of availing standby support from MSEDCL.

- 10.6 Subsequent to the passing of the order dated 23/03/2018, the Commission determined the share of three licensees i.e. TPC-D, Rinfra-D and BEST and Indian Railways vide impugned order dated 12/09/2018 on the basis of reasoning and findings returned in its order dated 23/03/2018.
- 10.7 Thus, the Commission has determined the share of the appellant for the payment of stand by charges based on the segregated CPD (Coincident Peak Demand) and NCPD (Non Coincident Peak Demand) data from December 2015 to FY 2017-18 of Indian Railways provided by MSLDC which has not been disputed by Railways. Consequently, the payment towards the stand by charges based on the undisputed data cannot be questioned by Indian Railways.
- 10.8 To conclude, in view of the submissions made hereinabove, Indian Railways is getting benefit of standby support by virtue of being connected to Mumbai system, it cannot deny the sharing of cost towards such standby support. The Respondent Commission has given a well reasoned order and consequent directions which are in line with the relevant orders and longstanding historical arrangement of standby supply to Mumbai system. In addition, the Commission's order dated 19/03/2018 which was not appealed against has attained finality and therefore, in terms of the said order as well, there is no merit in the present appeal of Indian Railways and is liable to be dismissed.

11. **Learned counsel, Mr. G. Sai Kumar, appearing on behalf of Maharashtra State Electricity Distribution Company Limited (MSEDCL) has filed common written submissions in both the appeals for our consideration:-**

11.1 The State Commission vide its order dated 14.06.2019 has analyzed that, as per FBSM Code, it is expected that there should be a load curtailment for the Distribution Licensee for shortfall beyond their available contracted capacity. Hence, in case of tripping of RGPPL/BRBCL Unit, Indian Railways is not expected to rely upon grid over draw quantum for meeting its load requirement. Also payment of FBSM charges does not absolve the responsibility of Indian Railways from following the Scheduling and Dispatch Code and also maintaining grid discipline.

11.2 When RGPPL or BRBCL Units trip, Indian Railways over-draws the power from the Grid to the full contracted capacity of the tripped Generating Unit i.e. about 200 to 300 MW which is more than 100% of its expected allowable limit on the basis of Base TCR (1.53% of 250 MW i.e. 3.82 MW). Hence, it becomes difficult for the other State Utilities to manage their real time deviations during such period. Appellant cannot be allowed to overdraw continuously such quantum of power, even though he is ready to pay charges as per FBSM/DSM regulations.

11.3 The State Commission has very clearly directed Indian Railways to make standby arrangements in view of grid discipline. Hence, principally directives of standby arrangements are also applicable to the Appellant for Mumbai area. It is pertinent to submit that even after grant of such liberty, Indian Railways did not make any standby arrangement and continued to overdraw from grid in the events of tripping of RGPPL or

BRBCL units. In view of the order dated 19.03.2018 which has attained finality, it was expected that the appellant will make standby arrangement of power for whole Maharashtra including Mumbai, but has not yet done so.

11.4 The issue of standby power dealt by State Commission vide order dated 19.03.2018 in view of endanger to state grid, cannot be read in isolation for rest of Maharashtra (excluding Mumbai) only. Tripping of BRBCL unit supplying power to the appellant for Mumbai area can also endanger state grid stability. There have been instances of the tripping of BRBCL Units on 29 July, 2018 and then on 18 September, 2018. The impugned order of the State Commission dated 23.03.2018 covers the issue of standby power more specifically for Mumbai area. Accordingly, the contention of appellant that impugned order of the State Commission dated 23.03.2018 has nothing to do with Grid Security or Grid instability is totally wrong. Hence, the impugned order of the State Commission dated 23.03.2018 is definitely in continuation with State Commission's order dated 19.03.2018.

11.5 On 23.03.2018, Maharashtra Commission by its Order in Case No. 53 of 2017 (re. Impugned in Appeal No. 301 of 2018), held that Indian Railways being a Deemed Distribution Licensee is liable to pay its proportionate share in the Stand-by Charges payable by all Mumbai Distribution Licensees to MSEDCL. Maharashtra Commission accordingly directed MSEDCL to quantify the Stand-by Charges (based on data segregated from December 2015 onwards provided by MSLDC) of Indian Railways for the past and future period, and thereafter include the same in its Mid-Term Review ("MTR") Petition, for approval/ determination by Maharashtra Commission.

- 11.6 The answering Respondent is providing guaranteed standby supply upto 550 MVA/ 500 MW to the Mumbai Distribution Licensees during tripping of their generating unit to ensure uninterrupted power supply to Mumbai area. Such arrangement and the standby charges applicable are to be governed by the orders of the State Commission issued from time to time. The standby charges are like insurance premium which needs to be paid irrespective of whether the benefit is availed or not i.e. irrespective of the quantum of power actually drawn from this arrangement.
- 11.7 The standby charges payable form part of the ARR of each of the Distribution Licensees and accordingly, all Mumbai consumers bear the standby charges through the tariff. Appellant has got the status of Deemed Distribution Licensee, though not supplying power directly to individual consumers and utilizing the power to provide the service to the commuters/passengers. Here, commuters/passengers are deemed consumers of the appellant. So, the contention of the appellant that it is not supplying power to consumers and utilizing the same for their traction substations is nothing but trying to run away from the responsibility of sharing standby charges.
- 11.8 In spite of lapse of 10 months since the direction to refund, Indian Railways has acted in defiance of Maharashtra Commission's directions. In this regard, it is submitted that Maharashtra Commission by its recent Order dated 14.06.2019 read with errata dated 17.06.2019 in Case No. 2 of 2019 ("Execution Order") filed by MSEDCL for execution of the Liability Order dated 19.03.2018, has reiterated its earlier findings.

11.9 The traction substations of Appellant provides the power for Mumbai suburban railways which is a lifeline of Mumbai. About 80 lakh commuters/passengers are travelling daily on an average by Mumbai suburban railways and are paying necessary fares to the appellant for said transportation services. Any disruption in said services will have horrible consequences and may lead to law and order situation. Appellant has not made any standby provision for Mumbai area to cope up in the situation of tripping of BRBCL units and is dependent on overdrawl from the grid. There is no provision in FBSM to use power from the grid as a standby and drawing such power on a continuous basis is not allowed. Also, it is pertinent to mention here that in most of such overdrawl cases, MSEDCL power is being used by giving schedule to MSEDCL generators. In other words, appellant is enjoying the benefit of standby arrangement for Mumbai.

11.10 The Commission ordered that it was not convinced about SLDC's action or (non-action) in "public interest" as it is putting the grid discipline/stability at risk and is affecting the reliability to rest of consumers of the State. In spite of the clear directives, due to social obligation/public interest MSLDC has not curtailed the power to the appellant for Mumbai area.

11.11 The Indian Railways earlier as a consumer of TPC and thereafter as a deemed distribution Licensee is always enjoying the preferential treatment by virtue of standby arrangement for Mumbai. As per the settled provisions, Mumbai distribution Licensees are paying standby charges to the MSEDCL and appellant being deemed distribution Licensee ought to pay the share of standby charges for Mumbai. But, instead of agreeing to pay the share of standby charges, appellant is

making irresponsible statements that he is not getting any preferential treatment for continuous supply in Mumbai/not supplying power to the consumers.

11.12 The Indian Railways has failed to make out a prima facie case of grant of the relief sought in the main Appeals. Indian Railways has also failed to show that the balance of convenience is in its favour. On the contrary, the balance of convenience is in the favour of MSEDCL and the other Mumbai Distribution Licensees who continue to share in proportion to their load/ share in the InSTS. Any adverse order will cause grave prejudice and financial injury to Respondent.

11.13 The Appellant so far has filed three appeals viz are 301 of 2018, 26 of 2019 and 268 of 2019 in the matter of standby charges with this Tribunal so as to avoid/delay the legitimate standby charges payable to the answering respondent.

12. **We have heard learned senior counsel appearing for the Appellant, the learned senior counsel(s) appearing for the Respondent Commission and learned counsel appearing for Respondent/ MSEDCL at considerable length of time and gone through their written submissions carefully. After thorough critical evaluation of the relevant material available on records, the following issue arises in the appeals for our consideration:-**

- Whether in the facts and circumstances of the case, the State Commission is justified in passing the impugned order(s) holding that Indian Railways are liable to proportionately share the Standby Support Charges along with other distribution licensees in the Mumbai Region?

Our Analysis & Findings:-

13. Learned senior counsel for the Appellant submitted that the very purpose for imposing such stand by Support Charges is that the consumers are serviced by such distribution licensees in the Mumbai area without any interruption whereas consumers of other areas in the state of Maharashtra serviced by MSEDCL do not have uninterrupted supply of power as in Mumbai. He further submitted that the issue which has arisen is the validity of extending the liability to pay such standby charges to Indian Railways as deemed licensee when it is not servicing any consumer in Mumbai area with such special privilege of uninterrupted supply in comparison to consumers in other areas of the State of Maharashtra. Learned counsel vehemently submitted that the entire submissions of the Respondents have proceeded on the wrong premise that the impugned orders dtd. 23.03.2018 and 12.09.2018 are in continuation of the MERC order dtd. 19.03.2018 and the Indian Railways having not challenged the order dtd. 19.03.2018, the present appeals are not maintainable.
- 13.1 Learned counsel further submitted that the overdrawal by Indian Railways has to be dealt under the DSM Regulations and the order dtd. 19.03.2018, the Indian Railways has not challenged this order as there had to be an action as per DSM Regulations for any over drawl or any under drawl including the payment of UI charges, penalties, action against the Indian Railways as may be admissible in accordance with law. The Respondents have claimed that over drawl by Indian Railways is in Mumbai Region and thus affecting MSEDCL. Learned counsel clarified that the case of over drawal in parts other than Mumbai region, say in Nagpur area, the Respondent cannot claim application of

23.03.2018 order to the same. Therefore, any over drawal outside Mumbai region has to be dealt only under the DSM Regulations. He pointed out that the negotiations took place with MSEDCL for the standby arrangement in regard to drawal covered under the DSM Regulation i.e. order dtd. 19.3.2018 and not as per order dtd. 23.03.2018. Accordingly, it is reiterated that there is no standby arrangement as in the order dtd. 23.03.2018 anywhere in India applicable to Indian Railways.

- 13.2 Learned counsel advancing his argument further submitted that the standby agreement by Indian Railways have been negotiated and have entered into in States such as Gujarat, Madhya Pradesh etc. and is in regard to an arrangement to draw electricity over and above the quantum of electricity scheduled from the generator. In fact, the Indian Railways have always stated that it is willing to enter into similar arrangement with MSEDCL in the State of Maharashtra as a whole. Further, the standby arrangements for Indian Railways is for extra power to be supplied in case of tripping of electricity available from the generators not only with MSEDCL but also with the generating companies like NVVN, NTPC etc..
- 13.3 He further contended that the charges imposed under the orders dtd. 19.03.2018 which are for a different purpose mainly on account of drawl of electricity by any distribution licensee in excess of those scheduled for drawal. These charges also termed as standby charges are of different nature and for distant purpose from the charges under the orders dtd. 23.03.2018 and 12.09.2018. It is thus clear that the charges under the order dtd. 19.03.2018 is universal in nature and there is no such thing as Mumbai area vis-à-vis other parts of Maharashtra. Accordingly, the charges dealt in the two impugned orders relate to the amount payable by the distribution licensees namely TPCL-D, AEML, BEST etc. servicing

the consumers in the Mumbai Region to MSEDCL which is serving the consumers in the entire state of Maharashtra outside the Mumbai region.

13.4 Learned counsel for the Appellant was quick to point out that the salient aspects which have been overlooked in the impugned orders are that the Indian Railways is not supplying electricity to any consumers in the Mumbai region who has been vested with the privilege of getting uninterrupted power supply from its distribution licensee as compared to the consumers outside the Mumbai region serviced by MSEDCL who has not been provided any special privilege. Learned Counsel contended that in the impugned order dtd. 23.03.2018, the State Commission had taken note of the submissions of Tata Power which brings out the objective and purpose of the standby charges as under:-

“3.1. There is an Arrangement between MSEDCL and the three Distribution Licensees of Mumbai, viz., TPC-D, Reliance Infrastructure Ltd. (Distribution) (RInfra-D) and Brihanmumbai Electric Supply and Transport Undertaking (BEST), since 1 October, 2006 for meeting the demand of Mumbai upto 550 MVA of the three Licensees to ensure uninterrupted power supply in Mumbai region. The three Distribution Licensees pay an aggregate Fixed Charge of Rs. 396 crore for the existing Stand-by arrangement, which is shared between them based on their respective share in the average of Coincident Peak Demand (CPD) and Non-Coincident Peak Demand (NCPD) of the Mumbai Energy Demand. The Distribution Licensee which avails such stand-by support from MSEDCL also has to pay energy charges at the rate of the weighted average system marginal price (WASMP) of power for actual power drawal.

Further, the order dtd. 03.10.2006 of the State Commission inter alia stated about the nature and purpose of the recovery of standby charges as under:-

*“
In view of the changed industry structure, the Commission does not agree with the views of TPC that MSEDCL is providing standby to TPC-G. The Commission is of the opinion that the standby charges needs to be recovered*

*by MSEDCL from the three Distribution Licensees of Mumbai System, i.e., REL-D, TPC-D and BEST to ensure that all the consumers of Mumbai system contribute to standby charges. The Commission has allocated the total standby charges payable to MSEDCL in proportion to average non-coincident peak demand of Distribution Licensees in Mumbai system during FY 2005-06. The average non-coincident peak demand of Distribution Licensees in Mumbai System during FY 2005-06 and sharing of Standby Charges amongst Distribution Licensees is given in the Table below:
.....”*

- 13.5 Learned counsel for the Appellant further submitted that the Indian Railways in its status as deemed distribution licensee is entitled to source electricity from any generating company or trader and it is not necessary that the electricity requirements of Indian Railways are to be taken from other distribution licensees of the area where the Traction sub-station is situated namely as a consumer of electricity of a distribution licensee. He further added that the Indian Railways while taking electricity through Open Access is subjected to scheduling and despatch requirements, DSM, UI Mechanism etc. as notified by Central Commission from time to time. In fact, the State Commission in its order dtd. 19.03.2018 had considered the standby charges payable by the Indian Railways. Learned counsel clarified that the nature and scope of standby charges discussed in the Order dated 23.03.2018 is distinct from the nature and scope of standby charges discussed in the Order dated 19.03.2018. To be more specific, the standby charges payable as per order dtd. 19.03.2018 deals with the mechanism for recovery of charges on account of overdrawal by Indian Railways as a distribution licensee whereas the order dtd. 23.03.2018 deals with differential treatment of the consumers in Mumbai area vis-a-vis the consumers in other parts of Maharashtra. Therefore, the objective and purpose of two charges are distinct. The order dtd. 19.03.2018 relates to the over drawal from the grid and concerning the issue of grid stability, management etc.. Thus,

the purpose of the standby charges provided in the impugned order dtd. 23.03.2018 has nothing to do with the grid security or grid instability etc. dealt in the order dtd.19.,03.2018 relating to the over drawal of electricity.

13.6 Learned counsel for the Appellant was quick to submit that there is an essential distinction between the Indian Railways and other distribution licenses operating in the Mumbai Region. While the distribution licensee such as TPCL-D and others are catering to the consumers at large in the Mumbai region, the Indian Railways is using the electricity for the purpose of Railway administration as envisaged under Railways Act, 1989. The Indian Railways is not distributing electricity to any public at large as such there is no such use or privilege given to the Indian Railways as being extended to consumers in the Mumbai region as compared to the other parts of Maharashtra. In a nutshell, it is clear that there is no special privilege availed by Indian Railways by drawing electricity through the Traction sub-station in the Mumbai Region as compared to the Traction sub-station in the other parts of Maharashtra.

13.7 Learned counsel for the Appellant contended that Railways while drawing electricity through open access are acting in the same manner whether the traction sub-station is situated in Mumbai area or outside the Mumbai area. In fact, this is the essential differentiation of Indian Railways vis-a-vis other distribution licenses operating in the Mumbai Region. Learned counsel pointed that in the 23.03.2018 order, the State Commission had directed the Indian Railways to compensate TPCL-D for the period commencing from December, 2015. In this regard, Learned counsel submitted that no standby charges for the period from Dec, 2015 to 11.02.2016 can be made payable by the Indian Railways as it started availing supply as a deemed distribution licensee in Mumbai

area only w.e.f. 11.02.2016 from TPCL-D. Before that, the Indian Railways was availing supply as a consumer of TPCL-D. Summing up his arguments, learned counsel for the Appellant reiterated that in view of the above submissions, the impugned orders dated 23.03.2018 and 12.09.,2018 passed by the State Commission are liable to be set aside.

13.8 **Per contra**, learned counsel for the Respondent /TPCL-D outrightly submitted that Indian Railways being a deemed distribution licensee having operations, inter-alia, within the Mumbai region is required to pay its share in the standby charges payable to MSEDCL to avail of uninterrupted power supply provided in Mumbai area during outage of their respective contracted generators. He further indicated that the Indian Railways has to refund a sum of Rs. 27.35 Crores to the TPCD for the past period standby charges (Dec, 2015 to March, 2018). While bringing out the historical background of the standby charges, he submitted that on 03.10.2006, the State Commission while determining the ARR of TPCL-D for 2005-06 etc. inter-alia considered the purpose and payment of the standby charges under Para 6.3.5. Learned counsel was quick to submit that this order determining the principles of sharing the stand by charges between all distribution licensees in proportion to their load has attained finality and the same has remained unchallenged.

13.9 Learned counsel for TPCL-D vehemently submitted that the Indian Railways was a retail consumer of TPCL-D and as such it was paying its share of the standby charges through the tariff determined by the State Commission. The Indian Railways was granted the status of a deemed distribution licensee in Nov., 2015 and by virtue of it, became liable to pay the proportionate share in the standby charges which it was anyway paying as a consumer of TPCL-D. Learned counsel further submitted

that after the 23.03.2018 order, the State Commission passed another order on 12.09.2018 which, among others, computed the share of Indian Railways in standby charges for the past period i.e. Dec, 2015 to March, 2018. The said order also directed Indian Railways to refund the said amount of Rs.27.35 crores to TPCD in 3 equal monthly instalments without interest not later than Dec, 2018. However, in spite of lapse of considerable period by now, the Indian Railways has acted in defiance of the State Commission's directions and instead of paying the said amount has preferred litigations before this Tribunal. It is pertinent to note that by order dtd. 14.06.2019 read with Errata dtd. 17.06.2019 in MSEDCL's case No.2 of 2019 (Execution order) seeking execution of the liability order dtd. 19.03.2018, MERC inter alia held that:-

- (a) *Indian Railways must enter into a suitable and adequate Stand-by supply arrangement within 3 months, after due consultation with MSLDC.*
- (b) *Indian Railways must pay its share of the fixed Stand-by Charges for Mumbai area (as determined by MERC) to MSEDCL within 15 days of the Order along with delayed payment charges @ 1.25% p.m.*
- (c) *Other Distribution Licensees in Mumbai are paying Stand-by Charges to MSEDCL for ensuring uninterrupted supply to their consumers in the event of tripping of their respective generating units/sources. Considering the Indian Railways' own submission that it should be given an identical treatment at par with the other Distribution Licensees, the arrangement of payment of Stand-by charges on the same terms as those determined for other Distribution licensees of Mumbai become inevitable for Indian Railways to ensure uninterrupted supply to its Traction sub-stations within Mumbai.*

Indian Railways has challenged the aforesaid execution order vide Appeal No.268 of 2019 which is pending adjudication before this Tribunal.

13.10 Learned counsel contended that admittedly, Indian Railways have partly complied with the aforesaid execution orders by paying its share in the fixed standby charges for its operation in the Mumbai area to MSEDCL from January, 2019 onwards. Having accepted that it is obligated to

have an adequate standby arrangement, Indian Railways claimed identical treatment at par with the other distribution licensees. Indian Railways having paid the standby charges to MSEDCL and determined by MERC in the implementation order dtd. 12.09.2018, cannot refuse to refund the outstanding sum to TPCL-D for the past period as it was conferred as a deemed distribution licensee status. In fact, being a deemed distribution licensee, Indian Railways is governed by DSM and pays the applicable UI charges in the event it over draws powers from the grid. In view of these facts, the Indian Railways cannot be permitted to selectively implement part of an order and it, therefore, ought to be directed to refund the outstanding dues to TPCD arising out of its share in standby charges for the past period. Learned counsel further submitted that TPCD has filed a case No. 04 of 2020 before the State Commission seeking necessary directions against Indian Railways for continued non-compliance of the MERC directions to refund the outstanding sum. The said petition is pending adjudication before the State Commission.

13.11 It is an admitted position that Indian Railways requires uninterrupted power supplies as its Traction and other operations cannot be stopped during outage / tripping of its contracted generators. For this reason when its contracted generators (RGPEL OR BRBCL) trip or have an outage, the Indian Railways overdraws power from the grid to the full contracted capacity of the tripped generating unit i.e. about 200-300 MW. Taking cognizance of these aspects, the MERC in its various orders has time and again categorically held that Indian Railways act of overdrawing its full contracted capacity during outage of its contracted generator for an unlimited period amounts to grid indiscipline and is contrary to the applicable laws. Learned counsel pointed out that such action of Indian

Railways in the absence of a firm stand by arrangement makes it difficult for the other State Pool Participants to manage their respective real time deviations during such period of large quantum of power being overdrawn by Indian Railways without any sanction of law. It is a matter of fact that Indian Railways is not duly permitted and, therefore cannot be allowed to overdraw such quantum of power continuously or otherwise from the grid even though it may be willing to pay charges as per FBSM/DSM Regulations.

13.12 Learned counsel vehemently submitted that in an event Indian Railways is exempted from sharing in the standby charges payable by all Mumbai distribution licensees to MSEDCL, the remaining licensees and their respective consumers will land up paying in excess of their TCR determined by MERC. The Indian Railways has erroneously contended that it is not required to pay standby charges because it does not have any consumers such as the other distribution licensee and it consumes power for its own use. Learned counsel pointed out that contentions no longer hold ground considering the Indian Railways has complied with Commission's liability and Execution order and is paying its share in the fixed standby charges to MSEDCL.

13.13 Learned counsel contended that the Indian Railways is in the business of transporting commuters/goods for which it recovers a charge covering all heads of expenditure including electricity tariff just like any other distribution licensee supplying electricity to its consumers. The Indian Railways having large revenues, the one time refund of the sum of Rs. 27.35 crores to TPCL-D which was wrongly recovered from TPCL-D for the past period will have a very little or no impact on Indian Railway operations. Learned counsel further submitted that FBSM code which is

currently applicable in the state of Maharashtra is different from DSM and UI prevalent at the Central Level. While the DSM /UI mechanism is frequency based, settlement of deviation as per FBSM code on the Weighted Average System Marginal Price in the Maharashtra System. As such being a State Pool Participant, Indian Railways is mandated to follow the FBSM code and cannot seek to rely on UI mechanism as a means to avoid entering into a Stand-by Arrangement, as has been placed upon other Mumbai Distribution Licensees by MERC.

13.14 Learned counsel for the Respondent/TPCL-D further submitted that Indian Railways has failed to make out any case for the relief sought in the captioned Appeals. Besides, Indian Railways has also failed to show that the balance of convenience is in its favour. On the contrary, the balance of convenience lies in the favour of TPCL-D and the other Mumbai distribution licensee who continue to share in proportion to the load in the intra state transmission system. In view of these facts, the Appeals filed by Indian Railways are liable to be rejected.

13.15 Learned senior counsel appearing for the State Commission submitted that the main ground of challenge to the impugned orders is that the Appellant has no differential treatment for electricity drawn in the traction sub-station situated in Mumbai region as compared to the other region situated in the other region in the state of Maharashtra. In fact, this contention of the Applicant is based on the alleged distinction between other distribution licenses and the Appellant on the ground that the other distribution licensees have consumers in Mumbai area and rest of Maharashtra whereas the Appellant does not have any consumers of that kind. In fact, this contention is wholly misconceived and is not in keeping with the purpose of standby charges as contained in order dtd.

07.12.2001. Learned counsel for the Commission was quick to submit that the imposition of standby charges and the purpose for which it is imposed has never been a subject matter of any dispute. Hence, if the aforementioned contention of the Appellant is tested on the touch stone of the definition and purpose of the standby charges, it would be evident that the same cannot withstand the test. He pointed out that in the first place, Indian Railways has not disputed that they are deemed distribution licensees and secondly it is also not in dispute that Railways have not benefitted from the standby capacity provided by MSEDCL for Mumbai area to ensure uninterrupted power supply of electricity. Further, it is also not in dispute that the traction sub-station in Mumbai is not using this stand by capacity of MSEDCL for uninterrupted power supply. Learned counsel emphasised that on the basis of this admitted position alone, no distinction can be drawn between the Appellant and the other distribution licensee towards the liability of payment of stand by charges.

13.16 Learned counsel for the Commission further submitted that the contentions of the Appellant having not challenged the order dtd. 19.03.2018 is untenable as the order granted liberty to Indian Railways to source standby power through a separate arrangement with any other generator or entity which it considers to be more financially beneficial to it. Thus, the said order of 19.03.2018 while dealing with the issue of liability of Indian Railways to pay towards demand charges applicable to temporary category apply in terms of Section 62 (3) of the Electricity Act. In fact, the Indian Railways did not make any separate arrangement for ensuring uninterrupted power supply and continued to overdraw from the grid, makes it liable to pay standby charges on parity with other distribution licensees, as determined by state commission in its impugned orders. It is clear from the 23.03.2018 order that every

consumer of Mumbai region who is availing benefit of uninterrupted power supply on account of standby support is paying towards the support through its distribution licensee. Therefore, the State Commission in the above referred order has clarified that any new distribution licensee connected to Mumbai system has to share the cost of standby support. Therefore, Appellant who has been recognised as a deemed distribution licensee by the CERC order dated. 05.11.2015, by virtue of being connected to Mumbai system is availing the benefit of standby support provided by MSEDCL and hence will have to contribute towards cost of availing standby support from MSEDCL. The State Commission has determined the shares of all licensees in the stand by charges vide its order dated 12.09.2018, as impugned.

13.17 Learned counsel further submitted that in view of the submissions made herein above, it is concluded that Indian Railways is getting benefit of standby support by virtue of being connected to Mumbai system, it cannot deny the sharing of cost towards such standby support. The Respondent Commission has given a well reasoned order and consequent directions which are in line with the relevant orders and long standing historical arrangement of standby supply to Mumbai system. Therefore, there is no merits in the present appeals of Indian Railways and are liable to be dismissed.

13.18 Learned counsel appearing for Respondent/MSEDCL submitted that the State Commission vide its order dtd. 14.06.2019 has analysed that as per FBSM code, it is expected that there should be a load curtailment for the distribution licensee for the shortfall beyond their available contracted capacity. Hence, in case of tripping of RGPPL, BRBCL units, Indian

Railways is not expected to rely upon grid over drawl quantum for meeting its load requirement. Also, payment of FBSM charges does not absolve the responsibility of Indian Railways from following the scheduling and the despatch code and also maintaining the grid discipline. Practically, when RGPPL or BRBCL units trip, Indian Railways overdraws the power from the grid to the full contracted capacity i.e. about 200 -300 Mw which is more than 100% of its expected allowed limit on the basis of base TCR. Hence, it becomes difficult for the other State Utilities to manage their real time deviations during such period. Therefore, the Appellant cannot be allowed to overdraw continuously such quantum of power, even though he is ready to pay charges as per FBSM/DSM regulations.

- 13.19 Learned counsel for MSEDCL contended that the State Commission has very clearly directed Indian Railways to make standby arrangements in view of grid discipline. However, even after grant of such liberty, Indian Railways did not make any standby arrangement and continued overdrawal from the grid in the events of tripping of RGPPL/BRBCL units. In view of the order dtd. 19.03.2018, which has attained finality, it was expected that the Appellant will make standby arrangement of power for while Maharashtra including Mumbai but has not done yet so. MERC vide its order dtd. 23.03.2018 held that Indian Railways being a distribution licensee is liable to pay its proportionate share in the standby charges payable by all Mumbai distribution licensee to MSEDCL. He further submitted that MSEDCL is providing guaranteed standby supply up to 500 MW to the Mumbai distribution licensees during tripping of their generating units to ensure uninterrupted power supply to Mumbai area. Such arrangement and the standby charges applicable are to be governed by various orders of the State Commission issued from time

to time. Learned counsel for the Respondent, MSEDCL contended that the traction sub-station of the Appellant provide power for Mumbai sub-urban railway which is a lifeline of Mumbai. More than 8 millions passengers are travelling daily by Mumbai Railways and are paying necessary fares to the Appellant for the said transport services. In case of any disruption in the said services will have horrible consequences and may lead to law and order situations. The Appellant has not made any standby provision for Mumbai area to cope up in the situation of tripping of RGPPL/BRBCL units and is wholly dependent on overdrawl from the grid. It is pertinent to mention that in most of the such over drawl cases by Railways, MSEDCL power is used by giving schedule to MSEDCL generators. In other words, the Appellant is enjoying the standby arrangement for Mumbai at the cost of other distribution licensees.

13.20 Learned counsel also pointed out that the Indian Railways earlier as a consumer of TPCL-D and thereafter as a deemed distribution licensee is always enjoying the preferential treatment by virtue of a standby arrangement for Mumbai region. As per the settled provisions, Mumbai distribution licensees are paying standby charges to MSEDCL and the Appellant being deemed distribution licensee ought to pay its share in the said charges. However, instead of agreeing to pay the share of stand by charges, the Appellant is making irresponsible statement that it is not getting any preferential treatment for continuous supply in Mumbai and it is not supplying power to any consumer.

13.21 Learned counsel for the Respondent, MSEDCL summed up his arguments by pleading that Indian Railways has failed to make out a prima facie case of grant of the relief sought in the appeals and in view

of the submissions of the Respondent, the Appeals are liable to be dismissed.

Our findings :

13.22 We have carefully considered the submissions / arguments of learned counsel for the Appellant and learned counsel for Respondents namely TPCD, State Commission & MSEDCL and also taken note of all the relevant documents placed before us during the proceeding. The primary issue of dispute is relating to the sharing of standby charges with other distribution licensees of Mumbai region. The Appellant and Respondents have expressed divergent views as far as payment of standby charges is concerned. Before we proceed further in deciding the issue of dispute, we take reference of various provisions of the Railways Act, 1989 which governs the operation of Indian Railways in the country . The Section 2(31) of the Railways Act, 1989 defines the term 'Railways' and under 31 (c), it provides as under:-

“(31) "railway" means a railway, or any portion of a railway, for the public carriage of passengers or goods, and includes—

*(c) all electric traction equipments, **power supply and distribution installations used for the purposes of, or in connection with, a railway;***

(Emphasis Supplied)

Further Section 2(32) defines the terms 'Railway Administration' as under:-

“(32) "railway administration", in relation to—

- (a) a Government railway, means the General Manager of a Zonal Railway; and*
- (b) a non-Government railway, means the person who is the owner or lessee of the railway or the person working the railway under an agreement;”*

Section 11 of the Railways Act deals with powers of Railway Administration to execute all necessary works of Railways and under Section 11(g), it includes as under:

*“11. Payment of amount for damage or loss.-(1) Notwithstanding anything contained in any other law for the time being in force, but subject to the provisions of this Act and the provisions of any law for the acquisition of land for a public purpose or for companies, and subject also, in the case of a non-Government railway, to the provisions of any contract between the non-Government railway and the Central Government, a **railway administration may, for the purposes of constructing or maintaining a railway—***

*(g) **erect, operate, maintain or repair any electric traction equipment, power supply and distribution installation in connection with the working of the railway;***

(Emphasis Supplied)

Further, Section 12 of the Railways Act empowers Railway to alter the electric supply line as under:-

*“12. **Power to alter the position of pipe, electric supply line, drain or sewer, etc.**-(1) A railway administration may, for the purpose of exercising the powers conferred on it by this Act, alter the position of any pipe for the supply of gas, water, oil or compressed air, or the position of any electric supply line, drain or sewer:*

***Provided that** before altering the position of any such pipe, electric supply line, drain or sewer, the railway administration shall give a notice indicating the time at which the work of such alteration shall commence, to the local authority or other person having control over the pipe, electric supply line, drain or sewer.*

(2) The railway administration shall execute the work referred to in sub-section (1) to the reasonable satisfaction of the local authority or the person receiving the notice under the proviso to sub-section (1).”

13.23 Learned counsel for the Appellant submitted that terms of the provisions of Railways Act, 1989, the Railway Administration is entitled to

undertake electric supply and distribution and the said authority to the Indian Railways existed even during the period prior to enactment of the Electricity Act, 2003. Learned counsel for the Appellant referred to Section 173 of the Electricity Act dealing with inconsistency of the laws and also Section 14 which provides that the Central Govt. and the State Govt. are deemed licensee.

13.24 Learned counsel for the Appellant further submitted that the purpose of imposing stand by charges is the consumers serviced by distribution licensee are allowed to draw electricity in the Mumbai areas without any interruption whereas in the other areas in the Maharashtra serviced by MSEDCL do not have uninterrupted power supply as in Mumbai. He pointed out that the issue which has arisen is the validity extending the liability to pay such stand by charges to Indian Railways as deemed licensee when Indian Railways is not servicing any consumer in Mumbai Area with such special privilege of uninterrupted supply in comparison to consumers in other areas of the State of Maharashtra. Learned counsel for the Appellant vehemently submitted that the Respondents are mixing up the issues in another order dated 19.03.2018 passed by the State Commission in another independent and unrelated petition being Case No.114 of 2016. The standby charges referred to in the order dated 19.03.2018 is totally different from the standby charges dealt in the impugned orders dated 23.03.2018 and 12.09.2018. The entire submissions of the Respondent have proceeded on the wrong premise that the impugned orders are in continuation of order dated 19.03.2018.

13.25 Learned counsel for the Appellant further submitted that the Respondents have claimed that overdrawl by Indian Railways in Mumbai Region is affecting MSEDCL. However, there is no such things as

overdrawl by Indian Railways in Mumbai area distinct from other parts of Maharashtra. Further, negotiation took place with MSEDCL for the standby arrangement in regard to drawal covered under the DSM Regulations i.e. order 19.03.2018 and not as per 23.03.2018 order. In fact, the standby arrangement by Indian Railways have been negotiated and entered into in other States such as Gujarat, Madhya Pradesh etc. The Indian Railways have always stated that it is willing to enter into similar arrangement with MSEDCL in the State of Maharashtra as a whole which is the standby arrangement for extra power to be supplied in case of tripping of electricity available from the generators not only with MSEDCL but also with other generating companies like NVVN, NTPC etc..

13.26 Learned counsel for the Appellant was quick to point out that the salient aspects which have been overlooked in the impugned orders is that the Indian Railways is not supplying electricity to any consumers in the Mumbai region who have got special privilege of getting 24 X 7 electricity from its distribution licensee as compared to the consumers outside the Mumbai region serviced by MSEDCL who have not been given such privilege of uninterrupted supply of power. In the impugned order dtd. 23.03.2018, the State Commission had taken note of the submission of TPCD which brings out the objective and purpose of the standby charges:-

“3.1. There is an Arrangement between MSEDCL and the three Distribution Licensees of Mumbai, viz., TPC-D, Reliance Infrastructure Ltd. (Distribution) (RInfra-D) and Brihanmumbai Electric Supply and Transport Undertaking (BEST), since 1 October, 2006 for meeting the demand of Mumbai upto 550 MVA of the three Licensees to ensure uninterrupted power supply in Mumbai region. The three Distribution Licensees pay an aggregate Fixed Charge of Rs. 396 crore for the existing Stand-by arrangement, which is shared between them based on their respective share in the average of Coincident Peak Demand (CPD) and Non-Coincident Peak Demand (NCPD) of the Mumbai

Energy Demand. The Distribution Licensee which avails such stand-by support from MSEDCL also has to pay energy charges at the rate of the weighted average system marginal price (WASMP) of power for actual power drawal.

Learned counsel for the Appellant also drew our attention on the order dated 03.10.2006 passed by the State Commission in Case no. 12 of 2005 and 56 of 2005 which inter alia stated about the nature and purpose of the recovery of standby charges as under:-

“.....

In view of the changed industry structure, the Commission does not agree with the views of TPC that MSEDCL is providing standby to TPC-G. The Commission is of the opinion that the standby charges needs to be recovered by MSEDCL from the three Distribution Licensees of Mumbai System, i.e., REL-D, TPC-D and BEST to ensure that all the consumers of Mumbai system contribute to standby charges. The Commission has allocated the total standby charges payable to MSEDCL in proportion to average non-coincident peak demand of Distribution Licensees in Mumbai system during FY 2005-06. The average non-coincident peak demand of Distribution Licensees in Mumbai System during FY 2005-06 and sharing of Standby Charges amongst Distribution Licensees is given in the

Table below:

.....”

13.27 Learned counsel for the Appellant contended that as evident from the above, the objective and purpose of two charges are distinct. While, the order dtd. 19.03.2019 related to overdrawal of Indian Railways from the grid and relates to the issue of grid stability, management etc.. Such overdrawal charges are applicable for both at the intra state level and also at the inter-state level in an integrated grid. On the other hand, the purpose of standby charges provided in the impugned orders have nothing to do with the grid security or grid instability etc. dealt in the order 23.03.2018 relating to overdrawal of electricity. As mentioned earlier, the Indian Railways does not supply electricity to the consumers in the

Mumbai region with such privileges as considered by the State Commission in the order dtd. 23.03.2018. In fact, the Indian Railways have no such differential treatment for the electricity drawn in the Traction Substation situated in the Mumbai Region as compared to the Traction Substation situated outside the Mumbai region in the state of Maharashtra. In that fact of the matter, the Indian Railways while drawing electricity through open access are acting in the same manner whether the Traction Substation where the electricity is drawn is situated in the Mumbai region or outside the Mumbai region. As such, it is the essential differentiation of Indian Railways from other distribution licensees like TPC-D, Reliance, BEST etc.

13.28 Learned counsel advancing his arguments further, pointed out that in the impugned order dated 23.03.2018, the State Commission had directed Indian Railway to compensate TPCD for the standby charges for the period from December 2015 to 11.02.2016 which is quite erroneous due to the fact that Railway started availing supply as a deemed licensee only w.e.f. 11.02.2016 from TPCL-D. Before that, Indian Railways was availing supply as a consumer of TPCL-D. Learned counsel while summing up his argument reiterated that the impugned orders are erroneous and liable to be set aside.

13.29 On the other hand, the learned counsel for Respondents have submitted in unison that the Indian Railway being deemed distribution licensee and availing all the facilities of uninterrupted power supply specially through Mumbai sub-urban railways is very much liable to share the standby charges as decided by the State Commission for the Mumbai area along with other distribution licensees – Tata, Reliance, Adani, BEST etc. Learned counsel for the TPCL-D submitted that as per the directions of

the State Commission, the Indian Railways is required to deposit a sum of Rs. 27.35 Crores to Tata Power company Ltd. – Distribution for the past period Stand-by Charges in 3 equal monthly instalments not later than December, 2018. However, Indian Railways instead of paying the same have engaged itself into litigations before this Tribunal to avoid payment. It is further submitted that to enable reliable and uninterrupted power supply in Mumbai, a Stand-by arrangement exists since 2006 between MSEDCL and the other Distribution Utilities of Mumbai, duly approved by MERC from time to time.

13.30 Learned counsel for the Respondents further submitted that being a State pool participant Indian Railways is duty bound to follow the relevant provisions of the Electricity Act and Regulations thereunder in totality and make standby arrangement to overdraw for unlimited periods during outage of its contacted generators. The Indian Railways cannot be permitted to override the statutory & regulatory framework under the garb of being deemed distribution licensee. Further, Indian Railways liability to enter into a standby arrangement and to refrain from overdrawing power from the state grid has been duly addressed by the State Commission in its liability order dtd. 19.03.2018 and execution order dtd. 14.06.2019. Learned Counsel for the Respondents further submitted that the FBSM code which is currently applicable in the state of Maharashtra is different from the DSM / UI mechanism prevalent at the Central Level. As such, Indian Railways, mandated to follow the FBSM code cannot seek to rely on UI mechanism as a means to avoid entering into a standby arrangement placed upon other Mumbai Distribution Licensees by MERC.

13.31 Further, subsequent to the passing the order dated 23.03.2018, the Commission determined for payment of stand by charges by various distribution licenses i.e. TPCL-D /AEML/BEST and also Indian Railway vide order dated. 12.09.2018. In view of the detailed submissions herein above, learned counsel for the State Commission concluded that Indian Railways is getting all benefits of standby support as being connected to the Mumbai system and it cannot deny the sharing of cost towards such support. The impugned orders are well reasoned orders and passed in consideration of all facts and figures and hence, interference of this Tribunal is not called for.

13.32 Learned counsel for MSEDCL additionally submitted that the State Commission while passing its order dtd. 14.06.2019 has analysed all the factual aspects as per FBSM code. He submitted that when RGPPL and BRBCL units trip, Indian Railway overdraws power i.e. about 200 to 300 Mw which is more than 100% of its expected / allowed limit on the basis of base TCR. Further, the State Commission by its recent Order dated 14.06.2019 read with errata dated 17.06.2019 in Case No. 2 of 2019 (Execution Order) filed by MSEDCL for execution of the Liability Order dated 19.03.2018, has held that Indian Railways must enter into a suitable and adequate Stand-by supply arrangement within 3 months, after due consultation with MSLDC and Indian Railways must pay its share of the fixed Stand-by Charges for Mumbai area (as determined by Maharashtra Commission) to MSEDCL within 15 days of the Order along with delayed payment charges @ 1.25% per month. Summing up these arguments, learned counsel for MSEDCL reiterated that Indian Railways has failed to make out a prima facie case for grant of the relief sought in the Appeals and hence Appeals are liable to be dismissed.

13.33 While taking note of the various provisions of the Railways Act, 1989, it is crystal clear that the Indian Railways have been empowered to construct, operate and maintain the required transmission and distribution lines for its operation across the country. Further, the Railways Act, 1989 has been saved under the Electricity Act, 2003 and the inconsistency clause stipulated in the Electricity Act further strengthens the powers of Indian Railways. Subsequently, in November, 2015 it has also been declared / notified a deemed distribution licensee. Further, Hon'ble Supreme Court in its judgment dated 09.02.2012 in the case Union of India vs. Chairman, UPSEB 2012 3 SCC 329 has considered and elucidated the scope of Section 11 (a) and (g) of the Railways Act as under:-

“16. That apart, Sections 11 (a) and (g) of the Railways Act, 1989 clearly authorise the Railways to construct necessary transmission lines, dedicated for their own purpose. It is not possible to read this Section in a restricted manner in which it was sought to be conveyed. This is because the principal part of Section 11 authorises the Railway Administration to execute all necessary works for the purpose of constructing or maintaining railways. Sub-section (a) of this Section authorises Railways to make or construct in or upon, across, under or over any lands electric supply lines.

17. Under sub-section (g), thereof, the Railways are authorised to erect, operate, maintain or repair any electric traction equipment, power supply and distribution installations in connection with working of the railways. This sub-section clearly empowers Railways to erect any electric traction equipment and power supply and distribution installation which is in connection with the work of the Railways. This will certainly include construction of transmission lines. That being so, there is no substance in this submission made by the UPSEB as well.”

In view of the above stipulations, the scope and powers of Indian Railways to construction and expansion of required transmission and distribution system for integrated operation of the Railways across the country cannot be disputed. Further, being a deemed distribution licensee, it is also exempted from taking any license as required under Section 14 of the Electricity Act.

13.34 We have critically evaluated the rival submissions of the parties and carefully gone through the orders of the State Commission impugned herein. In the facts and circumstances of the case, as brought out above by the parties through their submissions/arguments during the proceedings, we are of the opinion that the Indian Railways being a pool participant with other distribution licensees in Mumbai region is already availing the benefits of 24 X 7 un-interrupted power supply being provided by MSEDCL. We find no force in the arguments of the Appellant that it is already paying over drawal charges under DSM Regulations and it is not availing any privilege service in Mumbai region or outside for its traction sub-station as being rendered to consumers of Mumbai region being serviced by distribution licensees.

13.35 It is an admitted position that subsequent to the order dated 14.06.2019 read with Errata dtd. 17.06.2019 in MSEDCL Case No.02 of 2019 (Execution Order), Indian Railways has partly complied with the aforesaid Execution Order by paying its share in the fixed standby charges for its operations in the Mumbai Region to MSEDCL from January, 2019 onwards. Therefore, we find force in the arguments of the Respondents that having accepted the terms of the Execution Order that it is obligated to have an adequate standby supply arrangement, Indian Railways has to make identical treatment at par with the other distribution licensees. To be more specific, Indian Railways having paid the standby charges to MSEDCL as determined by MERC in the Implementation Order dated 12.09.2018 cannot refuse to refund the outstanding sum of Rs.27.35 crores to TPC-D for the past period. Further, prior to 11.02.2016, the Indian Railways were already paying such standby charges to TPCL-D being its consumer and on the same principles, the

Indian Railways as a deemed distribution licensee has to share the standby charges in the Mumbai region as specified by the State Commission from time to time.

13.36 Having regard to the Railways Act, 1989 and further rulings of the Apex Court in its judgment dated 09.02.2012 in the case of Union of India Vs. Chairman, UPSED coupled with various notifications of the Govt. of India, it is crystal clear that Indian Railways have the scope and powers for constructions, expansion and O&M of required transmission / distribution system for integrated operation of the Railways across the country. It is also not in dispute that the Indian Railways are deemed distribution licensee and do not require any license under Section 14 of the Electricity Act, 2003. It is, however, contended by the Respondents that the Indian Railways is in the business of transporting commuters / goods for which it recovers a charge covering all heads of expenditure including Electricity tariff just like any other distribution licensee supplying electricity to its consumers. Further, as per Section 61 of the Electricity Act, the generation, transmission, distribution and supply of electricity are conducted on commercial principles and hence the charges payable by Indian Railways cannot be absorbed by other distribution licensee in Mumbai region. We find force in these contentions of the learned counsel for Respondents.

13.37 In view of the above, we are of the opinion that the instant appeals are devoid of merits and hence liable to be dismissed.

ORDER

For the foregoing reasons stated supra, we are of the considered opinion that the issues raised in the instant Appeal Nos. 301 of

2018 and 26 of 2019 are devoid of merits and hence the Appeals are rejected. The impugned orders dated 23.03.2018 in Case No. 53 of 2017 and 12.09.2018 in Case No. 195 of 2017 passed by the Maharashtra Electricity Regulatory Commission are hereby upheld.

In view of the disposal of the both the Appeals, the reliefs sought in the IAs do not survive for consideration and accordingly stand disposed of.

No order as to costs.

Pronounced in the Virtual Court on this **22nd day of October, 2020.**

(S.D. Dubey)
Technical Member

(Justice Manjula Chellur)
Chairperson

REPORTABLE / ~~NON-REPORTABLE~~

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