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40. As per Tata Power, the low end consumers did not want to get converted from Changeover to Switchover primarily due to following two reasons:

- (i) Switchover consumers have to pay Service Connection Charge in addition to Application Charges and Security Deposit. Presently, the Service Connection Charges are in the range of Rs. 2,000 to Rs. 9,000 depending on the load applied. In comparison Application charges are only Rs 50 for single phase and Rs 70 for three phase connection. Security Charges are Rs 70/ kVA of load. For Residential Consumers the payback period to compensate for additional service line charges considering the charges applicable then was up to 43 months. Therefore, many

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consumers did not prefer to pay this upfront charge to switchover to Tata Power's network more so in absence of any guarantee that the tariff of the Tata Power would remain lower than that of RInfra in future. In order to avoid paying Service line charges again and again, the low end consumers with large payback period would prefer to changeover from RInfra to Tata Power rather than switchover so that they may changeover again to RInfra in future if the tariff of RInfra becomes more attractive than Tata Power.

- (ii) Switchover Consumers are also required to provide space for meter and related infrastructure which is not required for changeover consumers. In Mumbai, space for

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meter is provided by the consumer in his premises. Further, in certain cases Consumer Sub-Station may be required to be installed in consumers' premises. This space is also provided by the consumer. Provision of space for meter and sub-station has been found to be a deterrent in several cases for following reasons:

- Unavailability of space for separate metering panel in case of slums. In case of societies, where installation of Consumer Sub-station may be required, the existing space is already occupied by the existing licensee. Therefore, Tata Power does not get space for sub-station.
- In some residential premises, there is a mix of 0-300 and above 300 residential consumers. In

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these cases, the consumers in 0-300 slab are unable to convince the society to allot additional space for fixing of meters within the society premises.

- In many cases, it was also noted that the consumers do not wish to get into the hassle of providing space for meter and prefer to be changeover consumers.

41. Shri Buddy Ranganadhan, learned counsel for the State Commission has submitted as under:

- a) The Commission on the basis of material placed before it including the cluster maps of the network found that Tata Power was laying lines to high end consumers whilst retaining low end consumers on the changeover basis. This is apparent from the cluster map placed

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before this Tribunal which would clearly show while Tata Power laid lines to individual high end consumers, it did not extend the network to cover hundreds of changeover consumers adjoining such lines.

- b)* Even if it were assumed that Tata Power had laid lines only to new consumers and not to switchover consumers, even then it is apparent that while laying lines selectively for the new consumers Tata Power has not used the same lines for existing changeover consumers adjoining and abutting the lines laid for the high end consumers. Hence in either view of the matter Tata Power has been selectively laying its network and indulging in cherry picking.

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- c) Tata Power has sought to argue that it is for the consumers to choose as to whether to receive supply on the wires of RInfra or Tata Power. It is submitted that such contention is contrary to the scheme of the Section 43 (1) and 43(2) of the Electricity Act where it is an obligation of the licensee to provide electrical line and electrical plant in order to give supply to the premises.

42. Learned Senior Counsel for RInfra made the following submissions on this issue:

- a) The contention of Tata Power that it is upto consumer to opt to receive supply from Tata Power, either through network of Tata Power or RInfra, is completely contrary to the provisions of Act, Rules and Regulations made there under and

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obligations of the licensee. It is well settled law and as held by this Tribunal in Appeal No 132 and Batch that Tata Power has to meet its USO by supplying through its own distribution network.

- b) It is further contended by Tata Power that residential consumers have not been keen to Switchover as compared to commercial or industrial category consumers, payback period for residential consumers to Switchover is very long. This is the perception of Tata Power and not of the consumers. As per the provisions of the Act, Tata Power has no option but to supply to any consumer in its area of supply through its own network. There are already residential consumers across the entire area who have changed over to Tata Power supply on the network of RInfra. Tata

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Power is obligated to connect to all these consumers on its own network without any discussion on economics of switchover as these consumers have already opted for Tata Power supply and are duty bound to pay connection charges independent of their economics.

- c) Tata Power has purportedly placed reliance on paragraph 73 of the impugned Order which, in the submission of RInfra, holds that it can give supply to new consumers through its own network when such consumers have not approached RInfra for receiving supply, since they cannot be considered either as changeover or switch over consumers. It is submitted that the said observation was only in respect of new consumers and not temporary connections. In the

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submission of RInfra, the purported belated reliance is only to justify its actions in selectively supplying to high end consumers, when to the knowledge of Tata Power, Tata Power has understood and has challenged the said Order with regard to State Commisison's finding that it has indulged in cherry picking by selectively laying down the network, inter alia, in respect of temporary consumers of RInfra before this Tribunal.

- d) The State Commission has rightly held that Tata Power are selectively laying network to single consumers and not laying network to low end residential consumers. Tata Power during the course of hearing sought to contend that they have supplied to 12,200 residential consumers.

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These are high end residential consumers to whom network was laid by Tata Power as a new project. While doing so, Tata Power has conveniently ignored laying the network to existing changeover consumer in and around such projects to which network was selectively laid. Tata Power's submission that it is not possible to find too many single residential houses in a city like Mumbai is clearly fallacious as there are more than 3 lac residential consumers who have changed over to Tata Power supply on wires of RInfra all over suburban Mumbai.

- e) About 50% of the area of Mumbai is covered by unorganized developments commonly known as slums who are essentially low end residential

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consumers and even after more than 100 years of being a licensee in the area, the Tata Power doesn't have even a single slum area on its network.

- f) It is denied that RInfra is adopting an obstructive approach despite proactive steps taken by Tata Power to switchover low-end residential consumers on its network. It is submitted that proactive steps suggested by Tata Power are illegal. Tata Power has gone as far as to ask, as a matter of right that instead of developing its own network in compliance with law and terms of its license, RInfra should be directed to transfer its network at book value for slum area to itself thereby making the Tata Power compliant with Universal Service Obligation and RInfra instantly

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in breach thereof.

43. We find that while arriving at the conclusion that Tata Power had been indulged in “Cherry Picking” the State Commission has relied on the cluster maps showing HT and EHT network laid down by the Tata Power. The State Commission has also observed that while laying such network selectively for the high end subsidizing consumers, Tata Power has not used the same lines for existing changeover consumers adjoining and abutting the lines laid for the high end consumers. On Tata Power’s contention that it is the choice of the Consumers whether to switchover or changeover, the Commission has referred to the provisions of Section 43(1) and 43(2), which states that it is the duty of the licensee to provide electric line and plant, and has observed that the consumer has no say

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in deciding the network from which it will get supply. However, the Commission did not respond to the Tata Power's submission that switchover is not beneficial to low end consumers due to payment of Service Line Charges, the payback period of which could be as high as 43 months. The Commission also did not respond to the practical difficulty in providing space for meter and transformer by the Consumers opting for switchover, in its reply. There is practical problem in switching over in respect of residential consumers having 0-300 units consumption who are located in flats in multi storied building where there are other flats where the consumption is more than 300 Units.

44. We find some force in the Tata Power's contention that low end consumers did not opt to switchover as it involved payment of service line charges and high

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payback period thereof and also due to uncertainty in economics of future tariff of Tata Power vs. RInfra. Low end consumers may apprehend that in case they switchover to Tata Power's network by paying service line charges and in near future the tariff of Tata Power becomes higher than RInfra's tariff before the payback, switching over would not be beneficial to them. If they wish to go back to RInfra's network, they will have to pay Service line Charges to RInfra again for switching over from TPC to RInfra. However, if they opt for changeover, they do not have to pay service line charges. Low end subsidized consumers do not pay cross subsidy surcharge and, therefore, they do not have any appreciable advantage to switch over from RInfra to Tata's network. The difference in wheeling charges, if any, may also be balanced by increase in wheeling charges of Tata Power due to high cost of the

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new network being laid in the common licensed area. The changeover gives low end consumers flexibility to choose supplier depending on the tariff decided by the State Commission from time to time without going into the hassle of change of service line.

45. The Commission has ruled that Tata Power has indulged in “Cherry Picking” in laying down network selectively on the basis of cluster maps submitted by Tata Power showing large number of changeover consumers around the network laid down by the Tata Power. Tata Power has submitted that the locations shown in the Maps are not names of any Single Consumers but are the names of Distribution Substations and the Tata Power has extended supply from such substations to many residential consumers with in 250 Mts. from these substations and the

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Commission did not ask for any explanation on this. In its reply the Commission has submitted that the Tata Power has for the first time mentioned that names shown in the cluster maps were not single consumers but were the names of substations. On a specific query it was informed that the cluster maps have shown only HT/EHT network laid down by the Tata Power. It may not, therefore, be correct to presume that the Tata Power had not laid any LT network emanating from the substations shown in the maps without examining the actual information in details. It is true that the maps shows large number of changeover consumers around these substations, but it would not be correct to conclude on that basis alone that the Tata Power had not laid network to supply to LT consumers around the substations it had established.

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46. Learned Counsel for the Commission has argued that Section 43(2) requires the licensee to provide for electric line and plant to give supply to the consumers under section 43(1). The Tata Power is, therefore, duty bound to provide supply through its own network to the changeover consumers. The Act did not envisage that it is for the consumers to opt for the wires of the Tata Power or of the RInfra.

47. While relying on Section 43 of the Act, the Commission has not considered the provision of Section 46 of the Act which authorizes the licensee to recover the expenditure incurred in providing such line or plant. Let us quote Section 43 and Section 46 of the Act:

**“43. Duty to supply on request.—(1) Save as otherwise provided in this Act, every distribution licensee, shall, on an application by the owner or**

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*occupier of any premises, give supply of electricity to such premises, within one month after receipt of the application requiring such supply:*

*Provided ....:*

*Provided ....*

*Explanation.—For the purposes of this sub-section, “application” means the application complete in all respects in the appropriate form, as required by the distribution licensee, along with documents **showing payment of necessary charges** and other compliances:*

*(2) It shall be the duty of every distribution licensee to provide, if required, electric plant or electric line for giving electric supply to the premises specified in sub-section (1):*

*...*

*(3) If a distribution licensee fails to supply the electricity within the period specified in sub-section (1), he shall be liable to a penalty which*

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*may extend to one thousand rupees for each day of default”.*

**“46. Power to recover expenditure.—***The State Commission may, by regulations, authorise a distribution licensee to charge from a person requiring a supply of electricity in pursuance of section 43 any expenses reasonably incurred in providing any electric line or electrical plant used for the purpose of giving that supply”.*

48. Conjoint reading of the above two sections would reveal that the applicant has to deposit the required charges along with the application itself. Charges required to be deposit along with the application include the service line charges. Therefore, if a consumer desires to switchover, he would be required to deposit service line charges, only then his application would be considered to be complete for switch over. If a consumer submits application without

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required service line charges then it could be presumed that the consumer has opted for changeover only. Moreover, the Commission has itself devised a changeover protocol to enable consumers connected to the network of one licensee to changeover to another licensee by paying wheeling charges and other compensatory charges including cross subsidy surcharge. If a consumer is satisfied with the changeover arrangement, we feel the consumer cannot be forced to switchover.

49. Merely because Tata Power has not switched over the subsidized residential changeover consumers in the vicinity of its network, does not establish that Tata Power is selectively laying its LT network as these consumers have not chosen to switch over to Tata Power's system.

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50. In the light of above discussions we feel that it is not established conclusively that Tata Power in laying network selectively for high end subsidizing consumers. However, such possibility is also not completely ruled out. Tata Power has made submissions regarding difficulties in laying down the distribution network due to space constraints and problem in getting permission from the Municipal Authorities for digging for laying cables. Difficulties in laying service line, installing transformers in the premises of the consumers and space constraints for metering arrangements are also brought to our notice.

51. While directing Tata Power to lay down duplicate network in the licensed area where RInfra's network is existing and changeover consumers are availing supply through RInfra's network, it would be

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necessary to examine the practical difficulties in a congested metropolitan city where a reliable distribution system of RInfra is already existing. In the congested areas there are problems in laying down distribution network and installing switch gear, transformers and metering arrangement at consumers premises where the switchgear, transformer and metering arrangement of one licensee are already existing. In Multi storied buildings, there may be different types of consumers and mix of consumers (commercial and residential) having high or low energy consumption. Some of the consumers may find it beneficial to take supply from the other licensee. However, it may not be practically possible to switch over the selective consumers due to non-availability of space for putting a second transformer, associated cables, switches and meters by the other licensee.

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52. Laying down of parallel network in a congested metropolitan city like Mumbai poses many physical constrains. Even if it is to be done by using entire underground cables/sub-stations digging of areas will pose numerous difficulties including getting approvals from the municipal authorities. Even if the parallel distribution network is laid in and around a cluster, it will be at an extremely high cost, which will be ultimately borne by the consumers. The cost of laying a distribution network in a congested metropolitan city will be much more than the normal cost. In view of the difficulties in laying the LT network, there will always issues regarding selective laying down of network by Tata Power and cherry picking the subsidizing consumers and not providing connectivity to the low end consumers. Laying down of network in

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the slums will extremely difficult. It may not be possible to lay down network and service line, etc. for the second licensee in certain areas. Therefore, some consumers particularly the low end consumers, even if they want to switch over to Tata Power will not be able to do so due to physical constraints.

53. We notice that the State Commission vide order dated 15.6.2009 in case No. 113 of 2008 itself did not approve the investment proposal of Network Rollout Plan and suggested to Tata Power for “exploring” the use of wires of other distribution licensees.

54. The relevant extract of the Tariff order dated 15.06.2009 is extracted herein below:

*“Moreover, incurring heavy capital expenditure for the network roll-out is not the only option available to TPC-D in its efforts to supply*

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*electricity to different consumers in its licence area, and the provisions of the EA 2003 relating to Open Access and the provisions of the MERC (General Conditions of Distribution Licence) Regulations, 2006 relating to use of the distribution network of another distribution licensee, need to be explored by TPC-D, so that the cost is optimised. The Honourable Supreme Court also, in its Judgment on the matter of TPC's distribution licence, observed that TPC could supply to consumers in its licence area, by utilising the distribution network of the other distribution licensee already present in the area.*

*Hence, incurrence of capex cannot be a condition for meeting the Licensee's obligations to all the consumers. In fact, the capital costs should be incurred only when there is no better optimal solution."*

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55. Let us examine a situation where the parallel network is laid by Tata Power also in all the cluster including, where a reliable system of RInfra is already existing. In that case, 50% of the total network of RInfra and Tata Power will remain redundant, the cost of stranded distribution system will be borne by the consumers of Mumbai. If some of the consumers who have migrated to Tata Power using the RInfra's network (changeover consumers), switch over to Tata Power, the RInfra's network will become redundant for which it was earlier getting wheeling charges from the changeover consumer. The fixed charges of the redundant system of RInfra which was earlier earning revenue will then be borne by the consumers of RInfra.

56. Therefore, in the circumstances of the present case where a reliable distribution system of RInfra is

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already existing and physical constraints in laying down of network by Tata Power and very high cost involved in the same, it is in the overall interest of consumers of Tata Power and RInfra that the changeover consumers continue to get supply from Tata Power on the RInfra's network. It will also be convenient and economical for the consumer to changeover back to RInfra in case RInfra's tariff becomes more attractive in future.

57. Consumer interest is one of the main features of the Electricity Act, 2003. It is also to be ensured that no undue commercial advantage is gained by Tata Power by selectively laying down network to cater to only high end consumers. The interest of RInfra has to be safeguarded to avert any cherry picking by Tata Power for switchover consumers.

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58. Laying down of parallel network in a congested metropolitan city like Mumbai where a reliable distribution network is already existing is to be viewed differently from situation in other areas in the country where there are deficiencies in the existing distribution network resulting in constraints in maintaining a reliable supply to the existing consumers and extending supply to new consumers. Practical difficulties in laying down the network and extending the 11/0.4 kV network all around the congested areas in multi-storeyed buildings and narrow lanes of slums and the extremely high cost involved in making an unnecessary expenditure has to be considered. In some areas it may be practically impossible to lay down the parallel network by Tata Power due to space constraints. Tata Power itself has stated that it is

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facing practical difficulties to lay down the distribution network. Tata Power at the same time cannot maintain its right to lay down distribution network selectively even in areas where a reliable network of RInfra is existing. Tata Power should therefore, be restricted to lay down its network only in areas where laying down of parallel network would improve the reliability of supply and benefit the consumer and also for extending supply to new consumers who seek connection from Tata Power. Tata Power's Rollout Plan should therefore, be restricted to only such areas. This may also require amendment in the licence condition of Tata Power, after following due process as per law. The Rollout Plan shall be approved by the State Commission only after hearing RInfra and the consumers. In the meantime, Tata Power should be

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restrained to lay down distribution network in the distribution area common to RInfra.

59. However, where Tata Power has already made considerable investment in constructing the distribution system in pursuance of the directions of the State Commission, it should be allowed to be commissioned and capitalized, to feed the consumers as decided by the State Commission. Tata Power may submit a proposal to State Commission in this regard which the State Commission shall consider and decide after hearing the concerned parties including RInfra. .

60. Where Tata Power has already laid down its network and some consumers have switched over from RInfra to Tata Power, these consumers can remain with Tata Power. However, they can choose to switch over to RInfra in future on RInfra's existing network as

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per the switch over protocol to be decided by the State Commission.

61. In view of above, Tata Power is directed to submit its Roll Out Plan as indicated above for approval of the State Commission. In the meantime, Tata Power is restrained to lay down its distribution network in the area common to RInfra till further orders of the State Commission on its Rollout Plan as per the directions given in this judgment. However, Tata Power can supply power to the existing consumers of RInfra irrespective of category of consumer on the request of the consumers only through RInfra's network by paying the necessary wheeling charges as well as the other compensatory charges including the cross subsidy charges to RInfra. However, there shall be no restriction on Tata Power or RInfra to lay network

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for supply to new connections. The State Commission shall consider to give approval for laying down of network by Tata Power only in areas where there are distribution constraints and laying down of a parallel network by Tata Power will improve reliability of supply and benefit the consumers, only after hearing RInfra and the consumers. Similarly, RInfra shall not lay network in any area where only Tata Power's network is existing and use Tata Power network for changeover of consumers, if any, till further orders by the State Commission, except for extending supply to new connections. The State Commission is directed to devise a suitable protocol in this regard after following due procedure. This may require change in licence condition of the licensees which the State Commission shall decide after following due procedure as per law.

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**62. The third issue is whether the Respondent Commission had power to issue the impugned directions to the Appellant under Section 23 of the Act?**

63. We find that the State Commission's order is completely silent of the issue. In fact the State Commission in its order did not refer to any of the section of the Act which conferred it the powers to issue the impugned directions. The Commission has referred to Section 23 of the Act only in its counter affidavit. The learned Counsel for the State Commission vehemently, with the support of large number of authorities, contended that if the Statute has given powers to an Authority, such Authority can exercise the powers even without mentioning the

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Section under which the Authority has gathered powers in the order. He also very forcefully argued that the Commission has plenary powers, including powers to issue the impugned directions under this section. The learned Senior Counsel for the RInfra supported the contentions of the Commission and submitted that the Commission has powers under Section 23 of the Act to issue the impugned directions.

64. The learned Senior Counsel for the Tata Power opposed the contentions of the Respondents and submitted that the provisions of section 23 of the 2003 Act are similar to the Provisions of Section 22B of the 1910 Act which was used only for the purpose of load shedding in the event of shortages. He also argued that the directions given by the Commission in fact amounts to amendment of licence conditions which

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can only be done under Section 18 of the Act after following due process prescribed in the Section itself. The Commission did not follow the procedure for amendment of licence conditions laid down in Section 18 of the Act and the directions issued by the Commission are, therefore, illegal and ultra virus. The Commission in its written submissions did not address this important issue raised by the Tata Power. RInfra in its written submission has tried to address this issue by submitting that if the contention of the Tata Power is accepted then even the load shedding protocol would amount to amendment to license conditions.

65. In order to determine the issue in detail let us examine the impugned directions issued by the Commission as given below:

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*“96. Based on all the analysis of all the above issues, the Commission has come to the conclusion that there is a need to intervene in the manner of changeover and switchover of consumers, as being undertaken by the Parties, and there is a need to calibrate the migration of consumers from one Licensee to another, in order to ensure a level playing field and also to protect the interests of low-end consumers being supplied electricity in the Common Area of supply between RInfra-D and TPC-D. Accordingly, the Commission hereby modifies the interim Order in Case No. 50 of 2009, under Section 94(2) of the EA 2003, as under:*

*a) Prospectively, from the date of this Order, consumer changeover will be allowed from RInfra-D to TPC-D only for the residential category of consumers and that too only for the consumers who consume electricity upto 300 units a month.*

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*b) For the purpose of identifying the target segment for consumer changeover, only those residential category consumers whose 'average' monthly consumption over the previous 12 months (as on date of submitting the application and as captured in the last paid monthly bill of RInfra-D) is upto and including 300 units per month, shall be eligible to changeover from RInfra-D to TPC-D.*

...

*i) Switchover of consumers from RInfra-D to TPC-D network is allowed for existing changeover consumers and all consumers who have already applied and are eligible for changeover, for all consumer categories, from the date of laying distribution network in the Common Licence Area. This has been explained in greater detail in the subsequent paragraphs.*

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*98. Accordingly, the Commission hereby issues the following directions to TPC-D regarding the network roll out plan and capital expenditure to be undertaken over the next one year from the date of this Order:*

*a) TPC-D will have to focus all its energies and capital expenditure and ensure that by the end of one year from the date of this Order, TPC-D has rolled out its entire distribution network in the 11 Clusters identified above (to be redrawn into a Municipal Ward-wise Plan by TPC-D) in such a manner that it is in a position to provide supply through its own distribution network to existing and prospective consumers located anywhere within these Clusters, within the minimum time period of one month specified under the MERC SOP Regulations.*

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*b) TPC-D has to ensure that all capital expenditure schemes submitted to the Commission for approval are part of the overall Network Rollout Plan prepared in such a manner that the above objective is achieved. The Commission clarifies that it shall not accord its in-principle approval for any capital expenditure scheme proposed by TPC-D to be undertaken over the next one year, unless it complies with this overarching direction. Further, TPC-D should ensure that the necessary space for sub-station/Distribution Transformer, etc., is obtained by relying on the help of the State Government and other appropriate Authorities, since, TPC-D cannot link the compliance to conditions such as space availability, etc.*

*c) Further, the Commission has already granted in-principle approval to capital expenditure schemes to be undertaken over*

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*the next 2-3 years. In view of the above direction to redraw the Cluster based Plan into a Ward-wise Plan, such that the 11 Clusters identified by the Commission are covered in the first Phase, TPC-D has to re-arrange the Plan such that the schemes covering the 6 Clusters overlapping between TPC-D's proposed Plan and those identified by the Commission (Mira Road, Dahisar, Kurla LBS, Saki, Mindspace, Trombay, Mankhurd Chembur, Vrindavan, Arogyanidhi, Vasantotsav, and Malad BMC Lagoon) are covered, and the balance schemes are designed for the remaining Clusters.*

*d) Further, TPC-D should ensure that wide publicity is given to reach the consumers in these identified 11 Clusters, to the effect that TPC-D is in a position to provide supply using its own network to all consumers interested in taking power supply from TPC-*

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*D, within the timelines specified in the MERC SOP Regulations”.*

66. The directions given by the Commission are summarized below:

- (a) Not to commence supply to any existing consumer of R-Infra with an average monthly consumption in excess of 300 units of electricity either on its own network (i.e., by “*switchover*”) or on R-Infra's network (i.e., by “*changeover*”) whether in the 11 clusters or elsewhere in Tata Power's distribution area.
- (b) To roll out its distribution network for a period of one year only in 11 clusters selected on the basis that these clusters consisted primarily of low-end residential consumers while restricting Tata Power

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from laying its network in any other areas and while doing so the TPC-D should ensure that the necessary space for sub-station/Distribution Transformer, etc., is obtained by relying on the help of the State Government and other appropriate Authorities, since, TPC-D cannot link the compliance to conditions such as space availability, etc.;

- (c) To roll out its network within its entire distribution area in the medium term within a time frame of two to three years so that Tata Power would be in a position to supply any consumer in its area within a minimum period of one month allegedly as required under Section 43(1) of the Electricity Act.

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67. Let us now examine as to whether these directions infringe upon the license conditions of Tata Power. The Commission under Section 16 of the Act has notified Regulations specifying specific conditions of license. Under Regulation 4.2 the Distribution licensee is authorized to supply electricity to the public for all purposes in accordance with the provisions of the Act. The above conditions imposed by the State Commission impose restrictions on geographical area and category of consumers to which Tata Power is entitled to supply power within its area of supply. This direction in our considered opinion, amounts to amendment of licence condition of Tata Power.

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68. The relevant portion of Section 18 regarding amendment of licence is reproduced below:

**“18. Amendment of licence.—***(1) Where in its opinion the public interest so permits, the Appropriate Commission, may, on the application of the licensee or otherwise, make such alterations and amendments in the terms and conditions of his licence as it thinks fit:*

*Provided that no such alterations or amendments shall be made except with the consent of the licensee unless such consent has, in the opinion of the Appropriate Commission, been unreasonably withheld.*

*(2) Before any alterations or amendments in the licence are made under this section, the following provisions shall have effect, namely:—*

*(a) where the licensee has made an application under sub-section (1) proposing any alteration or modifications in his licence, the licensee shall publish a notice of such application*

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*with such particulars and in such manner as may be specified;*

*(b) in the case of an application proposing alterations or modifications in the area of supply comprising the whole or any part of any cantonment, aerodrome, fortress, arsenal, dockyard or camp or any building or place in the occupation of the Government for defence purposes, the Appropriate Commission shall not make any alterations or modifications except with the consent of the Central Government;*

*(c) where any alterations or modifications in a licence are proposed to be made otherwise than on the application of the licensee, the Appropriate Commission shall publish the proposed alterations or modifications with such particulars and in such manner as may be specified;*

*(d) the Appropriate Commission shall not make any alterations or modifications unless all suggestions or objections received within thirty*

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*days from the date of the first publication of the notice have been considered”.*

69. Section 128 of the Electricity Act, 2003 provides for investigation of certain matters. Under this Section, the Appropriate Commission may, on being satisfied that a licensee has failed to comply with any of the conditions of licence or a licensee has failed to comply with any of the provisions of this Act, or the rules or regulations made thereunder, then it can by order direct a person (“Investigating Authority”) to investigate the affairs of the licensee and to report to the Commission on investigation made. The Investigating Authority can also be directed to make inspection. Based on the report of the Investigation Authority, the State Commission after giving opportunity to the licensee to make representation on

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the report can pass an order as laid down under subsection (6) of Section 128. No such investigations have been made by the State Commission u/s 128.

70. Section 23 provides as under:

**“23. Directions to licensees.**—*If the Appropriate Commission is of the opinion that it is necessary or expedient so to do for maintaining the efficient supply, securing the equitable distribution of electricity and promoting competition, it may, by order, provide for regulating supply, distribution, consumption or use thereof”.*

71. At this moment we are not inclined to examine as to whether the Commission has powers to issue specific directions under Section 23 or not. However, we do not propose to observe that the Commission did not have powers to issue such directions. If Tata Power indulges in laying down the network selectively to

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switchover the high end consumers ignoring the low end consumers to the detriment of RInfra, the State Commission has powers to issue such directions after following the procedure laid down in law. Section 18 of the Act is specific provision dealing with the amendment to license. Similarly, Section 128 is a specific provision for investigation if the licensee has failed to comply with any condition of license. Section 23 is general provision giving powers to the Commission to issue directions to licensee to do or not to do certain things under certain conditions. It is established law that specific provision of the statute shall prevail over general provision. Accordingly, we hold that the Commission could have issued the impugned directions under Section 18 or Section 128 of the Act only after following the procedure laid down in these Sections.

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72. The contention of the Respondents that if the argument of the Tata Power is accepted that the impugned directions amount to amendment to license conditions, then even the load shedding would amount to amendment in license conditions and should be dealt accordingly. The contention is misplaced and is liable to be rejected for the reason that load shedding is purely a temporary phenomenon carried out for few hours only during emergent conditions of power shortages and under these conditions it may be necessary to secure equitable distribution of electricity. It is not a restriction imposed by the Commission on the licensee but the Commission only approves the load shedding protocol proposed by the licensee to meet the emergent conditions due to gap between demand and availability of power. On the other hand the restrictions imposed by the

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Commission in the impugned order are restrictions on the licensee on not to supply electricity to all category of consumers, who wish to take supply from the Tata Power other than residential consumers having monthly consumption of less than 300 units.

73. In fact, such a restriction has denied other consumers from exercising their choice of supplier guaranteed by the Act. One of such consumer viz., Mumbai International Airport Limited (MIAL) has filed I.A. No. 395 and 396 of 2014 seeking impleadment and directions in the present Appeal and has submitted that the directions given by the State Commission takes away the choice given to MIAL as a consumer under Section 43 of the Electricity Act to take supply from either of the licensees.

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74. The Act has mandated the State Commission to protect the interests of the consumers. The State Commission, while giving any direction to the licensee is bound to ensure that such direction is in the interests of the consumer. Tata Power has expressed difficulties in laying down parallel network in the common licence area with RInfra. Laying of parallel network in every nook and corner of the city irrespective of the requirement and cost and where a reliable distribution system of RInfra is already existing would not be in the interest of the consumers of both Tata Power and RInfra as the existing network can be used for changeover. Wheeling charges of the Tata Power would increase due to un-necessary CAPEX and wheeling charges of RInfra would also increase due depletion of the consumer base. In changeover, RInfra recovers wheeling charges from

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changed over consumers and its consumer base, for evaluating wheeling charges, would remain intact.

75. In this regard we are of the view that the approach adopted by the State Commission in case number 113 of 2008 dated 15.6.2009, ruling that incurring heavy capital expenditure for the network roll-out is not the only option available to Tata Power in its efforts to supply electricity to different consumers in its licence area, and the provisions of the EA 2003 relating to Open Access and the provisions of the MERC (General Conditions of Distribution Licence) Regulations, 2006 relating to use of the distribution network of another distribution licensee, need to be explored by Tata Power, so that the cost is optimised, was the correct approach.

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76. The Commission should have continued to follow the same approach in its subsequent orders too. We have already given directions in regard to laying down of network by Tata Power in the preceding paragraphs while deciding the second issue.

77. As regards the fourth issue raised by RInfra in Appeal No. 229 of 2012, we feel it is perfectly legal for the consumers to changeover from one licensee to another using the network of one of the licensees and, therefore, there is no illegality in continuation of the directions of the State Commission in the order dated 15.9.2009 regarding changeover to Tata Power using RInfra's network. However, RInfra is entitled to charge from changeover consumers wheeling charges and other compensatory charges including the cross subsidy charges as decided by the State Commission

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from time to time as per law. The State Commission is also directed to lay down a detailed changeover protocol after hearing the concerned parties.

78. Before parting, we wish to state that we have given the above findings in view of the circumstances of the case where difficulties are being experienced in laying distribution network by the parallel licensee namely, Tata Power, to provide connectivity to all consumers in the licensed area common to RInfra and in the ultimate interest of the consumers.

79. As regards IA 395 and 396 of 2014 filed by Mumbai International Airport, we do not want to give any specific finding and we direct Mumbai International Airport to file a petition before the State Commission and the State Commission will decide the

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issue as per law, keeping in view the findings given in this order.

## **80. Summary of our findings**

**(i) It is not established conclusively that Tata Power was intentionally trying to create a road block to avert changeover of certain categories of consumers and indulging in cherry picking of changeover consumers. If the State Commission had received complaints about refusal of the Tata Power to changeover from low end consumers, it should have conducted an investigation under Section 128 of the Act and upon receipt of the investigation report, it could have taken corrective action or action against Tata Power after following the procedure laid down under Section 128. Tata Power has since revised its application form for**

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**changeover/new connection. Tata Power is directed to keep record of the category wise applications received for changeover (0-300 Units residential may be a separate category) applications rejected with reason for rejection (category-wise), category wise changeover allowed and post the same on its website quarterly. Tata Power is also directed to give a public notice regarding documents required for changeover application clearly indicating that PAN no. is not mandatory.**

**(ii) It is correct that the Tata Power has not laid down LT network to switch over the residential consumers who were availing supply from Tata Power on the network of RInfra and who were in the vicinity of the network laid down by Tata**

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**Power. This in our opinion cannot be cherry picking as it has been done in the interest of the consumers and is also in line with the decision of the State Commission in its order dated 15.6.2009 in case No. 113 of 2008. Therefore, it is in the interest of consumers of Tata Power and RInfra that the changeover consumers of Tata Power continue to get supply from Tata Power on the RInfra, even if a 33/22 kV sub-station of Tata Power is available in the vicinity. It will also be convenient and economical for the consumer to changeover back to RInfra in case RInfra's tariff becomes more attractive in future.**

**(iii) In view of the practical difficulties in laying down parallel network in Mumbai as pointed out by Tata Power we have given some directions**

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**under paragraphs 58 to 61 regarding restricting the Roll out Plan of the Tata Power only to the areas where laying down of parallel network will improve the reliability of supply and benefit the consumers and directions for continuation of changeover arrangement irrespective of category or consumption of consumers, commissioning of network where a substantial expenditure has been incurred by Tata Power in laying down new network on the directions of the State Commission, consumers who had already switched over to Tata Power, laying down network for providing new connection, changeover and switch over protocol, change in licence conditions of the licensees, etc. However, there shall be no restriction on any licensee to lay network for supply to new connections. The State Commission**

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**is also directed to decide the detailed protocol for switchover and changeover after hearing all concerned.**

**(iv) The State Commission has powers to give directions if it comes to its notice that a licensee is laying down network selectively to connect the high end consumers ignoring the low end consumers and violating the terms and conditions of the licence. However, such directions have to be given after following the procedures as per law.**

**(v) Directions given to Tata Power by the State Commission in the impugned order are set aside.**

**(vi) It is perfectly legal for the consumers to changeover from one licensee to another using the network of one of the licensees and, therefore,**

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**there is no illegality in continuation of the directions of the State Commission in the order dated 15.9.2009 regarding changeover to Tata Power using RInfra's network. However, RInfra is entitled to charge from changeover consumers wheeling charges and other compensatory charges including the cross subsidy charges as decided by the State Commission from time to time as per law. The State Commission is also directed to lay down a detailed changeover protocol after hearing the concerned parties.**

**(vii) We have given the above findings in view of the circumstances of the case where difficulties are being experienced in laying distribution network by the parallel licensee namely, Tata Power to provide connectivity to all consumers in**

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**the licensed area common to RInfra and in the  
ultimate interest of the consumers.**

81. In view of above, Appeal No. 246 of 2012 is allowed with certain directions. Appeal No. 229 of 2012 is disposed of but with certain directions to the State Commission for formation of procedure for changeover of consumers. No order as to costs.

82. Pronounced in the open court on this  
**28<sup>th</sup> day of November, 2014.**

**( Rakesh Nath)**  
**Technical Member**

**(Justice M. Karpaga Vinayagam)**  
**Chairperson**

√  
**REPORTABLE/~~NON-REPORTABLE~~**

Vs

Before the  
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION  
World Trade Centre, Centre No.1, 13th Floor, Cuffe Parade, Mumbai 400005.  
Tel. 022 22163964/65/69 Fax 22163976  
Email: mercindia@mercindia.org.in  
Website: www.mercindia.org.in

**CASE NO. 182 of 2014**

In the matter of

**Petition of Tata Power Company Ltd. for approval of Revised Network Rollout Plan in compliance of directions in Case No. 90 of 2014 relating to grant of its Distribution Licence**

**Coram**

**Smt. Chandra Iyengar, Chairperson  
Shri. Azeez M. Khan, Member  
Shri. Deepak Lad, Member**

The Tata Power Company Ltd.

Petitioner

**Appearance**

Petitioner

Shri. Amit Kapoor (Advocate)  
Shri. Ashok Sethi  
Shri. Bhaskar Sarkar

Reliance Infrastructure Ltd.

Shri. J. J. Bhat (Advocate)  
Shri Kapil Sharma

BEST Undertaking

Shri. Harindar Toor (Advocate)  
Shri. Patsute

Maharashtra State Electricity Distribution Co. Ltd.

Shri.Khandait  
Shri.Harindar Toor (Advocate)

Consumer Representative

Shri. Ashok Pendse, Thane-Belapur Industries Association

**INTERIM ORDER****Dated: 9 November, 2015**

1. The Commission, vide its Order dated 14 August, 2014 in Case No.90 of 2014, had granted Distribution Licence No. 1 of 2014 to the Tata Power Company Ltd. (TPC-D) for 25 years from 16 August, 2014, and directed TPC-D to submit a revised Network Rollout Plan separately for approval. In compliance of that direction, and also of the Specific Conditions in Part II of its Distribution Licence, TPC-D has submitted a Petition on 10 October, 2014 for approval of its Revised Network Rollout Plan.
2. The main prayers of TPC-D are as follows:
 

“

  - a) *To approve the revised Network Rollout Plan;*
  - b) *Condone any inadvertent omissions / errors / shortcomings and permit Tata Power to add / change / modify / alter this filing and make further submissions as may be required at a future date.*
  - c) *Pass any other such directive as that the Hon'ble Commission may deem appropriate in the facts and circumstances of the case.”*
3. In its Order in Case No. 90 of 2014, the Commission had asked TPC-D to submit its Rollout Plan. The Commission did not find it to be adequate, and directed TPC-D to submit a more comprehensive one keeping in view the comments made by the Commission in its Order dated 14 August, 2014. However, during the pendency of the present Petition, the Appellate Tribunal for Electricity (ATE) disposed of Appeal Nos. 229 and 246 of 2012 by its Judgment dated 28 November, 2014, returning certain findings, observations and directions. These were the cross-appeals filed by TPC-D and Reliance Infrastructure Ltd. (RInfra-D) challenging the Commission's Order dated 22 August, 2012 in Case No. 151 of 2011.
4. In view of the observations and directions of the ATE in its Judgment dated 28 November, 2014, TPC-D further revised its Network Rollout Plan and submitted it to the Commission on 12 February, 2015.
5. ***Features of TPC-D's Network Rollout Plan***
  - 5.1. In its Network Rollout Plan, TPC-D has considered a period of 7 years for network development, from FY 2014-15 to FY 2020-21.

5.2. For identifying appropriate network components and finalizing a suitable network design, TPC-D has analyzed the following critical parameters:

- A. Load profile
- B. Existing network
- C. Consumer mix and
- D. The landscape of the area where power is to be supplied.

5.3. The following philosophy is adopted by TPC-D for Network Development:

**Key Issue-1: Governing framework for distribution network philosophy:**

As per TPC-D, the distribution network planning and development shall be guided by following:

- a. MERC (Electricity Supply Code and other conditions of supply) Regulations, 2005 ('Supply Code')
- b. MERC (Standards of Performance (SoP) of Distribution Licensees, period for giving supply and determination of compensation) Regulations, 2005 ('SoP Regulations')
- c. CEA (Technical standards for construction of Electrical Plants and Electrical Lines), Regulations, 2010.
- d. Directions given by the ATE in its Judgment in Appeal Nos. 229 and 246 of 2012.

**Key Issue-2: Scope of Network rollout to cover creation of distribution backbone:**

The scope of Distribution Sub-station (DSS)-based distribution backbone would cover the following components:

- a. *33 kV line/cable from Receiving Station (RSS) to DSS (~ 5 km with 3 feeders of 33 kV):-* Under the standard DSS configuration, TPC-D envisaged that around 3 incoming 33 kV feeders shall be feeding power into 3 power transformers at DSS, either from the same RSS or different RSS sources, depending on location. For the purpose of this Network Rollout Plan, TPC-D presumed that the necessary outlets at respective RSS for feeding power into the DSS would be made available by the Transmission Licensee.
- b. *DSS and associated equipment:* A typical DSS comprises power transformers, station auxiliaries, bus-bars, (33 kV/11 kV) panels, circuit breakers, foundation, earthing, automation, etc.

- c. *11 kV main ring for distribution*: Under the standard DSS configuration, it is envisaged that 11 kV main ring network comprising rings (2 km x 2 km) would be developed. Total line length/cable length for 11 kV feeders under the proposed arrangement works out to around 32 km per DSS.

**Key Issue-3: Establishing last-mile connectivity from 11 kV Ring Main Grid to Consumer Sub-station (CSS):**

TPC-D highlighted that, as per the SoP Regulations, if the supply to a consumer requires installation of a new sub-station, the applicant will have to make available space for installation of the sub-station and associated equipment within its premises. With this arrangement in place for creation of backbone infrastructure, last-mile connectivity can be accomplished within the time period outlined under the Regulations.

6. The Commission also issued Notices to the Brihanmumbai Electric Supply and Transport Undertaking (BEST) and Reliance Infrastructure Ltd. (RInfra-D) (both Distribution Licensees overlapping parts of the Licence area of TPC-D) and the Authorized Institutional Consumer Representatives. Thereafter, and also in furtherance to the ATE Judgment in Appeal Nos. 229 and 246 of 2012, both BEST and RInfra-D have made detailed submissions in the present proceedings which are set out in subsequent paragraphs.
7. Vide its submission dated 29 July, 2015, BEST stated the following:

TPC-D does not have any distribution network for supply of electricity in retail, residential or commercial, in the area of supply common with BEST. It is only recently that TPC-D, due to developments of erstwhile mills and /or the mill land areas in the Island City of Mumbai, has been or is attempting to lay its distribution network for distribution of electricity. TPC-D is attempting to “cherry-pick” lucrative commercial and residential electricity consumers in the newly developing or developed mill land and other areas in the Island City of Mumbai.

- 7.1. The Revised Network Rollout Plan submitted by TPC-D is necessarily required to be examined in a Technical Validation Session (TVS), notified thereafter to the general public for objections, if any, and then decided after public hearing.
- 7.2. The Revised Network Rollout Plan is inadequate, not conducive to a level playing field and genuine competition, and also does not address or comply with the directions in the Commission’s Order in Case No.90 of 2014 and the ATE Judgement in Appeal Nos. 246 and 229 of 2012.

- 7.3. TPC-D has planned a capacity addition of 540 MVA with only 22 DSS in its entire licensed area in phases over a period of 7 years. However, such installed capacity is inadequate for meeting even 50 % of the projected load demand in the entire licensed area of TPC-D, nor even sufficient to meet 50% of the current load demand of the Island City of Mumbai.
8. Vide its submission dated 29 July, 2015, RInfra-D stated the following:
- 8.1. In terms of the ATE directions, TPC-D's Rollout Plan has to be considered in accordance with the following:
- a. The Rollout Plan should show that there are no practical or physical constraints in laying down the network.
  - b. If the Rollout Plan seeks to duplicate any part of the network already existing, it should demonstrate that the existing network is not reliable and laying down of parallel network would improve the reliability of supply and benefit the consumer.
  - c. The network proposed to be developed as per the Rollout Plan cannot be selective.
  - d. How the proposed capitalization of activities as per Case No.50 of 2015 is subsumed within the Rollout Plan is to be shown.
  - e. Extension of connectivity to consumers seeking connection from TPC-D.
- 8.2. As per the ATE Judgment, Licence conditions are required to be amended for the Distribution Licensee.
- 8.3. None of the submissions of TPC-D complies with the directions of ATE. None of the submissions show the exact locations where the network Rollout is intended to be undertaken, how the existing network in the area is unreliable, how laying down of parallel network would improve reliability of supply and benefit the consumers - existing or new - and how the network laying is not selective.
- 8.4. The issue of Rollout Plan is inextricably interlinked with the issue of protocol for 'switch-over' of consumers from one Licensee to another. These issues cannot be dealt with separately, but have to be dealt with compendiously after hearing all parties.
9. At the hearing on 30 July, 2015, TPC-D highlighted the background of the Petition and elaborated the directives in the ATE Judgment dated 28 November, 2014. RInfra-D

contended that the network Rollout Plan submitted by TPC-D is not adequate and does not cover important aspects such as improvement in the network reliability, physical constraints, high cost involved, etc. TPC-D needs to furnish additional details with area-wise expansion and reliability in the existing network. BEST contended that the Rollout Plan does not provide details of proposed network in BEST's area of supply, and also that it is not complying with principles set out in the ATE Judgment. The Commission directed TPC-D to submit additional data in support of its network Rollout Plan.

10. In compliance of the Daily Order dated 30 July, 2015, TPC-D made the following additional submission vide its letter dated 6 August, 2015:

10.1. TPC-D has interpreted the ATE Judgment and provisions of the EA, 2003 as follows:

- Protection of consumer interest is paramount in terms of the statutory framework. The consumer has the choice to elect both the source and mode of supply.
- There are no restrictions on the Distribution Licensee in the laying or development of network, where:
  - ✓ Such network is required to supply to new consumers, including those in redeveloped premises;
  - ✓ Demand made by an existing consumer and development is in consumer interest;
  - ✓ Substantial investment is already made and the network needs to be loaded for enhanced economic use;
  - ✓ The reliability of the existing network is low.
- The Distribution Licensee is required to maintain an efficient, coordinated and economical distribution system. Duplication of network should be avoided if:
  - ✓ There is a reliable distribution network of a Licensee existing in a particular area;
  - ✓ There are physical constraints in laying down any new network;
  - ✓ There is a very high cost involved in laying down such parallel network, which is not in consumer interest.
- A consumer is free to choose supply either in terms of Section 42 or 43 of the EA, 2003. The Commission has been directed to lay down a detailed protocol after hearing the parties.

- The ATE Judgment has clarified that, should the Commission require, it may amend the Licences of the Distribution Licensees to give effect to it. Amendment of Licence is not a pre-condition for approving the Rollout Plan.

10.2. For the purpose of Network Rollout, the load growth in Mumbai is classified into 3 different growth patterns:

- *'Yellow field' Areas:* Saturated areas with limited potential of growth in next 5-7 years. These areas are unlikely to see any substantive developments considering that there are a number of heritage structures, and are already congested with minimal possibility of redevelopment during the network Rollout Plan period.
- *'Brownfield' Areas:* Areas having considerable growth potential in terms of redevelopment of existing properties. These areas are assessed based on the existing land base with high density of slums, MHADA chawls and the presence of erstwhile mill lands, as identified in the Municipal Corporation of Greater Mumbai (MCGM)'s proposed Development Plan (2013-2034) and inputs from various developers.
- *'Greenfield' Areas:* Areas having significant potential for new growth in near future (next 5-7 years). These are areas where development is expected to commence based on proposed amendments in land usage permissions, e.g. salt pan lands, Mumbai Eastern Coast development, etc. These could also include areas presently in the No Development Zone and likely to be relaxed in due course.

10.3. In the absence of available data regarding the existing network developed and planned by other Distribution Licensees and data on reliability parameters of their networks, it becomes difficult to arrive at a fool proof, realistic network Plan.

11. Vide its submission dated 11 August, 2015, BEST stated as follows:

11.1. The present Case is in continuation of and part and parcel of the earlier Case No. 90 of 2014, and is required to be examined through a TVS and thereafter decided through public hearing.

11.2. In order to comply with the ATE requirements, it is necessary to first amend the Licence granted to TPC-D. The ATE Judgment is neither applicable nor relatable to BEST's area of supply.

12. At the hearing on 12 August, 2015, TPC-D submitted that the scope of the present proceedings is limited to approval of the network Rollout Plan which has been submitted in compliance of the Commission's directives in the Distribution Licence read with the ATE Judgment. BEST submitted that the ATE Judgment is not applicable to BEST's area of supply. In BEST's area of supply, the Rollout Plan of TPC-D needs to be in accordance with the Specific Conditions of Distribution Licence granted by the Commission. The Commission observed that the right of Open Access is not available for distribution networks of BEST. Hence, the two areas, i.e. area common with BEST and area common with RInfra-D, need to be treated differently. The Commission directed TPC-D to review its proposal for the BEST area.
13. At the hearing, TPC-D contended that, in spite of its request, the data necessary for ascertaining distribution constraints and reliability of the existing network was not made available by RInfra-D. RInfra-D responded that data available in the public domain has been provided to TPC-D. Both parties suggested that the Commission needs to first decide on the necessity of data, and then the parties may be asked to provide it. The Commission nominated its Director (Electrical Engineering) to liaise with the parties with regard to such information.
14. During the hearing, RInfra-D contended that TPC-D is violating the ATE Judgment by allowing consumers to switch-over to its network. It claimed that, post the ATE Judgment, TPC-D has switched over around 1100 consumers.
15. The Commission asked whether approval of a network Rollout Plan is still necessary after the ATE Judgment, which has laid down the principles of setting up a network. In reply, both parties have made submissions justifying the requirement of some kind of a network Rollout Plan. However, RInfra-D submitted that, as per the ATE Judgment, TPC-D can lay its network only in case of green field areas or for increasing reliability of network. TPC-D opposed such interpretation. It contended that, if laying of network is beneficial for the consumer, then it should be allowed to do so in any area. Both parties requested the Commission to provide guidance for implementing the ATE Judgment.
16. The Commission directed the parties to submit the following for assisting the Commission in interpretation of the ATE Judgment:
  - a. Difference between the terms '*observation*', '*finding*', '*ruling*' and its legal implications.
  - b. Meaning of '*new connection*' mentioned in the ATE Judgment and its implication for network laying.
  - c. Situation-specific scenarios for network laying.

17. TPC-D made a revised submission on 19 August, 2015 with respect to the Network Rollout Plan for the BEST area. TPC-D also made the following submission on 20 August, 2015:
- 17.1. During the hearing, the Commission had directed the parties to submit the difference between certain terms and its legal implications for assisting the Commission in interpretation of the ATE Judgment. To explain TPC-D's position, it relied on the settled principles of law with regard to the doctrine of precedent and difference between '*ratio-decidenti*' (reason of decision) and '*obiter dicta*' (general observations/fleeting references).
- 17.2. It is a settled principle of law that an '*obiter dicta*' as distinguished from a '*ratio-decidenti*' is an observation by the Court on a legal question suggested in a Case before it but not arising in such manner as to require a decision. The '*obiter dicta*' does not have a binding precedent.
- 17.3. Protection of consumer interest is paramount in terms of the statutory framework. The consumer has to ultimately decide the Distribution Licensee from whom he wishes to avail supply.
- 17.4. The ATE finds that a parallel network should be laid only if:
- a. There is no reliable existing distribution network of a Licensee in a particular area; and
  - b. There are no physical constraints in laying any new network; and
  - c. It is in consumer interest; and
  - d. It improves reliability of the supply.
- 17.5. There is no restriction on laying of a parallel network, if such network is laid:
- a. To supply to a new consumer/connection.
  - b. To cater to the demand made by an existing consumer; or
  - c. In consumer interest.
18. Vide its further submission dated 24 August, 2015, TPC-D also stated as follows:
- 18.1. The term 'New Consumer'/'New Connection' includes:
- (a) Any person who has made an application for supply of power and whose premises is, for the time being, not connected to the works of a Distribution Licensee for receiving supply of electricity, and also includes a person whose premises have been permanently disconnected by a Licensee.

- (b) Any person who has made an application for supply of power and whose premises is, for the time being, connected to the works of a Distribution Licensee only for receiving temporary supply of electricity;
- (c) Any other person/premises as may be decided by the Commission from time to time.
- 18.2. The interpretation of the term ‘New Connection’ and ‘New Consumer’ requires satisfying two basic elements, being:
- (a) Any person who has made an application for supply of power; and  
 (b) Not permanently connected, for the time being, to the works of the Licensee for the purpose of receiving supply of electricity.
- 18.3. In case of redevelopment, the existing premises or structure is demolished and a new structure or premises is erected. In effect, there is a change in premises. The owners or occupiers of such new premises amount to ‘New Connection’ and ‘New Consumer’.
19. In another submission dated 2 September, 2015, TPC-D submitted its analysis of optimistic, realistic and pessimistic scenarios in the network Rollout Plan, stating that, while doing so, it has maintained the original principles intact along with comparative analysis of reliability data.
- 19.1. With the above framework, TPC-D’s Network Rollout and Capital expenditure (Capex) Scenario Analysis as follows:

<b>Network Components</b>	<b>Optimistic Scenario</b>	<b>Realistic Scenario</b>	<b>Pessimistic Scenario</b>
DSS of 40 MVA (Nos)	10	9	8
33 kV Cable Network (km)	100	90	80
11 kV cable Network (km)	320	228	256
CSS (Nos)	409	365	321
LT Cable Network (km)	499	499	499
(Rs in Crore)			
<b>Network Capex</b>	<b>Optimistic Scenario</b>	<b>Realistic Scenario</b>	<b>Pessimistic Scenario</b>
DSS of 40 MVA	254	229	203
33 kV Cable Network	74	67	59
11 kV cable Network	264	237	211
CSS	241	215	189
LT Cable Network	182	182	182

<b>Total Capex Projected</b>	<b>1015</b>	<b>930</b>	<b>845</b>
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## 19.2. Phasing of Network Rollout Plan:

Particulars		Year						
		1	2	3	4	5	6	7
DSS - 20 MVA	Nos	1 to 2						
DSS - 40 MVA	Nos	1 to 3						
CSS - 0.5 MVA	Nos	38 to 47						
CSS - 1.0 MVA or more	Nos	66 to 76						
Additional CSS	Nos	33 to 42						
33 kV Cable network	Kms	30 to 36						
11 kV Cable network	Kms	78 to 91						
LT Cable network	Kms	117 to 128						

## Phasing of Capex:

(Rs. Crore)

Particulars	Year							
	1	2	3	4	5	6	7	Total
DSS - 40 MVA	20 to 80	331 to 381						
DSS - 20 MVA	10 to 30	102 to 127						
CSS - 0.5 MVA	10 to 20	104 to 130						
CSS - 1.0 MVA	30 to	274 to						

	50	50	50	50	50	50	50	315
Additional CSS	3 to 6	28 to 35						
33 kV Cable network	20 to 30	156 to 186						
11 kV Cable network	60 to 80	448 to 527						
LT Cable network	40 to 47	299 to 328						
Capex in Mumbai city (rounded values)	240 to 290	1740 to 2030						

TPC-D submitted that the overall capital expenditure over a period of 7 years would be in the range of Rs. 2200 crore.

20. Vide its submission dated 5 September, 2015, RInfra-D stated as follows:

20.1. The Commission has to ascertain the executable or implementable part of the ATE Judgment, and the indicia or factors laid down in it on the basis of which it requires to be implemented. Para. 80 of the Judgment gives a clear summary of its findings and categorically states what is directed by it to be implemented.

20.2. The directions in paragraphs 58 to 61 of the Judgment are premised on two findings: (i) that a reliable distribution network of RInfra-D is already existing in the area; and (ii) practical difficulties in laying down a new network, as stated by TPC-D itself.

20.3. Based on these dual premises, it has first to be ascertained whether a reliable network of RInfra-D exists in the area in which TPC-D, by its proposed Rollout Plan, desires to lay down its network.

20.4. Further, TPC-D should not be allowed to maintain its right to lay down its distribution network selectively even in areas where a reliable network of RInfra-D exists. TPC-D can extend its network only to a new consumer provided it benefits the consumer and improves reliability and not otherwise.

20.5. Consumers' interests would not be benefited where laying of a parallel network by TPC-D in the vicinity where a reliable network of RInfra-D already exists would entail additional expenditure which will ultimately be loaded on consumers and would be contrary to the principles of an efficient, economic and coordinated network.

21. In its submission dated 7 September, 2015, TPC-D proposed establishment of an ‘Appellate Technical Council’, a separate institutional structure for scrutiny and recommendation of a new distribution infrastructure in the city.
22. Vide its submission dated 07 September, 2015, BEST stated the following:
- 22.1. The revised network Rollout Plan submitted by TPC-D under its additional submission dated 2 September, 2015 ex-facie:-
- (a) Does not provide for an adequate or timely rollout of its distribution network.
  - (b) Does not provide equal access to all categories of consumers and create a level playing field.
  - (c) Is not sufficient to fulfil its Universal Service Obligation (USO) and duty to supply on demand in case of existing consumers.
- 22.2. The proposed Rollout is neither adequate nor timely, but is a coloured device to cherry pick consumers of electricity in the Island City of Mumbai.
23. At the hearing on 8 September, 2015, TPC-D made a presentation highlighting different scenarios of releasing connections to new and existing consumers based on availability and reliability of the distribution network of parallel Licensees. It also presented a comparative study of reliability and loading of TPC-D’s and RInfra-D’s distribution network. As the presentation required some modification/ clarification, TPC-D submitted that it would submit a modified presentation. TPC-D had made a proposal to BEST for utilizing its network, on payment of charges, for supplying power to TPC-D’s consumers. However, it has not yet received any response from BEST. TPC-D and RInfra-D also presented their views on the interpretation of the ATE Judgment. RInfra-D, inter alia, contended that, as per the ATE Judgment, choice of supply is available to existing consumers, but not the option of choosing the network. TPC-D responded that such interpretation would be against competition and consumer choice.
24. Vide its submission dated 15 September, 2015, TPC-D stated that:
- 24.1. As per the directions in the Daily Order dated 8 September, 2015, TPC-D has submitted a modified presentation, and its plan for improving reliability of the distribution network.
- 24.2. In its modified presentation, TPC-D has evolved 5 Scenarios for connecting consumers, which are:
- a) *Scenario 1*: New consumer approaching Distribution Utility/Licensee having adequate 33/11 kV DSS infrastructure in the vicinity.

- b) *Scenario 2*: New consumer approaching a Distribution Utility whose network would get overloaded and needs augmentation - In this case, Utility 2 having an under-loaded network provides a connection on behalf of Utility 1.
- c) *Scenario 3*: New consumer approaching Distribution Utility 1 which does not have adequate 33/11 kV DSS infrastructure in the vicinity - In such case, the other Utility provides a connection on behalf of Utility 1.
- d) *Scenario 4*: New consumer approaching Utility which does not have DSS in the vicinity, but provides space for DSS - In this case, Detailed Project Report (DPR) for in principle approval of the required capex shall be approved by the Commission.
- e) *Scenario 5*: Existing consumer of Utility 1 seeks migration on the network of the other Distribution Utility having adequate DSS/CSS in the vicinity – If the other Utility has adequate spare capacity to cater to the consumer load, then Utility 1 will permanently disconnect the supply of consumer to make way for the other Utility. The process is to be approved by the Commission.

24.3. TPC-D has suggested a 'Distribution Coordination Committee' (DCC) for scrutinizing and recommending network development in Mumbai. The Commission may develop a mechanism (e.g. a web-based tool) providing information about loading of DSS of all Utilities in Mumbai.

24.4. TPC-D has proposed the following principles for network Rollout for improving reliability:

- (a) The loading on the power transformer and distribution transformer should be considered as the key parameter to determine reliability of a network.
- (b) Wherever a Distribution Licensee's transformer is loaded above 60 % of its rated capacity, and the other Distribution Licensee has its transformer/ sub-station in the vicinity which is under-loaded, then the other Distribution Licensee should be permitted to lay down a downstream parallel network to service the consumers and improve the reliability of the existing network.
- (c) Where a Distribution Licensee (Utility 2) has laid down its own network which is under-loaded, and where the network of the other Distribution Licensee (Utility 1) in the same area is constrained/ overloaded - the existing loads of Utility 1 may be shifted onto the network of Utility 2 either in the "change-over"

mode or the “switch-over” mode to optimize the network and/or enhance the reliability.

24.5. TPC-D has presented 3 Scenarios for network development for improving reliability of an existing network.

<b>Scenario</b>	<b>Particulars</b>	<b>Remark</b>
<u>Scenario 1</u> Network of Utility-2 exists in the vicinity and is under-loaded	a) The downstream network of Utility-2 shall be laid and used to improve reliability.  b) Utility-1 will not be required to incur any capital expenditure to augment its network till the network of Utility -2 gets optimally loaded to 70 %.	1. TPC-D has identified 48 of RInfra-D’s RSS locations where loading is more than 60% and where, in the same vicinity, there is under-loaded TPC-D RSS and DSS capacity.  2. To enable use of this spare TPC-D capacity for improving reliability, capital expenditure of Rs. 245 crore is required for extending / establishing 11 kV network over and above the Rollout Plan.
<u>Scenario 2</u> Network of Utility -2 does not exist in the vicinity	Utility- 1 shall be allowed to augment its network to improve its reliability.	1.RInfra-D may be allowed to continue its network development in such areas, to address network reliability issues.  2.In the present Rollout Plan, TPC-D has not planned any network for this scenario.
<u>Scenario 3</u> Utility-2 has network in the vicinity but is optimally loaded / also needs augmentation	The Utility which provides a cost-competitive solution which neutralizes the impact on wheeling charge shall be allowed to develop/ augment the network.	1.There is no situation in Mumbai Suburban Area where the network of both Utilities are optimally utilized/ overloaded.  2.In the Rollout Plan, TPC-Dhas not planned any network for this scenario.

25. At the hearing on 22 September, 2015, RInfra-D made a presentation on its interpretation of reliability and definition of ‘new consumer’. Further, RInfra-D highlighted possible scenarios of releasing connections to new and existing consumers based on availability and reliability of the distribution network of parallel Licensees.

TPC-D underlined the intent of the EA, 2003 with reference to allowing a parallel Licensee to supply a consumer through its own network. BEST urged that the proposed network Rollout Plan be rejected in view of non-adherence to Licence conditions as stipulated in the Commission's Order in Case No.90 of 2014. BEST also informed that TPC-D's proposal of sharing BEST's network is under consideration. The Maharashtra State Electricity Distribution Co. Ltd. (MSEDCL) requested additional time for filing its Reply.

26. In pursuance of the Commission's directive during the hearing on 22 September, 2015, RInfra-D submitted a revised presentation on 26 September, 2015. In response, TPC-D filed its submission on 29 September, 2015 stating as follows:
- 26.1. The present proceedings are with regard to the approval of the network Rollout Plan as directed by the Commission vide its Order in Case No.90 of 2014, and not with regard to the issue of cherry-picking and selective network Rollout sought to be highlighted by RInfra-D.
- 26.2. Physical constraints of laying network in Mumbai City are experienced by all Licensees, and hence there should not be any bar on TPC-D laying its network based on any such physical constraints. The Commission may evolve a mechanism to deal with the issue and create a level playing field for all Utilities.
- 26.3. RInfra-D's submission relating to switch-over of consumers is erroneous. From a perusal of the ATE Judgment it is evident that there is no restriction imposed on switch-over of consumers. On the contrary, ATE has set aside the restrictions on switch-over that had been imposed by the Commission vide its Order in Case No.151 of 2011.
- 26.4. RInfra-D's plea that existing consumers do not have a choice of network is devised to perpetuate its monopoly and deny choice to consumers, which is not in accordance with the provisions of the EA, 2003 as well as the principles laid down by the ATE.
- 26.5. RInfra-D's cluster-wise development approach may not be the right approach to ensure the reliability of network. Loading of power transformers and distribution transformers are crucial for ensuring reliability.
- 26.6. The Scenarios proposed by RInfra-D are premised upon the following:
- The consumer does not have a choice of electing its mode of supply.
  - Cost optimization is the only criterion to be considered while approving TPC-D's Rollout Plan.

- Wherever RInfra-D's network exists, TPC-D is not permitted to lay down its network. In other words, RInfra-D has a monopoly in laying or augmenting its network in its Licence area.
- These premises on which RInfra-D has proposed its Scenarios are not only in contravention of the provisions of the EA, 2003 but also against the principles set out by the ATE.

27. In its further submission dated 1 October, 2015, RInfra-D submitted the following:

- 27.1. The ATE Judgment was passed in the context of the peculiar situation of Mumbai, its primary and fundamental basis being that TPC-D was facing difficulty in laying network in its area of supply in Mumbai as there were various constraints, including physical constraints. Now TPC-D has completely changed its stand and has made a totally new argument that there are no physical constraints for it to lay its network. This point was never raised by TPC-D; in fact, the stand of TPC-D was to the contrary.
- 27.2. The ATE categorically directed that, in order to protect consumer interest, the existing consumers of RInfra-D should be served using the network of RInfra-D only. The ATE also found that, in case switch-over of consumers from the RInfra-D network to the TPC-D network is allowed, the wheeling charges of RInfra-D would increase due to reduction in its consumer base. Further, the wheeling charges of TPC-D would also increase due to increase in the cost incurred to duplicate the network. Therefore, such network duplication will not be in the interest of either RInfra-D's consumers or TPC-D's consumers. The very underlying basis of the ATE Judgment is the existence of physical constraints as contended by TPC-D.
- 27.3. TPC-D is claiming that a consumer connected to RInfra-D's network can surrender its connection and connect to TPC-D's network. According to TPC-D, that is not contrary to the ATE Judgment. It is obvious that TPC-D does not wish to implement the Judgment of the ATE in the manner directed, and wishes to keep the choice of network development with it so that it can play that card in the "consumer choice" from time to time to develop the network selectively and connect consumers as it chooses.
- 27.4. Reliability of Utilities' networks cannot be compared simply on the basis of the Reliability Indices due to huge differences in the respective customer base, Customer Density, Load Density, spread of the networks, etc. RInfra-D is today serving more than 29 lakh consumers on its network, whereas TPC-D is serving only 75,000 consumers on its network in its entire area of supply common to RInfra-D as well as BEST. RInfra-D's network spread of 11,000 kms (HT+LT) is almost four times that of TPC-D. RInfra-D's network connects to all unorganized dwellings (slums) in its area of supply and is predominantly serving LT connections, whereas TPC-D's network is mainly connecting HT consumers, let alone being spread out in any slum. Hence, due

consideration needs to be given to these variations in Customer Density/Load Density, type of network (LT or HT) and spread of network while comparing Reliability Indices.

- 27.5. There is no question of allowing any additional Capex towards reliability improvement to TPC-D as part of its Rollout Plan as it would amount to unnecessary burdening of consumers. Even if the Commission perceives any issues related to reliability of RInfra-D's network, it would be in the consumer interest to first evaluate the marginal cost of RInfra-D to undertake improvements for better reliability as, in most situations, RInfra-D is likely to be better placed to take advantages offered by economies of scale.
- 27.6. Cluster-based approach adopted by RInfra-D helps in maintaining (n-1) reliability across its entire area of supply. Cluster-wise planning philosophy also helps RInfra-D to take advantage of diversity of load in case of any forced outage, and helps in faster restoration of supply. Further, cluster-wise planning minimizes Capex to maintain (n-1) reliability for all the sub-stations within that cluster, as against maintaining the same for individual sub-stations.
28. The Commission observes that MSEDCL is also a Licensee with whom TPC-D has a small common area of supply. The Notice for the present proceedings was issued to MSEDCL on 17 August, 2015. However, MSEDCL only entered appearance on the last date of hearing, i.e. on 22 September, 2015, and sought time to make additional submissions. Vide Daily Order dated 22 September, 2015, the Commission granted MSEDCL one week's time to file its submissions, which it failed to do.
29. The Commission has heard the matter at length and, vide Daily Order dated 22 September, 2015, reserved the Case for Order. The Commission is of the view that the physical Rollout of TPC-D's network is also dependent upon various other factors discussed in subsequent paras and that, therefore, it would be appropriate at this stage to pass an Interim Order inter-alia deciding certain issues raised for the Commission's consideration, and also giving certain directions which would enable the Commission to finally approve the Rollout Plan, subject to various modalities and conditions precedent, in accordance with the mandate of the EA, 2003 and the ATE Judgment.
30. The present Petition has been filed for the approval of the Rollout Plan of TPC-D subsequent to the Distribution Licence granted to it in Case No 90 of 2014. TPC-D has been granted a second Distribution Licence in the distribution area common with BEST and RInfra-D in the Mumbai Island City and Suburban Mumbai respectively (and a small area outside Mumbai common with MSEDCL). The Rollout Plan of TPC-D is to be approved in terms of the directions issued by the Commission in Case No. 90 of 2014, and also in consonance with the ATE directions.

31. Insofar as TPC-D's common distribution area with BEST is concerned, the Commission is cognizant of the fact that it is a 'Local Authority' not obliged to allow other Licensees or consumers use of its wires through Open Access under the EA, 2003 (as explained below). Therefore, the Commission will deal with the Rollout Plan of TPC-D separately in two parts, i.e. Rollout in the case of area of supply common with RInfra-D (and MSEDCL), and Rollout in the case of common area of supply with BEST.
32. As for approving the Rollout Plan in the area common with BEST, the Commission observes that BEST, before various forums, has contended that, since it is a Local Authority, no other Licensee is permitted to operate within its area. However, the Supreme Court in its Judgment dated 8 May, 2014 in Civil Appeal 4223 of 2012 has held that no such special right has been vested with a Local Authority as was claimed by BEST:

*“25. It is therefore, difficult to accept the extreme position taken by the appellant that if local authority is a distribution licensee in a particular area, there cannot be any other distribution licensee in that area without the permission of such a local authority. Not only such a contention would negate the effect of universal supply obligation under Section 43, it will also amount to providing an exception which is not there either in Section 43 or Section 14 of the Act namely to treat local authority in special category and by giving it the benefit even that benefit which is not specified under the Act.”*

33. From the above, it is clear that TPC-D's Licence to operate as a Distribution Licensee in the area of supply common with BEST is in accordance with the scheme of the EA, 2003. This brings us to the next question, i.e. whether the ATE Judgment in Appeal Nos. 229 and 246 of 2012 can provide a via media to TPC-D to use the existing wires of BEST to supply to its consumers in the area of supply common to both. The Commission observes that the ATE Judgment is not applicable that area for the following reasons:
- (a) BEST, admittedly being a Local Authority, has the right to refuse non-discriminatory Open Access to the second Distribution Licensee. That has also been vehemently contended by BEST in its submissions. Therefore, unlike RInfra-D, BEST cannot be directed or compelled to grant Open Access (use of its wires/network) to TPC-D for its consumers.
- (b) Unlike the common area of supply with RInfra-D, where TPC-D has a right to seek Open Access from RInfra-D, no such right exists in the case of BEST as, under Section 42 (3) of EA, 2003, it is exempted from the obligation of granting such non-discriminatory Open Access.

- (c) In any case, the ATE Judgment was specific to the area of supply common between RInfra-D and TPC-D, and the directions in that Appeal cannot be specifically enforced between TPC-D and BEST.
34. Further, vide its submission dated 23 October, 2015, BEST has stated inter-alia that its challenge to the grant of TPC-D's Licence is pending before the ATE and the Supreme Court and that, therefore, at this juncture BEST is not in a position to decide upon TPC-D's request for Open Access permission. BEST further urges that TPC-D should separately approach the Commission for the area of supply common with BEST, and that BEST would submit its recommendations or suggestions then.
35. At this stage, the Commission is not approving the Rollout Plan of TPC-D in the area of supply common with BEST. In this Interim Order, the Commission is constituting a Committee to make certain recommendations, the details of which are set out in subsequent paragraphs. BEST shall participate in its proceedings as an Invitee and give its views and suggestions. The Committee would make recommendations which will be considered by the Commission, giving due opportunity to all the parties, other stakeholders and the public.
36. As for the approval of TPC-D's Rollout Plan for the area common with RInfra-D, the Commission notes that the term 'Rollout Plan' per se has not been defined in the EA, 2003. However, the main object behind consideration and approval of a Rollout Plan is to ensure that TPC-D, which has been granted a Distribution Licence, is in a position to supply to consumers within its distribution area as per the time period specified under Section 43 of the Act and relevant Regulations. The reason for imposing such a condition was to ensure that TPC-D, within a reasonable period, is able to comply with its USO as required under Section 43. However, after the grant of Licence and during the pendency of the present Petition, the ATE has issued certain directions which are now required to be considered in approving the Rollout Plan of TPC-D. The Commission notes that the ATE Judgment was in relation to a Licence which has expired on 15 August, 2014. However, the directions in that Judgment also have a bearing on the Licence of TPC-D granted in Case No. 90 of 2014, which will be accordingly considered by the Commission.
37. The Commission observes that the TPC-D's Rollout Plan for the area common with RInfra-D will have to be considered in accordance with the guidelines and directions contained in the ATE Judgment. Both RInfra-D and TPC-D, in their arguments, have condensed these into the following issues:
- i. What is the scope or meaning of the term 'new consumer', and what impact does it have on the Rollout Plan of TPC-D to be approved in terms of the ATE Judgment?

- ii. What is scope and meaning of the term ‘reliability of the existing distribution network’, and what impact does it have on the Rollout Plan required to be approved?
  - iii. What shall be the mode and manner in which physical Rollout of the TPC-D network shall be approved after considering issues (i) and (ii) above?
38. The Commission notes that the ATE Judgment was in relation to Case No. 151 of 2011, which was associated with a Licence which expired on 15 August, 2014. However, the principles enunciated are equally applicable to the present Licence and Rollout Plan. The Commission will, therefore, be guided by the ATE directives, while factoring in the reality that the earlier Licence was a deemed Licence which expired on 15 August, 2014, but that the current Licence is for 25 years. Hence, the Commission at this stage would only decide on the principles of the physical Rollout Plan of TPC-D, and will also consider the scope and meaning of the ATE Judgment and its impact on the parameters of the Rollout to be undertaken by TPC-D in the years to come.
39. TPC-D has submitted that there are no restrictions on the Distribution Licensee in laying or development of the network, where:
- i) Such network is required to supply to new consumers, including new consumers in redeveloped premises;
  - ii) Demand is made by an existing consumer/consumers, and physical laying of the network is in the consumer interest; or
  - iii) Substantial investment is already made and the network needs to be loaded for enhanced economic use; or
  - iv) The reliability of the existing network is low.
40. On the other hand, RInfra-D has contended that, as per the ATE directions, where there is a reliable distribution network of RInfra-D, it would be in the interest of consumers of both Licensees that the change-over consumers continue to get supply from TPC-D on RInfra-D’s network, with liberty to migrate back to RInfra-D in case its Tariff becomes more attractive. Laying of a duplicate network would entail physical constraints and high costs, which cannot be in the overall interest of consumers. Even in respect of new consumers, TPC-D cannot lay down its network indiscriminately. To the extent possible, TPC-D would be compelled to use the existing network of RInfra-D.
41. With regard to whether a redeveloped premises constitutes a ‘new consumer’, RInfra-D has submitted that such premises cannot be treated as new connection as the RInfra-D network is already providing supply to the existing building. If TPC-D is allowed to

supply to such redeveloped building, it would amount to duplication of network by TPC-D under the guise of 'new connection'. Even if any augmentation needs to be done to cater to redeveloped premises, the cost of such augmentation for RInfra-D would only be incremental over its existing network and hence much lower, as against TPC-D which will have to lay its backbone network to reach such premises.

42. RInfra-D has submitted further that a new consumer is necessarily one in whose premises there does not exist any network at all, and only in such circumstances can a Distribution Licensee lay down its network to effect supply. TPC-D's interpretation of 'new consumer' also means that every existing consumer in the RInfra-D area is a new consumer once it approaches TPC-D by surrendering his existing connection, which is contrary to TPC-D's own definition of switch-over consumers, and such an interpretation by TPC-D would render the ATE Judgment otiose.
43. In its submission dated 26 September, 2015, TPC-D submitted that there is a difference between the term 'switch-over' and the term 'new connection/ consumer'. A 'new consumer' means a person who has made an application for supply of power and whose premises are for the time being not permanently connected to the works of a Distribution Licensee. On the other hand, a 'switch-over' consumer may make an application while he is still connected to the network of a Distribution Licensee.
44. The Commission is of the view that the submissions made by the parties have to be tested against the directions of the ATE. The relevant portions of its Judgment read as follows:

*“58. Laying down of parallel network in a congested metropolitan city like Mumbai where a reliable distribution network is already existing is to be viewed differently from situation in other areas in the country where there are deficiencies in the existing distribution network resulting in constraints in maintaining a reliable supply to the existing consumers and extending supply to new consumers. Practical difficulties in laying down the network and extending the 11/0.4 kV network all around the congested areas in multi-storeyed buildings and narrow lanes of slums and the extremely high cost involved in making an unnecessary expenditure has to be considered. In some areas it may be practically impossible to lay down the parallel network by Tata Power due to space constraints. Tata Power itself has stated that it is facing practical difficulties to lay down the distribution network. Tata Power at the same time cannot maintain its right to lay down distribution network selectively even in areas where a reliable network of RInfra is existing. Tata Power should therefore, be restricted to lay down its network only in areas where laying down of parallel network would improve the reliability of supply and benefit the consumer and also for extending supply to new consumers who seek connection from Tata Power. Tata Power's Rollout Plan should therefore, be restricted to only such areas. This may also require amendment*

*in the licence condition of Tata Power, after following due process as per law. The Rollout Plan shall be approved by the State Commission only after hearing RInfrac and the consumers. In the meantime, Tata Power should be restrained to lay down distribution network in the distribution area common to RInfrac.*

59. *However, where Tata Power has already made considerable investment in constructing the distribution system in pursuance of the directions of the State Commission, it should be allowed to be commissioned and capitalized, to feed the consumers as decided by the State Commission. Tata Power may submit a proposal to State Commission in this regard which the State Commission shall consider and decide after hearing the concerned parties including RInfrac.*
60. *Where Tata Power has already laid down its network and some consumers have switched over from RInfrac to Tata Power, these consumers can remain with Tata Power. However, they can choose to switch over to RInfrac in future on RInfrac's existing network as per the switch over protocol to be decided by the State Commission.*
61. *In view of above, Tata Power is directed to submit its Rollout Plan as indicated above for approval of the State Commission. In the meantime, Tata Power is restrained to lay down its distribution network in the area common to RInfrac till further orders of the State Commission on its Rollout Plan as per the directions given in this Judgment. However, Tata Power can supply power to the existing consumers of RInfrac irrespective of category of consumer on the request of the consumers only through RInfrac's network by paying the necessary wheeling charges as well as the other compensatory charges including the cross subsidy charges to RInfrac. However, there shall be no restriction on Tata Power or RInfrac to lay network for supply to new connections. The State Commission shall consider to give approval for laying down of network by Tata Power only in areas where there are distribution constraints and laying down of a parallel network by Tata Power will improve reliability of supply and benefit the consumers, only after hearing RInfrac and the consumers. Similarly, RInfrac shall not lay network in any area where only Tata Power's network is existing and use Tata Power network for changeover of consumers, if any, till further orders by the State Commission, except for extending supply to new connections. The State Commission is directed to devise a suitable protocol in this regard after following due procedure. This may require change in licence condition of the licensees which the State Commission shall decide after following due procedure as per law."*
45. From the directions of the ATE set out above, the following observations emanate for the consideration of this Commission:
- (a) Mumbai city is unique as it would not be physically and economically viable for TPC-D to create a parallel distribution network for the entire area of its supply common with RInfrac-D.

- (b) TPC-D cannot maintain its right to lay down distribution network selectively even in areas where a reliable network of RInfra-D exists.
  - (c) TPC-D should be restricted to laying its network in areas where such parallel network would improve the reliability of supply and benefit the consumer.
  - (d) TPC-D can extend supply to new consumers who seek connection from it.
  - (e) The Rollout approval may require amendment of the TPC-D's Licence.
  - (f) The Rollout should be done after following due process of law and after hearing RInfra-D and consumers.
  - (g) Where TPC-D has made considerable investment in constructing its distribution system in furtherance of the earlier directions of the Commission, such system should be commissioned and capitalized.
  - (h) Where TPC-D has already laid down its network and some consumers have switched over from RInfra-D to TPC-D, such consumers can remain with TPC-D.
  - (i) Till such time as the Commission approves the Rollout Plan, TPC-D is restrained from undertaking supply to new consumers through the switch-over mode.
46. These directions make it clear that the ATE in its Judgment has sought to promote consumer choice through a via media to ensure that there is choice of Licensee to all consumers within the parallel area of supply. The Commission has also been directed by the ATE to approve the Rollout of TPC-D in a manner which promotes consumer choice, which is economical for all consumers, and in which there is no wastage of national resources.
47. The Commission granted a new Licence to TPC-D vide Order in Case No. 90 of 2014. However, subsequent to this, the ATE passed its Judgment in Appeal No. 229 and 246 of 2012 and passed certain observations which overlap both Licences. While granting a Licence to TPC-D, the Commission was strictly guided by the letter of Section 43 of the EA, 2003:

*“(1) Save as otherwise provided in this Act, every distribution licensee, shall, on an application by the owner or occupier of any premises, give supply of electricity to such premises, within one month after receipt of the application requiring such supply:*

*Provided that where such supply requires extension of distribution mains, or commissioning of new sub-stations, the distribution licensee shall supply the*

*electricity to such premises immediately after such extension or commissioning or within such period as may be specified by the Appropriate Commission;*

*Provided further that in case of a village or hamlet or area wherein no provision for supply of electricity exists, the Appropriate Commission may extend the said period as it may consider necessary for electrification of such village or hamlet or area.”*

The Commission observes that the ATE Judgment lays down certain restrictions for valid reasons in the special circumstances of the case. However, throughout its Judgment, the ATE has held that the object of granting a parallel Licence is the supremacy of consumer choice coupled with economics of the cost of supply, as such factors are material for fixation of the tariffs of Licensees. Therefore, the enforcement of Section 43 will have to be done taking into account the guidelines issued by the ATE in Appeal Nos. 229 and 246 of 2012.

48. The Commission notes that it has granted the parallel Licence to TPC-D under Section 14 with the objective to promote competition and give choice to consumers. The Commission is of the view that the clear intent of the ATE Judgment is the same, namely to enable choice to consumers. However, both TPC-D and RInfra-D have argued that the method of supply of power should be a paramount consideration in approving the Rollout Plan of TPC-D.
49. The Commission is of the view that consumers' choice of Licensee triumphs over the method of supply. A consumer may seek supply from one or the other Licensee based mainly on considerations such as a comparison of quality of service and tariff, and would not be concerned in the manner in which the supply is made. In an ideal scenario, both parallel Licensees would be required to maintain a robust distribution network. However, in the present case, one of the Licensees (TPC-D) has been unable to lay such an extensive network owing to difficulties in Suburban Mumbai of delay in cable-laying, digging and other approvals, and physical difficulties in laying the network and due to congestion and the geography of the area (and having been largely only a bulk supplier rather than retail supplier in the past). Therefore, in these circumstances, the Licensees have been directed by the ATE to use each other's existing wires (excluding the BEST area) to effect supply to consumers within their area of supply.
50. The Commission notes that the EA, 2003 defines 'consumer' as any person who is supplied with electricity for his own use by a Licensee engaged in the business of supplying electricity to the public under the Act, and includes any person whose premises are for the time being connected for the purpose of receiving electricity with the works of a Licensee. Therefore, in terms of the EA, 2003, the Consumer is anyone

who is either supplied by a Licensee or is connected to the works of a Licensee. The ATE Judgment nowhere redefines this meaning of the term 'consumer'.

51. That being said, the focus of the ATE Judgment is to ensure that supply of electricity to consumers is done with minimal wastage and duplication of resources, optimum utilization of public funds, and using the existing network of either Licensee wherever possible. In this light, the Commission is, therefore, of the view that consumer choice is a primary consideration, and also that it is the responsibility of the Licensees and the Commission to ensure that the mode of supply opted for is the most cost effective and avoids duplicating or wasting national resources.
52. The Commission observes that the interpretations given by TPC-D or RInfra-D do not do true justice to the mandate envisaged by ATE. If TPC-D's interpretation is accepted, then in effect TPC-D has the right to lay its lines and supply to any consumer seeking such supply within its distribution area. If the definition of RInfra-D is accepted, then TPC-D does not have any right to lay its own lines so long as RInfra-D is present in the vicinity, barring a situation in which a completely new area is developed in the area of supply common to both Licensees. The Commission believes that the mandate actually given by the ATE is to find a via media by which consumer interest is protected and the existing network is used to its maximum potential, and new lines are only laid when reliability and adequacy, and economic viability along with consumer demand require it to be done.
53. The Commission is of the view that one of the issues that needs to be addressed in this Case is the responsibility of the Licensees, especially TPC-D, towards consumers who apply for a connection. This would arise in the following Scenarios:
  - (a) Location, Municipal Ward or other area which is completely covered by one Licensee, but consumers within such area still wish to shift from their existing provider to the other Licensee;
  - (b) Location, Ward or other area which is completely covered by both Licensees, but consumers within such area wish to shift from their existing provider to the other Licensee;
  - (c) Locations, Wards or other areas where neither Licensee is presently supplying power through its wires;
  - (d) Locations, Wards or other areas where either or both Licensees are present, and where the projected growth could considerably increase the number of consumers wishing to avail supply from either Licensee.

54. As far as Scenario (a) is concerned, it is clearly just a question of wheeling of power to the consumer through the network of the Licensee whose network is available in the area. Therefore, it is a matter of adjusting payments between such consumer and the concerned Licensee or between the Licensees. The existing system of accounting already deals with the situation, and therefore no modification to it is called for at present.
55. As far as Scenario (b) is concerned, where both Licensees have an existing robust distribution network available, if a consumer requests a shift from one Licensee to the other, the second Licensee would be permitted to supply to that consumer directly through its own wires.
56. As for Scenario (c) above, both Licensees are at liberty to approach the Commission for in-principle approval of their capex proposals (if required under the Guidelines of the Commission for such approval) for servicing those consumers in such areas who have sought or are likely to seek supply from them.
57. However, with regard to Scenario (d), which the ATE has also considered in its Judgment, it is obvious that the existing reliability and adequacy of the system coupled with economics and mode of supply will have to be considered. Wherever a Licensee desires to lay lines to supply consumers in such areas, this would have to be assessed on parameters such as the adequacy of the existing network coupled with the cost of augmentation (which may eventually be passed on to all the consumers of that Licensee in future tariffs). The Commission observes that a Licensee who is already present may be in a better physical and economical position to augment its network to supply to additional consumers. In some other cases, however, the other Licensee may be in a position to augment its nearby network and provide last-mile connectivity to such area in a more advantageous manner. Thus, the Commission is of the view that whether or not TPC-D will be permitted to lay its network to cater to specific areas and/or consumers will depend on the adequacy of its existing network in the vicinity and also upon the economics of such extension or augmentation. However, both Licensees are obligated to supply on request to all consumers within their area of supply regardless of the manner or method of supply which may be agreed or decided upon. Needless to say, the above directions are also applicable to RInfra-D in terms of the ATE Judgment.
58. The Commission is of the view that both Licensees need to see beyond the scope of 'change-over' and 'switch-over'. With a Distribution Licence comes the responsibility to discharge a USO, which has to be observed in letter and spirit. Questions may arise as to the mode and manner of supply to a consumer, but not on whether a consumer is to be supplied or not. The ATE by its Judgment has given a mandate to both Licensees to use each other's wires, where available, to effect supply.

59. The ATE has directed that TPC-D must be restricted to lay its network only in areas where laying of a parallel network would improve the reliability of supply and benefit consumers. Therefore, the Commission is of the view that it is necessary to understand the scope and meaning of the expression ‘reliability of the existing distribution network’, which would entitle either Licensee to lay or augment its network in case such reliability is found to be inadequate, in the context in which it has been used in the ATE Judgment.
60. Reliability of a network is a factor of technology, factors such as loading and aging, environmental factors, demographic movement, population change, etc. Both Licensees have got a Distribution Licence for 25 years. It is obvious that both technology and the servicing environment will undergo changes during this period. Even the present constraints in laying network in congested areas of Mumbai may not be as relevant in the course of time, with technological and other developments. Reliability is, therefore, a dynamic concept and cannot be ascertained by a single indicator.
61. The existing technical parameters of reliability have been provided in the Commission’s SoP Regulations, 2014. These are subject to revision or amendment from time to time. As pointed out above, in the context of this Case such technical reliability has to be looked at in a dynamic context extending over a longer period of time. It also has to be ensured that the extension or augmentation undertaken by either Licensee is in the best interest of consumers. ‘Reliability’ as defined in the SoP Regulations provides an index related to consumer interruptions and their period and frequency. However, the Commission is of the view that, in the context of the ATE Judgment and the circumstances of Mumbai, the term ‘reliability’ has to be understood more broadly to mean the adequacy of a network and infrastructure to feed existing and new consumers. As far as consumer supply interruptions are concerned, most areas in Mumbai have a relatively reliable distribution network. However, the system needs continuous augmentation and improvement to match growing demand. Thus, the adequacy of existing networks in specific locations or areas is an important consideration in determining the Rollout Plan, its modalities and the methodology for dealing with consumer demand. Parameters such as loading of network, ageing of network, obsolescence of technology, etc. determine the adequacy of the network. The Commission is of the view that such adequacy needs to be assessed for deciding augmentation or addition to the network for the purpose of supplying electricity at the least cost to consumers.
62. While granting the Licence to TPC-D in Case No. 90 of 2014 the Commission had found the Rollout Plan proposed by TPC-D to be inadequate and therefore had directed TPC-D to furnish a revised Plan. The Commission envisaged such a Plan as phased development of TPC-D’s network that would enable it to supply existing consumers and any future applicants using its own wires within a reasonable and realistic period of time. However, the subsequent ATE Judgment permits a Licensee

to effect supply through the wires of the other Licensee (where they are in place, but excluding BEST which is not statutorily obliged to provide Open Access) in the area common to both in order to meet its USO. The ATE Judgment has also laid down certain other principles and parameters considering which supply to an applicant from one or the other Licensee is to be effected. The Commission is of the view that, therefore, the term 'Rollout Plan' has now also to be understood in a wider sense to encompass the nature of the response required to such applications for supply in different scenarios mentioned above, which may or may not involve laying or augmentation of network by one or the other Licensee or consideration of an extensive, area-wise physical master plan except perhaps in respect of the BEST area.

63. The Commission notes that TPC-D's right to develop its existing network where it has already made investments for creation of distribution assets is undisputed in terms of the ATE Judgment. TPC-D has already filed a Petition in this regard in Case No. 50 of 2015, on which the Commission will pass appropriate Orders separately.
64. The ATE in its Judgment has also provided a solution for dealing with immediate consumer requests which will have to be honoured by directing TPC-D to supply using RInfra-D wires in cases where they are present and there is no TPC-D network. The same principle is applicable to RInfra-D (as well as to MSEDCL) and vice versa.
65. In order to further address and finalise the operational specifics of the matter, the Commission deems it appropriate to constitute a Committee which would make recommendations on the key aspects, as set out in broader sense in Para 62 of this Order, which would be considered by the Commission thereafter while approving TPC-D's Rollout Plan.
66. The Committee shall comprise the following:
  - (a) Director (Electrical Engineering) of the Commission – Convener
  - (b) Consumer Representative(s) (to be nominated by the Commission)
  - (c) Technical Consultant(s) (to be nominated by the Commission)
  - (d) Representatives of TPC-D, BEST, RInfra-D and MSEDCL - as Invitees

The nominations referred to above shall be made separately by the Commission after the issue of this Interim Order, and notified on its websites.

67. The Committee shall provide recommendations on the following matters, in relation to TPC-D's Rollout Plan:

- The protocol and procedure in terms of which any migration of consumers shall take place in the scenarios set out at para. 53 above so that it is cost-effective, swift and consumer-centric;
  - The institutional mechanism which may have to be put in place to operationalise the above in terms of deciding how consumer applications received or expected from time to time are dealt with;
  - The practicable, operational criteria and methodology which may be used for assessing the adequacy of the network of one or the other Licensee in an area from whom a consumer may approach the either Licensee for supply, and the manner in which the most efficient and cost-effective option for providing it may be determined;
  - Inputs on TPC-D's physical Rollout Plan for the common area of supply with BEST and its phasing, including the procedure to be followed for migration of consumers between the two Licensees, keeping in view USO requirements.
68. The Commission proposes to undertake the following process before passing its final Order in this Case:
- a. The Committee shall submit its recommendations to the Commission within 90 days of its constitution;
  - b. The Commission shall consider the recommendation of the Committee for approval and if it considers necessary, direct TPC-D to revise its Rollout Plan in terms of the approved recommendations of the Committee;
  - c. The revised Rollout Plan and the Committee's recommendations shall be made available in the public domain for comments, suggestions and objections, and the Commission shall also hold a Public Hearing.
69. The Commission in its final Order will decide on continuation or re-constitution of the Committee for scrutinizing the future capital investment schemes submitted by the parallel Licensees in accordance with the Capital Investment Guidelines in their common area of supply.
70. After the Commission's Daily Order dated 22 September, 2015, Shri Harishchandra Govalkar has approached the Commission with an Application dated 19 October, 2015 seeking public hearing of the matter, inter-alia placing reliance on the observations made in the ATE Judgment in that regard. That Application has been numbered as

Miscellaneous Application (MA) No.10 of 2015. The Applicant also states that he had earlier approached the ATE in DFR No. 2068 of 2015, which was disposed of vide Order dated 16 October, 2015 as follows:

*“We must note that the Applicant/Appellant has filed an application seeking leave to file the appeal and an application praying for waiver of court fee. We have not considered the merits of these applications. At this stage, learned counsel for the Applicant/Appellant states that the grievance of the Applicant/Appellant is that the State Commission has not given hearing to the Applicant/Appellant. Counsel states that he has instructions to withdraw the appeal and approach the State Commission requesting the State Commission to give the Applicant/Appellant a hearing. The Applicant/Appellant, if so advised, may do so. Needless to say that in case such an application is filed the State Commission shall consider the same in accordance with law. The State Commission shall consider all issues including the maintainability of such application. However, we make it clear that we have expressed no opinion on any aspect of the case including the aspect of maintainability.”*

As explained at para. 68 above, the Commission will give an opportunity of hearing to all, including the Applicant in MA No.10 of 2015, at a subsequent stage of the proceedings in this Case and before the final Order is passed. Therefore, MA No.10 of 2015 is disposed of in this Interim Order with liberty to the Applicant to approach the Commission with his views when the Commission undertakes the process of public consultation.

Sd/-

**(Deepak Lad)**  
**Member**

Sd/-

**(Azeez M. Khan)**  
**Member**

Sd/-

**(Chandra Iyengar)**  
**Chairperson**

**ANNEXURE P-3 (Colly)**No. MERC/Case No. 182 of 2014/**00049**

07 April, 2016

Subject: Petition of Tata Power Company Limited for submission of Revised Network Rollout Plan in compliance to the direction of the Commission in Case No. 90 of 2014.

**- Case No. 182 of 2014**

1. Vide paras. 65 to 67 of its Interim Order dated 09 November, 2015 in Case No. 182 of 2014, the Commission had decided to constitute a Committee which would make recommendations on certain matters.
2. Vide notification dated 03 December, 2015, the Commission nominated members of the Committee. The Committee's Report was expected to be submitted by 02 March, 2016. On the request of the Committee, this period was extended upto 01 April, 2016.
3. On 29 March, 2016, the Commission has received the Report of the Committee. The Parties and others to whom this letter is addressed may submit their say, if any, on the Report (enclosed herewith) within two weeks.
4. Thereafter, the Commission shall schedule a Public Hearing in the matter after publishing all the submissions made by the Parties in Case No. 182 of 2014, the Committee Report and the comments received and inviting comments from the public.
5. The date of Public Hearing will be communicated later.

Sd/-  
(R. S. Sonawane)  
Dy. Director (Legal)

**Encl. Committee Report**

Tata Power Co. Ltd.,  
Bombay House,  
24, Homi Mody Street,  
Fort, Mumbai - 400 001

Petitioner

Cc: The General Manager  
BEST Undertaking  
BEST Bhawan, BEST Marg  
Mumbai 400 001

Respondent

Cont'd →2

No. MERC/Case No. 182 of 2014/00049

07 April, 2016

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Cc: Reliance Infrastructure Limited Respondent  
 Devidas Lane, Off SVP Road  
 Near Devidas Telephone Exchange  
 Borivali (West), Mumbai - 400 092

Cc: Chief Engineer (Commercial), Respondent  
 Maharashtra State Electricity Distribution Co. Ltd  
 Plot No G-9, Prakashgad,  
 Anant Kanekar Marg,  
 Bandra (East), Mumbai - 400 051

Cc: HarishchandraYaswantGovalkar Application in MA No. 10 of 2015  
 Nagriksevasangh, Nehru Nagar,  
 Galli No. 11, R. No. 54  
 Borivali East, Mumbai - 400 066

Cc: **Institutional Consumer Representatives:-**

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Vidarbha Industries Association,  
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 Civil Line, Nagpur - 440 001  
 E-mail: [rkengg@gmail.com](mailto:rkengg@gmail.com)

**Report  
of the Committee constituted under  
Notification dated 3 December, 2015 in  
Case No. 182 of 2014  
(Petition of The Tata Power Company  
Ltd. for approval of Revised Network  
Rollout Plan)**

March 28, 2016

**Report Submitted to:**

**Maharashtra Electricity Regulatory Commission  
13th Floor, World Trade Centre, Centre No. 1, Cuffe Parade,  
Mumbai - 400 005**

**Report of the Committee constituted under Notification  
dated 3 December, 2015 in Case No. 182 of 2014  
(Petition of The Tata Power Company Ltd. for approval of  
Revised Network Rollout Plan)**

**Report Prepared by the Committee Members**

Sr. No.	Name	Status	Signature
1	Shri. Prafulla Varhade, Director (Electrical Engineering), Maharashtra Electricity Regulatory Commission	Convener	Sd/-
2	Dr. Ashok Pendse, Thane-Belapur Industries Association	Member (Consumer Representatives)	Sd/-
3	Shri. Manohar Bagde, Former Executive Director, Maharashtra State Electricity Distribution Company Ltd.	Member (Technical Consultant)	Sd/-
4	Shri. Palaniappan Meyyappan, Director, ABPS Infrastructure Advisory Pvt. Ltd.	Member (Technical Consultant)	Sd/-

**Report submitted to:**

Maharashtra Electricity Regulatory Commission  
13<sup>th</sup> Floor, World Trade Centre, Centre No. 1, Cuffe Parade, Mumbai - 400 005

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**LIST OF ABBREVIATIONS**

APTEL	Appellate Tribunal for Electricity
BEST	Brihan-mumbai Electric Supply and Transport Undertaking
BMC	Brihan-mumbai Municipal Corporation
CEA	Central Electricity Authority
CRZ	Coastal Regulation Zone
CSS	Consumer Substation
DDF	Dedicated Distribution Facility
DISCOM	Distribution Companies
DPR	Detailed Project Report
DSS	Distribution Substation
EA 2003 or Act	Electricity Act, 2003
HT	High Tension
IT	Information Technology
kV	Kilo Volt
LILo	Loop-in-loop-out
LT	Low Tension
MAEDC	Mumbai Appellate Electricity Distribution Council
MBMC	Mira-Bhayandar Municipal Corporation
MERC	Maharashtra Electricity Regulatory Commission
MIAL	Mumbai International Airport Limited
MSEDCL	Maharashtra State Electricity Distribution Company Limited
PD	Permanently Disconnected
RInfra-D	Reliance Infrastructure Limited-Distribution
RInfra-T	Reliance Infrastructure Limited-Transmission
RSS	Receiving Substation
SOP	Standards of Performance
STU	State Transmission Utility
TOR	Terms of Reference
TPC-D	The Tata Power Company Limited-Distribution
TPC-T	The Tata Power Company Limited-Transmission
USO	Universal Service Obligation

## 1 Background

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The Maharashtra Electricity Regulatory Commission (henceforth referred to as the MERC or the Commission) issued an Order dated August 14, 2014, granting Distribution Licence No. 1 of 2014 to The Tata Power Company Ltd. (TPC-D). Pursuant to the above said Order and Specific Conditions in Part II of its Distribution Licence, TPC-D submitted a Revised Network Rollout Plan on October 10, 2014 in Case No. 182 of 2014 covering the licence area of The Brihan Mumbai Electric Supply & Transport Undertaking (BEST) and Reliance Infrastructure Limited (Distribution) (RInfra-D). The Commission, in its Order, stated that it did not find the Network Rollout Plan submitted by TPC-D to be adequate and directed TPC-D to submit a more comprehensive Network Rollout Plan, keeping in view the comments made by the Commission in its Order dated August 14, 2014.

During the pendency of the Petition in Case No. 182 of 2014, the Hon'ble Appellate Tribunal for Electricity (APTEL) gave its Judgment on Appeal No. 229 and 246 of 2012 on November 28, 2014, which were cross-appeals filed by RInfra-D and TPC-D, respectively, against the Commission's Order dated 22 August, 2012 in Case No. 151 of 2011. In Case No. 151 of 2011, the Commission had directed TPC-D to focus all its energies and capital expenditure and ensure that by the end of one year from the date of the Order (i.e., by August 22, 2013), it has rolled out its entire distribution network in the 11 identified Clusters (to be redrawn into a Municipal Ward-wise Plan by TPC-D) in such a manner that it is in a position to provide supply through its own distribution network to existing and prospective consumers located anywhere within these Clusters, within the minimum time period of one month specified under the MERC SOP Regulations. The 11 Clusters identified in this Order were from the overlapping licence area of RInfra-D and TPC-D.

The APTEL in its Judgment dated November 28, 2014 ruled as under:

*"58. Laying down of parallel network in a congested metropolitan city like Mumbai where a reliable distribution network is already existing is to be viewed differently*

*from situation in other areas in the country where there are deficiencies in the existing distribution network resulting in constraints in maintaining a reliable supply to the existing consumers and extending supply to new consumers. Practical difficulties in laying down the network and extending the 11/0.4 kV network all around the congested areas in multi-storeyed buildings and narrow lanes of slums and the extremely high cost involved in making an unnecessary expenditure has to be considered. In some areas it may be practically impossible to lay down the parallel network by Tata Power due to space constraints. Tata Power itself has stated that it is facing practical difficulties to lay down the distribution network. Tata Power at the same time cannot maintain its right to lay down distribution network selectively even in areas where a reliable network of RInfra is existing. Tata Power should therefore, be restricted to lay down its network only in areas where laying down of parallel network would improve the reliability of supply and benefit the consumer and also for extending supply to new consumers who seek connection from Tata Power. Tata Power's Rollout Plan should therefore, be restricted to only such areas. This may also require amendment in the licence condition of Tata Power, after following due process as per law. The Rollout Plan shall be approved by the State Commission only after hearing RInfra and the consumers. In the meantime, Tata Power should be restrained to lay down distribution network in the distribution area common to RInfra.*

*59. However, where Tata Power has already made considerable investment in constructing the distribution system in pursuance of the directions of the State Commission, it should be allowed to be commissioned and capitalized, to feed the consumers as decided by the State Commission. Tata Power may submit a proposal to State Commission in this regard which the State Commission shall consider and decide after hearing the concerned parties including RInfra.*

*60. Where Tata Power has already laid down its network and some consumers have switched over from RInfra to Tata Power, these consumers can remain with Tata Power. However, they can choose to switch over to RInfra in future*

*on RInfra's existing network as per the switch over protocol to be decided by the State Commission.*

...

*61. In view of above, Tata Power is directed to submit its Rollout Plan as indicated above for approval of the State Commission. In the meantime, Tata Power is restrained to lay down its distribution network in the area common to RInfra till further orders of the State Commission on its Rollout Plan as per the directions given in this Judgment. However, Tata Power can supply power to the existing consumers of RInfra irrespective of category of consumer on the request of the consumers only through RInfra's network by paying the necessary wheeling charges as well as the other compensatory charges including the cross subsidy charges to RInfra. However, **there shall be no restriction on Tata Power or RInfra to lay network for supply to new connections. The State Commission shall consider to give approval for laying down of network by Tata Power only in areas where there are distribution constraints and laying down of a parallel network by Tata Power will improve reliability of supply and benefit the consumers, only after hearing RInfra and the consumers. Similarly, RInfra shall not lay network in any area where only Tata Power's network is existing and use Tata Power network for changeover of consumers, if any, till further orders by the State Commission, except for extending supply to new connections.** The State Commission is directed to devise a suitable protocol in this regard after following due procedure. This may require change in licence condition of the licensees which the State Commission shall decide after following due procedure as per law.*

...

*80. Summary of our findings*

...

*(iii) In view of the practical difficulties in laying down parallel network in Mumbai as pointed out by Tata Power we have given some directions under paragraphs 58 to 61 regarding restricting the Roll out Plan of the Tata Power only to the areas where laying down of parallel network will improve the reliability of supply and benefit the consumers and directions for continuation of changeover arrangement irrespective of category or consumption of*

*consumers, commissioning of network where a substantial expenditure has been incurred by Tata Power in laying down new network on the directions of the State Commission, consumers who had already switched over to Tata Power, laying down network for providing new connection, changeover and switch over protocol, change in licence conditions of the licensees, etc. However, there shall be no restriction on any licensee to lay network for supply to new connections. The State Commission is also directed to decide the detailed protocol for switchover and changeover after hearing all concerned.*

...

*(vii) We have given the above findings in view of the circumstances of the case where difficulties are being experienced in laying distribution network by the parallel licensee namely, Tata Power to provide connectivity to all consumers in the licensed area common to RInfra and in the ultimate interest of the consumers."(emphasis added)*

In view of the observations and directions of the APTEL in its Judgment dated November 28, 2014, TPC-D submitted a further revised Network Rollout Plan to the Commission on February 12, 2015. As the Network Rollout Plan overlaps the licence area of BEST and RInfra-D, the Commission issued notices to the above two Distribution Licensees and authorized institutional Consumer Representatives inviting comments/views on TPC-D's Revised Network Rollout Plan submitted on February 12, 2015. In its submission, BEST pleaded that in order to comply with the APTEL's directives, TPC-D's licence granted on August 14, 2014 first needs to be amended, as the APTEL Judgment is not applicable to BEST's area of supply. In BEST's area of supply, the Rollout Plan needs to be in accordance with the Specific Conditions of Distribution Licence granted by the Commission. After considering BEST's contention, the Commission directed TPC-D to submit two proposals for Network Rollout, viz., one for area overlapping with RInfra-D and another for the area overlapping with BEST.

During the proceedings in Case No. 182 of 2014, the Commission observed that even though the APTEL Judgment was in relation to Case No. 151 of 2011, which was associated with a Licence that expired on August 15, 2014, the principles enunciated are equally applicable to the present Licence and Rollout Plan. The Commission has ruled as under in the interim Order dated 9 November, 2015 in Case No. 182 of 2014:

*"47.... Therefore, the enforcement of Section 43 will have to be done taking into account the guidelines issued by the ATE in Appeal Nos. 229 and 246 of 2012.*

...

*49. The Commission is of the view that consumers' choice of Licensee triumphs over the method of supply. A consumer may seek supply from one or the other Licensee based mainly on considerations such as a comparison of quality of service and tariff, and would not be concerned in the manner in which the supply is made. In an ideal scenario, both parallel Licensees would be required to maintain a robust distribution network. However, in the present case, one of the Licensees (TPC-D) has been unable to lay such an extensive network owing to difficulties in Suburban Mumbai of delay in cable-laying, digging and other approvals, and physical difficulties in laying the network and due to congestion and the geography of the area (and having been largely only a bulk supplier rather than retail supplier in the past). Therefore, in these circumstances, the Licensees have been directed by the ATE to use each other's existing wires (excluding the BEST area) to effect supply to consumers within their area of supply.*

...

*51. That being said, the focus of the ATE Judgment is to ensure that supply of electricity to consumers is done with minimal wastage and duplication of resources, optimum utilization of public funds, and using the existing network of either Licensee wherever possible. In this light, the Commission is, therefore, of the view that consumer choice is a primary consideration, and also that it is the responsibility of the Licensees and the Commission to ensure that the mode of supply opted for is the most cost effective and avoids duplicating or wasting national resources.*

...

52.... *The Commission believes that the mandate actually given by the ATE is to find a via media by which consumer interest is protected and the existing network is used to its maximum potential, and new lines are only laid when reliability and adequacy, and economic viability along with consumer demand require it to be done.*

53. *The Commission is of the view that one of the issues that needs to be addressed in this Case is the responsibility of the Licensees, especially TPC-D, towards consumers who apply for a connection. This would arise in the following Scenarios:*

*(a) Location, Municipal Ward or other area which is completely covered by one Licensee, but consumers within such area still wish to shift from their existing provider to the other Licensee;*

*(b) Location, Ward or other area which is completely covered by both Licensees, but consumers within such area wish to shift from their existing provider to the other Licensee;*

*(c) Locations, Wards or other areas where neither Licensee is presently supplying power through its wires;*

*(d) Locations, Wards or other areas where either or both Licensees are present, and where the projected growth could considerably increase the number of consumers wishing to avail supply from either Licensee.*

...

57. *...Wherever a Licensee desires to lay lines to supply consumers in such areas, this would have to be assessed on parameters such as the adequacy of the existing network coupled with the cost of augmentation (which may eventually be passed on to all the consumers of that Licensee in future tariffs). The Commission observes that a Licensee who is already present may be in a better physical and economical position to augment its network to supply to additional consumers. In some other cases, however, the other Licensee may be in a position to augment its nearby network and provide last-mile connectivity to such area in a more advantageous manner. Thus, the Commission is of the view that whether or not TPC-D will be permitted to lay its network to cater to specific areas and/or consumers will depend on the adequacy of its existing network in the vicinity and also upon the*

*economics of such extension or augmentation. However, both Licensees are obligated to supply on request to all consumers within their area of supply regardless of the manner or method of supply which may be agreed or decided upon. Needless to say, the above directions are also applicable to RInfra-D in terms of the ATE Judgment.*

...

*61. ...It also has to be ensured that the extension or augmentation undertaken by either Licensee is in the best interest of consumers. 'Reliability' as defined in the SoP Regulations provides an index related to consumer interruptions and their period and frequency. However, the Commission is of the view that, in the context of the ATE Judgment and the circumstances of Mumbai, the term 'reliability' has to be understood more broadly to mean the adequacy of a network and infrastructure to feed existing and new consumers. As far as consumer supply interruptions are concerned, most areas in Mumbai have a relatively reliable distribution network. However, the system needs continuous augmentation and improvement to match growing demand. Thus, the adequacy of existing networks in specific locations or areas is an important consideration in determining the Rollout Plan, its modalities and the methodology for dealing with consumer demand. Parameters such as loading of network, ageing of network, obsolescence of technology, etc. determine the adequacy of the network. The Commission is of the view that such adequacy needs to be assessed for deciding augmentation or addition to the network for the purpose of supplying electricity at the least cost to consumers.*

...

*62. ...The Commission is of the view that, therefore, the term 'Rollout Plan' has now also to be understood in a wider sense to encompass the nature of the response required to such applications for supply in different scenarios mentioned above, which may or may not involve laying or augmentation of network by one or the other Licensee or consideration of an extensive, area-wise physical master plan except perhaps in respect of the BEST area.*

...

*65. In order to further address and finalise the operational specifics of the matter, the Commission deems it appropriate to constitute a Committee which would make recommendations on the key aspects, as set out in broader sense in*

*Para 62 of this Order, which would be considered by the Commission thereafter while approving TPC-D's Rollout Plan." (emphasis added)*

Thus, this Committee was formed through the Commission's Notification dated December 3, 2015 to further address and finalise the operational specifics of the matter. This Committee comprises:

Sr. No.	Name	Status
1	Shri. Prafulla Varhade, Director (Electrical Engineering), MERC	Convener
2	Thane-Belapur Industries Association (Dr. Ashok Pendse )	Member (Consumer Representative)
3	Shri. Manohar Bagde, (Former Executive Director, Maharashtra State Electricity Distribution Co. Ltd.)	Member (Technical Consultant)
4	ABPS Infrastructure Advisory Pvt. Ltd. (Shri. Palaniappan Meyyappan, Director)	Member (Technical Consultant)

## 2 Term of Reference (ToR)

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The Terms of Reference (ToR) assigned to the Committee by the Commission in the Interim Order in Case No. 182 of 2014 are as under:

"67. The Committee shall provide recommendations on the following matters, in relation to TPC-D's Rollout Plan:

- The protocol and procedure in terms of which any migration of consumers shall take place in the scenarios set out at para. 53 above so that it is cost-effective, swift and consumer-centric;
- The institutional mechanism which may have to be put in place to operationalise the above in terms of deciding how consumer applications received or expected from time to time are dealt with;
- The practicable, operational criteria and methodology which may be used for assessing the adequacy of the network of one or the other Licensee in an area from whom a consumer may approach the either Licensee for supply, and the manner in which the most efficient and cost-effective option for providing it may be determined;
- Inputs on TPC-D's physical Rollout Plan for the common area of supply with BEST and its phasing, including the procedure to be followed for migration of consumers between the two Licensees, keeping in view USO requirements."

Further, in its Notification dated December 3, 2015, while making nominations to the Committee, the Commission has also stated that:

"2. The Committee shall make its recommendations to the Commission on the matters set out at para. 67 of the Interim Order within 90 days. While doing so, the Committee shall also be guided by the various considerations elaborated elsewhere in the Interim Order.

3. Representatives of the Distribution Licensees, viz. Brihanmumbai Electric Supply & Transport Undertaking, Maharashtra State Electricity Distribution Co. Ltd., Reliance Infrastructure Ltd. and Tata Power Co. Ltd., are associated with the Committee as

*Invitees. The Distribution Licensees shall provide timely inputs as may be required by the Committee."*

### **Committee's Analysis on the Terms of Reference**

The Committee's analysis of the Terms of Reference (TOR) assigned by the Commission is elaborated below:

**TOR (a):** *The protocol and procedure in terms of which any migration of consumers shall take place in the scenarios set out at para. 53 above so that it is cost-effective, swift and consumer-centric.*

The Committee has formulated operational specifics to encompass the nature of response required for supply in different scenarios set out in para 53 of the Interim Order.

1. As stated in the Interim Order, the Scenario 53(a) is related to an area being completely covered by the existing Distribution Licensee's distribution system. If the second distribution licensee has to provide supply, then it will use the wires of the existing Distribution Licensee. This is addressed by the Changeover Protocol formulated by the Commission in the Order in Case No. 50 of 2009, and hence, no modification is required to be addressed by this Committee.
2. In order to formulate such protocol and procedure for the remaining Scenarios, the Committee has analysed the substance of the Scenarios set out at para 53 (b) to 53 (d). In order to differentiate between the various Scenarios (a to d) in para 53, the Committee sought data from the Distribution Licensees to map the entire licence area (common to RInfra-D and TPC-D) under the following four (4) Scenarios (a to d) given in the Order:
  - a. Location, Municipal Ward or other area which is completely covered by one Licensee, but consumers within such area still wish to shift from their existing provider to the other Licensee;

- b. Location, Ward or other area which is completely covered by both Licensees, but consumers within such area wish to shift from their existing provider to the other Licensee;
- c. Locations, Wards or other areas where neither Licensee is presently supplying power through its wires;
- d. Locations, Wards or other areas where either or both Licensees are present, and where the projected growth could considerably increase the number of consumers wishing to avail supply from either Licensee.

In order to devise a protocol for migration of the consumer from the Wires of one Licensee to another and to map the licence area as stated above, the Committee has first addressed the meaning of the terms 'Completely Covered', 'Present', and 'New Consumers' in the overlapping licence area between RInfra-D and TPC-D.

The Committee has also formulated different illustrations by envisaging situations that can arise and the classification of such situations, in order to minimise the ambiguity.

**TOR (b):** *The institutional mechanism which may have to be put in place to operationalise the above in terms of deciding how consumer applications received or expected from time to time are dealt with*

The Committee has discussed the need for a separate institutional mechanism to operationalize the proposed protocol, type of institution, staffing requirements, nature of role assigned, etc.

**TOR (c):** *The practicable, operational criteria and methodology which may be used for assessing the adequacy of the network of one or the other Licensee in an area from whom a consumer may approach the either Licensee for supply, and the manner in which the most efficient and cost-effective option for providing it may be determined*

The Committee has to suggest practicable operational criteria and methodology for assessing the adequacy of the distribution system of the Licensees. For devising

suitable operational criteria, the Committee has to understand the existing practices adopted by the Distribution Licensee for planning of the distribution system and consideration of various factors such as adequacy, reliability, and economic viability of setting up network along with consumers demand to be catered, etc. The Committee has also deliberated whether in cases where the distribution system of both the Licensees is found to be adequate, the assessment is to be made on cost of laying new distribution system or augmentation of the existing one or any other factor to be considered.

**TOR (d):** *Inputs on TPC-D's physical Rollout Plan for the common area of supply with BEST and its phasing, including the procedure to be followed for migration of consumers between the two Licensees, keeping in view USO requirements*

The new licence issued to TPC-D overlaps with the area of supply of BEST. However, in the overlapping licence area between BEST and TPC-D, the situation is different to that prevailing in the overlapping licence area between BEST and TPC-D, as TPC-D cannot use BEST's wires to supply to consumers in this area of supply, unless BEST offers its distribution system to TPC-D under some bilateral commercial arrangement. Hence, network duplication in this overlapping area is inevitable, and the development of distribution system by TPC-D in this area has to be viewed differently. Further, BEST's appeal against the Commission's Order in Case No. 90 of 2014 granting the Distribution Licence to TPC-D, is pending before the Hon'ble APTEL in Appeal No. 243 of 2014. One of the reasons for objecting to the grant of Distribution Licence to TPC-D by BEST is space constraint in its licence area. The Commission may consider the Judgment as and when given by the Hon'ble APTEL, in order to address the issue of TPC-D's physical Rollout Plan for the common area of supply with BEST.

### 3 Proceedings of the Committee

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For undertaking the task assigned to the Committee, the meetings of the Committee were held on the following dates.

- 1) Meetings of the Committee on December 18, 2015, January 21, 2016, January 22, 2016, February 18, 2016, March 15, 2016, March 16, 2016, and March 28, 2016.
- 2) One to one Meetings with each Distribution Licensee on December 18, 2015, January 21, 2016 and January 22, 2016.

It may be noted that all Members of the Committee were present during all the Meetings. The copies of the Minutes of Meetings of the Committee and Meetings with the Distribution Licensees are given at **Annexure 10.2 to 10.9** to this Report.

Further, during the proceedings, the Committee asked the Distribution Licensees to submit their suggestions on the Terms of Reference (TOR) given to the Committee and other related issues. The Distribution Licensees have submitted their suggestions, which have been duly considered by the Committee while finalising this Report.

Further, as per the timelines stipulated in the Interim Order, the Committee had to submit the Report within 90 days of the Notification, i.e., on or before 2 March, 2016. However, the Committee, vide letter dated 1 March, 2016 sought two weeks extension from the Commission for submission of the Report, on account of pendency of the additional submissions by the Distribution Licensees, as committed in their earlier submissions made before the Committee. The Committee reckoned that it would not be prudent to proceed further without considering the additional submissions of the Distribution Licensees. The Committee is of the view that it has given a reasonable time and opportunity to all the Distribution Licensees to make their submissions before the Committee. Further, vide letter dated 16 March, 2016, the Committee sought further two weeks extension from the Commission for

submission of the Report, as the issues related to the Network Rollout Plan in the licence area of TPC-D overlapping with BEST had to be deliberated further. After taking into account all submissions made by the Distribution Licensees, the Committee is pleased to submit its Report to the Commission.

The Committee is thankful to the representatives of the Distribution Licensees, viz., BEST, MSEDCL, RInfra-D, and TPC-D for the active co-operation extended during the interactions with them.

## 4 Key Issues

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### 4.1 Meaning of 'completely covered' by any/both Distribution Licensees

#### 4.1.1 MERC Order

The Committee observed that the Interim Order does not clearly state the meaning of the term "completely covered" by any/both Distribution Licensees. However, from para 54 and 55 of the Interim Order, it can be inferred that 'completely covered' means presence of the distribution system of the Licensee up to the consumer end, i.e., last mile connectivity.

#### 4.1.2 TPC-D's submission

TPC submitted that as per its interpretation, the term 'completely covered' means presence of the distribution system of the Licensee up to "Distribution Main" as defined in the Electricity Act, 2003 (hereinafter referred as "EA 2003" or "the Act"). Section 2(18) of the Act defines Distribution Main as under:

*"(18) "distributing main" means the portion of any main with which a service line is, or is intended to be, immediately connected;"*

#### 4.1.3 RInfra-D's submission

RInfra-D submitted that it has filed an appeal before the Hon'ble APTEL against the Interim Order dated November 9, 2015 in Case No. 182 of 2014 on the issue of "completely covered". Further, RInfra-D clarified that its submissions to the Committee were without prejudice to the Appeal No. 201 of 2014 and 296 of 2015 filed before the Hon'ble APTEL.

RInfra-D submitted that as per its interpretation, the term 'completely covered' means distribution system existing up to the Point of Supply as defined in the MERC (Electricity Supply Code and Other Conditions of Supply) Regulations, 2005.

#### 4.1.4 Committee's Recommendations

The Committee is of the view that the essence of the Judgment given by the Hon'ble APTEL in Appeal No. 246 of 2012, is that network duplication should be limited to areas where duplication will help in improving the reliability of the distribution system and in case of new consumers. For all other areas/situations, the existing distribution system should be utilised for giving supply to the consumers under the Changeover Protocol, irrespective of whether such existing distribution system has been set up by RInfra-D or TPC-D.

The Committee notes that Section 2(19) of the Act defines the distribution system as:

*"(19) "distribution system" means the system of wires and associated facilities between the delivery points on the transmission lines or the generating station connection and the point of connection to the installation of the consumers;"*

Further, the Act defines the Distributing main and service line as under:

*"(18) "distributing main" means the portion of any main with which a service line is, or is intended to be, immediately connected;*

... ..

*(61) "service-line" means any electric supply-line through which electricity is, or is intended to be, supplied -*

*(a) to a single consumer either from a distributing main or immediately from the Distribution Licensee's premises; or*

*(b) from a distributing main to a group of consumers on the same premises or on contiguous premises supplied from the same point of the distributing main;"*

The Commission, in para 54 related to para 53(a), and para 55 related to para 53(b) of the Interim Order in Case No. 182 of 2014, has ruled that under these Scenarios, no further distribution system would be required to be set up, and the existing

distribution system should be utilised. The 'distribution system' includes the wires up to the point of connection of the consumer, i.e., including the service connection.

In view of the above, the Committee is unable to accept TPC-D's contention that the term 'completely covered' should be understood by excluding the service connection, and only the presence of LT or HT distribution mains should be considered for assessing whether the Distribution Licensee completely covers the area/location/Ward, as such an interpretation would result in unnecessary duplication of the distribution system for extending supply to existing consumers, who are already connected to either distribution system through service connections.

Para 60 of the Hon'ble APTEL's Judgment states

*"Where Tata Power has already laid down its network and some consumers have switched over from RInfra to Tata Power, these consumers can remain with Tata Power. However, they can choose to switch over to RInfra in future on RInfra's existing network as per the switch over protocol to be decided by the State Commission"*

In other words, the Hon'ble APTEL has ruled that where TPC-D has already laid the distribution system and is already supplying to the consumer on its wires, such consumers may either remain with TPC-D or may switchover to RInfra-D, as both distribution systems exist up to the point of supply of the consumer. Hence, the Hon'ble APTEL has clearly ruled against duplication of the distribution system, except under specific circumstances. Permitting duplication of the distribution system, except under the specific circumstances permitted by the Hon'ble APTEL, would be in violation of the Hon'ble APTEL's Judgment in this regard.

**The Committee is hence, of the view that 'completely covered' by the Distribution Licensee means that the distribution system upto the 'point of supply' also exists, i.e., including the service connection.**

One issue to be considered is whether the Location/Municipal Ward or other area should be considered for assessing the categorisation under different scenarios described under para 53 of the Interim Order in Case No. 182 of 2014. Given that any solution should have minimum ambiguity in order to minimise subsequent issues and litigation, the Committee was initially inclined towards considering the 'Municipal Ward' as the area for assessment and categorisation under different scenarios. However, based on discussions with both TPC-D and RInfra-D, and the deliberations of the Committee, the Committee has concluded that it is not practical to do any such assessment for the entire Municipal Ward, for the following reasons:

- a) The distribution system has evolved over a period of time, and electrical network boundaries do not correspond to geographical area limits, such as Ward/Area
- b) The Municipal Ward is a very big area, as the entire Licence Area of RInfra-D overlapping with the Licence Area of TPC-D comprises 24 Municipal Wards, hence, most complete Wards may get categorised under Scenario 53(d), thereby, defeating the whole objective of minimising network duplication.
- c) The Distribution Licensees have expressed difficulty in mapping their existing distribution system for the Ward as a whole.
- d) Even the 'Clusters' identified by the Commission in its Order in Case No. 151 of 2011 were overlapping across 2-3 Wards in most cases.

Further, the Committee has also considered the option of 'Location' and 'Other Areas' mentioned in para 53 of the Interim Order in Case No. 182 of 2014. The Committee considered whether each 'Locality' may be identified and tagged, and whether the assessment of scenarios under para 53 could be done for each such 'locality'. While there are well known 'localities' that are used colloquially, viz., Linking Road, Pali Hill, Saki Naka, Powai, etc., the Committee is of the view that such 'locality' may be liable to interpretation by the Distribution Licensees, leading to ambiguity and subsequent complications in implementation, unless there is a clear-cut and unambiguous listing of 'Localities' available for the entire Licence area.

Options could be 'Localities' covered under each Police Station in the Licence Area, or Electoral Wards under Brihanmumbai Municipal Corporation (BMC) and Mira-Bhayandar Municipal Corporation (MBMC), etc. However, the Committee concluded that it would be difficult to map the entire area on such criteria, coupled with the difficulty of distribution system having evolved over a period of time, and electrical network boundaries not corresponding to geographical area limits, such as Ward/Area.

In view of the difficulty in above options, the Committee has decided that the **best method for assessing 'completely covered' would be to tag each existing consumer/premises based on the present distribution system to whom he is connected to, and the Distribution Licensee to whom such existing consumer is connected to would be categorised as 'completely covering' such licence area specific to that consumer.** The point of supply of the distribution licensee with the existing consumer or multiple consumers may be referred as connection point and such connection points can be easily identifiable for the Scenario under para 53(a). In cases where the existing consumer is connected to both Distribution Licensees, it would be considered as both Distribution Licensees 'completely covering' such licence area specific to that consumer, i.e., Scenario under para 53(b). This approach is also consistent with the categorisation envisaged by the Commission in its interim Order in Case No. 182 of 2014.

In view of the above discussion, and tagging of every individual consumer, it will be easier to assess whether either Licensee or both Licensees have 'completely covered' the licence area with respect to that consumer.

**4.2 Meaning of location/ward/area/locality where 'either or both licensees are present' and distinction between 'completely covered' and 'present' [reference para 53(d)]**

As stated in para 4.1 above, the Committee is of the view that 'completely covered' by the Distribution Licensee means that the distribution system up to the point of supply also exists, i.e., including the service connection.

Hence, **the Committee is of the view that if only distribution mains are present, and service connection is absent, then such area has to be classified as the Licensee being 'present' in the area/location/Ward, as categorised by the Commission under para 53(d) of the Interim Order in Case No. 182 of 2014.**

**4.3 Meaning of location/ward/area/locality where 'neither licensee is present' [reference para 53(c)]**

In the interim Order in Case No. 182 of 2014, the Commission has categorised locations, Wards or other areas where neither Licensee is presently supplying power through its wires, under Scenario 53(c). This Scenario relates to areas where neither RInfra-D nor TPC-D has its own distribution system for supplying electricity to consumers.

Thus, Scenario 53(c) covers areas where neither Licensee is even 'present', i.e., neither Licensee has even Distribution Mains. Based on discussions of the Committee with both TPC-D and RInfra-D, and the deliberations of the Committee, **the Committee is of the view that there are few clearly identifiable areas, such as salt pan area, certain pockets of Aarey, CRZ area, etc., where neither Distribution Licensee presently has a distribution system, because there is no existing consumer in these areas.** However, it is not possible for the Committee to identify every such area, though both Licensees, viz., RInfra-D and TPC-D, would be aware of such areas.

As regards Chene and Vesave area, the Committee observes that Chene and Vesave areas have been added as part of licence area for RInfra-D and TPC-D while granting the Licence to both Licensees.

MSEDCL submitted that at present it has 502 consumers in Chene village. MSEDCL added that its existing network of 220/100/22 kV is sufficient to cater to the load growth in the next five years (approximately 1 MVA) in Chene village.

Further, MSEDCL has submitted that at present, there is no infrastructure of MSEDCL in Vesave village, and consumers in Vesave village are supplied by RInfra-D.

The Committee is of the view that **as RInfra-D has the distribution network in Vesave village, the same shall be classified under Scenario 53(a), i.e., completely covered by RInfra-D.** Though technically, the Chene area in MBMC area could be categorised under Scenario 53(c), as neither RInfra-D nor TPC-D have their own distribution wires in this area, it would not be appropriate to do so, in view of the overarching philosophy of minimising network duplication as laid down by the Hon'ble APTEL in its Judgment in Appeal No. 246 of 2012. It may be noted that MSEDCL has the requisite distribution system in Chene area, and has also conveyed its willingness to provide its distribution system to either of RInfra-D or TPC-D under the changeover mechanism, on payment of due wheeling losses, wheeling charges, cross-subsidy surcharge, and other compensatory charges as approved by the Commission. Hence, **the Committee is of the view that the Chene area should be categorised under Scenario 53(a), i.e., 'completely covered' by MSEDCL, and no network duplication by RInfra-D and TPC-D should be allowed in this area.**