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MAHARASHTRA ELECTRICITY REGULATORY COMMISSION (APPROVAL OF CAPITAL INVESTMENT SCHEMES) REGULATIONS, 2022

STATEMENT OF REASONS

Dated: 12 July, 2022

Introduction

The Commission issued the "Guidelines for In-Principle Clearance of Proposed Investment Schemes" (hereinafter referred as "Capex Guidelines") on 9th February, 2005 with an objective to stipulate a framework for carrying out the prudence check of the capital investment schemes proposed by the Regulated Power Entities and assess the impact of these schemes on tariffs of these entities. As per the Capex Guidelines, the Regulated Power Entities are required to obtain ex-ante in-principle approval of the Commission for Capital Investment Schemes exceeding Rs.10 Crore. Also, as per SLDC Budget Order and subsequent applicable MYT Regulations, SLDC is required to obtain ex-ante in-principle approval of the Commission for Capital Investment Schemes exceeding Rs.1 Crore.

The Commission notified the first amendment to the Capex Guidelines on 18th February, 2008 stipulating that Generating Companies planning to submit Capital Investment Schemes for establishment of new generating stations shall be excluded from these Guidelines.

The Power Sector is very dynamic in nature and there have been significant changes in the business environment of power sector utilities since the notification of the Capex Guidelines in 2005, as partially amended in year 2008. Other factors such as technology upgradation, commercial upliftment, increased level of power consumption, need for investments, introduction of competition in distribution through parallel licensees, efficient utilization of resources, increasing number of private players in the Generation, Transmission and Distribution Businesses, etc., has led to transformation in the scenario under which Capital Investment Schemes are undertaken by the entities over the years. The Commission has been facing increasing issues in restraining over-capitalisation of assets, i.e., prevention of execution of inefficient and poorly planned Capital Investment Schemes or unnecessary Schemes and felt that there is room for improvement in the framework of prudence check of proposed Capital Investment Schemes of Utilities.

Owing to the above factors, the Commission felt that there is a need to regularize and streamline the filing and approval process of Capital Investment Schemes in line with the developments witnessed by the sector in the past sixteen years and based on the learnings at

the time of scrutiny of these Capital Investment Schemes and based on the approach adopted in various MYT/MTR Orders. The Commission has tried to ensure that an objective approach gets adopted to the extent possible at both stages of approval of Capital Investment Schemes, i.e., at in-principle approval stage as well as at the time of approval of completed cost.

The Commission hence formulated the Draft Maharashtra Electricity Regulatory Commission (Approval of Capital Investment Schemes) Regulations, 2022 (hereinafter referred as "Draft Regulations, 2022"). While formulating the Draft Regulations, 2022, the Commission has been guided by the analysis of Capital Investment Schemes submitted by the Regulated Power Entities and approved by the Commission over the past few years. The Commission also considered the existing Guidelines and relevant Regulations, recent MYT/MTR Orders, and the Hon'ble APTEL Judgments passed from time to time with regard to Capital Investment Schemes. While framing the Draft Regulations, 2022, the Commission also considered the inter-State comparison of existing Capex Investment Approval Regulations/Guidelines or MYT Regulations for approval of capex prevalent in other States.

The Commission proposed the Draft Regulations, 2022 based on its experience in implementing the MERC Capex Guidelines for in-principle approval of Capital Investment Schemes and final approval of such schemes as per MERC (Multi-Year Tariff) Regulations, 2019 as amended from time to time [hereinafter referred as "MERC MYT Regulations, 2019"]. The rationale for the various provisions proposed in the Draft Regulations, 2022 were elaborated in the Explanatory Memorandum (EM) published along with the Draft Regulations, 2022.

Accordingly, the Draft Regulations, 2022 and the associated Explanatory Memorandum were published on the Commission's website *www.merc.gov.in* in downloadable format on 14 March, 2022. A Public Notice was also published in daily newspapers Marathi (Maharashtra Times and Lokmat) and English (Economic Times and Times of India), inviting comments, objections and suggestions from all stakeholders to be submitted to the office of Commission on or before 4 April, 2022, which was subsequently extended till 18 April, 2022. A total of 14 stakeholders submitted their comments/suggestions on the Draft Regulations, 2022. The list of stakeholders who offered their comments/suggestions on the draft Regulations and Explanatory Memorandum, which have been considered by the Commission while finalising the Regulations, is placed at **Annexure-I**.

The main comments and views expressed by the stakeholders through their written submissions and the Commission's views thereon have been summarized in the following paragraphs. It may be noted that all the suggestions given by the stakeholders have been considered, and the Commission has attempted to elaborate all the suggestions as well as the Commission's decisions on each suggestion in the Statement of Reasons, however, in case any suggestion is not specifically elaborated, it does not mean that the same has not been considered. Further, some stakeholders have suggested changes on Syntax/phrase/addition of word(s)/rewording related changes, cross-references, etc., which have been suitably incorporated, wherever necessary.

Wherever possible, the comments and suggestions have been summarised clause-wise, along with the Commission's analysis and ruling on the same. However, in some cases, due to overlapping of the issues/comments, the clauses have been combined in order to minimise repetition.

Some comments and suggestions were not directly related to the Draft Regulations, 2022, on which inputs were invited. While the Commission has summarised such comments and suggestions briefly in this Statement of Reasons (SOR), specific rulings on the same have not been provided, as the same are outside the scope of these Regulations. The Commission has also made certain suo-motu consequential changes in order to ensure consistency across clauses. Also, it may be noted that the Regulation numbers given in this Statement of Reasons are those mentioned in the Draft Regulations, 2022.

The SOR is organised in the following Chapters, along the same lines as the MERC (Approval of Capital Investment Schemes) Regulations, 2022, summarising the main issues raised during the public consultation process, and the Commission's analysis and decisions on them which underlie the Regulations as finally notified:

Chapter 1: Short Title and Definitions

Chapter 2: Categorization of Capital Investment Schemes

Chapter 3: Application and Scrutiny for In-Principle Approval and Completed Cost approval of Capital Investment Schemes

Chapter 4: Treatment of Time and Cost Overrun of Capital Investment Scheme

Chapter 5: Necessary Conditions for Capital Investment Schemes

Chapter 6: Additional Points

1 Short Title and Definitions

1.1 Regulation 1.1: Title of Regulations

1.1.1 Proposed in Draft Regulations, 2022

"1.1 These Regulations may be called the Maharashtra Electricity Regulatory Commission (Approval of Capital Investment Schemes) Regulations, 2022."

1.1.2 Comments Received

The Maharashtra State Electricity Distribution Company Limited (**MSEDCL**) submitted that as per the EM and Draft Regulations, 2022, there is difference between Opex schemes and Capital Investment Schemes. If the Commission intends to bring the Opex schemes also under the scope of Capital Investment Approval Regulations, 2022 under optional mode, then the name of the Regulations may be amended accordingly.

1.1.3 Analysis and Commission's Decision

The Commission clarifies that these Regulations are primarily Capital Investment Approval Regulations, with very small scope for Opex Schemes, to address the issue of overlap between Capex and Opex. Hence, there is no need to amend the name of the Capital Investment Approval Regulations, 2022. The Commission has therefore, not made any modifications in the Draft Regulations, 2022 in this regard.

1.2 Regulation 2.1(1): Definition of 'Act'

1.2.1 Proposed in Draft Regulations, 2022

"'Act' means the Electricity Act, 2003 (36 of 2003)".

1.2.2 Comments Received

MSEDCL submitted that the definition of the 'Act' may be updated in line with the MERC MYT Regulations, 2019, as shown below:

"'Act' means the Electricity Act, 2003 (36 of 2003), as amended from time to time."

1.2.3 Analysis and Commission's Decision

The Commission finds the suggestion of the stakeholder appropriate. Hence, **the Commission has modified the definition of 'Act' in the Regulations, as under**:

"'Act' means the Electricity Act, 2003 (36 of 2003), as amended from time to time."

1.3 Regulation 2.1(3): Definition of 'Bulk Power Transmission Agreement

1.3.1 Proposed in Draft Regulations, 2022

"'Bulk Power Transmission Agreement' means an executed Agreement that contains the terms and conditions under which a Transmission System User is entitled to access to an intra-State transmission system of a Transmission Business/Licensee".

1.3.2 Comments Received

No comments have been received on this definition.

1.3.3 Analysis and Commission's Decision

The Commission has deleted this definition from the Final Regulations, as this term has not been used in the Regulations.

1.4 Regulation 2.1(4): Definition of 'Capital Investment'

1.4.1 Proposed in Draft Regulations, 2022

"'Capital Investment' or 'Capex' means investment proposed by the Applicant against Schemes to meet the objectives specified in Regulation 3 of these Regulations".

1.4.2 Comments Received

MSEDCL submitted that the Capital Investment Scheme as per existing 'Guidelines for In-Principle Clearance of Proposed Investment Schemes' includes the term 'acquisition. There may be instances of the acquisition/takeover of assets created under Dedicated Distribution Facility (**DDF**). Therefore, the term 'acquisition' should be incorporated in the draft Regulations.

1.4.3 Analysis and Commission's Decision

The Commission finds the suggestion of the stakeholder appropriate, as there could be instances of acquisition of assets created under DDF. Hence, **the Commission has modified the definition of 'Capital Investment' in the Regulations, as under**:

*"**'Capital Investment' or 'Capex'** means investment or acquisition proposed by the Applicant against Schemes to meet the objectives specified in Regulation 3 of these Regulations."*

1.5 Regulation 2.1(6): Definition of 'Change in Law'

1.5.1 Proposed in Draft Regulations, 2022

"'Change in Law' means occurrence of any of the following events:

(i) enactment, bringing into effect or promulgation of any new Indian law; or

(ii) adoption, amendment, modification, repeal, or re-enactment of any existing Indian law; or

(iii) change in interpretation or application of any Indian law by a competent court, Tribunal, or Indian Governmental Instrumentality, which is the final authority under law for such interpretation or application; or

(iv) change of any condition or covenant by any competent statutory authority in relation to any consent or clearances or approval or Licence available or obtained for the Project; or

(v) any change in taxes or duties, or introduction of any taxes or duties levied by the Central or any State Government;"

1.5.2 Comments Received

The Tata Power Company Ltd. - Transmission Business (**TPC-T**) submitted that since Municipal Corporations (e.g., Municipal Corporation of Greater Mumbai (**MCGM**)) also enforce certain statutory payments like Reinstatement Charges, any change in taxes / statutory charges levied by Local Bodies/Municipal Corporations should also be covered under Change in Law.

1.5.3 Analysis and Commission's Decision

The Commission has proposed to partly recover Road Reinstatement Charges imposed by Local Bodies from the local population. Hence, charges levied by the Local Bodies/Municipal Corporations including any change cannot be covered under Change in Law.

Hence, the definition proposed in the Draft Regulations, 2022 has been retained.

1.6 Regulation 2.1(8): Definition of 'Competitive Bidding'

1.6.1 Proposed in Draft Regulations, 2022

"'Competitive Bidding' means a transparent process for procurement of equipment, services and works in which bids are invited by the procurer by open advertisement covering the scope and specifications of the equipment, services and works required, and the terms and conditions of the proposed contract as well as the criteria by which bids shall be evaluated, and shall include domestic competitive bidding and international competitive bidding;"

1.6.2 Comments Received

MSEDCL submitted that the Draft Regulations, 2022 has specified the definition of Competitive Bidding as per the MYT Regulations; however, the term 'power' has been omitted from the definition. As per the definition, the proposed Regulations are not applicable to capital investment undertaken in Projects set up through Competitive Bidding. The same should be clarified.

KRC DISCOMs, i.e., Mindspace Business Parks Private Limited (MBPPL), Gigaplex Estate Private Limited (GEPL) and KRC Infrastructure and Projects Private Limited (KRCIPPL) submitted that the publication of advertisement for marginal value items is not economically viable for small Distribution Licensees. Therefore, there should be a defined limit in terms of order value above which advertisement may be made compulsory.

1.6.3 Analysis and Commission's Decision

The Commission is of the view that no modification is required in the definition by including 'power', as the definition is proposed as intended for the Capital Investment Approval Regulations, and the instance of Capital Investment in specific cases in Projects set up through competitive bidding has been separately addressed as Section 63 project.

As regards suggestion on specifying a defined limit in terms of order value above which advertisement may be made compulsory, the Commission has modified Appendix II [Guidelines for Procurement of material through Competitive Bidding Limit], which is re-numbered as Appendix 3 in the Capital Investment Approval Regulations, 2022. Further, for ensuring consistency, the term 'by open advertisement' has been deleted from the definition of 'Competitive Bidding'.

Hence, **the Commission has modified the definition of 'Competitive Bidding' in the Regulations, as under**:

*"**'Competitive Bidding'** means a transparent process for procurement of equipment, services and works in which bids are invited by the procurer covering the scope and specifications of the equipment, services and works required, and the terms and conditions of the proposed contract as well as the criteria by which bids shall be evaluated, and shall include domestic competitive bidding and international competitive bidding."*

1.7 Regulation 2.1(14): Definition of 'Emergency Works'

1.7.1 Proposed in Draft Regulations, 2022

No definition was proposed in the Draft Regulations, 2022 for 'Emergency Works'.

1.7.2 Comments Received

Prayas submitted that it is not clear what qualifies as an 'emergency'. The Regulations should specify certain parameters on the basis of which the scope of work can be defined as 'emergency' or not.

1.7.3 Analysis and Commission's Decision

The Commission concurs with the view that the term 'Emergency Works' should be clearly defined, so as to avoid ambiguity of interpretation.

Hence, **the Commission has defined 'Emergency Works' in the Capital Investment Approval Regulations, 2022, as under**:

"'2.14 Emergency Works' *means and include all such works necessary to be undertaken immediately to prevent the occurrence/happening/further deterioration/ damage/ disaster/ accident/ incident or restore the system after any of the above events, and cannot wait for prior in-principle approval;"*

1.8 Regulation 2.1(15): Definition of 'Existing Asset'

1.8.1 Proposed in Draft Regulations, 2022

"'Existing Asset' means a Generating Unit/Station or assets of Transmission Business/Licensee or Distribution Business/Licensee or MSLDC declared as under commercial operation prior to notification of these Regulations;"

1.8.2 Comments Received

MSEDCL submitted that the existing asset as per the Draft Regulations, 2022 means assets declared under commercial operation prior to notification of Draft Regulations, 2022, whereas existing asset as per the MERC MYT Regulations, 2019 implies assets declared under commercial operation prior to April 1, 2020. The ambiguity needs to be removed by making Draft Regulations, 2022 co-terminus with the Control Period of MERC MYT Regulations, 2019.

1.8.3 Analysis and Commission's Decision

The purpose of the Capital Investment Approval Regulations and the MERC MYT Regulations, 2019 are different and there is no requirement for any Control Period for the Capital Investment Approval Regulations, unlike MERC MYT Regulations, 2019. The 'Existing Asset' has been defined as proposed only for defining the applicability of the new Capital Investment Approval Regulations, and there is no ambiguity vis-à-vis treatment of existing assets as per MERC MYT Regulations, 2019.

Hence, the definition of 'Existing Asset' proposed in the Draft Regulations, 2022 has been retained.

1.9 Regulation 2.1(16): Definition of 'Force Majeure Event'

1.9.1 Proposed in Draft Regulations, 2022

"'Force Majeure Event' means, with respect to any party, any event or circumstance, or combination of events or circumstances, which is not within the reasonable control of, and is not due to an act of omission or commission of that party and which, by the exercise of reasonable care and diligence, could not have been prevented; and, without limiting the generality of the foregoing, shall include the following events or circumstances:

(i) acts of God, including but not limited to lightning, storm, action of the elements, earthquakes, flood, torrential rains, drought, and natural disaster;

…"

1.9.2 Comments Received

TPC-T submitted that Pandemic declared by Central/State Government should be considered as 'Force Majeure Event'.

1.9.3 Analysis and Commission's Decision

The Commission concurs with the view that Pandemic should be considered as a Force Majeure event, as laid down by the Central/State Government. Hence, **the Commission has modified the definition of 'Force Majeure Event' in the Regulations, as under**:

"'Force Majeure Event' means, with respect to any party, any event or circumstance, or combination of events or circumstances, which is not within the reasonable control of, and is not due to an act of omission or commission of that party and which, by the exercise of reasonable care and diligence, could not have been prevented; and, without limiting the generality of the foregoing, shall include the following events or circumstances:

(i) acts of God, including but not limited to lightning, storm, action of the elements, earthquakes, flood, torrential rains, drought, pandemic, and natural disaster;

…"

1.10 Regulation 2.1(21) and 2.1(23): Definition of 'High Tension and Low Tension'

1.10.1 Proposed in Draft Regulations, 2022

"'High Tension' (or 'HT') means all voltages above and including 650 Volt and up to and including 33 kilo Volt;"

"'Low Tension' (or 'LT') means all voltages below 650 Volt;"

1.10.2 Comments Received

MSEDCL submitted that the term "High Voltage (HV) or" and "Low Voltage (LV) or" may be added in the definitions of High Tension and Low Tension, respectively, in line with the MERC (Electricity Supply Code and Standards of Performance of Distribution Licensees including Power Quality) Regulations, 2021 [**MERC Supply Code Regulations, 2021**].

The Tata Power Company – Distribution Business (TPC-D) submitted that 'EHV' should be defined in line with the MERC Supply Code Regulations, 2021.

1.10.3 Analysis and Commission's Decision

The Commission finds the suggestion of the stakeholders appropriate for ensuring consistency. Hence, **the Commission has modified the definition of 'High Tension' and 'Low Tension' and added the definition of 'Extra High Voltage' as defined in the MERC Supply Code Regulations, 2021, as under**:

*"**"Extra High Voltage (EHV)" or "Extra High Tension (EHT)"** means all voltages above 33,000 Volts"*

*"'**High Voltage (HV)' or 'High Tension (HT)'** means all voltages above and including 650 Volt and up to and including 33,000 Volts;"*

*"**'Low Voltage (LV)' or 'Low Tension (LT)'** means all voltages below 650 Volt".*

1.11 Regulation 2.1(22): Definition of 'Indian Governmental Instrumentality'

1.11.1 Proposed in Draft Regulations, 2022

"'Indian Governmental Instrumentality' means the Government of India, State Government and any Ministry or Department or Board or Agency controlled by Government of India or the Government of the State where the Project is located or regulatory or quasi-judicial authority constituted under the relevant statutes in India;"

1.11.2 Comments Received

TPC-T submitted that since Municipal Corporations (e.g. MCGM) also enforce certain statutory payments like Reinstatement Charges, Municipal Corporations should also be covered under 'Indian Governmental Instrumentality'.

1.11.3 Analysis and Commission's Decision

The Commission has proposed to partly recover Reinstatement Charges imposed by Local Bodies from the local population. Hence, Local Bodies/Municipal Corporations cannot be covered under 'Indian Governmental Instrumentality'.

Hence, the definition proposed in the Draft Regulations, 2022 has been retained.

1.12 Regulation 2.1(27): Definition of 'O&M Expenses'

1.12.1 Proposed in Draft Regulations, 2022

'Operation and Maintenance expenses' or 'O&M expenses' means the expenditure incurred on operation and maintenance of a project or part thereof to upkeep the project to operate at full capacity, and includes the expenditure on manpower, repairs, replacement of the parts of the assets, tools and tackle's, testing equipment, spares, consumables, insurance and overheads.

1.12.2 Comments Received

TPC-D requested to maintain the definition of Operation and Maintenance expenses in line with the MERC MYT Regulations, 2019.

1.12.3 Analysis and Commission's Decision

The Commission has accepted the suggestion and **modified the definition of 'O&M Expenses'** in line with the definition as per MERC MYT Regulations, 2022, as under:

""Operation and Maintenance expenses" (*or* ***"O&M expenses")*** *in respect of a Generating Company means the expenditure incurred on operation and maintenance of the Generating Station or Unit of a Generating Company, or part thereof, and includes the expenditure on manpower, repairs, spares, consumables, insurance and overheads, but excludes fuel expenses; and, in respect of a Licensee, means the expenditure incurred on operation and maintenance by a Transmission Licensee or Distribution Licensee, or part thereof, and includes the expenditure on manpower, repairs, spares, consumables, insurance and overheads;"*

1.13 Regulation 2.1(28): Definition of 'Opex Schemes'

1.13.1 Proposed in Draft Regulations, 2022

"'Opex Schemes' are Schemes proposed to be undertaken by the Generating Business/Company or Transmission Business/Licensee or Distribution Business/Licensee or MSLDC for Operation and Maintenance of the asset, wherein the payments will be linked to the performance and deliverables throughout the contract period, including but not limited to system automation, maintenance, new technology and IT implementation, etc., as specified in the MERC (Multi-Year Tariff) Regulations, 2019, as amended from time to time;"

1.13.2 Comments Received

TPC-T and TPC-D submitted that MERC MYT Regulations, 2019 specify Opex schemes for system automation, new technology and IT implementation, etc., and, such expenses may be allowed over and above normative O&M Expenses, subject to prudence check by the Commission. However, in the Draft Regulations, 2022, it is specified that in Opex Schemes the payments will be linked to the performance and deliverables throughout the contract period. The Commission should clarify the differences in the two definitions.

TPC-T and TPC-D also added that since, many activities, which were earlier approved by the Commission under Capital Investment are being shifted to Opex schemes in the Draft Regulations, 2022, the Commission should revise the normative O&M expenditure accordingly to accommodate the Opex schemes.

1.13.3 Analysis and Commission's Decision

The Commission clarifies that the definition of 'Opex Schemes' was modified in the Draft Regulations, 2022 with respect to the definition as per MERC MYT Regulations, 2019, considering the greater clarity at present regarding Opex Schemes, and there is no change in the intent of Opex Schemes in both the Regulations. Hence, the definition of 'Opex Schemes' proposed in the Draft Regulations, 2022 has been retained.

The issue of additional O&M cost due to shifting of some Schemes from Capital Investment Schemes to O&M has been addressed separately in the proviso to Regulation 3.19 of the final Capital Investment Approval Regulations, 2022.

1.14 Regulation 2.1(30): Definition of 'Project'

1.14.1 Proposed in Draft Regulations, 2022

"'Project' means a Generating Station and the evacuation system up to the Inter-connection Point, or a Transmission Project as the case may be; and excluding Small Hydro Power Generating Station;"

1.14.2 Comments Received

Prayas (Energy Group) submitted that from the definition of 'Project', Small Hydro power generating stations have been excluded, but the rationale for the same is not clear and is also missing from the EM.

1.14.3 Analysis and Commission's Decision

The intention of the exclusion was to exclude Small Hydro Projects governed by the applicable MERC (Terms and Conditions for Determination of Renewable Energy Tariff) Regulations. Hence, for ample clarity, **the Commission has defined 'Project' in the Capital Investment Approval Regulations, 2022 as under**:

"'Project' means a Generating Station and the evacuation system up to the Inter-connection Point, or a Transmission Project as the case may be; and excluding Small Hydro Power Generating Station governed under applicable Maharashtra Electricity Regulatory Commission (Terms and Conditions for Determination of Renewable Energy Tariff) Regulations, as amended from time to time;"

1.15 Regulation 2.1(37): Definition of 'Useful Life'

1.15.1 Proposed in Draft Regulations, 2022

"'Useful Life' shall have the same meaning as defined in the MERC (Multi-Year Tariff) Regulations, 2019, as amended from time to time;"

1.15.2 Comments Received

No comments have been received on the definition of Useful Life.

1.15.3 Analysis and Commission's Decision

Though no comments have been received on the definition of 'Useful Life', some comments have been received on the need to specify Useful Life for more equipment, and the Commission has specified the Useful Life for more equipment in the Final Regulations, as discussed subsequently. Hence, **the Commission has defined 'Useful Life' in the Capital Investment Approval Regulations, 2022 as under:**

*"**'Useful Life'** shall have the same meaning as defined in the MERC (Multi-Year Tariff) Regulations, 2019, as amended from time to time and as specified in these Regulations"*

2 Categorisation of Capital Investment Schemes

2.1 Objectives for Capex

2.1.1 Proposed in Draft Regulations, 2022

"3.1 Any one or a combination of the following objectives needs to be fulfilled by the proposed Capital Investment Schemes for being considered for approval in accordance with these Regulations:

(a) New Infrastructure to meet upcoming load;

(b) Augmentation of capacity of the existing project/system;

(c) Increase in transformation capacity;

(d) Increase in revenue from the assets;

(e) Increase in operational efficiency of existing system;

(f) Increase in the Useful Life of the entire project/scheme/assets;

(g) Replacement of the entire asset after completion of Useful Life and which has gone beyond repair;

(h) Improvement in power quality and reliability

(i) Reduction in maintenance requirements;

(j) Renovation and Modernisation for life extension of entire project;

(k) Improvement in system parameters:

Provided that Renovation and Modernisation Schemes for Generation Business and Transmission Business shall be in accordance with relevant Guidelines notified by the Central Electricity Authority (CEA).

2.1.2 Comments Received

TPC-T and TPC-G submitted that the provision should be included to incur expenses towards fulfilment of any Statutory / Environmental compliance as the case may be.

MSEDCL submitted that the list of the objectives needs to be expanded at least in line with the other Regulations. The wording 'Meeting the requirement of load growth, Reduction in distribution losses, Reduction in congestion' as per MERC MYT Regulations, 2019 should be added. Also, the wording 'creation of back up facility, correlation with previous schemes' as per '**Appendix 1'** may be suitably incorporated in the main Regulations so that there is uniformity. Further, Regulation 3.1 does not envisage asset replacement as envisaged under Regulation 3.22(b); hence, the provision as per Regulation 3.22(b) may be included under Regulation 3.1 (g) for consistency.

The Maharashtra State Power Generation Company Limited (MSPGCL) submitted that the following provisions should be added to the objectives:

(i) New technology introduced with discontinuation / obsolescence of existing technology by manufacturer industry;
(ii) Security / Statutory requirements;
(iii) Breakdown/ fire / damage beyond repair.

The Adani Electricity Mumbai Limited - Distribution Business (AEML-D) submitted that the Draft Regulations 3.5, 3.8 and 3.11 further list out the various types of schemes that the Generating Company, Transmission Licensee and Distribution Licensee may submit under capital expenditure. Various types of schemes mentioned in these Regulations should relate to one or more objectives mentioned in draft Regulation 3.1. If a scheme type does not match with a listed objective, there is a chance that the scheme itself may get rejected at the stage of in-principle approval. In the Draft Regulations, 2022, there are some types of schemes which do not find an associated objective as per draft Regulation 3.1. While the types of schemes mentioned in Regulations 3.5, 3.8 and 3.11 are indicative and not exhaustive, the objectives listed out in Regulation 3.1 appear exhaustive as the word "indicative" has not been used in Regulation 3.1. Also, later in the draft Regulations, it is specified that the scheme presented for in-principle approval must demonstrate meeting any one or more of the given objectives. This makes it all the more important that the list of objectives be broadened to include all types of capex schemes that the Generating Companies, Transmission Licensees and Distribution Licensees can present.

AEML-D further suggested following inclusions in draft Regulation 3.1:

(i) New infrastructure required to comply with environmental or safety norms or for compliance to statutory directions, or due to change in law requirements;

(ii) Construction of new Civil infrastructure (such as administrative buildings, offices, etc.);

(iii) IT, System Automation or New Technology interventions, not being under Opex Schemes;

(iv) Asset replacement before completion of Useful Life, based on repairability and repair vs. replacement cost-benefit;

(v) Replacement of component of an asset of a value equal to or more than 25% of the cost of original asset, before or after completion of Useful Life, based on repairability and repair vs. replacement cost-benefit.

Prayas submitted that Regulation 3.1 specifies objectives that need to be fulfilled by schemes in order to be considered for approval. The objectives focus on efficiency, supply quality improvement and techno-economic considerations given growing demand. However, it makes no space for investments needed in order to comply with statutory requirements and obligations. Installation of pollution control equipment may be needed to meet revised emission norms under the Environment (Protection) Amendment Rules, 2015 but may not improve efficiency, supply quality, etc. Therefore, 'Compliance with statutory requirements, obligations and norms in a timely, cost-effective manner; should be added in the objectives.

TPC-G submitted that more clarity is required on interpretation of Regulation 3.1(g). At the time of capitalization and more specifically in older Units such as Unit-5 and Unit-7, many assets are capitalized together as a system. So, if one part needs replacement due to the conditions stipulated in the Regulation such as "completion of Useful Life and in beyond repairable condition", the treatment needs to be clarified. There may be a case that it is not appearing as one complete asset and may be part of an asset as per Asset Register or there may be a case that in another Unit / location same sub-system is appearing as one asset.

As regards Regulation 3.1(h), TPC-G submitted that direct corelation may not be available in relation to improvement in power quality and reliability, hence, specific criteria should be defined.

KRC DISCOMs submitted that considering the development in IT related Infrastructure for Distribution Licensees, the Commission should create a separate categorization for IT Infrastructure Projects/Schemes for future IT related Infra in case of Distribution Licensees, which may also include cyber security majeures to be taken by Distribution Licensees.

2.1.3 Analysis and Commission's Decision

In order to clearly differentiate between capital expenditure and revenue expenditure, the Commission has defined all kinds of works/projects or schemes that shall be termed as Capital Investment Schemes in the Draft Regulations, 2022. The Commission has already covered following aspects in the Draft Regulations, 2022:

- Load growth requirement is covered under Regulation 3.1(a);
- Reduction in distribution losses and Reduction in congestion are covered under Regulation 3.1(e);
- Loss reduction is covered under Regulation 3.1(e);
- Creation of back up facility is covered under Regulation 3.1(h);
- Correlation with previous schemes is covered under Regulation 3.1(e)
- beyond repair is already addressed under Regulation 3.1(g) in combination with after completion of useful life;
- Renovation & Modernisation is already covered under Regulation 3.1(j);
- IT, System Automation or New Technology interventions, not covered under Opex Schemes are covered under Regulation 3.1(e)

Based on the suggestions of the stakeholders to consider additional objectives for Capital Investment and for consistency, the Commission has added following objectives in Regulation 3.1:

- Fulfilment of any statutory compliance requirement;
- asset replacement as envisaged under Regulation 3.22, which also addresses the concern regarding part or complete asset replacement;
- new infrastructure for enhancement of security;

- Construction of new Civil infrastructure (such as administrative buildings, offices, etc.).

As regards other aspects, the Commission is of the view that there is no need to state "in a timely, cost-effective manner" as such conditions are elaborately specified elsewhere, and under Regulation 3.1, only the broad categories/nature of capex work is specified. In order to give some leeway for objectives not specifically covered in Regulation 3.1, the words 'shall invariably' have been added to the objectives to be fulfilled. Also, it is clarified that Regulations 3.5, 3.8, 3.11, and 3.14 (specific Business-wise Schemes) shall be in addition to objectives specified under Regulation 3.1 (overall Objectives). Further, specific treatment of obsolescence of equipment/technology is covered in detail and incorporating it under generic clause may lead to confusion; hence, it is not considered.

In view of the above, **the Commission has revised the Regulation 3.1 as under:**

"3.1 Any one or a combination of the following objectives shall invariably need to be fulfilled by the proposed Capital Investment Schemes for being considered for approval in accordance with these Regulations:

(a) New Infrastructure to meet upcoming load;

(b) Augmentation of capacity of the existing project/system;

(c) Increase in transformation capacity;

(d) Increase in revenue from the assets;

(e) Increase in operational efficiency of existing system;

(f) Increase in the Useful Life of the entire project/scheme/assets;

(g) Replacement of the entire asset after completion of Useful Life and which has gone beyond repair;

(h) Improvement in power quality and reliability

(i) Reduction in maintenance requirements;

(j) Renovation and Modernisation for life extension of entire project;

(k) Improvement in system parameters;

(l) Fulfilment of any statutory compliance requirement;

(m) Asset replacement as envisaged under Regulation 3.23;

(n) New infrastructure for enhancement of security;

(o) Construction of new Civil infrastructure:

Provided that Renovation and Modernisation Schemes for Generation Business and Transmission Business shall be in accordance with relevant Guidelines notified by the Central Electricity Authority (CEA):

Provided further that the indicative list of various categories of Capital Investment Schemes specified in Regulations 3.2, 3.6, 3.9, and 3.18 shall be in addition to the objectives specified in this Regulation."

2.2 Indicative List of Schemes for Generation

2.2.1 Proposed in Draft Regulations, 2022

"3.5 The indicative list of various categories under which Generating Companies or Generating Businesses may file Capital Investment Schemes for approval are:

(a) Improvement in operational performance parameters of Generating Unit/Station;

(b) Compliance with environmental norms notified by the concerned Indian Governmental Instrumentality and requires to set up additional assets that qualify under the criteria specified for Capital Investment Schemes;

(c) Renovation & Modernization in accordance with the provisions of the MERC (Multi-Year Tariff) Regulations, 2019, as amended from time to time;

(d) Replacement of Asset on account of inter-alia, completion of Useful Life and in beyond repairable condition, performance degradation, need for induction of new efficient technology;

(e) Emergency Restoration Works involving asset replacement;

(f) Civil work such as office building, approach road, etc.;

(g) Obsolescence of assets and absence of support from Original Equipment Manufacturer;

(h) Replacement of Battery Sets and battery charger after completion of Useful Life and assets becoming irreparable:

Provided that the Repair and Maintenance of the existing roads and building shall not be claimed as capital expenditure."

2.2.2 Comments Received

Prayas submitted that the draft Regulation 3.5 should also include investments required to provide ancillary services to enable cost-optimal power utilisation and reliability. This will also make space for investments in storage technologies.

MSPGCL submitted that the following schemes should be included in the list:

- Ash bund and bund raising;
- Replacement of battery sets and battery charger after completion of Useful Life or assets becoming irreparable with due justification;
- SCADA and Control equipment (DCS, PLC and similar advanced technology systems);

MSPGCL also submitted that though life of Thermal/ Gas plant is 25 years, life of certain specific parts of main equipment is less than 25 years. These components are of high value and are to be replaced after particular operating hours / operating cycles/ certain years.

MSPGCL submitted that CERC Regulations allow procurement of capital spares to Generating Companies during truing up process on year-on-year basis over and above normative O&M expenses, subject to prudence check like spares from a standard list, value of spare, details of opening stock, consumption and closing stock, etc. The Commission can also adopt similar approach and allow such items as capital spares over and above the normative O&M. With such treatment, the generators will not have to go through the process of in-principle approval and carry out replacement on the basis of spare specific criteria and subsequently submit the details to the Commission along with the Truing up Petition for the concerned period. However, for such capex, no additional equity is allowed and thus this will result in reduction in the tariff burden on consumers as these expenses will be allowed additional O&M expenses and there will not be any RoE burden loaded on consumers.

MSPGCL added that the Draft Regulations, 2022 do not provide specific clarity on replacement of capital spares. Therefore, one more category should be provided for "Replacement of capital spares as per life cycle of such individual capital spares". Capital spare list may be prepared based on cycle of replacement during lifetime of plant.

TPC-G submitted that while the indicative list covers majority of the job scopes for Generation Business, following are some of the important job scopes, which are required to be considered as provided for Transmission:

.....

i. Installation or Upgradation of Supervisory Control and Data Acquisition (SCADA);
j. Installation or Upgradation of communication and/or control equipment;
k. Interface metering and communications.

2.2.3 Analysis and Commission's Decision

In the Draft Regulations, 2022, the Commission has listed various categories of schemes for generation based on the study of the Capital Investment Schemes filed by the Applicants in the past few years. The Commission finds merit in some of the additional Schemes proposed by the stakeholders and has therefore, added Schemes for "Construction of ash bund and raising height of ash bund", "Installation or Upgradation of control equipment", and "Interface metering and communications". The Commission has also added "Battery Storage Schemes" under Indicative List of Schemes for Generation, considering the latest MoP notification in this regard.

The Draft Regulations had intentionally used "and" instead of "or" between "Useful Life" and "irreparable", i.e., the replacement shall be allowed only when the asset is beyond Useful Life and also irreparable. The Utility has to ensure quality purchase and maintain the batteries properly.

The Commission notes that no new data has been provided by the stakeholder to revise the DPR limits, and DPR limits have been proposed in the Draft Regulations, 2022 after study of past data. The issue of capital spares and additional O&M expenses needs to be addressed in the MERC MYT Regulations, and is not a subject matter of these Regulations.

Based on the above, **the Commission has revised Regulation 3.2 (revised Regulation number) as under:**

"3.2 The indicative list of various categories under which Generating Companies or Generating Businesses may file Capital Investment Schemes for approval are:

(a) Improvement in operational performance parameters of Generating Unit/Station;

(b) Compliance with environmental norms notified by the concerned Indian Governmental Instrumentality and requires to set up additional assets that qualify under the criteria specified for Capital Investment Schemes;

(c) Renovation & Modernization in accordance with the provisions of the MERC (Multi-Year Tariff) Regulations, 2019, as amended from time to time;

(d) Replacement of Asset on account of inter-alia, completion of Useful Life and in beyond repairable condition, performance degradation, need for induction of new efficient technology;

(e) Emergency Restoration Works involving asset replacement;

(f) Civil work such as office building, approach road, Ash bund, raising height of ash bund, etc.;

(g) Obsolescence of assets and absence of support from Original Equipment Manufacturer;

(h) Replacement of Battery Sets and battery charger after completion of Useful Life and assets becoming irreparable;

(i) Construction of ash bund and raising height of ash bund;

(j) Installation or Upgradation of control and/or protection equipment;

(k) Interface metering and communications;

(l) Battery Storage Schemes:

Provided that the Repair and Maintenance of the existing roads and building shall not be claimed as capital expenditure."

2.3 Capital Investment Schemes for Generating Unit/Station

2.3.1 Proposed in Draft Regulations, 2022

"3.6 The Generating Companies or Generating Businesses shall submit separate Capital Investment Schemes for each Generating Unit/Station, as appropriate."

2.3.2 Comments Received

MSPGCL submitted that an exception to this Regulation should be provided for hydro stations.

2.3.3 Analysis and Commission's Decision

No justification has been submitted by MSPGCL for exception to be provided for hydro stations. Hence, the clause proposed in the Draft Regulations, 2022 has been retained.

2.4 Correlation with remaining tenure of the PPA

2.4.1 Proposed in Draft Regulations, 2022

"3.7 The Capital Investment Schemes submitted by Generating Companies or Generating Businesses shall be corelated to the remaining tenure of the Power Purchase Agreement with the Distribution Licensee."

2.4.2 Comments Received

MSPGCL submitted that Capex due to Change in Law should not be correlated to the remaining tenure of the PPA.

MSEDCL submitted that Capital Investment Schemes submitted by Generating Companies or Generating Businesses should be correlated to entire balance life of the concerned asset only.

AEML-D submitted that there could be many cases where capital investment is required to be undertaken by Generating Company for ensuring reliability, continuity of supply or for any statutory compliance / change in law or environmental compliance. This will be irrespective of the remaining tenure of the PPA, because the plant would simply not be able to function, without the capex. In such cases, corelation with remaining tenure of the PPA should ensure that the capital so invested by the Company is not subjected to regular depreciation but is allowed to be recouped over the remaining tenure of the PPA, through accelerated depreciation.

TPC-G submitted that assets, which are proposed to be replaced in Capex generally have Useful Life ranging from 3 years to 40 years. However, nowadays, PPAs between Generating Businesses and Discoms are valid for 5 years. It may not be feasible to corelate the schemes only to the remaining PPA tenure.

2.4.3 Analysis and Commission's Decision

The Commission is of the view that the linkage of Capex recovery of GENCO to remaining PPA tenure is more appropriate and in consumer interest, as the cost recovery of GENCO is linked to PPA tenure; after PPA tenure, GENCO is free to sell to any third-party as generation is delicensed.

The aspect raised by AEML-D will get addressed in the Cost Benefit Analysis, in case of "ensuring reliability, continuity of supply" objectives. In case of statutory compliance, the

alternatives will be considered at the time of Capex approval. The issue of Accelerated Depreciation is a subject matter of the MERC MYT Regulations, and cannot be addressed here.

2.5 Indicative List of Schemes for Transmission

2.5.1 Proposed in Draft Regulations, 2022

"3.8 The indicative list of various categories under which Transmission Business/Licensees may file Capital Investment Schemes for approval are:

(a) Evacuation of power from upcoming Generation Unit/Station;

(b) Erection of Air Insulated Sub-station (AIS) or Gas Insulated Sub-station (GIS) and associated transmission lines;

(c) Capacity augmentation at existing Transmission Sub-station and Transmission Lines;

(d) Construction of transmission link or tie-lines for interconnections between Sub-stations and/or Transmission Lines;

(e) System strengthening to mitigate overloading or to provide redundancy or to improve voltage profile or reactive power management through installation of reactors.

(f) Network improvement to ensure reliability and availability of network;

(g) Installation or Upgradation of Supervisory Control and Data Acquisition (SCADA);

(h) Installation or Upgradation of communication and/or control equipment;

(i) Interface metering and communications;

(j) Renovation & Modernisation in accordance with the provisions of the MERC (Multi-Year Tariff) Regulations, 2019, as amended from time to time;

(k) Replacement of Asset on account of inter-alia, completion of Useful Life, performance degradation, need for induction of new efficient technology;

(l) Emergency Restoration System involving asset replacement;

(m) Obsolescence of assets and absence of support from Original Equipment Manufacturer;

(n) Civil work such as office building, approach road for transmission construction, etc.:

Provided that the Repair and Maintenance of the existing roads and building shall not be claimed as capital expenditure."

2.5.2 Comments Received

TPC-T submitted that Regulation 3.8 should be modified as under:

"3.8 The indicative list of various categories under which Transmission Business/Licensees may file Capital Investment Schemes for approval are:

…

*(c) Capacity augmentation at existing Transmission Sub-station, EHV **Underground Cables** and Transmission Lines;*
*(d) Construction of transmission link or tie-lines for interconnections between Sub-stations and/or Transmission Lines, **EHV Underground Cables**;*
….
(o) Upgradation of Protections Systems;

(p) Replacement of Assets beyond repairable condition;

(q) Improvements in Operational Safety and Security;

(r) Introduction of Green Technology for sustainable and environment friendly solutions;

(s) Introduction of New Technology with overall reduced Life Cycle Cost of ownership of any asset;

(t) Battery Energy Storage Systems;

(u) Full / Part asset replacements as allowed in Regulations 3.22 of the draft regulations*"*

Prayas submitted that Regulations 3.5, 3.11 and 3.8 should also include investments required to provide ancillary services to enable cost-optimal power utilisation and reliability. This will also make space for investments in storage technologies. Similarly, the Area Load Dispatch Centre investments suggested for SLDC in draft Regulation 3.20 are welcome. In a similar fashion, investments to enable better communication and strengthening role of REMCs can also be included.

2.5.3 Analysis and Commission's Decision

Replacement of Assets beyond repairable condition is one of the criteria for identifying Capex Schemes and is not a Scheme category. Also, Full/Part asset replacement is not a Scheme category. Introduction of Green Technology for sustainable and environment friendly solutions is too generic and is not a Scheme category; however, the Licensee may approach the Commission with the concerned Scheme for the Commission's consideration.

Considering the other suggestions of the stakeholders, the Commission has added following Schemes in Regulation 3.6 of the final Capital Investment Approval Regulations, 2022:

- EHV Underground cables;
- Installation/Upgradation of Protection Systems;
- Improvements in Operational Safety and Security;
- Battery Storage Schemes

Since Ancillary services are part of SLDC functions; the Commission has added "Battery Storage Schemes along with ancillary services' as Indicative Scheme in the SLDC List (Regulation 3.14).

It is clarified that EHV assets created using consumer funds, shall be refunded to consumer (after deducting applicable Schedule of Charges) through the Distribution Licensee in accordance with Regulation 4.2 of MERC Supply Code Regulations, 2021, as amended from

time to time. Also, list of schemes given in Regulation 3.8 is an indicative list only and not an exhaustive list, so any Scheme that fits the objectives would qualify.

In view of the above, **the Commission has modified the Regulation 3.6 as under:**

The indicative list of various categories under which Transmission Business/Licensees may file Capital Investment Schemes for approval are:

(a) Evacuation of power from upcoming Generation Unit/Station;

(b) Erection of Air Insulated Sub-station (AIS) or Gas Insulated Sub-station (GIS) and associated transmission lines;

(c) Capacity augmentation at existing Transmission Sub-station and Transmission Lines and EHV Underground Cables;

(d) Construction of transmission link or tie-lines for interconnections between Sub-stations and/or Transmission Lines and EHV Underground Cables;

(e) System strengthening to mitigate overloading or to provide redundancy or to improve voltage profile or reactive power management through installation of reactors;

(f) Improvement in operational safety and security;

(g) Network improvement to ensure reliability and availability of network;

(h) Installation or Upgradation of Supervisory Control and Data Acquisition (SCADA);

(i) Installation or Upgradation of communication and/or control equipment and/or protection systems;

(j) Interface metering and communications;

(k) Renovation & Modernisation in accordance with the provisions of the MERC (Multi-Year Tariff) Regulations, 2019, as amended from time to time;

(l) Replacement of Asset on account of inter-alia, completion of Useful Life, performance degradation, need for induction of new efficient technology;

(m) Emergency Restoration System involving asset replacement;

(n) Obsolescence of assets and absence of support from Original Equipment Manufacturer;

(o) Civil work such as office building, approach road for transmission construction, etc.;

(p) EHV assets created using consumer funds to be refunded to consumer through the Distribution Licensee in accordance with Regulation 4.2 of the Maharashtra Electricity Regulatory Commission (Electricity Supply Code and Standards of Performance of Distribution Licensees including Power Quality) Regulations, 2021, as amended from time to time;

(q) Battery Storage Schemes:

Provided that the Repair and Maintenance of the existing roads and building shall not be claimed as capital expenditure."

2.6 Premature Replacement/ Shifting of the assets

2.6.1 Proposed in Draft Regulations, 2022

"3.10 Under normal circumstances, the cost of premature replacement/shifting of the assets because of projects of other utilities such as road widening, construction/strengthening of dams, removal of obstacles, and freeing space for other project, shall be recovered/recoverable from the concerned infrastructure development agency:

Provided that the premature replacement/shifting of the assets because of projects of other utilities as stated above may be treated as capex scheme depending on circumstances and justification, in cases where the same is not recovered/recoverable from the concerned infrastructure development agency."

2.6.2 Comments Received

MSPGCL submitted that Regulation similar to Regulations 3.10 and 3.14 should be provided for generation business also.

2.6.3 Analysis and Commission's Decision

The Commission is of the view that this clause is relevant for Generation Business also. The **Commission has therefore, incorporated Regulation 3.4 as under**, in this regard:

"3.4 Under normal circumstances, the cost of premature replacement/shifting of the Generation assets because of projects of other utilities such as road widening, removal of obstacles, and freeing space for other project, shall be recovered/recoverable from the concerned infrastructure development agency:

Provided that the premature replacement/shifting of the assets because of projects of other utilities as stated above may be treated as capex scheme depending on circumstances and justification, in cases where the same is not recovered/recoverable from the concerned infrastructure development agency".

2.7 Indicative List of Schemes for Distribution

2.7.1 Proposed in Draft Regulations, 2022

"3.11 The indicative list of various categories under which Distribution Business/Licensees may file Capital Investment Schemes for approval are:

(a) Infrastructure required for releasing new supply connections;

(b) System strengthening by enhancing capacity of inter-alia, Sub-station, cables, and Circuit Breaker, to mitigate overloading or to provide redundancy or to improve voltage profile;

(c) Agriculture feeder separation;

(d) Justified conversion of Overhead Wires to Underground Cables based on the approved Policy document by concerned Local Government and vetted by the State Government and/or the Commission;

(e) Capital Nature Schemes funded partially by Central or State Government Grants;

(f) Upgradation of distribution network in a particular area including ring main system;

(g) Installation of Receiving Sub-station, distribution lines and transformers to cater to demand in a particular area;

(h) Capacity augmentation of distribution lines and transformers at existing Sub-stations or Receiving Stations;

(i) Improvement in quality of supply and reliability of distribution system;

(j) Emergency Restoration System involving asset replacement;

(k) Installation or Upgradation of Supervisory Control and Data Acquisition (SCADA);

(l) Installation or Upgradation of communication and/or control equipment;

(m) Setting up Distribution Supply Operation Centre (s)

(n) Implementation of Smart Meters and/or Pre-paid meters;

(o) Improvement in consumer services;

(p) Obsolescence of assets and absence of support from Original Equipment Manufacturer;

(q) Civil work such as office building, approach road, etc.:

Provided that the Repair and Maintenance of the existing roads and building shall not be claimed as capital expenditure.

2.7.2 Comments Received

MSEDCL submitted the following suggestions w.r.t. Regulation 3.11:

- Wording 'Loss reduction, creation of back up facility, correlation with previous schemes' as per 'Appendix 1- 2. Part II - 1. Need of the Investment' may be suitably incorporated in the main Regulations so that there is uniformity.
- Regulation 3.11(c): Regulation need not be restricted only to 'Agriculture feeder separation' and may be replaced by 'Agriculture related scheme'.
- Regulation 3.11(m): The Commission should clarify whether 'Online tracking and monitoring system for distributed generation' as mentioned in Regulations 28.3 of the MERC (State Grid Code) Regulations, 2020 is covered under this scheme or same may be added separately.
- Regulation 3.11(n) should be replaced with Implementation of Smart Meters and/or Pre-paid meters 'or meters having at least the facility of remote reading'.

- Regulation 3.11(o) – MSEDCL understands that schemes such as SMS services, go-green initiatives are covered under these draft Regulations.
- Regulation 3.11(q) to be updated with "Civil work such as office building, approach road, Cost of land, etc."
- The term 'Control Centres of Distribution Licensee' need to be added separately as per Regulation 28.3 of the MERC (State Grid Code) Regulations, 2020.
- The term 'Implementation of energy conservation measures' may be added separately.
- The term 'acquisition/takeover of assets created under D.D.F.' may be added separately.
- The term 'Project Management Agency (PMA) works' may be added separately.
- The Commission should clarify whether approval is required for D.D.F. (consumer contribution) schemes.
- The term 'Implementation of Energy accounting and energy audit measures as mandated by MoP/BEE' may be added separately.

TPC-D submitted that the expenditure required for Installation and upgradation of Geographical Information system (GIS) and any IT/IOT System/ Other Technologies is very high and these systems are used for number of years, hence, it is required to be included in the indicative list under which Distribution Licensees may file Capital Investment scheme for approval. Hence, TPC-D proposed the following inclusion in Regulation 3.11:

1) Installation & upgradation of Geographical Information system
2) IT/IOT System/ Other Technologies

EON Kharadi Infrastructure Pvt. Ltd. (EON) submitted that in case of a Deemed Distribution Licensee which is an SEZ, setting up of electrical assets for consumers also requires the Licensee to allot certain land for the asset (E.g., for switching station, Distribution licensee office, etc.). Hence, following should be added in the list:

- Land cost required for setting up of electrical asset;
- ABT Meter cost along with dedicated CT/PT and Automated Meter Reading software and its necessary hardware cost;
- Post Facto Approval schemes for CAPEX of SEZ Deemed Distribution Licensee.

2.7.3 Analysis and Commission's Decision

The Commission has incorporated loss reduction schemes as suggested by MSEDCL. Further, the 'Agriculture feeder separation' has been reworded as Agriculture related schemes for more generic coverage. As all metering schemes would be considered, the term 'implementation of smart meter and/or pre-paid meter has been replaced with 'All metering schemes'. Further, Battery Storage Schemes have been added, as done in the case of

Generation and Transmission Business. Energy conservation measures has also been added as a Distribution Scheme.

As regards the other suggestions:

- The Schemes related to 'Control Centres of Distribution Licensee' and 'Online tracking and monitoring for Distributed Generation' are already covered under 3.9 (m) Setting up Distribution Supply Operation Centre(s).
- The term 'acquisition/takeover of assets created under D.D.F.' has been addressed in the definition of Capital Investment, and under Regulation 4.4, as discussed subsequently.
- The Scheme 'Project Management Agency (PMA) works' has not been incorporated, as PMA cost is part of the Scheme cost and is not a separate Capital Investment Scheme by itself.
- Schemes such as SMS services, go-green initiatives are covered under Regulation 3.11(o), and hence, do not need to be added separately;
- Cost of land is part of project cost and not a separate Scheme by itself, and cannot be added;
- Schemes related to Installation and upgradation of GIS and IT/IOT System/Other Technologies are adequately addressed under Regulation 3.1 read with Regulation 3.9 of the Final Regulations, and are not required to be added separately;

Further, the Commission has incorporated an exception proviso for first-time post-facto approval for SEZs/Small size Deemed Distribution Licensees, allowing them to seek post-facto approval for all capital investment undertaken prior to operationalisation of Distribution Licensee business and up to first six months after operationalisation of Distribution Licensee business; however, any capex post 6 months of operationalisation shall require prior in-principle approval. For typical licensees, the Commission is able to approve the phasing of capital investment, such that the same is built up in phases to meet the growing load. However, it has been observed that some of these Deemed Distribution Licensees have very poor loading of their assets, as the distribution network is created for much higher load projections, which does not materialise, and the burden of the higher cost spread over lower sales units has to be borne by the smaller number of consumers. As the Commission is according post-facto approval for such capital investment, the Commission is unable to phase the investment. Hence, in order to protect the consumers, the Commission has incorporated a proviso to the effect that the cost recovery shall be in proportion to actual asset loading, with certain loading limits.

Accordingly, **the Commission has modified the Regulation 3.11 as under:**

"3.9 The indicative list of various categories under which Distribution Business/Licensees may file Capital Investment Schemes for approval are:

(a) Infrastructure required for releasing new supply connections;

(b) System strengthening by enhancing capacity of inter-alia, Sub-station, cables, and Circuit Breaker, to mitigate overloading or to provide redundancy or to improve voltage profile or reduce losses;

(c) Agriculture related schemes;

(d) Justified conversion of Overhead Wires to Underground Cables based on the approved Policy document by concerned Local Government and vetted by the State Government and/or the Commission;

(e) Capital Nature Schemes funded partially by Central or State Government Grants;

(f) Upgradation of distribution network in a particular area including ring main system;

(g) Installation of Receiving Sub-station, distribution lines and transformers to cater to demand in a particular area;

(h) Capacity augmentation of distribution lines and transformers at existing Sub-stations or Receiving Stations;

(i) Improvement in quality of supply and reliability of distribution system;

(j) Emergency Restoration System involving asset replacement;

(k) Installation or Upgradation of Supervisory Control and Data Acquisition (SCADA);

(l) Installation or Upgradation of communication and/or control equipment;

(m) Setting up Distribution Supply Operation Centre (s)

(n) All metering schemes;

(o) Improvement in consumer services;

(p) Obsolescence of assets and absence of support from Original Equipment Manufacturer;

(q) Civil work such as office building, approach road, etc.;

(r) Energy conservation measures;

(s) Battery Storage Schemes:

Provided that the Repair and Maintenance of the existing roads and building shall not be claimed as capital expenditure."

"3.12 Deemed Distribution Licensees, excluding Maharashtra State Electricity Distribution Company Limited, who have incurred capital investment prior to being recognised as a Deemed Distribution Licensee by the Commission shall be permitted to seek post-facto approval of the Commission for capital investment undertaken prior to commencement of operations as a Distribution Licensee as well as capital investment undertaken during the first six (6) months of operation as a Distribution Licensee:

Provided that such Deemed Distribution Licensees shall be allowed to recover the costs related to the capital investment already undertaken without obtaining the Commission's in-principle approval, only to the extent of capital investment subsequently approved by the Commission and in proportion to actual asset loading, subject to achievement of minimum

asset loading of twenty-five (25) percent, with entire cost recovery being allowed once the loading reaches seventy (70) percent:

Provided further that such Deemed Distribution Licensees shall be required to obtain in-principle approval as specified in these Regulations prior to undertaking the capital investment against DPR Schemes, after six (6) months of operation as a Distribution Licensee."

2.8 Implementation of Smart Meters and/ or Pre-paid meters

2.8.1 Proposed in Draft Regulations, 2022

"3.13 The Distribution Business/Licensees may consider implementation of Smart Meters and/or Pre-paid meters under Total Expenses or TOTEX (Capex Expenditure + Opex Expenditure) model."

2.8.2 Comments Received

Prayas submitted that the draft Regulation 3.13 states that smart meters/ pre-paid meters may be implemented under Total Expenses or TOTEX model. However, the Regulations do not provide a framework for approval of cost pass through under TOTEX model. This is crucial as the framework for this approval is not part of the Standard Bidding Guidelines for smart metering and neither is it part of the provisions under the RDSS scheme.

Prayas submitted that prior to large scale roll-out the following framework should be specified in the Regulations:

- Investment planning and DPR preparation for smart metering
- Investment scrutiny under TOTEX model
- Cost benefit assessment of investment post implementation
- Evaluation of costs and benefits and sharing of costs and benefits (if any) from smart metering investments and cost recovery model from consumers

Prayas also submitted that to enable transparency, detailed scrutiny, data formats for TOTEX specific investments, cost-benefit assessments should also be specified.

2.8.3 Analysis and Commission's Decision

The Commission is of the view that the cost benefit of TOTEX Scheme shall be assessed in accordance with the framework laid down by the relevant Guidelines of Government of India.

Accordingly, **the Commission has incorporated proviso to Regulation 3.11 as under:**

"Provided that the prudence of the TOTEX scheme shall be evaluated in accordance with the framework laid down by the relevant Guidelines of Government of India."

2.9 Conversion of Overhead Lines to Underground Cables

2.9.1 Proposed in Draft Regulations, 2022

"3.14 Capital investment proposals of Distribution Licensees for conversion of Overhead Lines to Underground Cables shall be allowed only if such proposals are in accordance with a comprehensive policy to be prepared by the Distribution Licensee.

3.15 The comprehensive Policy for conversion of Overhead Lines to Underground Cables referred in Regulation 3.15 shall be based on the following criteria:

(a) Whether the proposed conversion from Overhead Lines to Underground Cables satisfies the criteria laid down by CEA in the 'Guidelines for use of under Ground Cable System and Overhead Conductor System along with cost benefit analysis', 2018;

(b) The purpose of undertaking such Scheme in terms of addressing safety concerns or improving reliability or reducing losses or combination of these need to be clearly identified;

(c) Whether use of other cheaper options such as Aerial Bunched Cables, ring main of Overhead network, etc., would resolve the issues being faced;

(d) Whether complete conversion of Overhead network (High Tension and Low Tension) to Underground network is required or partial undergrounding of network is sufficient to resolve the issues being faced;

(e) Whether the conversion from Overhead Lines to Underground Cables has been prioritised based on certain intelligible criteria;

(f) Whether the Average Billing Rate (ABR) of such area where project is proposed is higher than the Average Cost of Supply (ACoS) of the concerned Distribution Licensee:

i. Conversion of Overhead Lines to Underground Cables not to be considered in cases where the ABR is lower than the ACoS;

ii. Conversion of Overhead Lines to Underground Cables to be considered in cases where the ABR of that area is higher than the ACoS, and if the number of years required to recover the capital investment of the proposed Scheme from available margin between ABR and ACoS is equal to or lower than the stipulated payback period of say 5 years;

(g) In case the Scheme is to be undertaken despite not meeting above criteria, then the cost of such investment shall be funded through:

i. Subsidy or Viability Gap Funding (VGF) from Government or Local Body or Planning Authority (MIDC, MMRDA, etc.), or

ii. Recovered from the consumers located in that area through additional charges to be determined separately and shall not be socialised over the Aggregate Revenue Requirement (ARR) of the concerned Distribution Licensee, or

iii. A combination of" "" and " ii" above."

2.9.2 Comments Received

MSEDCL submitted that as per proposed Regulations 3.15, Capital investment proposals of Distribution Licensee for conversion of Overhead Lines to Underground Cables shall be allowed only if such proposals are as per "Comprehensive Policy for conversion of Overhead Lines to Underground Cables". It is understood that Distribution Licensee need to prepare such Policy as per Regulation 3.16 and get it vetted by the Commission. However, Regulation 3.11 (d) implies that for every project (such policy prepared by Distribution Licensee) shall be approved by the concerned Local Government, which in turn will be vetted by the State Government and/or the Commission. This aspect needs to be reviewed in view of various clauses in Draft Regulations, 2022 related to time bound compliances and consequent delay. Therefore, requirement of multiple approvals should be removed and uniform approval process may be provided for Comprehensive Policy document.

MSEDCL further submitted that Regulation 3.16(f)(ii) should be updated with following:

"ii. Conversion of Overhead Lines to Underground Cables to be considered in cases where the ABR of that area is higher than the ACoS, and if the number of years required to recover the capital investment of the proposed Scheme from available margin between ABR and ACoS is equal to or lower than the stipulated payback period of ***5 to 7 years****;"*

2.9.3 Analysis and Commission's Decision

There is no requirement for multiple approvals of Distribution Licensee Policy, and Distribution Licensee has to prepare uniform Policy. If Local Government does not approve it, then the conversion of overhead to underground network cannot take place in that area. The suggestion that period for recovery of capital investment from margin between ABR and the ACOS should be specified as 5 to 7 years, has been accepted.

Accordingly, **the Commission has modified the Regulation 3.15 as under:**

"3.15 The comprehensive Policy for conversion of Overhead Lines to Underground Cables referred in Regulation 3.14 shall be based on the following criteria:

(a) Whether the proposed conversion from Overhead Lines to Underground Cables satisfies the criteria laid down by CEA in the 'Guidelines for use of under Ground Cable System and Overhead Conductor System along with cost benefit analysis', 2018;

(b) The purpose of undertaking such Scheme in terms of addressing safety concerns or improving reliability or reducing losses or combination of these need to be clearly identified;

(c) Whether use of other cheaper options such as Aerial Bunched Cables, ring main of Overhead network, etc., would resolve the issues being faced;

(d) Whether complete conversion of Overhead network (High Tension and Low Tension) to Underground network is required or partial undergrounding of network is sufficient to resolve the issues being faced;

(e) Whether the conversion from Overhead Lines to Underground Cables has been prioritised based on certain intelligible criteria;

(f) Whether the Average Billing Rate (ABR) of such area where project is proposed is higher than the Average Cost of Supply (ACoS) of the concerned Distribution Licensee:

i. Conversion of Overhead Lines to Underground Cables not to be considered in cases where the ABR is lower than the ACoS;

ii. Conversion of Overhead Lines to Underground Cables to be considered in cases where the ABR of that area is higher than the ACoS, and if the number of years required to recover the capital investment of the proposed Scheme from available margin between ABR and ACoS is equal to or lower than the stipulated payback period of say 5 to 7 years;

(g) In case the Scheme is to be undertaken despite not meeting above criteria, then the cost of such investment shall be funded through:

i. Subsidy or Viability Gap Funding (VGF) from Government or Local Body or Planning Authority (MIDC, MMRDA, etc.), or

ii. Recovered from the consumers located in that area through additional charges to be determined separately and shall not be socialised over the Aggregate Revenue Requirement (ARR) of the concerned Distribution Licensee, or

iii. A combination of "" and " ii" above."

2.10 Need for clarity in Reference Regulation

2.10.1 Proposed in Draft Regulations, 2022

"3.18 Premature replacement/shifting of the assets because of projects of other utilities as stated above may be treated as capex scheme depending on circumstances and justification, in cases where the same is not recovered/recoverable from the concerned infrastructure development agency."

2.10.2 Comments Received

MSEDCL submitted that Regulation 3.18 mentions the term 'projects of other utilities as stated above'. However, from the Regulation, it is not clear which projects are being referred to. The same may be clarified.

2.10.3 Analysis and Commission's Decision

The Commission observes that the draft Regulation 3.18 has been inadvertently repeated, and this issue is already addressed in proviso to Regulation 3.13, where it is clear which Regulation is being referred to. Hence, **the Commission has deleted draft Regulation 3.18** in the final Capital Investment Approval Regulations, 2022.

2.11 Reinstatement Charges

2.11.1 Proposed in Draft Regulations, 2022

"3.19 In order to mitigate the impact of varied and high Reinstatement (RI) Charges levied by the Urban Local Bodies for laying down underground distribution infrastructure, fifty (50)

percent of the capital cost due to RI shall be recovered from the consumers of the concerned local area through an additional charge to be approved by the Commission from time to time:

Provided that Distribution Licensees may take up this issue with Urban Development Department of the State Government for reducing/eliminating such charges, which may consider making provision of cable trench alongside the road mandatory so as to avoid digging of the road for laying down underground infrastructure:

Provided further that Distribution Licensees shall pursue with the concerned Urban Local Bodies for the excess RI Charges collected for any Scheme in accordance with Rule 12 of the Maharashtra Electricity Works of Licensees Rules, 2012, and pass on the refund to the consumers from whom such RI cost has been recovered."

2.11.2 Comments Received

BEST submitted that the Commission should give advice to the Urban Development Department of the State Government for reducing/ eliminating RI charges. Also, entire cost of RI Charges should be covered in the Capex for the 4th MYT Control Period.

TPC-D submitted that RI is a part of investment for laying cable for various purposes and is not limited to the last mile connectivity only so that 50% of RI charges can be charged to the consumers of that area. In case of new Distribution Sub-station (DSS) commissioning, the cable is being laid for bringing EHV lines from transmission substation to proposed DSS and the purpose of commissioning the new DSS may be due to additional load required from some of the existing consumers. In that case, it may not be feasible to charge the proportion of 50% RI charges to the consumers residing in that area who have not requested for additional load. This may lead to undue burden on the existing consumers of the area in which the RI charges are paid for laying the cable. Charging 50 % RI to be to particular local area may result in following challenges -

a. Since only local individual consumers need to bear RI charges, it will affect new industrial and building project development in Maharashtra as their costs will rise substantially.

b. These cables usually are utilised for all the future consumers as well as increased load required from the existing consumers and it may also feed as emergency tie to other areas. Thus, to map the consumers for RI recovery of these cables will be practically impossible.

b) In Parallel licencing scenario, consumers can switch over anytime from Licence A to Licence B within a period of one month after submission of complete application. In that case, any RI charges levied to that consumer for laying cable to release the power supply of that consumer will be left as unrecovered and it will be difficult for the Licence A to recover such RI cost.

TPC-D hence, submitted that this Clause should be deleted from the Regulations and the previous methodology of RI expenditure recovery as part of overall capital investment should be retained.

AEML-D submitted that it is very difficult to identify consumers affected by a particular scheme of cable laying in case of improvement works. There will always be subjectivity involved in the process and affected consumers will not be clearly identifiable in many cases. Affected consumer(s) can only be identified clearly in case of service line jobs for new supply.

AEML-D added that underground cables are also laid in case of new supply works. In that case, the scheme is meant for the benefit of the consumer or set of consumers to whom supply is released. In such case, the present Schedule of Charges permits recovery of normative service connection charges only. It is to be clarified that if, through this Regulation, additional recovery of 50% of actual RI charges will be allowed as well.

AEML-D further submitted that Change-over consumers (using a Licensee's network and obtaining supply from other Licensee) could also be affected by network improvement works of the Wires Licensee. However, the billing to such consumers is done by the Supply Licensee. So, in such case, how these charges shall be recovered from change-over consumers and remitted to Wires Licensee, is required to be specified.

AEML-D added that RI charges incurred on capital investment are recognised as capital expenditure, whereas the amounts recovered from the consumers will be revenue income. The implication of these Regulations will be that the RI charges incurred during a year will not be capitalised in the books till the time it is known as to how much of the same would be allowed as recovery from consumers and only the balance 50% will be considered in capex. This is also complicated by the fact of capex allowance or disallowance on actual basis; in case, a part of capex is disallowed by the Commission, the corresponding RI charges will get disallowed too and if they are already recovered from consumers, then the same would have to be refunded in some manner. Also, if the same capex is then re-allowed by a higher Court, whether the corresponding RI charges would be recovered again. This is extremely difficult to implement.

AEML-D submitted that the EM provides the process in which these charges are to be worked out by a Distribution Licensee (year end, based on actual RI charges incurred during the year, converted to per unit terms, using energy sales of affected consumers). The process of calculation of these charges and prior approval of the Commission for recovery, is required to be brought out in the Regulations, rather than confining it only to the EM.

In view of the above, AEML-D suggested that this provision may be deleted from final Regulations.

2.11.3 Analysis and Commission's Decision

The Commission has already advised the Government of Maharashtra (GoM) regarding rationalizing/reducing the RI Charges (in the matter of Advice to GoM in RInfra-D matter). The licence area of MSEDCL, AEML-D and TPC-D are spread across more than one Municipal Corporation (MC) area, and different MCs levy different RI Charges. However, consumers can be tagged based on their address and the additional RI Charges can be levied based on the local body in whose area they are located. The Additional RI Charges for

Change-over consumers on account of RI incurred by Wires Licensee would be recovered in the same manner as Wheeling Charges as at present, so there is no difficulty in this aspect. As regards the concern that if the consumer switches over to the parallel licensee, the recovery of RI will be left unrecovered, the same shall be addressed in the same manner as other Wheeling Charges of the Wires Licensee.

As regards the concern about capex being disallowed and later allowed and its consequences, the issue would have to be dealt with in the same manner as any other capital investment or revenue expenditure disallowed initially and allowed later. The concerns raised regarding refund and recovery of additional RI Charges can be managed by adjusting the RI Charges year on year to that extent, in the same manner as done in tariff. The electricity distribution business is an ongoing business, and such amounts are being recovered on an on-going basis even today.

In case of new supply connections, it is clarified that 50% of RI Charges shall not be recoverable in addition to charges approved under Schedule of Charges.

Further, it is not required to identify consumers affected by a particular scheme of cable laying in case of improvement works, as the entire applicable RI will get pooled and partly recovered from the Distribution Licensee's consumers located in the area of that local body.

The desired clarity regarding the framework for approval and recovery of 50% RI Charges through an additional charge needs to be addressed in the MERC MYT Regulations.

2.12 Negative List of Schemes not allowed as Capex

2.12.1 Proposed in Draft Regulations, 2022

"3.21 The indicative list of various categories of Schemes that shall not be allowed as Capital Investment Schemes (DPR as well as Non-DPR) for Generating Companies/ Businesses or Transmission Licensees/Businesses or Distribution Licensees/Businesses/MSLDC(Applicant) is as follows:

(a) Replacement/repairing of individual items such as Current Transformer (CT), Potential Transformer (PT), Lightning Arrestor (LA), Circuit Breaker (CB), Distribution Box, Cables, LT switchgears, protection system, Insulators and Hardware after failure;

(b) O&M/overhauling of the equipment such as CB, Transformers, ICTs, Coal Mills, Boiler, Compressor, Generator, Alternator, Coal Handling Plant, Ash Handling Plant, etc.;

(c) Replacement of small part of the entire system such as Relays of Sub-stations, control, protection and communication panels of Sub-station equipment, replacement of the panel meters, reprogramming of meters;

(d) Replacement of the members of the Transmission Towers, increasing height of the towers, replacement of few towers, replacement of few spans of the conductor of Transmission lines, re-earthing of the Sub-stations and Towers, Strengthening of Towers/Poles, replacement of motors, gearbox, Stators, Rotors, Coal Mill parts, Security

System (including digital), replacement of protection and control system, water supply system, replacement of ancillary system/Street Lights, etc.;

(e) Premature Replacement of Air Insulated Substation (AIS) with Gas Insulated Substation (GIS)/Underground Cables/Transmission Lines/other equipment before completion of useful life, and even after completion of useful life in cases where replacement is not justified based on the diagnostic test reports/Study report;

(f) Foundation strengthening of the Towers/Poles, substation equipment, internal civil work, repair and maintenance of office/residential quarters/guest house and office building, Metal spreading in yard, furniture, Repair and maintenance of control rooms, Compound wall for the Sub-stations and empty land, street light replacement, R&M of existing roads and buildings, etc.;

(g) Procurement of maintenance spares, testing tools and kits, maintenance tools, Annual Maintenance Contract (AMC);

(h) Beautification projects unless the same is justified as per the pre-decided Policy;

(i) Distribution/Generation scope of work included in Transmission DPR, Transmission Scope included in Generation DPR, etc.;

(j) DPR for only land without any project proposal;

(k) Development of Garden, Advertisement expenses;

(l) Premature replacement of the equipment, cables, rerouting of cables/lines for freeing the space for other project/infrastructure activities of Utility;

(m) Work required for restoration of supply post occurrence such as Tower collapse, conductor snapping, shifting of the Tower/poles on consumer request;

(n) Clubbing of scope of work of O&M nature at different plants, substations, lines;

(o) Opex Schemes as provided in the Regulations;

(p) Expenditure that should be taken up under O&M expenses;

(q) Transmission Schemes that are not included in the STU Plan;

(r) Schemes that are not included in the Rolling Plan of the concerned Utility;

(s) Schemes that have not obtained the Commission's in-principle approval, unless they are exempted."

2.12.2 Comments Received

MSEDCL submitted that from the combined reading of the Regulation 3.21(s) and Regulation 4.4, 4.6 and Regulation 9.2(2), it is evident that 'Schemes that fall under emergency works' are not categorized under Non-DPR schemes. The Commission should exclude 'Schemes that fall under emergency works' from Non-DPR scheme while calculating the allowance of non-DPR capitalization to the extent of percentage of DPR capitalization as specified in Regulation 24.7 of the MERC MYT Regulations, 2019. Schemes that fall under emergency works may also include replacement of individual assets, therefore, it is requested to allow

replacement/repairing of individual items covered under Regulation 3.21(a) as 'Schemes that fall under emergency works'.

TPC-T submitted that many of assets mentioned under this Regulation have been earlier considered as capital expenditure and approved by the Commission through its DPR approval. In case of first-time replacement of such assets by any Generating Company/Licensee, the expenditure incurred should be allowed over and above normative O&M entitlements as the same would have not been part of expenditure while setting up O&M norms. TPC-T also submitted that replacement of individual items such as CT, PT, LA, Breaker, protection system, Insulators and Hardware should be allowed in case of failure if it happens only after outliving the Useful regulatory life. Since the world of electronics is constantly upgrading every day, the replacement of small part of the entire system such as Relays of Sub-stations, control, protection and communication panels of Sub-station equipment, replacement of the panel meters, and reprogramming of meters is required to be allowed in case of Technology obsolescence. In case Licensee will be procuring any land for future project proposal then the total interest burden due to debt part should be allowed to be recovered post approval of DPR for which this land will be utilized by Licensee. Non-DPR Transmission Schemes are not included in the STU Plan, hence, they need to be exempted under this list.

In view of the above, TPC-T suggested to revise the Regulation 3.21 as below:

"3.21 The indicative list of various categories of Schemes that shall not be allowed as Capital Investment Schemes (DPR as well as Non-DPR) for Generating Companies/ Businesses or Transmission Licensees/Businesses or Distribution Licensees/Businesses/MSLDC(Applicant) is as follows:

(a) Replacement/repairing of individual items such as Current Transformer (CT), Potential Transformer (PT), Lightning Arrestor (LA), Circuit Breaker (CB), Distribution Box, Cables, LT switchgears, protection system, Insulators and Hardware after failure ***except if happens after outliving the Useful Regulatory Life;***

...

(c) Replacement of small part of the entire system such as Relays of Sub-stations, control, protection and communication panels of Sub-station equipment, replacement of the panel meters, reprogramming of meters ***except in case of Technology obsolescence****.*

(d) ***Premature Replacement of Equipment shall be allowed in following cases:***

(1) Where the Assessment of Equipment is not possible without availing long outages.

(2) Where the failure is not linked to any maintenance issues as certified by competent agency.

...

(q) Transmission Schemes are not included in the STU Plan ***except Non-DPR Schemes;***

...."

TPC-D submitted that Circuit Breakers and CT/PTs are treated as separate equipment in consumer substation and form the major cost of substation setup, hence, replacement of such devices can be considered as capital nature of work. TPC-D also submitted that high value test kits having life of 5-10 years may be considered to fall under Capital nature of investment.

TPC-G submitted that replacement of items listed under Regulation 3.21 (a) should be allowed under Capex as these have different Useful Life than the original asset (substation). It is not recommended to replace all the items at once and item-wise replacement based on condition will help to optimize the cost. Further, if these items are replaced in Opex (O&M expenses), there will be variations in yearly R&M cost and hence, tariff. TPC-G submitted that this should be considered on case-to-case basis as it may be a major cost of replacement in certain cases.

As regards Regulation 3.21(d), TPC-G submitted that stator and rotor are integral parts of a Generator and condition-based replacement of any of these items helps to increase the useful life. Hence these items should be covered under CAPEX. TPC-G submitted that this should be considered on case-to-case basis as it may be a major cost of replacement in certain cases.

AEML-D submitted that all the examples given in Regulation are individual assets in their own right. They may work along with other assets to form a system, but that does not take away their own identity as an asset. These are individual items, which exist with their own useful life and can be used interchangeably in various systems. It is not that they are integral to a given asset or site and are useless when removed. Accordingly, they are required to be identified as separate assets. Any component, which has a separate useful life, is not identified as an integral component of a given asset or system, but can be used as a replacement part across all such assets is an asset in itself. The Utility should be allowed to justify why the component should be treated as an independent asset and the same can be allowed as capex after regulatory scrutiny.

Examples such as LT switchgear, Relays, Circuit Breakers, Distribution Boxes, Cables are all regular capital investment in Distribution business. All system improvement or new supply DPRs of distribution will have Distribution Boxes, switchgear and cable laying. These cannot be part of negative list.

Similarly, there are many other items in the negative list, which are either very open-ended, or could result in a capex scheme as per other provisions in this Regulation:

(a) Procurement testing tools and kits: even under current practice, procurement of these items is treated as capital expenditure, and is generally included under Non-DPR expenditure.

(b) Replacement of Street Lights: Street Lights comprise Pole, Bracket and Lamp. Replacing the entire system is capital expenditure and cannot be termed as O&M expense as whole system /asset is replaced.

(c) Work required for restoration of supply post occurrence such as Tower collapse, conductor snapping, shifting of the Tower/poles on consumer request: this will overlap with “Emergency Restoration system, involving asset replacement”, which is included as a capex scheme under the indicative list of capital expenditure in Regulations 3.5, 3.8 and 3.11 as restoration of supply works, following this type of emergency could very well lead to replacement of some asset, such as the tower itself.

(d) Schemes that are not included in the Rolling Plan of the concerned utility: Based on AEML's comments on the respective Regulation about Rolling Plan (Regulation 7), this entry may be removed from the negative list.

(e) AIS to GIS: AIS to GIS replacement can also be proposed for other advantages as well such as freeing up space for future expansion of capacity (this is important in case of land availability issues) or for using such space for optimum utilisation of assets to generate income for ARR.

(f) Expenditure that should be taken up under O&M expenses: Indian Accounting Standards and Generally Accepted Accounting Principles (GAAP) provide guidance w.r.t. expenditure of capital vs. revenue nature. Including this clause with insufficient definition of O&M Expenses may result in irrational denials of genuine cost capitalisation. This is very generally worded and will result in a lot of subjectivity in decision making, which should be avoided.

AEML-D submitted that only expenditure on consumables is part of revenue expense and none of the assets shown as examples are consumables. Insurance Spares, not necessarily procured at the time of initial capitalisation, may be allowed as capital expenditure. Spares may be procured from time to time by a utility, depending upon criticality of equipment and to ensure continuity and reliability of supply. Accordingly, procurement of critical spares should be permitted as capital expenditure.

AEML-D also submitted that all assets or components, which can be justified to have an independent existence and useful life, are not identified with and are not integral to any given asset or system and can be used across assets or systems, should be considered assets in themselves and should be allowed to be capitalised. For example, CT/PT can be used with any metering system and are not integral to any specific system, similarly, LT switchgears are not integral to any given substation, etc. Hence, a negative list is not required, as only consumables, which deplete with use, can be treated as operating expenditure. In any event and without prejudice, it is submitted that a decision of whether to treat asset replacement as capex or opex should be case to case and the Utility should be allowed to justify as to how the proposed works are capex, based on Accounting Standards and GAAP.

MSPGCL submitted that replacement/repairing of CT/PT should be allowed as CAPEX item. HT motors, turbine rotors, generator rotor, generator stator, HT transformer are essentially capex items. Therefore, such blanket exclusion will not be prudent for the Generating Company. Hence, it is requested to delete these items from negative list. Also, from security point of view, power stations such as Koyna, Chandrapur are considered as vital installations, hence, expense for installation of advanced digital security system scheme needs to be allowed as Capex and only the recurring expenses on the same need to be allowed as additional expense over and above the normative O&M expenses.

For MSPGCL, GIS are maintained at Koyna Hydro Power Station. Consumption of these items is slow and it is also high valued item. Hence, GIS need to be allowed as Capex item. Special Tool kits for turbines, Boiler circulating water pumps, and special Testing kits should be considered as Capex.

MSPGCL also submitted that the proposal for premature replacement of the equipment, rerouting of cables /shifting of assets for freeing space for assets for other projects should be allowed to the extent of unrecovered expenses, as allowed under Regulation 3.10 and 3.14 of the Draft Regulations, 2022.

KRC DISCOMs submitted that Testing tools/equipment and kits are required to carry out the testing, commissioning activities before the commencement of distribution operation and thereafter to carry out regular/periodic testing activities. As the purchase of Testing tools/equipment and kits are capital in nature, it should be allowed under Capital investment Schemes as part DPR /Non-DPR scheme wherever necessary.

2.12.3 Analysis and Commission's Decision

The Commission is of the opinion that regulatory Useful Life is not the sole criteria for replacement of individual items such as CT, PT, LA, Breaker, protection system, Insulators and Hardware, hence, such exception is not intended. If only a small part of entire equipment becomes technologically obsolete, then the Licensee may replace it under O&M expenses. Also, part replacement cannot be allowed merely because assessment of equipment is not possible without long outages. Further, there is no linkage of failure due to Utility's fault or otherwise, with expense being considered under Capex.

The Commission has added the words 'except Non-DPR Schemes' in Regulation 3.21 (q) as Non-DPR Schemes would not be part of STU Plan. The words 'except as allowed under Regulation 3.4, 3.8, and 3.13' have been added in Regulation 3.21(l), in order to avoid ambiguity on this aspect. The terms 'testing tools and kits, maintenance tools' have been deleted from the negative list, as procurement of such items are allowed under capital investment.

As mentioned in the EM, based on the experience with Capex Schemes submitted by Utilities, it is seen that on several occasions, there is ambiguity (or lack of clarity for the Utility) as to whether a particular Scheme qualifies as a Capex Scheme. There is a need to impart clarity on types of Schemes, which shall be considered as Capex Scheme and evaluated under the Capital Investment Approval Regulations. Therefore, the Commission has proposed a negative list of Schemes in the Draft Regulations, 2022 that shall not be considered as Capex Schemes. The negative list is indicative and not comprehensive. The Commission clarifies that all these items in the negative list were carefully considered before inclusion and were also based on past practice. GIS itself has not been included in negative list. Only premature replacement of AIS to GIS has been included in negative list, and not AIS to GIS conversion per-se, which will have to be justified in accordance with the Regulations. Only replacement of individual assets such as CT, PT, etc., have been included in negative list, and not these items as standalone items, so the concern raised by the stakeholders is misplaced.

Further, the Commission has also included Schemes that have not been processed through the Grid Coordination Committee and/or Maharashtra Transmission Committee in accordance with the Maharashtra Electricity Grid Code, 2020, as appropriate, under the negative list.

As regards replacement of certain individual assets as a consequence of emergency restoration, the Licensee may propose such Schemes for the Commission's consideration, as and when such situation arises.

The issue of computation of Non-DPR Schemes as percentage of DPR Schemes is a subject matter of the MERC MYT Regulations.

As regards the concern regarding increased O&M expenses due to shifting of certain expenses from Capex to O&M, the Commission has addressed the same in the newly added proviso to Regulation 3.19, as under:

"Provided that the Commission may consider any request for revision of the normative O&M expenses on account of consideration of some Schemes under O&M rather than Capital Investment on case-to-case basis, depending on the justification to be submitted by the Applicant and the life-cycle cost analysis, as may be allowed under the applicable MERC (Multi-Year Tariff) Regulations."

Accordingly, **the Commission has modified the Regulation 3.19 as under:**

"3.19 The indicative list of various categories of Schemes that shall not be allowed as Capital Investment Schemes (DPR as well as Non-DPR) for Generating Companies/ Businesses or Transmission Licensees/Businesses or Distribution Licensees/Businesses/MSLDC is as follows:

(a) Replacement/repairing of individual items such as Current Transformer (CT), Potential Transformer (PT), Lightning Arrestor (LA), Circuit Breaker (CB), Distribution Box, Cables, LT switchgears, protection system, Insulators and Hardware after failure;

(b) O&M/overhauling of the equipment such as CB, Transformers, ICTs, Coal Mills, Boiler, Compressor, Generator, Alternator, Coal Handling Plant, Ash Handling Plant, etc.;

(c) Replacement of small part of the entire system such as Relays of Sub-stations, control, protection and communication panels of Sub-station equipment, replacement of the panel meters, reprogramming of meters;

(d) Replacement of the members of the Transmission Towers, increasing height of the towers, replacement of few towers, replacement of few spans of the conductor of Transmission lines, re-earthing of the Sub-stations and Towers, Strengthening of Towers/Poles, replacement of motors, gearbox, Stators, Rotors, Coal Mill parts, Security System (including digital), replacement of protection and control system, water supply system, replacement of ancillary system/Street Lights, etc.;

(e) Premature Replacement of Air Insulated Substation (AIS) with Gas Insulated Substation (GIS)/Underground Cables/Transmission Lines/other equipment before completion of useful life, and even after completion of Useful Life in cases where replacement is not justified based on the diagnostic test reports/Study report;

(f) Foundation strengthening of the Towers/Poles, substation equipment, internal civil work, repair and maintenance of office/residential quarters/guest house and office building, Metal spreading in yard, furniture, Repair and maintenance of control rooms, Compound

wall for the Sub-stations and empty land, street light replacement, R&M of existing roads and buildings, etc.;

(g) Procurement of maintenance spares, Annual Maintenance Contract (AMC);

(h) Beautification projects unless the same is justified as per the pre-decided Policy;

(i) Distribution/Generation scope of work included in Transmission DPR, Transmission Scope included in Generation DPR, etc.;

(j) DPR for only land without any project proposal;

(k) Development of Garden, Advertisement expenses;

(l) Premature replacement of the equipment, cables, rerouting of cables/lines for freeing the space for other project/infrastructure activities of Utility except as allowed under Regulation 3.4, 3.8 and 3.13;

(m) Work required for restoration of supply post occurrence such as Tower collapse, conductor snapping, shifting of the Tower/poles on consumer request;

(n) Clubbing of scope of work of O&M nature at different plants, substations, lines;

(o) Opex Schemes as provided in the Regulations;

(p) Expenditure that should be taken up under O&M expenses;

(q) Transmission Schemes that are not included in the STU Plan except Non-DPR Schemes;

(r) Schemes that have not been processed through the Grid Coordination Committee and/or Maharashtra Transmission Committee in accordance with the Maharashtra Electricity Grid Code, 2020, as appropriate;

(s) Schemes that are not included in the Rolling Capital Investment Plan of the concerned Utility;

(t) Schemes that have not obtained the Commission's in-principle approval, unless they are exempted.

Provided that the Commission may consider any request for revision of the normative O&M expenses on account of consideration of some Schemes under O&M rather than Capital Investment on case-to-case basis, depending on the justification to be submitted by the Applicant and the life-cycle cost analysis, as may be allowed under the applicable MERC (Multi-Year Tariff) Regulations."

2.13 Asset Replacement

2.13.1 Proposed in Draft Regulations, 2022

"3.2 Asset replacement shall not be approved merely because the asset has completed its Useful Life as specified in the applicable Regulations, and the Applicant will have to submit adequate justification for the asset replacement based on aspects such as inter-alia, residual

life as certified by competent agency, performance degradation based on the diagnostic testing, assets beyond repair and cost-benefit analysis of repair versus replacement.

3.3 The certificate from the competent agency referred in Regulation 3.2 shall be required only in case the replacement of assets is premature without completion of regulated life or obsolescence of the technology and there are alternatives to replacement under capital expenditure."

2.13.2 Comments Received

AEML-D submitted that asset replacements required to be carried out as per any statutory or policy directives, including those required for any environmental compliance, should be permitted regardless of the requirements of Regulations 3.2, 3.3 and 3.22. Regulations 3.2, 3.3 and 3.22, all deal with how replacement capex will be treated. Therefore, it is necessary that the wordings leave no ambiguity or inconsistency between these Regulations. It is suggested that all clauses related to replacement be put at one place in the Regulations, which at the moment are scattered across the three Regulations referred.

BEST and TPC-T submitted that for replacement of assets after Useful Life, the Internal Audited Performance/Test Report of asset should also be considered. TPC-D, TPC-G, and Prayas submitted that definition of Competent Agency is required to be included as applicable. BEST and TPC-T submitted that for premature replacement of assets without completion of regulated Useful Life, the Internal Audited Performance Report and cost comparison of Repair and Replacement of asset should also be considered. Also, the Commission should specify the name of competent agency to bring more role clarity. An indicative list of who qualifies to be a competent agency or a third party would be more effective.

TPC-G submitted that Regulation 3.2 of the Draft Regulations, 2022 specifies that certification of residual life from Competent Agency shall be required even for proposed replacement of asset that has completed its Useful Life, whereas Regulation 3.3 of the Draft Regulations, 2022 specifies that certification of residual life from Competent Agency shall be required only in case of proposed replacement of asset before completion of Useful Life. TPC-G requested for clarity on this aspect.

MSEDCL submitted that the Distribution Licensee proposes replacement of old infrastructure like corroded poles, conductors, etc. which have corroded earlier than their Useful Life due to coastal proximity. The Distribution Licensees have been proposing replacement until now by considering sample photographs and information like date of commissioning of assets. MSEDCL suggested to modify draft Regulation 3.2 as under:

"3.2 … and the Applicant will have to submit adequate justification for the asset replacement based on aspects such as inter-alia, residual life as certified by concerned Applicant/Utility"

MSEDCL also suggested to modify the draft Regulation 3.3 as under:

"The certificate from the testing team of concerned Applicant/Utility shall be required in case the replacement of assets is premature without completion of regulated life or obsolescence of the technology and there are alternatives to replacement under capital expenditure."

AEML-D submitted that in the Draft Regulations, 2022, Useful Life definition as per MERC MYT Regulations, 2019 is proposed to be adopted; however, Useful Life definition as per MERC MYT Regulations, 2019 is incomplete and does not include many types of assets. Assets like Meters, Batteries, Civil structures, Relays, IT hardware, Vehicles, Office equipment and appliances, electrical equipment and appliances, certain tools and instruments, metering boards and housings, LT Distribution panels, line insulators, etc., have shorter Useful Life. Due to shorter operational life and also due to corrosive and saline atmosphere in and around Mumbai, more frequent replacement becomes necessary.

AEML-D submitted that following Useful Life may be defined in the Capital Investment Approval Regulations to avoid any confusion about Useful Life of various types of assets:

Type of Asset	**Useful Life**
Building	30-60 Years
Plant and Equipment (Except Meters & Batteries)	25-35 Years
Plant and Equipment – Meters	10 Years
Plant and Equipment – Batteries	5 Years
Distribution Line / Transmission Cable	35 Years
Street Light	25 Years
Furniture and Fixtures	10 Years
Office Equipment	5 Years
Computers, Servers & Related Network	6 Years
Vehicles	8 - 10 Years

AEML-D also submitted that in case of distribution system assets as listed above, there are no competent agencies, which could certify residual life. Even the OEM will not be able to do so. It is therefore not practical to seek residual life certification for small assets or for their significant components due to volume of such replacements in any given scheme. Even if it was possible to obtain such certifications every time an asset or its component's replacement is proposed prematurely, it would only add further cost of seeking such certificate in the system and cause un-necessary delays in critical asset replacement. Therefore, instead of certification from competent agency, an assessment report signed off by concerned Network / Technical / Engineering Head of the Distribution Licensee should be allowed, which shall be based on factual evidence of performance, condition monitoring results, history of failures / faults, etc. Premature replacement of assets should be allowed wherever it is more economical to replace as compared to undertaking further repairs.

KRC DISCOMs submitted that they have underground HT and LT distribution network. The HT Network (22 kV incoming sources to Licensee) are from MSETCL EHV S/s through underground cable network. In case of premature replacement of underground cable

(particularly HT Cable) due to various factors, it may not be feasible and/or also economical to obtain certification from third party competent agency.

2.13.3 Analysis and Commission's Decision

The Commission agrees with the suggestion to place Regulations 3.2, 3.3, and 3.22 together, as all these clauses relate to asset replacement. The Commission has hence, shifted Regulations 3.2 and 3.3, and the revised Regulation Numbers are Regulation 3.20 and 3.21, followed by Regulation 3.22, whose number is unchanged.

The Commission is of the view that Internal Report or self-certification cannot be accepted in place of certificate from Competent Agency, as it would defeat the objective. The Utility that is proposing the replacement capital expenditure obviously believes that the asset replacement is justified and is hence, proposing such asset replacement. Basing the approval on self-certification from the same Utility would not suffice the requirement of independent assessment and certification for the asset replacement.

The instance of replacement of 22 kV cables on account of STU directions will not require additional certification from Competent Agency, as the STU itself would constitute the Competent Agency in such an instance. For internal cable replacement, certification of Competent Agency is required. For more clarity, the Commission has specified an Indicative list of Competent Agencies, which will include entities like Central Electricity Authority, Central Power Research Institute, Electrical Research and Development Association, National Power Training Institute, Indian Institute of Technology, Government Engineering Institutes or any other reputed expert professional agency.

It is clarified that there would be no exception from Competent Agency certification for Distribution Business; and smaller size Schemes would fall under Non-DPR Schemes or may be taken up under Repair & Maintenance. In case of premature replacement, Utilities may undertake the same under Repairs & Maintenance.

As regards the requirement of certification of residual life from Competent Agency for proposed replacement of asset before and after completion of Useful Life, the Commission has addressed the inconsistency, and has specified that certification of residual life from Competent Agency shall be required only in case of proposed replacement of asset before completion of Useful Life. The requirement for such certification has been deleted from Regulation 3.20 (earlier Regulation 3.2).

The Commission agrees that it is necessary to specify the Useful Life for all/most assets in order to reduce ambiguity in the interpretation of the Regulations. The Commission has relied on the provisions of the Companies Act, 2013 or CPWD Maintenance Manual, 2019, or Ministry of Road Transport and Highways reference documents, for specifying the Useful Life for different Assets, as shown in the Table below:

Type of Asset	Useful Life	Basis/Reference Document

Type of Asset	Useful Life	Basis/Reference Document
Building		
Buildings RCC Frame Structure	60 Years	Companies Act, 2013
Buildings other than RCC Frame Structure	30 Years	Companies Act, 2013
All Temporary Structures	3 Years	Companies Act, 2013
Meters	10 Years	RFP issued by selected Distribution Licensees
Batteries	10 years	RFP issued by selected Distribution Licensees, Industry Practice
Street Light	25 years	Industry Practice
Furniture and Fixtures	15 Years	CPWD Maintenance Manual, 2019
Office Equipment	5 years	Companies Act, 2013
Computers, Servers & Related Network		
Servers and related networks	6 years	Companies Act, 2013
End user devices, such as, desktops, laptops, etc.	3 years	Companies Act, 2013
Vehicles	15 Years	MORTH - Voluntary Vehicle Fleet Modernisation Program Investor Handbook

Accordingly, **the Commission has modified Regulations 3.20 to 3.22 and incorporated Regulation 3.28 as under:**

"3.20 Asset replacement shall not be approved merely because the asset has completed its Useful Life as specified in the applicable Regulations, and the Applicant will have to submit adequate justification for the asset replacement based on aspects such as inter-alia, performance degradation based on the diagnostic testing, assets beyond repair and cost-benefit analysis of repair versus replacement.

3.21 The certificate from the competent agency shall be required only in case the replacement of assets is premature without completion of regulated life or obsolescence of the technology and there are alternatives to replacement under capital expenditure.

***Explanation:** competent agency shall include entities like Central Electricity Authority, Central Power Research Institute, Electrical Research and Development Association, National Power Training Institute, Indian Institute of Technology, Government Engineering Institutes or any other reputed expert professional agency.*

3.22 Replacement of the assets shall be the last resort and not the first priority:

Provided that while proposing the assets for replacement, only essential scope shall be considered to optimise the project cost."

"3.28 Useful Life in relation to a Unit of a Generating Station, transmission system, distribution system and communication system from the date of commercial operation shall mean the following, namely:-

i.	*Buildings RCC Frame Structure:*	*60 years;*
ii.	*Buildings other than RCC Frame Structure:*	*30 years;*
iii.	*All Temporary Structures:*	*3 years;*
iv.	*Meters:*	*10 years;*
v.	*Batteries:*	*10 years;*
vi.	*Street Light:*	*25 years;*
vii.	*Furniture and Fixtures:*	*15 years;*
viii.	*Office Equipment:*	*5 years;*
ix.	*Servers and related network:*	*6 years;*
x.	*End-user devices such as desktops, laptops, etc.:*	*3 years;*
xi.	*Vehicles:*	*15 years:*

Provided that the above Useful Life of various equipment is in addition to the Useful Life specified in the applicable Maharashtra Electricity Regulatory Commission (Multi-Year Tariff) Regulations, 2019, as amended from time to time."

2.14 Conditions for Asset Replacement

2.14.1 Proposed in Draft Regulations, 2022

"3.22 Schemes proposing asset replacement shall be allowed only if the following conditions are fulfilled:

(a) Complete asset replacement after completion of Useful Life as per Regulations subject to asset being beyond repair, residual life certification, performance degradation, cost-benefit analysis of repair vs. replacement, technology and/or equipment obsolescence, no support of OEM, etc.;

(b) Complete asset replacement before completion of Useful Life as per Regulations subject to asset being beyond repair, performance degradation, cost-benefit analysis of repair vs. replacement, technology and/or equipment obsolescence, no support of OEM;

(c) Part asset replacement after completion of Useful Life as per Regulations, if comprising more than twenty-five (25) percent of the cost of complete equipment;

(d) On account of technology obsolescence, subject to certification of Technical Expert body like CEA and comprising more than twenty-five (25) percent of the cost of complete equipment;

(e) On account of equipment obsolescence, subject to communication from Original Equipment Manufacturer (OEM) confirming discontinuation of support:

Provided that in case certain Schemes for asset replacement are allowed by the Commission under exceptional circumstances despite not fulfilling the above conditions, then the

Applicant may be entitled to lower rate of Return on Equity on such investment, as may be specified in the applicable MERC (Multi-Year Tariff) Regulations."

2.14.2 Comments Received

AEML-D submitted that in many cases, replacement of unsafe and damaged LT pillars on the road (damage due to third party works, vehicular accidents, etc.) is proposed primarily from the point of view of safety of general public. In these cases, the asset may neither have completed its Useful Life, nor may it show degradation in performance, but would still require replacement to ensure safety. Such replacements, which are proposed from safety point of view, ought to be allowed by the Regulations.

AEML-D further submitted that Regulations should specify how the 25% threshold will be demonstrated. This is important because the historical cost of the component will not be available as the asset is normally procured as one single unit. In this regard, with reference to Section 123 and Schedule II of Companies Act, 2013 and Ind AS 16, it is submitted that the cost of the component can be worked out using any of the below options:

- Break-up cost provided by the vendor;
- Current replacement cost of component of the related asset and applying the same basis on the historical cost.

Therefore, the Regulations should provide the basis for working out the cost of significant component.

AEML-D added that Proviso of Regulation 3.22 is completely un-necessary and not justified in view of the fact that a scheme, once allowed as capex, is the same as any other scheme in terms of expectation of returns from it by the shareholder. The equity infusion by the shareholder does not differentiate between schemes and risk perception across schemes being fairly same, the cost of equity is also same. There is no reason for treating a scheme allowed as capex as an exception or that allowed normally.

AEML-D submitted that replacement of any component of asset whose cost is 25% or more than the cost of the related should also be allowed pre-maturely, based on the same conditions as above for the entire asset. In this regard, AEML-D submitted as under:

a. This appears to be permitted only upon completion of Useful Life and not prematurely, if the situation so requires. Therefore, there is a need to reword these Regulations for better clarity and also to cover all possible situations of asset or significant component replacement.

b. Indian Accounting Standards do not provide any such quantification of cost of component proposed to be replaced. Any component, which has a separate useful life, is not identified as an integral component of a given asset, but can be used as a replacement part across all such assets is an asset in itself. Replacement of such assets, regardless of their cost % to the total asset should be permitted. The utility should be allowed to justify why the component should be treated as an independent asset and the same can be allowed as capex after regulatory scrutiny.

With reference to Regulation 3.22 (a), TPC-G submitted that Regulation 3.2 of the Draft Regulations, 2022 specifies that certification of residual life from Competent Agency shall be required even for proposed replacement of asset that has completed its Useful Life, whereas Regulation 3.3 of the Draft Regulations, 2022 specifies that certification of residual life from Competent Agency shall be required only in case of proposed replacement of asset before completion of Useful Life. TPC-G requested for clarity on this aspect.

TPC-T and TPC-D submitted that the part asset replacement on account of failure before completion of Useful Life as per Regulations should be allowed if it happens due to reasons not attributable to the Licensee. Also, the definition of "the cost of complete equipment" mentioned in clause (d) of Regulation 3.22 needs to be clarified. TPC-T suggested to modify clause (c) of Regulation 3.22 as below:

"(c) Part asset replacement after completion of Useful Life/ ***on account of failure before completion of useful life*** *as per Regulations, if happened due to reasons not attributable to the Licensee as per Regulations, if comprising more than twenty-five (25) percent of the cost of complete equipment;"*

As regards Regulation 3.22(c), TPC-G submitted that if part replacement valuing less than 25% of cost of complete equipment is required, then it will be difficult to replace. Further, it is not clear how the term 'Asset' will be interpreted. Say, for example, if it is proposed to replace CW inlet valve compete assembly then will it be considered as an asset or part of the CW System Asset? If it is considered as a part of CW system asset, then does this asset also include CW Pumps and Condenser? TPC-G submitted that there should be no such limit for replacement of part asset. Further, definition of "cost of complete equipment" with an example needs to be clarified for replacement of assets.

As regards Regulation 3.22(b), MSPGCL submitted that the Life of Thermal / Gas plant is 25 years. However, life of certain assets, which forms part of total plant is different from 25 years. These assets need to be replaced after completion of Useful Life of these particular assets, however, prior to life of the complete thermal / Gas plant, eg: Reheater coils, LTSH coils, Economiser coils, Coal mill gear boxes, etc. (which have high value) but will be lower than Rs. 25 Crore. MSPGCL suggested to allow certain items with life less than 25 years as Capital spares over and above the normative O&M expenses. Such treatment will reduce the tariff burden on consumers as these will be recovered through additional O&M expenses and RoE burden will not be loaded on consumers.

As regards limit of 25% specified in Regulation 3.22(c), MSPGCL submitted that as this decision will be taken up after thorough assessment of the condition of asset, it should be left to the Utility to decide on how much part of the asset to replace, depending on the life assessment and O&M experience and supporting documents. Further, the Draft Regulations, 2022 have no mention of part replacement of asset before completion of useful life. This needs to be added because in case of the part asset being not repairable or completely out of condition, it will be essential to replace that much part even when the life of total asset is not over. Also, anyhow the proposer has to submit the proper justification and details for replacement needs. Hence, it will not be appropriate to outright disallow part replacement

before completion of expected life of total asset as this may lead to further deterioration (due to higher O&M expenses) of the asset resulting in full replacement of asset if not properly maintained. MSPGCL submitted that the limit of 25% need to be reviewed. Part replacement due to technical obsolescence should be allowed without minimum limit as per certification of Technical expert body/Agency.

As regards certification mentioned in Regulation 3.22(d), MSEDCL submitted that certification of Applicant/Utility should be considered.

2.14.3 Analysis and Commission's Decision

It is clarified that asset replacement has been envisaged before completion of Useful Life only under specific circumstances, as specified in Regulation 3.23 (b).

As regards the suggestion for allowing additional O&M expenses, as elaborated earlier, the Commission has incorporated proviso to Regulation 3.19 as under:

> *"Provided that the Commission may consider any request for revision of the normative O&M expenses on account of consideration of some Schemes under O&M rather than Capital Investment on case-to-case basis, depending on the justification to be submitted by the Applicant and the life-cycle cost analysis, as may be allowed under the applicable MERC (Multi-Year Tariff) Regulations."*

The Commission has retained the 25% limit for allowing part asset replacement, however, the term 'normally' has been incorporated in order to provide some flexibility to the Utilities in this regard. Further, the Commission has also incorporated the term 'considering the break-up of cost provided by the equipment supplier', for greater clarity regarding the method of assessment of 25% of complete asset value. Also, as desired by the stakeholders, the Commission has given certain illustrations in this SOR, to clarify how the percentage contribution of part asset replacement shall be computed, as shown below:

1. **Project: Establishment of 400 kV S/s with @ 1 km 400 kV line and @ 7 km 220 kV line (400 kV Pimpalgaon S/s at Nashik) approved on 15.04.2022 (Rs. 350 Cr.)**

   A. In case only 220 kV bays (i.e., 9 nos.) part material and ABT Meters, SCADA, etc., is replaced due to issues like OEM difficulties, ageing effect after 20 to 25 years' service, then cost of replacement would be Rs. 25 Cr. i.e. @ 7% of DPR cost.

   B. In case 400 kV + 220 kV all bays (i.e., 10 + 9 nos.), ICTs, and Reactors are replaced due to issues like OEM difficulties, ageing effect after 25 years' service, then cost of replacement would be Rs. 125 Cr., i.e., @ 35% of DPR cost.

   C. As the cost of replacement under Option A is not above 25% of original DPR, it is not qualified as Capex.

D. As the cost of replacement under Option B is above 25% of original DPR, it is qualified as Capex. It has also crossed specified limit of Rs. 25 Cr. Therefore, DPR for above work (B) shall be treated as Capex Scheme.

2. Project: Establishment of 132/33 kV S/s with @ 0.5 km 132 kV line (132 kV Mihan S/s at Nagpur) Approved on 17.06.2021 (Rs. 42 Cr.)

A. In case 132 kV and 33 kV Part equipment such as CT, PTs, and CB are replaced due to O&M difficulties and ageing effect, then cost of replacement would be Rs. 8 Cr., i.e., @ 20% of DPR cost.

B. In case 220 kV + 33 kV all bays, Power Transformers and Capacitor Bank, etc., are replaced due to O&M issues and ageing after 20 to 25 years' service, then cost of replacement would be Rs. 14 Cr., i.e., @ 33% of DPR cost.

C. As the cost of replacement under Option A is not above 25% of original DPR, it is not qualified as Capex.

D. As the cost of replacement under Option B is above 25% of original DPR, it is qualified as Capex. However, it has not crossed specified limit of Rs. 25 Cr. Therefore, such Scheme shall be treated as Non-DPR Capex Scheme.

***Note**: The above costs and scope of work as submitted by MSETCL in the DPR are considered for illustration purposes only. Actual costs incurred may vary from the illustrative cost. Further, the combination of scope of work in actuals may vary.*

The Commission has also incorporated a clause that the Utility should submit details of past maintenance records of the concerned assets in digital format, to justify that all due maintenance has been carried out as required.

Further, as clarified earlier, there is no linkage of failure due to Utility's fault or otherwise, with expense being considered under Capex.

The Commission is of the view that Internal Report or self-certification cannot be accepted in place of certificate from Competent Agency, as it would defeat the objective. The Utility that is proposing the replacement capital expenditure obviously believes that the asset replacement is justified and is hence, proposing such asset replacement. Basing the approval on self-certification from the same Utility would not suffice the requirement of independent assessment and certification for the asset replacement.

As stated earlier, with reference to Regulations 3.20 and 3.21, the Commission has addressed the inconsistency, and has specified that certification of residual life from Competent Agency shall be required only in case of proposed replacement of asset before completion of Useful Life. Accordingly, the same modification has been made in Regulation 3.23 (a) as well, for ensuring consistency.

The proviso to Regulation 3.22 (lower RoE if asset replacement is permitted despite not fulfilling criteria) is only an enabling clause and will come into effect only if appropriate clause is incorporated in the amendment to MERC MYT Regulations, 2022.

Accordingly, **the Commission has modified Regulation 3.23 as under:**

"3.23 Schemes proposing asset replacement shall be allowed only if the following conditions are fulfilled:

(a) Complete asset replacement after completion of Useful Life as per Regulations subject to asset being beyond repair, performance degradation, cost-benefit analysis of repair vs. replacement, technology and/or equipment obsolescence, no support of OEM, etc.;

(b) Complete asset replacement before completion of Useful Life as per Regulations subject to asset being beyond repair, performance degradation, cost-benefit analysis of repair vs. replacement, technology and/or equipment obsolescence, no support of OEM;

(c) Part asset replacement after completion of Useful Life as per Regulations, if comprising more than twenty-five (25) percent of the cost of complete equipment;

(d) On account of technology obsolescence, subject to certification of Technical Expert body like CEA and normally comprising more than twenty-five (25) percent of the cost of complete equipment, considering the break-up of cost provided by the equipment supplier;

(e) On account of equipment obsolescence, subject to communication from Original Equipment Manufacturer (OEM) confirming discontinuation of support;

(f) Submission of details of past maintenance record of the concerned assets in digital format:

Provided that in case certain Schemes for asset replacement are allowed by the Commission under exceptional circumstances despite not fulfilling the above conditions, then the Applicant may be entitled to lower rate of Return on Equity on such investment, as may be specified in the applicable MERC (Multi-Year Tariff) Regulations."

2.15 Differentiation between Capex and Opex Schemes

2.15.1 Proposed in Draft Regulations, 2022

"3.23 The Applicant may also submit Opex Schemes for approval of the Commission, which shall be considered as separate from Capital Investment Schemes.

3.24 For Opex Schemes, the Applicant shall submit detailed justification and cost benefit analysis and life-cycle cost analysis of such schemes including savings in O&M expenses, as specified in the MERC (Multi-Year Tariff) Regulations, 2019, as amended from time to time.

3.25 For Opex Schemes, the Applicant may consider operational advantages in management as one of the benefits.

3.26 The purpose of the Scheme shall be given importance rather than the nature of the work or funding pattern, while deciding whether it is a Capex Scheme or Opex Scheme:

Provided that the onus of achievement of the proposed improvements in the set parameters shall lie with the Applicant."

2.15.2 Comments Received

MSEDCL submitted that the EM at Para No. 3.3(c) mentions three relevant conditions for Opex schemes such as detailed justification, cost-benefit analysis and savings in O&M expenses. This is in line with the already notified Regulation 75.7 of MERC MYT Regulations, 2019. However, draft Regulation 3.24, without any explanation in EM, has added the term 'life-cycle cost analysis'. Such requirement is also not insisted upon at the time of approval of MYT expenses. Therefore, it is suggested that the term 'life-cycle cost analysis' needs to be removed.

Draft Regulations 5.1(2)(f)(i) and 8.2(2)(m) requires justification for consideration of scheme as Capex scheme rather than Opex scheme or expenditure under O&M expenses, on the other hand draft Regulation 3.24 along with Regulations 75.7 of MYT Regulations, 2019 seek detailed justification and cost benefit analysis of Opex scheme against the capex scheme. Such comparison from both sides results in conflict of provisions and hence, MSEDCL requested the Commission to limit requirement/submission of justifications while submitting Opex scheme only.

MSEDCL further submitted that although the draft Regulations propose for optional submission of Opex schemes, in such case the particular format under which such information is required to be submitted may be clarified. As per EM and draft Regulations, there is difference between Opex schemes and Capital Investment Schemes.

2.15.3 Analysis and Commission's Decision

The Commission has given some more clarity in Draft Regulations, 2022 regarding Opex Schemes, as compared to that specified in the MERC MYT Regulations, 2019. Life-cycle cost analysis is completely relevant for assessing whether any expenditure should be taken up under Capex or Opex, and is an analysis that the Utility should itself be doing before proposing any Scheme under Capex or Opex. Hence, the Commission has retained the requirement of life-cycle cost analysis in the final Regulations. The two-way justification for Capex vs. Opex does not lead to any inconsistency, and has been retained.

Hence, the clauses proposed in the Draft Regulations, 2022 have been retained.

3 Application and Scrutiny for In-Principle Approval and Completed Cost approval of Capital Investment Schemes

3.1 Cost Limit for In-Principle Approval

3.1.1 Proposed in Draft Regulations, 2022

"4.1 Capital Investment Schemes of a value exceeding Rupees Twenty-five crore or such other amount as may be stipulated by the Commission from time to time shall be considered as DPR Schemes:

Provided that the limit shall be Rupees One crore for MSLDC and Deemed Distribution Licensees other than Maharashtra State Electricity Distribution Company Limited (MSEDCL)"

3.1.2 Comments Received

BEST submitted that Capital Investment Schemes of a value exceeding Rs. 10 Crore should be considered as DPR Scheme for Distribution Licensee. This will ensure that the Mumbai Discoms (parallel licensees) would approach the Commission for in-principle approval for maximum percentage of Schemes in terms of cost/value, which will help in evaluation to avoid duplication of DPR Schemes and also to restrict the Non-DPR Schemes of Distribution Licensees.

MSETCL submitted that for Transmission Licensee, EHV level Capital Investment Schemes of a value exceeding Rs. 25 Crore for the current year and increase of Rs. 5 Crore per year for subsequent years should be considered as DPR Schemes, considering inflation and material price trend.

TPC-T submitted that unlike Generation and Distribution DPRs, approval of Transmission DPRs follows a step-by-step process of scrutiny by STU, MTC, GCC as specified in MERC State Grid Code Regulations, 2020 even before the DPRs are submitted to the Commission. This process itself runs over a period of more than 2 to 3 months on an average. Hence, Transmission DPRs may not require to be processed again through the CISC and may be put up directly to the Commission after necessary checks by the concerned officers of the Commission. TPC-T also submitted that Provisions of Regulation 4 should be modified to exempt the Transmission DPRs up to Rs. 100 Crore from the stage of scrutiny of Schemes in CISC as the same has already been processed through multi-layer analysis of STU, MTC and GCC. Further, an overall timeline of 3 months should be specified for approval of DPRs including scrutiny of STU, MTC and GCC.

TPC-G submitted that the limit of Rs. 25 Crore needs to be revisited. Minimum Threshold Value for DPR schemes can be maintained at Rs. 10 crore. If DPR scheme value is raised from Rs. 10 Crore to Rs. 25 Crore, it will further affect the prospect of clubbing of small

schemes to make combined DPR of Rs. 25 Crore. Also, 20% clause for Non-DPR scheme should be modified to Asset based % and should not be specific to one year. Instead, 5 years (MYT Control Period) can be considered for Non-DPR quantum eligibility.

MSPGCL submitted that if DPR Capex limit is revised to Rs. 25 Crore, majority of its Capex schemes will not comply the condition for DPR scheme under the Draft Regulations, 2022. If MSPGCL takes a cautious view and undertakes capex only to the level of approvable level irrespective of plant requirements, it will severely affect the operational performance of MSPGCL. On the other hand, if necessary capex is carried out irrespective of possible capex disallowances, there will be severe under-recovery of related expenses (lower depreciation/ lower interest on loans, etc.). Thus, increase in DPR capex limit may act as double whammy for MSPGCL.

If the Commission allows MSPGCL to submit composite DPR at MSPGCL level instead of station-level submission, the difficulties regarding the threshold limit can be eased. Submission of such comprehensive composite DPR scheme will be easier for scrutiny purpose also. While submitting such combined scheme, MSPGCL will compute and submit tariff impact on sub-scheme basis and station basis. Alternatively, the existing limit of Rs. 10 Crore may be retained for Thermal stations and limit may be reduced to Rs. 1 Crore for individual Hydro stations or Rs. 5 Crore after clubbing schemes for different hydro stations. As another option, the Commission may increase the ceiling cap for Non-DPR capitalisation to 50% of approved DPR capitalisation, if the DPR capex limit is increased to Rs. 25 Crore and Generating Companies have to submit the schemes on station basis only.

AEML-D submitted that in case of schemes of Generating Companies, other than the schemes for Renovation & Modernisation, the capex schemes are generally expected to be of smaller value. In case of Adani - Dahanu Thermal Power Station (ADTPS), AEML has been clubbing works of similar nature in order to be able to reach a cumulative value of Rs. 10 Crore so that a DPR can be prepared. If this limit is increased to Rs. 25 Crore, it will become very difficult to carry out capex schemes in generation, as even with clubbing, this limit may not reach. This will make it very difficult to present any generation schemes as a DPR. Furthermore, as Non-DPR capitalisation allowed under MERC MYT Regulations, 2019 is only a percentage of DPR capitalisation, it will not be possible to execute such works under Non-DPR as well, as the same will not be allowed, because of no or insufficient DPR capitalisation. Therefore, AEML-D suggested that the limit of Rs. 10 Crore may be retained for Generating Companies.

TPC-D submitted that the DPR for Distribution Licensees other than MSEDCL under the category of Reliability or efficiency improvement and replacement of outdated technology are generally between Rs. 10 Crore to Rs. 15 Crore. Hence, the Capital Investment scheme limit may be retained as Rs. 10 Crore in line with the current practice, at least for Distribution Licensees other than MSEDCL. In case the Commission is in favour of keeping the value limit as Rs. 25 Crore to be considered as DPR Scheme, then the limit for Non-DPR Schemes may be revised to 40% of the DPR value.

Quadron Business Parks Private Limited (QBPPL) submitted that it has developed its distribution network within the IT/ITES SEZ, i.e., its area of supply, however, at present it is

operating as HT consumer of MSEDCL and is taking power from MSEDCL for the occupants of the IT/ITES SEZ. QBPPL, from 2014 onwards, has incurred capital expenditure towards infrastructure and equipment in the IT/ITES SEZ for provision of power to the occupants of the IT/ITES SEZ. QBPPL now intends to operationalize its Distribution Licensee status from 1st August 2022.

QBPPL added that Deemed Distribution Licensees of SEZs like QBPPL, plan and execute their capex before actually operationalising their distribution business, which shall form the basis of first Tariff determination of a Deemed Distribution Licensee. In this case, QBPPL shall submit entire CAPEX scheme including Capital Investment carried by QBPPL for Distribution Business from 2014 onwards till date, which has been incurred by it prior to operationalisation along with a Rolling Plan for balance MYT period. QBPPL apprehends that such capital outlay may exceed the limits stipulated in draft Regulation 4.1 of the draft Capex Approval Regulations, 2022.

QBPPL also submitted that upon perusal of the Draft Regulations, 2022, it is unclear whether such costs incurred by QBPPL prior to operationalising its Distribution Licence and for which no in-principle approval has been obtained, are going to be included within the threshold specified under draft Regulation 4.1 of the Draft Regulations, 2022. As per the current Capex Guidelines, the Commission while scrutinising the Tariff Petition submitted by a Deemed Distribution Licensee considers this aspect and allows the capital expenditure upon due prudence check.

QBPPL further submitted that it shall approach the Commission for approval of Capital Expenditure carried out for distribution business and Tariff approval during Mid Term Review of 4th Control period of MYT and therefore, seeks necessary clarification in this regard. It is requested that the Draft Regulations include necessary clauses to clarify and confirm that such capital expenses, which are incurred by Deemed Distribution Licensees prior to operationalising their Licences are not governed by the limits mentioned in draft Regulation 4.1 and their already executed capital investment for which no in-principle approval is obtained shall be considered as a single scheme for the approval by Commission.

3.1.3 Analysis and Commission's Decision

The DPR limit was specified as Rs. 10 Crore in the Capex Guidelines and has continued to be the same for the last sixteen years. As clarified in the EM, the Commission observed that over the period there are dynamic changes in Generation, Transmission and Distribution Businesses in terms of increased capacity. Hence, Capital Expenditure needs have increased dramatically over the years in the State of Maharashtra. Over the period due to increase in inflation and also advent of the modern technology, the cost of the schemes have increased substantially. Further, in the recent years, the Commission has been receiving more applications for in-principle approval of Capital Investment Schemes. The Commission, therefore, proposed to revise the DPR limit so that the number of applications would be reduced while at the same time the Commission should be able to scrutinize maximum possible amount of Capital Investment Schemes, to ensure that the overall objective of the Regulations is met. To determine DPR cost limit for in-principle approval of Capital

Investment Schemes, the Commission studied Schemes and the estimated cost of the Schemes approved by the Commission in the past few years.

The Commission, thus, has proposed DPR limit of Rs. 25 Crore in the Draft Regulations, 2022, after detailed analysis, to capture high % in value terms and reduce number of DPRs for timely scrutiny. The Commission has noted that the stakeholders have not submitted any new input to modify the DPR limit. Further, annual escalation of Rs. 5 Crore for DPR limit for Transmission is not required since Regulation 4.20 of Draft Regulations, 2022 already provides for periodic review by the Commission. The Commission has not proposed to revise the requirement of CISC approval for Schemes greater than Rs. 25 Crore and up to Rs. 50 Crore. For Schemes approved by the MTC, Draft Regulations, 2022 already specify that the Commission shall only ensure that due procedure has been followed.

As regards the request to allow submission of composite DPR at Generation Company level, it is clarified that Generation Schemes have to be submitted Station/unit-wise as specified and it cannot be submitted for Genco as a whole. Further, the suggestion regarding increasing limit for Non-DPR to 50% of DPR Schemes is within the scope of the MERC MYT Regulations, 2019. However, it is clarified that in case of any difficulties on account of this prescribed limit, the Utilities may approach the Commission for necessary relaxation giving due justification at the appropriate time, for the Commission's consideration.

In order to address the peculiar situation faced by the small Deemed Distribution Licensees, who operationalise their Distribution Business at a later date, as stated earlier, the Commission has already incorporated the following provisions in the final Capital Investment Regulations, 2022:

"3.12 Deemed Distribution Licensees, excluding Maharashtra State Electricity Distribution Company Limited, who have incurred capital investment prior to being recognised as a Deemed Distribution Licensee by the Commission shall be permitted to seek post-facto approval of the Commission for capital investment undertaken prior to commencement of operations as a Distribution Licensee as well as capital investment undertaken during the first six (6) months of operation as a Distribution Licensee:

Provided that such Deemed Distribution Licensees shall be allowed to recover the costs related to the capital investment already undertaken without obtaining the Commission's in-principle approval, only to the extent of capital investment subsequently approved by the Commission and in proportion to actual asset loading, subject to achievement of minimum asset loading of twenty-five (25) percent, with entire cost recovery being allowed once the loading reaches seventy (70) percent:

Provided further that such Deemed Distribution Licensees shall be required to obtain in-principle approval as specified in these Regulations prior to undertaking the capital investment against DPR Schemes, after six (6) months of operation as a Distribution Licensee."

Further, considering the submission of the Deemed Distribution Licensees, the Commission has incorporated an exception proviso in Regulation 4.1 for first-time post-facto approval for SEZ/Small size DDLs.

Further, in order to avoid any ambiguity in interpretation, the Commission has incorporated a proviso in Regulation 4.1 to the effect that the Capital Investment Schemes proposed by the Applicant shall be for entire independent system including any associated upstream/downstream works, and the Schemes shall not be submitted in parts.

The Commission will issue Practice Directions under the State Grid Code fixing the overall timeline for approval of DPRs including scrutiny to be carried out by STU, MTC and GCC.

In view of the above, **the Commission has modified the Regulation 4.1 as under:**

"4.1 Capital Investment Schemes of a value exceeding Rupees Twenty-five crore or such other amount as may be stipulated by the Commission from time to time shall be considered as DPR Schemes:

Provided that the Capital Investment Schemes proposed by the Applicant shall be for entire independent system including any associated upstream/downstream works, and the Schemes shall not be submitted in parts:

Provided further that the limit shall be Rupees One crore for MSLDC and Deemed Distribution Licensees other than Maharashtra State Electricity Distribution Company Limited (MSEDCL) and Maharashtra State Electricity Transmission Company Limited (MSETCL):

Provided also that the limit of Rupees One crore shall not be applicable for Deemed Distribution Licensees seeking post-facto approval for capital investment undertaken prior to commencement of operations as a Distribution Licensee as well as capital investment undertaken during the first six (6) months of operation as a Distribution Licensee."

Further, in order to alleviate some of the concerns of the Utilities regarding treatment of Non-DPR Schemes, the Commission has incorporated additional Regulation 10.1 to the effect that all Non-DPR Schemes shall be required to be registered with the Commission on quarterly basis, and unless registered, shall not be considered for final approval of completed cost.

In view of the above, **the Commission has incorporated Regulation 10.1 as under:**

***"**10.1 All Non-DPR Schemes shall be required to be registered with the Commission on quarterly basis in physical form, till the commencement of the web-portal referred in Regulation 19 of these Regulations, after which the Schemes shall be registered on the web portal:*

*Provided that the Format specified in **Appendix 1** for submission of DPR Schemes shall be applicable for Non-DPR Schemes also, to be filled-up as applicable/relevant:*

*Provided further that the registration of the Non-DPR Schemes shall only be acknowledged by the Commission in accordance with the Format specified in **Appendix 4**, and shall not be construed as approval by the Commission:*

Provided also that the Commission shall not consider Non-DPR Schemes that have not been registered with the Commission, for Final approval of completed cost in accordance with these Regulations."

3.2 Capital Investment Approval Process

3.2.1 Proposed in Draft Regulations, 2022

"4.3 The Commission shall approve the Capital Investment in the following two stages:

(a) In-principle approval prior to undertaking the capital investment against DPR Schemes;
(b) Final approval of completed cost after asset is put to use"

3.2.2 Comments Received

TPC-T suggested to modify the Regulation 4.3 as under:

"4.3 The Commission shall approve the Capital Investment in the following two stages:

(a) In-principle approval prior to undertaking the capital investment against DPR Schemes;
*(b) Final approval of completed cost after asset is put to use **subject to Clause 24 of MYT Regulations, 2019**"*

3.2.3 Analysis and Commission's Decision

The Commission notes that TPC-T has not explained/clarified which clause of Regulation 24 of MERC MYT Regulations, 2019 is being sought to be linked. On scrutiny, it is observed that apparently, TPC-T is referring to provisos of Regulation 24.1 of MERC MYT Regulations, 2019, which specify certain aspects of assets being 'put to use'. The Commission is of the view that there is no requirement to specifically link these two Regulations for this aspect, as there is ample clarity regarding asset being put to use. Hence, the clauses proposed in the Draft Regulations, 2022 have been retained.

3.3 Exemption of Schemes from obtaining In-Principle Approval

3.3.1 Proposed in Draft Regulations, 2022

"4.4 Prior in-principle approval shall not be required for Non-DPR Schemes or hundred (100) percent Grant funded Schemes or Schemes that fall under emergency works.

4.5 Prior in-principle approval shall be required for DPR Schemes funded partly by Grants where the contribution or share of the Application in terms of debt and equity is higher than the limit specified in Regulation 4.1.

4.6 In case of emergency works, the Applicant shall approach the Commission within 30 days from the start of the work and shall submit the DPR complete in all respects for approval of the Commission with due approval of its competent authority.

4.7 The prior in-principle approval granted by the Commission for the Capital Investment shall be considered as an Order issued by the Commission."

3.3.2 Comments Received

MSEDCL submitted that from combined reading of Regulation 3.21(s) and Regulations 4.4, 4.6 and 9.2(2), it is evident that 'Schemes that fall under emergency works' are not categorized under Non-DPR schemes. The Commission should exclude 'Schemes that fall under emergency works' from Non-DPR scheme while calculating the allowance of non-DPR capitalization to the extent of percentage of DPR capitalization as specified in Regulation 24.7 of MERC MYT Regulations, 2019. The Commission should modify the Regulation 4.6 such that MSEDCL shall be required to approach the Commission under Regulation 4.6 only in case of 'Schemes that fall under emergency works' with a value exceeding DPR Limit for in-principle scheme, i.e., above Rs. 25 Crore.

MSEDCL requested that submission of 'Schemes that fall under emergency works' as required under draft Regulation 4.6 may be allowed to be submitted within 60 days from the start of the work and during any time of year through web-portal. MSEDCL suggested that the draft Regulation 4.6 should be modified as under:

> *"In case of emergency works, the Applicant shall approach the Commission* ***within 60 days*** *from the start of the work and shall submit the DPR complete in all respects for approval of the Commission with due approval of its competent authority."*

TPC-T and TPC-D submitted that an Order can only be passed by the Commission after due adjudicatory proceedings conducted by the Commission as prescribed under the MERC (Conduct of Business) Regulations, 2004. The MERC Conduct of Business Regulations stipulates the procedure and process of proceedings before the Commission, which includes providing a reasonable opportunity of a fair hearing, submission of pleadings, etc. It is only thereafter that a reasoned Order is passed with signatures of the Members of the Commission.

An administrative letter/ in-principle approval under the said Capex Regulations cannot be given the stature and sanctity of an Order of Adjudication. Per Contra and to put things in perspective, the final approval granted by the Commission under the said Capex Regulations, for completed cost after asset is put to use sought along with the claim for true-up for any financial year filed along with the appropriate Petition for approval of Multi-Year Tariff or Mid-Term Review, will be an adjudicatory order of the Commission.

The Act does not define Judgment, Decree or Order. Thus, a reference can be made to Section 2 (14) of Civil Procedure Code (CPC). The in-principle approval granted by the Commission, thus, cannot be termed as an Order in terms of the definition provided in CPC. In case, such an approach is proceeded with as per the Capex Approval Regulations, 2022, the entire adjudicatory mechanism will collapse and the purpose of having an open court system would

be rendered nugatory. Therefore, TPC-T suggested that this clause should be removed from the final Regulations.

TPC-T and TPC-D further submitted that the approved copy of all approved DPRs should be made available on the website of the Commission. Accordingly, the Regulation 4.7 should be revised as below:

"4.7 ***The copy of all approved DPR's of Generating companies, MSEDCL, MSETCL as well as all licensees shall be made available on MERC website****."*

3.3.3 Analysis and Commission's Decision

The issue of not clubbing Emergency Schemes with Non-DPR Schemes is a subject matter of implementation of MERC MYT Regulations, 2019, and the Utilities may seek necessary relief at the appropriate time.

Considering the submission of the Utilities, the Commission has modified the Regulations to the effect that post-facto approval is to be sought for the emergency schemes along with the quarterly filings for in-principle approval. However, the Utilities shall be required to mandatorily intimate the Commission regarding such Emergency Schemes within 15 days from the start of the work.

It is also clarified that only emergency schemes with DPR value greater than Rs. 25 Crore shall have to be submitted for post-facto approval along with the quarterly filings for in-principle approval, and emergency schemes costing less than Rs. 25 Crore can be submitted along with the True-up Petition, along with other Non-DPR Schemes.

As regards the concern raised that in-principle approval granted by the Commission cannot be termed as an Order, the Commission is of the view there is no legal hurdle in considering administrative approval as an Order of the Commission. The Hon'ble APTEL has already ruled in favour of the Commission in this regard in its Judgment dated 21st May 2007 in Appeal No. 46 of 2007, relevant extracts of which are reproduced below:

> *"The present appeal challenges the Orders of Maharashtra Electricity Regulatory Commission (MERC) dated 12.2.2007 and 27.02.07, whereby MERC granted permission to the appellant to proceed with the infrastructure plan for Ahmadnagar Rural Division, but made certain modifications in the proposal.*
>
> *…MERC has framed regulations (Terms and Conditions of Tariff) Regulation 2005 referred to as "Tariff Regulations", which have statutory force. The MERC has also framed Guidelines For In-principle Clearance of Proposed Investment Scheme. The appellant also submitted Feasibility Reports (FR) for investment Schemes as required by the Guidelines.*
>
> *…The respondent, MERC in its Counter Affidavit has alleged that Regulations 71.5 grants power to Commission to give in-principle approval to the investment plan of the distribution licensee with modifications or conditions as it may deem appropriate.*

…The basic difference between the cases of that of the KPTCL and the present one is that the Regulations specifically empowers the MERC to grant clearance with modifications and conditions as it may deem appropriate. In the case of KPTCL judgment, no such regulations have been cited or examined.

…All the Arguments advanced by Mr. Vikas Singh for reading down the above regulations No. 71.5 appear to be directed towards striking down the said regulation, which, however, is beyond the jurisdiction of this Tribunal. None of his arguments allow us to accept the plea that the Commission has the right to impose conditions and modifications but not the specific modifications made by it in the impugned order. So long as the regulations 71.5 is in place, the appellant can expect no relief from this Tribunal. The appeal therefore, has no force.

…Hence, we dispose of the appeal by directing the respondents to allow a fresh opportunity to the appellant to explain technical and commercial impact of the project proposal with economic advantage and justify the entire project in question and in case the respondent is satisfied, it may appropriately revise the impugned sanction orders."

Further, in a recent Order dated 7th January 2022 in Case No. 95 of 2021 and MA No. 27 of 2021 in Case No. 95 of 2021, the Commission has ruled as under:

"42. The Commission further notes that it is a settled principle of law that after the passing of the judgment, decree or order, the court or the tribunal becomes functus officio and is not entitled to vary the terms of the judgments, decrees and orders earlier passed. For the aggrieved party, the proper remedy for seeking any correction on the merits of the case is to file an appeal or review application. The Commission is not expected to sit as an Appellate Authority to reconsider the earlier Order passed by it and only the review jurisdiction can be exercised by the Commission and that too under only limited circumstances. It is not the case of TPC-T that review is required on the approval granted to AEML-T's DPR for correcting some error on face of record. Rather, TPC-T is seeking to recall and reconsider the approval granted to AEML-T. The Commission is of the view that there is a legal difficulty to do so as explained above."

Hence, for removal of any ambiguities and inconsistencies in this regard, the Commission has reworded Regulation 4.7 to the effect that the prior in-principle approval granted by the Commission for the Capital Investment shall be subject to Appeal before higher Courts in the same manner as any Order issued by the Commission.

In view of the above, ***the Commission has modified the Regulation 4.6 as under:***

"4.4 Prior in-principle approval shall not be required for Non-DPR Schemes or hundred (100) percent Grant funded Schemes or Schemes that fall under emergency works.

4.5 Prior in-principle approval shall be required for DPR Schemes funded partly by Grants where the contribution or share of the Application in terms of debt and equity is higher than the limit specified in Regulation 4.1.

4.6 In case of emergency works, the Applicant shall mandatorily intimate the Commission within 15 days from the start of the work and shall submit the DPR complete in all respects for post-facto approval of the Commission with due approval of its competent authority along with the subsequent quarterly submission in accordance with Regulation 4.21:

Provided that emergency works falling under Non-DPR schemes shall be required to be submitted for approval along with other Non-DPR schemes.

4.7 The prior in-principle approval granted by the Commission for the Capital Investment shall be subject to Appeal before higher Courts in the same manner as any Order issued by the Commission."

3.4 Scrutiny by the Capital Investment Scrutiny Committee and by the Commission

3.4.1 Proposed in Draft Regulations, 2022

"4.8 All Capital Investment Schemes of a value exceeding Rupees Twenty-five crore and up to Rupees Fifty Crore shall be first scrutinised by the Capital Investment Scrutiny Committee (CISC) to be set up by the Commission through separate notification for scrutiny of such proposals:

Provided that an external expert or agency may be co-opted by the CISC from time to time for necessary inputs and expertise.

4.9 For Schemes categorised for scrutiny by the CISC, the Applicants shall make a presentation to the CISC on the salient features of the Capital Investment Scheme in order to facilitate better understanding of the Scheme.

4.10 The concerned officers of the Commission shall analyse the Schemes in detail, raise deficiencies and queries on the Scheme, and after detailed analysis, put up each qualified Scheme for the consideration of the CISC.

4.11 The CISC shall submit its recommendations to the Commission for due consideration along with due analysis and justification within a maximum time period of two months from the date each qualified Scheme has been first put up to the CISC for consideration:

Provided that the CISC shall finalise its recommendations on each Scheme after a maximum of two (2) deliberations:

Provided further that if the scheme is not justified or the Applicant does not submit the requisite information as sought within stipulated time, CISC may return the scheme to the Applicant with the reasons for doing so in writing.

4.13 For Capital Investment Schemes of a value exceeding Rupees Fifty crore and up to Rupees Hundred Crore, the Applicants shall make a presentation to the Commission on the salient features of the Capital Investment Scheme in order to facilitate better understanding of the Scheme.

4.14 The concerned officers of the Commission shall analyse in detail such Schemes of a value exceeding Rupees Fifty crore and up to Rupees Hundred Crore, raise deficiencies and queries on the Scheme, and after detailed analysis, put up each qualified Scheme for the consideration of the Commission."

3.4.2 Comments Received

MSEDCL submitted that in the EM, the Commission has opined that there should be definite timeline for filing/submission of DPR schemes by all Distribution licensees, so that process of filing and approval of Capex schemes is streamlined and there is clarity on the approved schemes. Accordingly, as per draft Regulation 4.21, an application for in-principle approval of DPR scheme during a Financial year is permitted only on two occasions, i.e., April and October, and the Commission has proposed various time-bound activities/compliances.

MSEDCL submitted that as per draft Regulation 4.11, after submission of scheme with cost above Rs. 25 Crore and up to Rs. 50 Crore, Officers of the Commission would be scrutinizing the same in detail, raising deficiencies and queries on scheme. Further, to facilitate better understanding of CISC, a presentation is also envisaged. Moreover, CISC may also avail the services of an external expert or agency. MSEDCL and TPC-G submitted that after such an extended analysis, CISC should submit its recommendations within a maximum period of one month. MSEDCL also suggested that a representative of respective Distribution Licensee may be included as one of the Members of CISC for speedy disposal. MSEDCL also requested to provide timelines for approval of schemes after submission of respective schemes for all capex value limits.

MSPGCL submitted that presently the scheme approval process at the Commission level takes longer that 2 months period (for some cases around 1 year to 2 years period). When it is expected from the Utilities to abide by certain timelines, similar specific timelines may also be specified for the decisions at Commission's end. For schemes above Rs. 50 Crore, no such timelines are mentioned. Therefore, appropriate timelines should be added to the relevant Regulations, i.e., Regulations 4.12, 4.13, 4.14, and 4.15.

TPC-G submitted that clarity is required on who shall be a part of CISC.

3.4.3 Analysis and Commission's Decision

The Commission has attempted to streamline the process of approval of Capital Investment Proposals by framing the present Regulations, which clearly specify the various requirements to be complied with by the Applicant, the various aspects that the Commission shall analyse, and the process of approval by the Commission. Such clarity is intended to reduce any ambiguities, thereby speeding up the process of Capital Investment Approval.

As stated in the Draft Regulations, 2022, the Capital Investment Scrutiny Committee (CISC) shall be set up by the Commission through separate notification.

The time-frame of 2 months for the CISC to finalise its recommendations has also been specified with the same objective. However, further reducing the time for CISC recommendations to 1 month or specifying time-frame for all approvals by the Commission is

not realistic. Further, the suggestion to include the representative of the Utility as a part of the CISC, cannot be accepted, as the Utility that is submitting the Capital Investment Proposal cannot be in a position to decide on the approval or rejection of the Proposal.

The Commission also considers it necessary to impart clarity regarding the timelines for CISC to finalise its recommendations, in case any Scheme is returned and the Scheme is resubmitted by the Applicant. The Commission has hence, clarified that such resubmitted Scheme shall be treated as a fresh proposal in respect of timelines specified in these Regulations.

In view of the above, ***the Commission has modified the Regulation 4.11 as under:***

"4.11 The CISC shall submit its recommendations to the Commission for due consideration along with due analysis and justification within a maximum time period of two months from the date each qualified Scheme has been first put up to the CISC for consideration:

Provided that the CISC shall finalise its recommendations on each Scheme after a maximum of two (2) deliberations:

Provided further that if the scheme is not justified or the Applicant does not submit the requisite information as sought within stipulated time, CISC may return the scheme to the Applicant with the reasons for doing so in writing:

Provided also that any scheme resubmitted by the Applicant after being returned by the CISC shall be treated as a fresh proposal in respect of timelines specified in these Regulations."

3.5 Need to Increase Regulatory Scrutiny of Transmission Projects

3.5.1 Proposed in Draft Regulations, 2022

"4.14 For Capital Investment Schemes of Generation Business and Distribution Business of a value exceeding Rupees Hundred crore, the Applicants shall make a presentation to the Commission on the salient features of the Capital Investment Scheme in order to facilitate better understanding of the Scheme.

4.15 The concerned officers of the Commission shall analyse in detail such Schemes of Generation Business and Distribution Business of a value exceeding Rupees Hundred crore, raise deficiencies and queries on the Scheme, and after detailed analysis, put up each qualified Scheme for the consideration of the Commission:

Provided that an external expert or agency may be consulted by the Commission from time to time for necessary inputs and expertise while evaluating such Schemes.

4.16 For Capital Investment Schemes of Transmission Business of a value exceeding Rupees Hundred crore, the STU shall evaluate the technical feasibility and financial prudence of the Scheme based on least cost analysis and sensitivity analysis, in accordance with Regulation 13 of the Maharashtra Electricity Grid Code, 2020 and the Prudence Check framework specified in Regulation 8 of these Regulations:

Provided that while undertaking the technical evaluation of such Schemes, the STU shall bear in mind the issues related to reactive power management, associated distribution network development, load bifurcation/re-orientation, available alternatives, management of outlets for Distribution Licensees, etc.

4.17 The decision on undertaking Transmission Schemes of a value exceeding Rupees Hundred crore shall be taken after due deliberation between the stakeholders in the Grid Co-ordination Committee and/or Maharashtra Transmission Committee, formulated as per the Maharashtra Electricity Grid Code, 2020, as appropriate.

4.18 When the Application is made for approval of such Transmission Schemes of a value exceeding Rupees Hundred crore under these Regulations, the Commission shall only ensure that the STU has followed the due process laid down in the Maharashtra Electricity Grid Code, 2020 and the provisions of these Regulations, before granting approval for such Schemes."

3.5.2 Comments Received

Prayas submitted that Transmission projects are high value investments, which have significant cost implications to consumers. While State level planning is required for such projects, it is crucial that project suitability, planning, specific in-principle and final investment approval as well as project monitoring be approved by the Commission.

Thus, the process before the Commission for a DPR based transmission project should be the same as any other DPR based non-transmission capital investment project. In compliance with Regulations 13.2.3 and 13.2.4 of the Grid Code, STU should evaluate plans and provide due consideration for financial implications of investments. However, the Commission should not delegate its duty and legal mandate to ensure detailed scrutiny of these projects.

Prayas submitted that the draft Regulation 4.18 should be deleted and draft Regulation 4.14 should be amended as follows:

"For all Capital Investment Schemes of a value exceeding Rupees Hundred crore, the Applicants shall make a presentation to the Commission on the salient features of the Capital Investment Scheme in order to facilitate better understanding of the Scheme."

3.5.3 Analysis and Commission's Decision

The Commission is of the opinion that the limit of Rs. 100 Crore for Distribution Business is an enabling clause and it is not required to be deleted. The suggestion to increase scrutiny of Transmission Schemes costing more than Rs. 100 Crore has not been accepted, as it would amount to duplication of the entire approval process.

However, the Commission finds it necessary to clarify that Schemes may be resubmitted in case the Grid Co-ordination Committee and/or Maharashtra Transmission Committee, as applicable, are unable to agree on certain aspects of such Transmission Schemes, and if the State Transmission Utility is still of the view that the Scheme is required.

In view of the above, **the Commission has modified the Regulation 4.19 as under:**

"4.19 In case the Grid Co-ordination Committee and/or Maharashtra Transmission Committee, as applicable, is unable to agree on certain aspects of such Transmission Schemes of a value exceeding Rupees Hundred Crore, then the Application made to the Commission for approval of the Scheme shall be evaluated in accordance with the procedure laid down in Regulations 4.14 and 4.15:

Provided that Grid Co-ordination Committee and/or Maharashtra Transmission Committee, as applicable shall carry out deliberations and necessary studies before concluding the matter:

Provided further that if the Grid Co-ordination Committee and/or Maharashtra Transmission Committee, as applicable, are unable to agree on certain aspects of such Transmission Schemes, and if the State Transmission Utility is still of the view that the Scheme is required, then it shall note down the reasons for non-agreement and the same shall be submitted along with the DPR for the Commission's approval."

3.6 Review of DPR Value Limit

3.6.1 Proposed in Draft Regulations, 2022

"4.19 The Commission may review the value limit for consideration as DPR Scheme as specified in Regulations 4.1, 4.8, 4.12, 4.14 and 4.16 once in every three years, and stipulate a different value limit through separate Order, as appropriate."

3.6.2 Comments Received

Prayas submitted that as the in-principle approval process hinges on this value limit, any reconsideration should come as an amendment to the Regulations and should not be allowed through a separate Order. Therefore, Regulation 4.20 should be deleted.

MSEDCL submitted that considering the difficulties in submission, once in every three years review interval should be made co-terminus with the new 5th Control Period and Mid-Term Review (i.e., say two and half years period). Such stipulation through separate Order may be done well before the filing date application for approval of Completed Cost of DPR schemes.

3.6.3 Analysis and Commission's Decision

The Commission is not inclined to accept the suggestion. For increasing the DPR limit value, amendment of Regulations is not required, and separate reasoned Order is sufficient. Further, there is no linkage between review of DPR limit and the same being co-terminus with the MYT Regulations and/or MYT/MTR filings. Hence, the clauses proposed in the Draft Regulations, 2022 have been retained.

3.7 Time Period for Filing of DPR Scheme for In-Principle Approval

3.7.1 Proposed in Draft Regulations, 2022

"4.20 The Applicant may file the Application for in-principle approval of DPR Schemes in April and October of every financial year, on or before 30th April and 31st October, respectively:

Provided that the Application for in-principle approval of DPR Schemes shall be filed under a single covering letter, along with the consolidated cost benefit analysis and tariff impact for all the Capital Investment Schemes:

Provided further that any Application filed after 30th April and 31st October, respectively, shall be considered along with the next filing, as applicable."

3.7.2 Comments Received

MSEDCL submitted that as per draft Regulation 4.21, an application for in-principle approval of DPR scheme during a financial year is permitted only at two occasions, i.e., April and October. However, withholding Capex Schemes for such a long time would be cumbersome at least for the Utility of a scale of MSEDCL who is catering to diversified consumer base.

MSEDCL added that as proposed in the Draft Regulations, 2022, the Distribution Licensee is required to submit application for in-principle approval of DPR scheme under a single covering letter, along with the consolidated cost benefit analysis and tariff impact for all capital investment schemes. Once the Licensee submits such application, the Commission would be scrutinizing the same in detail, raising deficiencies and queries on scheme. In such case, the Distribution Licensee is expected to reiterate submission of a single covering letter (along with the consolidated cost benefit analysis and tariff impact for all capital investment schemes), as under scrutiny schemes would be at different level of 'qualified scheme' based on types of deficiencies raised by the Commission.

MSEDCL requested to allow submission of each scheme separately for in-principle approval, or allow it to make submission on quarterly basis.

AEML-D submitted that the timeline specified in Regulation 4.21 is un-necessarily restrictive as capital investment schemes could be formulated throughout the year and in response to various regulatory and policy directives, on which the Applicants have no control. For example, say, a particular Policy directive is issued related to setting up some infrastructure or equipment in order to comply with environment norms or safety guidelines or in response to Regulations such as the Supply Code, which also prescribe defined timeline for execution of changes and such changes normally entail capital investment interventions. If any such capex is above the limit of Rs. 25 Crore, it will have to follow in-principle approval process. In case, October 31st is already over, the Applicant has to wait till April 30th next year, which may not be possible due to timelines imposed by the Regulation or Policy directive, which require the capex in the first place.

AEML-D submitted that each capex scheme is triggered by its specific need, circumstances, policy / statutory / environmental directive, emergency, etc. The need can arise anytime, based on system condition, which is dynamic. Utilities ought to be at liberty to submit their capex proposals anytime based on the specific triggers. Artificial restrictions on submission will only result in delay of execution of works and affect system performance. Therefore, submission of capex schemes may continue to be allowed anytime, as at present and this Regulation may not be included in the final Regulations.

TPC-T submitted that unlike Generation and Distribution DPRs, approval of Transmission DPRs follows a step-by-step process of scrutiny by STU, MTC, GCC as specified in MERC State Grid Code Regulations, 2020 even before the DPRs are submitted to the Commission. This process itself runs over a period more than 2 to 3 months on an average. Hence, TPC-T submitted that the Commission should modify the provisions of Regulation 4.21 to allow the Transmission DPRs to be submitted throughout the Financial Year after STU's approval; or, allow the submission at least on a Quarterly Basis during any Financial Year.

EON SEZ submitted that the date for submission of Capex Proposals is mentioned as 30th April and 31st October. It is requested to consider a later suitable date for DDL as the Capex DPR has to be filed after the Commission's Order for taking on record the Distribution Licensee status. The clause should be modified as below:

"4.21 The Applicant may file the Application for In-principle approval of DPR Schemes in April and October of every financial year, on or before 30th April and 31st October ***or suitable later date in case of deemed distribution licensee****, respectively:*

Provided that ..."

3.7.3 Analysis and Commission's Decision

The Commission is not inclined to accept the suggestion for submission of individual DPRs, as greater discipline in planning and submission of Capital Investment Proposals is required. As elaborated in the EM, the Commission is of the opinion that there should be a defined timeline in these draft Regulations for filing/submission of DPR Schemes by all Applicants, so that the process of filing and approval of Capex Schemes is streamlined and there is clarity on the approved Schemes, at the time of tariff determination based on the MYT/MTR Petitions filed by the Utilities. At the same time, it would be cumbersome for the Utilities as well as the Commission if all the Schemes are filed for approval at the same time. Hence, the Commission had specified that the Applications for in-principle approval may be filed twice a year in line with the following half-yearly timelines, i.e., on or before 30th April of each year and on or before 31st October of each year. However, considering the suggestions of the stakeholders, the Commission has decided to increase periodicity to quarterly filing for all Utilities.

The concern of SEZ DDLs has been addressed separately, as stated earlier, in Regulation 3.12 and Regulation 4.1, by giving a time of 6 months after operationalising Distribution Licensee, for submission of Schemes for post-facto approval. For other prior approval, same timelines as applicable for other Utilities shall apply.

Further, the Commission has also added a proviso to the effect that the Applicant shall deposit the Fees specified in the Maharashtra (Fees and Charges) Regulations, 2017 for every Scheme for which the Applicant is seeking in-principle approval.

Accordingly, **the Commission has modified the Regulation 4.21 as under:**

"4.21 The Applicant may *file the Application for in-principle approval of DPR Schemes once every quarter of each financial year, on or before 30th April, 31st July, 31st October, and 31st January, respectively:*

Provided that the Application for in-principle approval of DPR Schemes shall be filed under a single covering letter, along with the consolidated cost benefit analysis and tariff impact for all the Capital Investment Schemes:

Provided further that any Application filed after 30th April, 31st July, 31st October, and 31st January, respectively, shall be considered along with the next filing, as applicable:

Provided also that the Applicant shall deposit the Fees specified in the Maharashtra (Fees and Charges) Regulations, 2017 for every Scheme for which the Applicant is seeking in-principle approval and revised approval, as applicable."

3.8 Clubbing of Capital Investment Schemes

3.8.1 Proposed in Draft Regulations, 2022

"4.21 Distribution Licensees shall submit separate application for approval of Capital Investment for each Distribution Zone or equivalent area, except for Schemes related to metering, centralised purchase such as Distribution Transformers, Cable, and other equipment, which may be submitted for the Distribution Licensee as a whole:

Provided that the Distribution Licensees may club Schemes for being considered as a DPR Scheme only for the categories of capital investment schemes specified under Regulation 3, for in-principle approval under these Regulations:

Provided further that the Distribution Licensees may club Distribution Schemes partly funded by Government grants such as DDUGJY, IPDP, RDSS, SAUBHAGYA, etc."

3.8.2 Comments Received

MSEDCL submitted that under draft Regulation 3.12, it is specified that the Distribution Licensee needs to file combined DPR for State or licence area. Whereas, as per Regulation 4.22, separate application is permitted. For the Utility of the scale of MSEDCL who is catering to diversified consumer base, there can be area specific or activity specific DPR schemes such as Vidarbha, Marathwada, Towns, Agriculture, Non-Agriculture, MIDC, etc. Different types of works are also proposed together in different schemes including the activities of substation, DTC, etc. (where it is mentioned to submit combined DPR) which have different funding, there would be operational issues such as closure if such combined DPRs with different funding are considered.

MSEDCL requested to clarify whether Application for area such as Region or Zone or Circle or Division or Sub Division or area-specific DPR scheme are also allowed.

TPC-D submitted that in Mumbai suburban area, TPC and AEML are operating as Distribution Licensees and in Mumbai city, TPC and BEST are operating as Distribution Licensees, hence, Zone segregation for capital investment may be considered as Mumbai city and Mumbai Suburban.

3.8.3 Analysis and Commission's Decision

The Commission is of the opinion that some flexibility in clubbing of the schemes for Distribution Licensees would be required. Accordingly, **the Commission has modified the Regulation 4.22 as under:**

"4.22 Distribution Licensees shall submit separate application for approval of Capital Investment for each Distribution Zone or specific region or area or specific to activity, except for Schemes related to metering, centralised purchase such as Distribution Transformers, Cable, and other equipment, which may be submitted for the Distribution Licensee as a whole:

Provided that the Distribution Licensees may club Schemes for being considered as a DPR Scheme only for the categories of capital investment schemes specified under Regulation 3, for in-principle approval under these Regulations:

Provided further that the Distribution Licensees may club Distribution Schemes partly funded by Government grants such as DDUGJY, IPDS, RDSS, SAUBHAGYA, etc."

3.9 Ceiling Limit of Non-DPR Investments

3.9.1 Proposed in Draft Regulations, 2022

"4.25 The Generating Business/Company, Transmission Business/Licensees or Distribution Business/Licensees or SLDC shall not split the scope of work into small parts to qualify as Non-DPR Schemes."

3.9.2 Comments Received

Prayas submitted that the draft Regulation 4.25 mentions that the Regulated Power Entity shall not split the scope of work into small parts to qualify as non-DPR schemes. However, it is not clear how such practices will be cross-verified especially as non-DPR schemes are only scrutinised and approved post facto. To ensure that there is a limit on the quantum of non-DPR schemes undertaken, it is crucial to have an annual maximum ceiling limit of 10% of approved DPR capital expenditure in terms of value.

3.9.3 Analysis and Commission's Decision

The limit of non-DPR capitalisation to the extent of 20% of the DPR capitalisation is specified in the MERC MYT Regulations, 2019, and is not specified in the Capital

Investment Approval Regulations. Hence, the clauses proposed in the Draft Regulations, 2022 have been retained.

3.10 Application for In-Principle Approval of Capex

3.10.1 Proposed in Draft Regulations, 2022

"5.1 The Application for in-principle approval of Capital Investment shall necessarily comprise the following particulars:

(1) ***Overview of Scheme***

a. Name of the Scheme;

b. Date of approval by competent authority, duly authorised by the Company's Board of Directors, along with documentary evidence;

c. Categorisation of Scheme under Regulation 3 of these Regulations;

d. Location of the project including GPS co-ordinates;

e. Brief scope of work;

f. Objective of the capital investment;

g. Technical specifications of the scope of work;

h. Reference of Study Report or Recommendations of well-reputed Government Institute or Expert agency such as CPRI /ERDA etc., as applicable;

i. Estimated cost and basis of the same;

j. Completion Schedule of the capital investment with Project Evaluation and Review Technique (PERT) Chart;

k. Year-wise capital investment and proposed capitalisation;

l. Funding arrangement with break-up of grants, consumer contribution, debt, equity, as applicable;

m. Quantifiable, verifiable and monitorable tangible and intangible benefits of the capital investment;

n. Overall cost-benefit analysis;

o. Checklist of the supporting documents appended;

p. Any other relevant documents required based on the nature of the scheme.

(2) ***Justification for Scheme***

a. Need for the capital investment with adequate back-up documentation in terms of inter-alia load flow studies, projected load growth, new connection applications, recommendations of Original Equipment Manufacturer or expert;

b. All Transmission and Distribution Schemes shall be prepared considering overall system requirement, existing infrastructure and ongoing capital

investment projects, and not only for specific area, in order to ensure against over-investment in certain districts/areas;

c. Urgency of the capital investment in terms of scope for and impact of phasing and/or deferment, as well as implications of not undertaking the capital investment;

d. Single Line Diagram of the proposed Scheme and Grid maps of relevant areas;

e. Detailed route survey for Transmission Schemes;

f. Technical justification

i. Basis for consideration as a Capital Investment Scheme rather than Opex Scheme or expenditure to be undertaken under O&M expenses;

ii. Statutory requirement, if any which is capital nature;

iii. Inclusion in STU Plan for Transmission Schemes and prepared as per the provisions of the State Grid Code as amended from time to time;

iv. Expected benefits of Capital Investment in terms of inter-alia development of the new infrastructure, augmentation of existing infrastructure, improvement in operational parameters/efficiency; improvement in quality of supply, improved load management, increased redundancy, evacuation of upcoming generation, adoption of latest technology, and release of new connections;

v. Past trends and projections of concerned operational performance for next five years, with and without proposed capital investment, in case the Scheme is for improvement of operational performance;

vi. Justification for quantities proposed for various items;

vii. Basis/test report/diagnostic test report, etc., if the Scheme is for replacement of the existing assets;

viii. Compliance of the Central Electricity Authority (CEA) transmission planning criteria, provisions of the State Grid Code, etc., as amended from time to time;

ix. Request letter and demand projections of phasing of load of Distribution Business/Licensee or request letter from consumer/s, as applicable;

x. Details of loading of asset, future load projections, and basis for load projections;

xi. NOC of CTU, in case the scheme is incidental to the ISTS.

g. Financial justification/Cost analysis:

i. phasing of capital investment and capitalisation;

ii. *cost assessment with break-up of equipment cost, installation cost, Project Management expenses or turnkey cost, as applicable, contingencies, interest during construction;*

iii. *Impact of taxation on the project cost;*

iv. *Reasonability/comparison of rates considered for estimation;*

v. *Ensuring that only necessary scope of work is considered for execution;*

vi. *Efforts taken by the utilities to optimise the project cost;*

vii. *least cost analysis considering all possible alternatives to the proposed scheme to achieve the desired objectives and merits and demerits of the various alternatives, considering the economic, technical and environmental aspects of all such alternatives, to ensure that the proposed option is the least cost option available;*

viii. *funding arrangements;*

ix. *projected revenue addition;*

x. *projected reduction in operating costs;*

xi. *Cost-Benefit analysis in terms of comparison of the investment Cost with technical and financial benefits, quantified objective of the Scheme, overall benefit to the entity, year-wise realisation of target objectives, year-wise tariff impact in Rs./kWh for the first five years after commissioning of proposed capital investment, financial investment criteria such as inter-alia Payback Period, Internal Rate of Return (IRR), and Net Present Value (NPV);*

xii. *Copy of the verification of the land cost issued by the District Revenue Authority if the land is acquired before the in-principle approval of the scheme, along with the utilisation of the proposed land:*

Provided that if excess land is acquired without adequate justification, then the Commission may allow the cost of the necessary land only.

h. *Methodology by which the Scheme's progress can be monitored and corrective action to be taken in case of any deviation from the schedule;*

i. *Methodology for verification of Scheme being put to use and projected percentage utilization of the assets for the first five years after commissioning of proposed capital investment;*

j. *Details of required upstream/downstream arrangements, if any, for realisation of the benefits from the proposed Scheme, and their status and programme for their completion;*

k. *List and Status of Statutory Clearances/Approvals required to execute the project;*

l. Physical and financial constraints, if any, in execution of the Scheme, and identification of all possible delays and their causes and proposed mitigation measures."

3.10.2 Comments Received

MSEDCL submitted the following suggestions:

- Regulation 5.1(1)(d) should be modified as under:

  "d. Tentative Location of the project & GPS location as per actual execution at the time of final approval."

- Regulation 5.1(2)(a): The term 'recommendations of Original Equipment Manufacturer or expert' should be omitted from the proposed Regulation.

- Regulation 5.1(2)(d): Instead of 'Single Line Diagram of the proposed Scheme' it is suggested to consider 'activity wise Single Line Diagram of Major activity in the relevant area'.

- Regulation 5.1(2)(f)(vii): Instead of 'Basis/test report/ diagnostic test report, etc.' it is suggested to consider 'Certificate from Head of concerned Department of Utility.

- Regulation 5.1(2)(g)(xii): Procuring such documents may cause delay in implementation of project. Further, the land size at times is higher than required for proposed substation, as it is reserved by Local Authority. MSEDCL may plan to take up the spare space in future for store, office, etc., purpose. The land acquisition proceedings are decided after in-principle approval of scheme. Therefore, the outright rejection of cost of excess land at the in-principle approval stage may not be done.

As regards Regulation 5.1(1), AEML-D submitted the following suggestions:

- Regulation 5.1(1) (c) is same as Regulation 5.1(1) (f). Also, the fact that the scheme has one of the objectives as listed in Regulation 3, it is all the more important that the list of objectives be expanded as per suggestions given in these comments.

- Regulation 5.1(1) (d) is too onerous for multi-location schemes, such as those for new cable or transformer laying or replacement, laying of new LT mains or replacement of existing LT mains at various locations across the License area. GPS coordinates are only suitable for schemes related to specific-point locations such as EHV station or a 33/11 kV DSS. Regulation 5.1(1) (d) should be modified to state *"Location of the project including GPS co-ordinates,* ***wherever feasible****".*

- Regulation 5.1(1) (m) identifies those benefits could be both tangible and intangible. If the benefits are intangible, then question of quantification does not arise. Also, schemes related to new supply are not required to demonstrate benefit as those are schemes to be executed to meet Universal Service Obligation of a Distribution Licensee. Regulation 5.1(1) (m) may be modified as follows:

"Quantifiable, verifiable and monitorable tangible benefits of the capital investment, ***wherever relevant****."*

As regards Regulation 5.1(2), AEML-D submitted the following suggestions:

- Regulation 5.1(2)(a)– "new connection applications" is included as one of the requirements for justification. All Service DPRs submitted are with a time horizon of 2 to 3 years, which means that the DPR estimates are based on some new connection applications, as available for the initial period, but, thereafter, the estimates are largely assumption-based, normally, on past history of material requirements. This is because new connection applications are normally received two to three months prior to when the consumer wants supply. These applications cannot possibly be available 1 to 2 years in advance and hence, New Supply DPRs for LT mains or for Service Cables are normally planned on estimated material requirement, as per history of material consumption. Therefore, Regulation 5.1(2)(a) may be modified as follows:

  "Need for the capital investment with adequate back-up documentation in terms of inter-alia load flow studies, projected load growth, new connection applications ***to the extent available****, recommendations of Original Equipment Manufacturer or expert;"*

- Regulation 5.1(2) (b) – All Transmission and Distribution schemes cannot be planned for overall system requirements. Transmission EHV S/s are largely planned keeping the load growth of the concerned area and its vicinities. Similarly, DSS and CSS for system improvement are planned keeping load relief requirements of particular areas and clusters only. New connection schemes are, in any case, specific to individual cases. For instance, if a new DSS is planned for a specific new load requirement, it has nothing to do with overall system conditions or requirements. Hence, this condition is needless, particularly when every scheme is, in any case, required to demonstrate its specific objective. Therefore, Regulation 5.1(2) (b) should be deleted.

As regards Regulation 5.1.1 (j), TPC-T submitted that at the time of DPR submission, Gantt Chart may be allowed to be submitted. Hence, Regulation 5.1.1 (j) should be modified as follows:

"Completion Schedule of the capital investment with Project Evaluation and Review Technique (PERT) Chart / ***Gant Chart / any other suitable project schedule mechanism****"*

As regards Regulation 5.1 (1)(d), TPC-D submitted that details of GPS co-ordinates of prospective consumers may not be available at the time of submission for in-principle approval, since the GPS details are not available at the project inception stages.

As regards Regulation 5.1(b), TPC-G submitted that the Commission should specify the name of competent agency to bring more role clarity.

3.10.3 Analysis and Commission's Decision

As regards the suggestion to omit the term 'recommendations of Original Equipment Manufacturer or expert' from Regulation 5.1(2)(a), the Commission clarifies that OEM or

Expert recommendation will not be required in all cases, and shall be required 'as applicable', as specified in the Regulations. MSEDCL has suggested to consider 'Certificate from Head of concerned Department of Utility' instead of 'Basis/test report/ diagnostic test report, etc.' However, as stated earlier, the Commission is of the view that Internal Report or self-certification cannot be accepted in place of certificate from Competent Agency, as it would defeat the objective. Basing the approval on self-certification from the same Utility would not suffice the requirement of independent assessment and certification for the capital investment.

Also, the concern of MSEDCL about land is misplaced, as the verification copy issued by Authority is required only if the land is acquired before in-principle approval; further, excess land cost may be disallowed only if adequate justification is not provided.

The concern about the objectives specified in Regulation 3.1 have already been addressed as stated earlier, hence, both, Regulation 5.1(1)(c) and 5.1(1)(f) have been retained. As regards the concern about GPS coordinates, the Commission has inserted the terms 'Final or tentative' before location of the project, to address the concerns expressed in this regard.

Further, the term 'Intangible' has been retained in Clause 5.1(1)(m), as though intangible benefits cannot be quantified, they may be verified or monitored. The suggestion to delete Regulation 5.1(2) (b) has not been accepted since "overall system requirement" is an important criteria for evaluating the Capex Scheme.

The 'competent authority' referred in Regulation 5.1(1)b is the internal entity of the Applicant, who has approved the Capital Investment Scheme.

Based on the other suggestions made by the stakeholders, the Commission has incorporated the following modifications:

- New connection applications "to the extent available" and OEM or Expert recommendation 'wherever relevant' have been added in Regulation 5.1 (2) (a);
- "Gantt Chart or any other suitable Project Monitoring Mechanism" has been added in Regulation 5.1(1)(j);
- Single Line Diagram of the proposed Scheme and Grid maps of relevant areas has been modified to "Activity-wise Single Line Diagram of relevant areas";
- Tentative Location/GPS.

Further, the Commission has added the term 'including geo-tagging, etc.' for monitoring the scheme's progress under Regulation 5.1(2)(h). Further, in response to the suggestion regarding clarity on the treatment of leased assets, the Commission has incorporated new sub-clause 5.1(2)(g)(iii) for greater clarity.

Accordingly, **the Commission has modified Regulation 5.1 as under:**

"5.1 The Application for in-principle approval of Capital Investment against DPR Schemes shall necessarily comprise the following particulars:

*(1) **Overview of Scheme***

a. *Name of the Scheme;*

b. *Date of approval by competent authority, duly authorised by the Company's Board of Directors, along with documentary evidence;*

c. *Categorisation of Scheme under Regulation 3 of these Regulations;*

d. *Final or tentative Location of the project including GPS co-ordinates;*

e. *Brief scope of work;*

f. *Objective of the capital investment;*

g. *Technical specifications of the scope of work;*

h. *Reference of Study Report or Recommendations of well-reputed Government Institute or Expert agency such as CPRI /ERDA etc., as applicable;*

i. *Estimated cost and basis of the same;*

j. *Completion Schedule of the capital investment with Project Evaluation and Review Technique (PERT) Chart or Gantt Chart or any other suitable Project Monitoring Mechanism;*

k. *Year-wise capital investment and proposed capitalisation;*

l. *Funding arrangement with break-up of grants, consumer contribution, debt, equity, as applicable;*

m. *Quantifiable, verifiable and monitorable tangible and intangible benefits of the capital investment;*

n. *Overall cost-benefit analysis;*

o. *Checklist of the supporting documents appended;*

p. *Any other relevant documents required based on the nature of the scheme.*

(2) ***Justification for Scheme***

a. *Need for the capital investment with adequate back-up documentation in terms of inter-alia load flow studies, projected load growth, new connection applications to the extent available, recommendations of Original Equipment Manufacturer or expert wherever relevant;*

b. *All Transmission and Distribution Schemes shall be prepared considering overall system requirement, existing infrastructure and ongoing capital investment projects, and not only for specific area, in order to ensure against over-investment in certain districts/areas;*

c. *Urgency of the capital investment in terms of scope for and impact of phasing and/or deferment, as well as implications of not undertaking the capital investment;*

d. *Activity-wise Single Line Diagram of relevant areas;*

e. *Detailed route survey for Transmission Schemes;*

f. Technical justification

i. Basis for consideration as a Capital Investment Scheme rather than Opex Scheme or expenditure to be undertaken under O&M expenses;

ii. Statutory requirement, if any which is capital nature;

iii. Inclusion in STU Plan for Transmission Schemes and prepared as per the provisions of the State Grid Code as amended from time to time;

iv. Expected benefits of Capital Investment in terms of inter-alia development of the new infrastructure, augmentation of existing infrastructure, improvement in operational parameters/efficiency; improvement in quality of supply, improved load management, increased redundancy, evacuation of upcoming generation, adoption of latest technology, and release of new connections;

v. Past trends and projections of concerned operational performance for next five years, with and without proposed capital investment, in case the Scheme is for improvement of operational performance;

vi. Justification for quantities proposed for various items;

vii. Basis/test report/diagnostic test report, etc., if the Scheme is for replacement of the existing assets;

viii. Compliance of the Central Electricity Authority (CEA) transmission planning criteria, provisions of the State Grid Code, etc., as amended from time to time;

ix. Request letter and demand projections of phasing of load of Distribution Business/Licensee or request letter from consumer/s, as applicable;

x. Details of loading of asset, future load projections, and basis for load projections;

xi. NOC of CTU, in case the scheme is incidental to the ISTS.

g. Financial justification/Cost analysis:

i. phasing of capital investment and capitalisation;

ii. cost assessment with break-up of equipment cost, installation cost, Project Management expenses or turnkey cost, as applicable, contingencies, interest during construction;

iii. land/assets taken on lease under 'right of use' shall be included in the capital cost as per the applicable Accounting Standards under IND-AS;

iv. Impact of taxation on the project cost;

v. Reasonability/comparison of rates considered for estimation;

vi. Ensuring that only necessary scope of work is considered for execution;

vii. Efforts taken by the utilities to optimise the project cost;

viii. *least cost analysis considering all possible alternatives to the proposed scheme to achieve the desired objectives and merits and demerits of the various alternatives, considering the economic, technical and environmental aspects of all such alternatives, to ensure that the proposed option is the least cost option available;*

ix.. *funding arrangements;*

x. *projected revenue addition;*

xi. *projected reduction in operating costs;*

xii. *Cost-Benefit analysis in terms of comparison of the investment Cost with technical and financial benefits, quantified objective of the Scheme, overall benefit to the entity, year-wise realisation of target objectives, year-wise tariff impact in Rs./kWh for the first five years after commissioning of proposed capital investment, financial investment criteria such as inter-alia Payback Period, Internal Rate of Return (IRR), and Net Present Value (NPV);*

xiii. *Copy of the verification of the land cost issued by the District Revenue Authority if the land is acquired before the in-principle approval of the scheme, along with the utilisation of the proposed land:*

Provided that if excess land is acquired without adequate justification, then the Commission may allow the cost of the necessary land only.

h. *Methodology by which the Scheme's progress can be monitored and corrective action to be taken in case of any deviation from the schedule including geo-tagging, etc;*

i. *Methodology for verification of Scheme being put to use and projected percentage utilization of the assets for the first five years after commissioning of proposed capital investment;*

j. *Details of required upstream/downstream arrangements, if any, for realisation of the benefits from the proposed Scheme, and their status and programme for their completion;*

k. *List and Status of Statutory Clearances/Approvals required to execute the project;*

l. Physical and financial constraints, if any, in execution of the Scheme, and identification of all possible delays and their causes and proposed mitigation measures."

3.11 Responsibility for all clearances and compensation

3.11.1 Proposed in Draft Regulations, 2022

"5.5 The Applicant shall be responsible for obtaining all applicable clearances and approvals, and financial impact of any delay in obtaining the necessary clearances shall be dealt with appropriately by the Commission"

3.11.2 Comments Received

No comments have been received on this issue.

3.11.3 Analysis and Commission's Decision

The Commission finds it necessary to further clarify that the Applicant shall be responsible for obtaining all applicable land acquisition and making payments of all associated compensation for land and/or right of way. Hence, **the Commission has modified Regulation 5.5 as under**:

5.5 The Applicant shall be responsible for obtaining all applicable clearances, approvals, land acquisition and compensation for land and/or right-of-way, and financial impact of any delay in obtaining the same shall be dealt with appropriately by the Commission."

3.12 Capex Scheme for Technology Upgradation

3.12.1 Proposed in Draft Regulations, 2022

"5.7 The following criteria shall have to be satisfied for Capex Schemes proposed for technology upgradation and improvement at significantly higher cost:

a. Significant operational difficulties with the existing assets leading to frequent disruption of operations and/or supply;

b. The Useful Life of the asset proposed to be upgraded should have either been exhausted or significantly completed as validated by residual life test/diagnostic test results, and not merely because of completion of Useful Life;

c. Cost benefit analysis should justify the asset upgradation:

Provided that in case the Applicant submits Capex Scheme for technology upgradation and improvement despite above specified criteria not being satisfied, then the cost of the Capex Scheme shall be recovered directly from the Local Authority governing the area/consumers / beneficiaries, etc., that shall benefit from the Capex Scheme and shall not be socialised across the licence area:

Provided further that the consent of the concerned Local Authority for recovery of the cost of the Capex Scheme shall be submitted along with the DPR Scheme for in-principle approval of the Commission."

3.12.2 Comments Received

AEML-D submitted that the Draft Regulations, 2002 provide that in case the Applicant submits the capex scheme for technology upgradation even if the conditions specified in the Regulations are not met, then the cost of such scheme will be recovered from the concerned Local Authority. However, this is applicable only in cases where the works are part of any beautification package instituted by the Local Authority, not otherwise. In case of schemes like AIS to GIS conversion, there is no requirement from Local Authority and these are done primarily because of safety and reliability considerations as well as to free up space at the concerned EHV or DSS, as the case may be, which space could be utilized for capacity

expansion in future or for optimum utilisation of such space for generating income from Other Business.

As regards Regulation 5.7 c, TPC-G submitted that fulfilment of this criteria should not be required for replacement due to obsolescence.

3.12.3 Analysis and Commission's Decision

The Commission is of the view that the clause for technology upgradation would not be applicable for AIS to GIS conversion, as AIS is a perfectly acceptable technology and more than ~ 90% of installations across the country would be AIS.

As regards the requirement of cost benefit analysis specified under Regulation 5.7 c, it is clarified that Regulation 5.7 addresses situations of Capital Investment proposals for technology upgradation and improvement at significantly higher cost, and not cases of asset replacement on account of obsolescence. The situation of technology upgradation and improvement at significantly higher cost is addressed in Regulation 3.23.

The Commission has therefore, not made any modifications in the draft Regulations in this regard.

3.13 Revised In-Principle Approval of Capex Scheme

3.13.1 Proposed in Draft Regulations, 2022

"5.8 Revised in-principle approval of Capital Investment may be accorded by the Commission in case an Applicant files an Application for the same, only under exceptional circumstances related to land unavailability for the Scheme or feasibility of the Scheme being adversely affected due to force-majeure events.

5.9 Revised in-principle approval may be sought only after exceeding ninety (90) percent of the originally approved cost of the Scheme.

5.10 Revised in-principle approval may be granted only for change in scope of work due to site conditions and not change in rates.

….

5.13 Revised in-principle approval shall not be accorded more than once for any Scheme under any circumstances."

3.13.2 Comments Received

AEML-D submitted that Regulation 5.8 is un-necessarily restrictive. The Commission, at present, carries out prudence check upon completion of scheme, which is also provided in the Draft Regulations, 2022. At the time of prudence check, all factors that have caused variation in the scope and/or cost of the scheme can be analysed on their individual merits, controllability and other factors. At best, the Commission could institute the process of prudence checks upon submission of completion report of each scheme, instead of doing it for

all completed schemes together at the time of tariff process. This will stagger the workload and provide opportunity to utilities to make adequate representations, thereby making detailed analysis of variations possible, which will ensure better decision making.

In any given scheme, there are a very large number of factors, which could cause scope and / or cost variation. These include, but are not limited to, cable re-routing due to requirements of other authorities such as MCGM, PWD, MMRDA, Railways, etc., relocation of substations due to unavailability of land, variation in cost of award of contract due to discovery of different rates in competitive bidding, forex variation in case of imported material, general change in material price, changes in RI charges or other statutory levies, changes in taxes or duties, etc. None of this can be reasonably foreseen. Regulation 5.10 of draft Regulations provides that revised approval shall only be granted for change in scope and not for change in rates. Due to such situations as described above, there could be significant variance in material or labour rates, causing a large, unanticipated variation in completed cost. All of these factors could be analysed together when completed cost is submitted. Therefore, this process of 'revised approval' is un-necessary and will only add another stage in execution of scheme, which will delay the same.

Due to this clause, which requires that utility should seek revised approval will act as a hinderance to financing and will increase the cost of financing. This is because, at present, all increases in cost (for any reason, including change in scope) are allowed or disallowed based on prudence checks of completed cost. However, with the introduction of this Regulation, financiers will insist on obtaining revised approval, whenever there is anticipation of change in cost and will restrict financing of the scheme till the time revised approval is available and in case, for any reason, revised approval is not provided by the Commission, further financing will stop. Financiers will see this as a risk and will either not provide finance or build the cost of this risk in their interest cost. This will only increase cost of doing business and ultimately impact tariff of consumers.

AEML-D submitted that the Regulation ought to clarify the following:

(a) that seeking revised approval is entirely optional on the part of the Applicant;

(b) that not seeking revised approval will not be a ground for disallowance of any increase in actual cost, and the same shall continue to be evaluated based on prudence checks.

As regards Regulation 5.9, TPC-T, TPC-D, and TPC-G submitted that the Licensee should get an opportunity to submit the revised DPR approval in case of revision in major contracts based on outcome of competitive bidding. The licensee cannot commit any expenditure in absence of visibility on revised approval of the Commission. Therefore, Regulation 5.9 should be modified as below:

"Revised in-principle approval may be sought ***in case there is revision in major contract cost exceeding ten (10) percent of the originally approved cost of the equipment****.";* OR

"Revised in-principle approval may be sought only after exceeding ninety (90) percent ***commitment (Order placed) of the originally submitted cost of the DPR****."*

TPC-T submitted that since the scheme is in progress, it is imperative to have such approval issued within 15 days / 1 month; alternatively, the Commission may revise the requirement of 90% to 70%.

As regards Regulation 5.10, TPC-T submitted that due to volatility in prices of various items/equipment, the licensee will not be able to accommodate the prices realised through budgetary offers, which is DPR approval. Hence major changes in rates shall qualify for revised approval as same are based on competitive bidding. Further, change in route / location due to unforeseen site constraints leading to increase in the price also needs to be considered. Therefore, Regulation 5.10 should be modified as below:

"Revised in-principle approval may be granted only for change in scope of work due to ***equipment modification, change in route, location****, site conditions and* ~~*not*~~ *change in rates."*

In context of Regulation 5.10, MSEDCL submitted that the proposal that revised in-principle approval may be granted only for "change in scope of work" due to site conditions and not "change in rates" is not justified. In case change in scope of work is required for particular component of substation (e.g., civil work) due to site conditions as per land available, then variation in rate of substation has to be allowed. Further, variation in cost due to change of type of substation from outdoor to indoor or GIS as per land availability should be allowed.

MSEDCL submitted that 'Change in rate' need to be allowed. Also, the 'change of rate due to Price Escalation' need to be allowed as Price variation in allowed in Tender. Thus, Regulation 5.10 to be updated with following:

"Revised in-principle approval may be granted only for change in scope of work due to site conditions, change of rate, and change of rate due to Price Escalation."

As regards Regulation 5.11, TPC-D and TPC-G submitted that this clause should be deleted and modified as suggested as the prices are based on outcome of competitive bidding, hence, the variations in the same for reasons not attributable to Licensee should be allowed even within 10% of the approved values. Further, there is no provision to retain the gain in case the Licensee completes the project within 90% of the cost. Alternatively, TPC-D proposed to include the provision to retain 10% of the approved cost if the project is completed with 90% of the approved project cost, or if the variation between actual cost and Original Submitted cost is within 10% of the approved cost, then the variation shall be absorbed by the Applicant.

As regards Regulation 5.13, MSETCL submitted that provision for revised approval is required as EHV line projects get delayed due to severe Right of Way (RoW) issues and pending court cases. There should be a provision for one revised approval for EHV line projects and lines plus sub-station projects (i.e., for combined LOA), if project could not be completed within 5 years from the date of issue of LOA.

TPC-T submitted that installation of EHV transmission line in Mumbai area is quite challenging due to various reasons like rehabilitation of PAP, ROW issues, multiple agencies working together, etc., which are not attributable to the Licensee. Also, the longer time to get various statutory approvals may result into cost overrun. Hence, it is requested not to restrict

the Transmission schemes and allow the revisions as may be required to cover the impact of revisions for reasons not attributable to the Transmission Licensee. Therefore, Regulation 5.13 should be revised as below:

"Revised in-principle approval shall not be accorded more than once ***(except where the reason for change is not attributable to the transmission licensee)*** *for any Scheme under any circumstances."*

3.13.3 Analysis and Commission's Decision

The concern that it is mandatory to seek revised approval is misplaced. Regulation 5.8 is an enabling clause, and shall operate only if the Applicant files Application for the same and that too under exceptional circumstances. Also, the concern that not seeking revised approval will be a ground for disallowance of any increase in actual cost is misplaced as nowhere is it specified that unless revised approval is sought, any excess cost shall be disallowed.

As regards the submission that revised approval should be granted even for change in rates, the Commission is of the opinion that the same has to be sought with appropriate justification at the time of completed cost approval, and hence, the revised approval has been restricted to very specific circumstances, as specified in the Draft Regulations. Further, the changes due to "equipment modification, change in route, location" would come under change in scope of work. Further, timelines of 15/30 days as proposed for granting revised approval is not feasible.

The Commission is of the opinion that the suggestion that the Licensee should get an opportunity to submit the revised DPR in case of revision in major contracts based on outcome of competitive bidding, is not appropriate. All such variations need to be addressed at the time of completed cost approval.

Further, the Commission has incorporated a requirement that the application for revised in-principle approval has to be supported by necessary approval of STU/MTC, etc., as applicable, as the same amounts to a change to the scheme particulars earlier approved by the STU/MTC, etc.

As regards the concerns raised regarding Regulation 5.13, the Commission has consciously specified maximum of 1 revised approval, as the practice of seeking revised in-principle approval should be resorted to only under exceptional circumstances. As the first and only revised approval can be sought only beyond 90% of approved capex, there will be no relevance of providing for more than 1 revised approval.

The Commission has also incorporated a clause that Utilities can file for cancellation of approval for Schemes that may or may not have been started but are not required now.

Accordingly, **the Commission has modified the Regulations as under:**

"5.8 Revised in-principle approval of Capital Investment may be accorded by the Commission in case an Applicant files an Application for the same, only under exceptional

circumstances related to land unavailability for the Scheme or feasibility of the Scheme being adversely affected due to force-majeure events.

5.9 Revised in-principle approval may be sought only after exceeding ninety (90) percent of the originally approved cost of the Scheme.

5.10 Revised in-principle approval may be granted only for change in scope of work due to site conditions and not change in rates:

Provided that the application for revised in-principle approval has to be supported by necessary approval of Grid Co-ordination Committee and/or Maharashtra Transmission Committee, as applicable.

…

5.12 The Applicant shall submit all the necessary documents and justification for the request for revised in-principle approval as may be sought by the Commission

5.13 Revised in-principle approval shall not be accorded more than once for any Scheme under any circumstances.

5.14 The Applicant may file for cancellation of in-principle approval for any Scheme at any point of time, in case such Scheme is no longer relevant."

3.14 Variation in Cost

3.14.1 Proposed in Draft Regulations, 2022

"5.11 If the variation between actual cost and approved cost is within 10% of the approved cost, then the variation shall be absorbed by the Applicant."

3.14.2 Comments Received

MSEDCL submitted that the Distribution Licensee has the right to recover actual expenditure incurred to provide electricity to the consumers. If such variation of up to 10% even if justified, is absorbed by the Licensee, then it would result into financial burden on MSEDCL, whose financial conditions are precarious. Hence, Regulation 5.11 should be updated with following:

"If the variation occurs because of Price variation between actual cost and approved cost, then such variation shall be allowed by the Commission."

BEST submitted that the variation between actual cost and approved cost of the Schemes should be considered after prudence check and justification submitted by the Applicant.

AEML-D submitted that there are many uncontrollable circumstances that cause the actual project cost to vary vis-à-vis the approved cost. The Commission has already directed that capex schemes of transmission and distribution are required to be executed through competitive bidding for purchase of material. It is submitted, therefore, that once competitive bidding is done and the Applicant demonstrates the same while seeking final approval of

completed cost, positive variations, if any, in completed cost due to higher prices being discovered should be permitted entirely.

At the time of estimation of DPR, RI charges are estimated based on anticipated type(s) of road. RI charges vary with the type of road and not all road types where cables will be laid, can be anticipated at the time of DPR preparation. Normally, in distribution DPRs – whether for new supply or system improvement – it is not known in advance with certainty as to which type of roads will be encountered. This is more so in case of new supply related schemes, where the DPR is prepared not actually based on location, but simply using past history of material consumption, as actual locations and hence, the type of roads are not known. Furthermore, the impact of Guarantee factor applicable on RI rate cannot be estimated at the time of planning of the DPR and hence, may affect the overall scheme cost.

AEML-D submitted that most DPRs are presented without including Interest During Construction (IDC), as it is not possible to estimate the same at the time of submission of DPR. Even if the same is indeed projected and built in the cost, it is estimated based on overall capex and capitalization phasing of the total DPR as a whole. In case of Distribution business, DPRs for DT installation or LT pillar installation, each DT or Pillar is a separate job and interest to be capitalized actually depends on the length of time for which the job remained in progress. Hence, the actual IDC could be very different from the estimated IDC at the time of in-principle approval. IDC could also vary due to variance in interest rates.

All of the above and many more such instances are natural variances or arising out of unforeseen circumstances. A blanket provision that all cost variance up to 10% of approved cost is to be absorbed by the Applicant is too onerous, unfair and really un-necessary. The completed cost of the scheme will be considered only after prudence checks and, if any technical or financial imprudence is found, it could automatically lead to a disallowance to that extent. Therefore, a blanket provision should not be there. Also, this will be counter-productive as Applicants, in order to avoid presenting an increase in cost, will deliberately over-estimate and seek approval of higher quantity and cost than necessary, so as it is, this provision will be defeated.

AEML-D further submitted that this provision will also have the effect of making financing projects difficult and increase the cost of financing as financiers will view the 10% cost absorption clause as a risk to financial viability of the Applicant. Also, the absorption of additional 10% cost will mean no realization of tariff revenue from the same, which will automatically affect the cost of financing. Whether or not, there is actual cost increase over and above approved, the existence of this clause alone will nor augur well with financiers and will definitely increase the perception of risk amongst them, and consequently the cost of financing.

AEML-D added that Regulation 23.5(d) of MERC MYT Regulations, 2019 actually intends that cost variations up to 10% will not require a detailed justification and shall be passed through. This is actually a tolerance limit, which allows a tolerance of up to 10% increase in scheme completed cost. This does not mean that variations up to 10% are to be absorbed by the Applicant, as provided in the Draft Regulations, 2022.

AEML-D submitted that Regulation 5.11 may not be included in the final Regulations. Alternatively, and without prejudice, the gain due to reduction in actual cost over approved cost, should also be allowed to be retained by the Applicant.

KRC DISCOMs submitted that the rates considered in the Capex proposal submitted by Distribution Licensees for in-principle approval of the Commission are based on the latest Purchase Order rates. The rates of the material/services get changed based on the WPI/CPI data. Further, in case of small Licensee, the quantity of orders is generally miniscule compared to the quantity requirement of large Distribution Licensees, therefore, the benefit of economies of scale would not be realised. Therefore, cost of equipment of Deemed Distribution Licensee may not be comparable with other Distribution licensee. Hence, consistency in cost of equipment may not be applicable in case of small Licensee. Therefore, the Commission should allow rate escalation based on WPI/CPI data in the in-principle approval stage itself. The Commission should allow the variation between actual cost and approved cost at the time of truing up subject to prudence check.

3.14.3 Analysis and Commission's Decision

In view of the stakeholders' comments, the Commission has modified Regulation 5.11 such that increase in actual cost with respect to the approved cost shall be allowed to be passed through, subject to prudence check, and the Utilities shall not have to bear the cost if variation is up to 10% of approved cost, as proposed in the Draft Regulations, 2022. This modification has been made, as the Utilities are required to justify the cost variation, and if the variation is justified, then the recovery of such variation should rightly be allowed.

Accordingly, **the Commission has modified the Regulation as under:**

"5.11 Increase in actual cost with respect to the approved cost shall be allowed to be passed through, subject to prudence check based on detailed justification and supporting documents to be submitted by the Applicant."

3.15 Application for Approval of Completed Cost of DPR Schemes

3.15.1 Proposed in Draft Regulations, 2022

*"**6. Application for Approval of Completed Cost of DPR Schemes***

The approval of completed cost of all the DPR Schemes completed before filing the claim for true-up for any financial year along with the appropriate Petition as specified in Regulation 4.9 shall be sought in a combined manner and shall necessarily comprise the following particulars for each Scheme:

(1) Name and Reference number of Scheme along with date of in-principle approval by the Commission;

(2) Whether the stated objectives of the Scheme as submitted in the Application for in-principle approval have been achieved, and justification for variation in the same.

*(3) **Technical Parameters***

a. *Date of asset being 'put to use' along with Certificate of Electrical Inspector or authorised officer of Distribution Business/Licensee, as applicable;*

b. *Comparison of year-wise loading of asset since the date of being put to use with year-wise loading proposed in the Application for in-principle approval;*

c. *Bills of Quantity actually used vis-à-vis quantity claimed in the application for in-principle approval, with break-up of number of units and per unit cost, and justification for the variation in quantity, if any;*

d. *Justification for change in scope of work with respect to the original scope of work approved in-principle by the Commission, including changes in specification of assets, if any, and cost implication due to the change if higher than 10% of the approved cost;*

e. *Variation with respect to scheduled completion date, reasons and justification for the delay, if any, inter-alia, technical parameters, constraints, controllable and uncontrollable factors, mitigation measures adopted by the Applicant, and confirmation that these factors had been highlighted at the time of seeking in-principle approval;*

f. *Physical Completion Certificate (PCC) issued by technical officer of Applicant, duly authorised by the competent authority;*

g. *Impact on operational performance on account of delay in execution of works, if any;*

h. *Final route survey report in case of Transmission Business/Licensee, and justification for deviation from route proposed in the application for prior approval, if any, in case of cost increase higher than 10% of the approved cost;*

i. *Detailed comparison of the scope and cost approved by the Commission vis-a-vis that actually incurred by the Applicant with justification for deviations.*

(4) ***Financial Parameters***

a. *Item-wise justification for variation between approved equipment cost and completed cost, if any, in case of cost increase higher than 10% of the approved cost;*

b. *Difference between approved and actual year-wise phasing of capital investment and capitalisation;*

c. *Justification for increase in Interest During Construction (IDC), if any, with respect to IDC approved by the Commission in the in-principle approval;*

d. *Confirmation that the asset has been capitalised in the annual accounts of the entity, along with the date of asset capitalisation, as reflected either in the Asset Register or ERP system;*

e. *Justification for variation in funding through debt or equity or grants, if any, with respect to that proposed in the Application for in-principle approval;*

f. *Financial Completion Certificate (FCC) issued by competent officer of Applicant, duly authorised by the competent authority;*

g. *Comparison of actual cost benefit analysis with respect to cost benefit analysis proposed at the time of in-principle approval and justification for variation, if any;*

h. *Impact on financial performance on account of delay in execution of works, if any;*

i. *Impact of commissioning of asset on retail tariff after considering actual completed cost;*

j. *Copy of the verification of the land cost issued by the District Revenue Authority, if the land was acquired post in-principle approval of the scheme:*

Provided that if excess land is acquired without adequate justification, then the Commission may allow the cost of the necessary land only."

3.15.2 Comments Received

MSEDCL submitted that the draft Regulation 6 refers to Regulation 4.9 for Petition; however, no such Petition is mentioned in the draft Regulation 4.9. Hence, it should be clarified. AEML-D also submitted that Regulation 4.9 of the Draft Regulations, 2022 as referred have no relation with completed cost. The reference is incorrect and the same may be modified.

As regards Regulation 6(3)(a), MSEDCL submitted that the dates are different for different locations. It would result into multiple documents for Distribution Licensee to submit and scrutinize for the Commission. Hence, the Commission may allow submission of a comprehensive document.

As regards Regulation 6(3)(b), MSEDCL submitted that instead of term 'year-wise loading of asset' it is suggested to consider 'Comparison of year-wise loading of major activities viz., Substation/DTC, etc.'

Further, Regulation 6(4)(j) should be updated with following:

"Copy of the verification of the land cost as approved by the internal Committee of concerned Utility, if the land was acquired post in-principle approval of the scheme:"

As regards Regulation 6(3)(e), AEML-D submitted that while most disclaimers about factors that could cause variance in scheduled completion date will be highlighted at the time of presentation of the DPR, however, this could still leave out factors, which could not possibly have been foreseen. Therefore, to require a confirmation that all factors had been highlighted at the time of seeking in-principle is too onerous and un-necessary. The final completed cost, including over-runs, if any, shall anyway be subject to Commission's prudence check.

AEML-D submitted that Regulation 6(3)(f) requires submission of Physical Completion Certificate (PCC) by the Applicant. In schemes related to construction of EHV station by Transmission Licensee or construction of DSS by a Distribution Licensee, the actual technical works are completed, and transformers and associated equipment are commissioned and charged. However, some civil works remain, such as construction of compound wall or some construction remaining in substation building, etc. In such cases, Technical Completion (TECO) is done, and assets are capitalised in the books and completion report is submitted to the Hon'ble Commission. This is because, the remaining civil works do not hold back the

scheme and all objectives and benefits of the scheme are realised. Condition of submission of PCC would delay the scheme completion and it would appear as if the scheme is not completed as scheduled, when that is not really the case. Hence, PCC should be replaced with Technical Completion Certificate (TECO or TCC).

TPC-T submitted that as the Licensee will be submitting approval of completed scheme in its first year of operation, the comparison of year-wise loading of asset since the date of being put to use with year-wise loading proposed in the Application for in-principle approval will not be available. Hence, this clause may be dropped from final Regulations.

3.15.3 Analysis and Commission's Decision

The appropriate reference in Regulation 6 should be to Regulation 4.27, rather than Regulation 4.9, as stated in the Draft Regulations, 2022, and the necessary modification has been done.

As regards suggestion on Regulation 6(3)(a), it is to be noted that Chief Electrical Inspector (CEI) certificate is required for each separate Asset for which completed cost is being claimed for approval. It may be given asset-wise or in a compiled form, with supporting documents. Further, loading of concerned asset is required; Distribution Licensee may provide loading of group of assets/Sub-Station/DT/Feeder, etc., as additional information.

The concerns raised regarding Regulation 6(3)(e) on giving confirmation that all factors have been considered, are not accepted, as the Utility should envisage typical possibilities. Force Majeure events are allowed as sufficient cause.

The Commission has not accepted the suggestion that internal certificate be accepted in place of verification of the land cost issued by the District Revenue Authority, if the land was acquired post in-principle approval of the scheme, as such internal certification will not serve the purpose of independent verification of land cost.

The Commission has accepted the suggestion that requirement of submission of PCC should be replaced with Technical Completion Certificate (TCC), and has made the necessary modifications in Clause 6(3)(f).

In view of the above, **the Commission has modified the Regulation 6 as below:**

*"**6. Application for Approval of Completed Cost of DPR Schemes***

The approval of completed cost of all the DPR Schemes completed before filing the claim for true-up for any financial year along with the appropriate Petition as specified in Regulation 4.27 shall be sought in a combined manner and shall necessarily comprise the following particulars for each Scheme:

(1) Name and Reference number of Scheme along with date of in-principle approval by the Commission;

(2) Whether the stated objectives of the Scheme as submitted in the Application for in-principle approval have been achieved, and justification for variation in the same.

(3) ***Technical Parameters***

a. *Date of asset being 'put to use' along with Certificate of Chief Electrical Inspector or authorised officer of Distribution Business/Licensee, as applicable;*

b. *Comparison of year-wise loading of asset since the date of being put to use with year-wise loading proposed in the Application for in-principle approval;*

c. *Bills of Quantity actually used vis-à-vis quantity claimed in the application for in-principle approval, with break-up of number of units and per unit cost, and justification for the variation in quantity, if any;*

d. *Justification for change in scope of work with respect to the original scope of work approved in-principle by the Commission, including changes in specification of assets, if any, and cost implication due to the change if higher than 10% of the approved cost;*

e. *Variation with respect to scheduled completion date, reasons and justification for the delay, if any, inter-alia, technical parameters, constraints, controllable and uncontrollable factors, mitigation measures adopted by the Applicant, and confirmation that these factors had been highlighted at the time of seeking in-principle approval;*

f. *Technical Completion Certificate (TCC) issued by technical officer of Applicant, duly authorised by the competent authority;*

g. *Impact on operational performance on account of delay in execution of works, if any;*

h. *Final route survey report in case of Transmission Business/Licensee, and justification for deviation from route proposed in the application for prior approval, if any, in case of cost increase higher than 10% of the approved cost;*

i. *Detailed comparison of the scope and cost approved by the Commission vis-a-vis that actually incurred by the Applicant with justification for deviations.*

(4) ***Financial Parameters***

a. *Item-wise justification for variation between approved equipment cost and completed cost, if any, in case of cost increase higher than 10% of the approved cost;*

b. *Difference between approved and actual year-wise phasing of capital investment and capitalisation;*

c. *Justification for increase in Interest During Construction (IDC), if any, with respect to IDC approved by the Commission in the in-principle approval;*

d. *Confirmation that the asset has been capitalised in the annual accounts of the entity, along with the date of asset capitalisation, as reflected either in the Asset Register or ERP system;*

e. *Justification for variation in funding through debt or equity or grants, if any, with respect to that proposed in the Application for in-principle approval;*

f. *Financial Completion Certificate (FCC) issued by competent officer of Applicant, duly authorised by the competent authority;*

g. *Comparison of actual cost benefit analysis with respect to cost benefit analysis proposed at the time of in-principle approval and justification for variation, if any;*

h. *Impact on financial performance on account of delay in execution of works, if any;*

i. *Impact of commissioning of asset on retail tariff after considering actual completed cost;*

j. *Copy of the verification of the land cost issued by the District Revenue Authority, if the land was acquired post in-principle approval of the scheme:*

Provided that if excess land is acquired without adequate justification, then the Commission may allow the cost of the necessary land only."

3.16 Rolling Capital Investment Plan

3.16.1 Proposed in Draft Regulations, 2022

"7.1 All Generating Business/Companies, Transmission Business/Licensees, Distribution Business/Licensees and MSLDC shall submit a five-year Rolling Capital Investment Plan for the next five financial years, within three (3) months of notification of these Regulations.

7.2 The Rolling Capital Investment Plan may be updated annually on or before April 30th of every financial year and shall be uploaded on Applicant's/ STU's website.

7.3 The Rolling Capital Investment Plan of Transmission Business/Licensees shall be consistent with the five-year Rolling Plan prepared by STU.

7.4 The Rolling Capital Investment Plan for the first three years shall be a concrete Plan and no changes shall be made in the same to the extent of addition of new schemes, though unnecessary schemes can be excluded.

7.5 If there are changes in the schemes/scope envisaged in the Rolling Plan for the fourth and fifth year, then the Applicant has to give the justification for such changes:

Provided that only incremental changes shall be considered by the Commission for the fourth and fifth year based on the justification to be submitted by the Applicant, and complete revamp/modification of the Rolling Capital Investment Plan is not envisaged:

***Illustration**: Original Rolling Capital Investment Plan comprises 10 Transmission Schemes including 4 x 220 kV Sub-stations, 6 x 132 kV Sub-stations, and 750 km of 220 kV/132 kV transmission lines; due to re-routing and land acquisition issues, the revised Rolling Capital Investment Plan may factor changes to length of transmission lines; however, revision in the number of 220 kV and 132 kV Sub-stations or location changes are not envisaged.*

7.6 The Rolling Capital Investment Plan shall bear in mind the previous trend in capital investment.

7.7 The Rolling Capital Investment Plan shall neither be approved in-principle by the Commission, nor shall it be construed as approved by the Commission.

7.8 Adverse inference may be drawn regarding the Capital Investment Schemes of the Applicant in case of non-submission of Rolling Capital Investment Plan as per the above schedule."

3.16.2 Comments Received

AEML-D submitted that the Draft Regulations, 2022 require that new schemes cannot be included in the first 3 years of the Rolling Capital Investment Plan. Additional schemes are required from time to time due to Statutory or Policy changes (such as opening up of certain NDZ/CRZ area for development, works due to some disaster event / emergency restoration works, releasing supply to some new major project (viz., Metro, Bullet-train), technological upgradation due to some newly identified concern (like cyber threat, etc.), schemes required as a result of statutory / policy / environmental compliance reasons, etc. The Regulation should not be restrictive as to not allow addition of new schemes, as that would only restrict critical or obligatory capex and hamper customer supply and services.

The negative list of capex provided in Regulation 3.21 does not allow a particular scheme to be submitted for DPR approval, if it is not part of the Rolling Plan. This makes it impossible for utilities to make the Rolling Plan as definitive as possible and that is simply not practical for businesses like distribution, where there is no certainty of schemes, let alone planning them 3 years in advance. The illustration provided with the Regulations mentions that revision in number of substations or changes in location are not envisaged. In case of Distribution business, this is not possible at all. Substations are mostly planned on developer provided plots and, therefore, if the project is stalled or the developer backs out of its commitment, the location of substation has to be changed to wherever in the vicinity a suitable plot is available. Even in case of transmission, location changes are very much possible. This is equally possible in case of EHV stations as well. To not permit these changes is very restrictive and definitely not in the interest of consumers. This leads to a great deal of micro-management and hampering of smooth conduct of business and should be avoided completely.

AEML-D submitted that the concern behind not allowing changes in Rolling Capital Investment Plan may be coming from the need to ensure certainty of capex impact on tariffs. However, such a certainty is in-built in the MYT Regulations, which only recognise approved schemes to be added in ARR, plus an adhoc amount of 20% towards unapproved schemes or those not submitted yet, in addition to Non-DPR. Thereafter, till Mid-term review (MTR), more schemes could be approved, but they are accounted for in tariff, only at MTR stage. Therefore, these restrictions of not allowing change in Rolling Capex Plan, when the plan itself is neither approved, nor construed to be approved by the Commission, are un-necessary.

AEML-D submitted that therefore, Regulation 7 may either not be included in the final Regulations, or suitably modified to allow for variations on account of addition of new scheme(s) or modifications to existing scheme(s).

TPC-D submitted that the changes in the capital investment plans may be allowed subject to the Capex investment required under Universal Service Obligation (USO) of Distribution

Licensee in line with the timelines prescribed for Standards of Performance in MERC Supply Code Regulations, 2021.

MSPGCL submitted that preparation of nearly firm Plan needs discussion and deliberation and is time-consuming. Also, Thermal power generation business is undergoing many policy changes and thus it has become difficult to plan for a longer duration. Therefore, it will be better if Rolling Plan is to be prepared for 3 years. Alternatively, Rolling Plan should be prepared for 5 years but remain firm for 2 years only. Alternatively, to begin with, Utilities should be asked to prepare Plan for FY 2023-24 and FY 2024-25 before December 31, 2022 and subsequently for the period starting from FY 2025-26, the procedure for 5 years' Plan can be adopted. This will also match with the next MYT Control Period.

KRC DISCOMs submitted that they are unique Distribution Licensees supplying to a very small area for IT & ITeS specific consumers. The entire distribution network in their area of supply under DPR schemes has already been laid. Hence, capital expenditure against DPR schemes will not be required every year. In nutshell, there may not be any major capex proposal of Deemed Distribution Licensees once operationalized, except capex on account of notification of additional SEZ area. Therefore, requirement for submission of Rolling Capital Investment Plan should be exempted for Deemed Distribution Licensee.

MSEDCL submitted that as per Regulation 74 of the MERC MYT Regulations, 2019, submission of Capital Investment Plan is envisaged as a part of the MYT Petition for the entire Control Period only. Whereas in terms of Regulation 74.5 of MERC MYT Regulations, only details showing the progress of capital expenditure projects is required to be submitted. As per Regulation 7.1 of Draft Regulations, 2022, Distribution Licensee is required to submit the five-year rolling Capital Investment Plan for next five years within 3 months of notification of the Regulations. In line with the spirit of notified MERC MYT Regulations for 4th Control Period, submission of Capital Investment Plan as proposed in Draft Regulations, 2022 should not be mandated and as such this should be introduced at the time of new Control Period only. Further, as per Draft Regulations, 2022, the Commission would not be approving such Capital Investment Plan.

Further, as per Regulation 7.5 of Draft Regulations, 2022, the Commission would be considering only incremental changes for fourth and five years. The five-year plan has been prepared by STU on 3 September, 2020 for period up to FY 2024-25. Further, it would be difficult for a Distribution License to project for Capital Investment Plan for FY 2025-26 and FY 2026-27 at present in the middle of 4th Control Period as new MYT framework for 5th Control Period that would be notified by the Commission in future would also have bearing on such projections. Hence, this particular provision may be made co-terminus with new Control Period.

MSEDCL submitted that Regulation 7.4 should be updated with following:

"The Rolling Capital Investment Plan for the first three years shall be a concrete Plan except the changes happen due to reasons beyond the control of Applicant/Utility"

MSEDCL also submitted that as the Commission would not be approving such Capital Investment Plan, the mandatory submission within (3) months should be omitted.

Prayas submitted that the draft Regulation 7 specifies that all Regulated Power entities should come out with a five-year Rolling Plan, of which the first three years are to remain concrete. Yet, since this Plan is not made mandatory, and is not to be approved by the Commission, the Plan may just remain ineffective and on-paper. Further, the draft Regulation 7.7 mentions that the Plan shall neither be approved in-principle by the Commission, nor shall it be construed as approved by the Commission. Since, the subsequent DPR and Non-DPR schemes shall be scrutinised on the basis on this Rolling Plan, it is of utmost importance that this Plan is approved by the Commission, following due public process. The approved Plan can also be released as a separate Order. This way, the Commission can also ensure that there is consistency across the Rolling Plans. Also, some broad checklist or criteria for the Rolling Plan should be specified in the Regulations.

3.16.3 Analysis and Commission's Decision

As regards the suggestion to exempt Distribution Licensees from submission of Rolling Plan, or allow for variations on account of addition of new scheme(s) or modifications to existing scheme(s), the Commission is of the opinion even Distribution Licensees need to plan for the medium/long-term. Further, if addition of new Schemes is allowed, irrespective of whether such Schemes were envisaged in the Rolling Plan or not, then the Rolling Plan would cease to have any relevance. Hence, the Commission has not accepted these suggestions.

The Commission has accepted the suggestion to increase the time-frame for submission of Rolling Plan, and the time-frame has been increased from 3 months to 6 months after notification of the final Regulations. However, the Commission has added a clause to the effect that no new Scheme shall be taken up for consideration till the Rolling Capital Investment Plan is submitted.

The Commission also agrees with the suggestion that the Rolling Plan should be co-terminus with the MYT Control Period, and has hence, specified submission of Rolling Plan for FY 2023-24 and FY 2024-25 within 6 months, and 5-year Rolling Plan for the subsequent Control Period starting from FY 2025-26, to be submitted latest by May 2024.

As regards the concern regarding modification of the Rolling Plan on account of need to meet USO, it is clarified that the Commission shall consider such request based on adequate justification to be submitted by the Applicant.

As regards the concern raised by KRC DISCOMs, it is clarified that the Rolling Plan may be submitted with Nil Capex Schemes.

The Commission does not agree that since the Rolling Plan is not being approved by the Commission, the Plan may just remain ineffective and on-paper. The Rolling Plan shall not be ineffective, as the Utilities would be bound by it, hence, they would exercise due diligence before submitting it.

The Commission has specified the Format for submission of Rolling Plan as Appendix 2 of the final Regulations.

In view of the above, **the Commission has modified the Regulation 7 as under:**

"7.1 All Generating Business/Companies, Transmission Business/Licensees, Distribution Business/Licensees and MSLDC shall submit the Rolling Capital Investment Plan for FY 2023-24 and FY 2024-25, within six (6) months of notification of these Regulations in accordance with the format specified in ***Appendix 2****:*

Provided that no new Scheme shall be taken up for consideration till the Rolling Capital Investment Plan is submitted:

Provided further that Applicants shall submit the Rolling Capital Investment Plan for each five (5) year period thereafter, with the Rolling Capital Investment Plan from FY 2025-26 to FY 2029-30 to be submitted latest by May 2024.

7.2 The Rolling Capital Investment Plan may be updated annually on or before April 30th of every financial year and shall be uploaded on Applicant's/ STU's website.

7.3 The Rolling Capital Investment Plan of Transmission Business/Licensees shall be consistent with the five-year Plan prepared by STU.

7.4 The Rolling Capital Investment Plan for FY 2023-24 and FY 2024-25 and for the first three years of every five-year period shall be a concrete Plan and no changes shall be made in the same to the extent of addition of new schemes, though unnecessary schemes can be excluded.

7.5 If there are changes in the schemes/scope envisaged in the Rolling Capital Investment Plan for the fourth and fifth year, then the Applicant has to give the justification for such changes:

Provided that only incremental changes shall be considered by the Commission for the fourth and fifth year based on the justification to be submitted by the Applicant, and complete revamp/modification of the Rolling Capital Investment Plan is not envisaged:

Illustration*: Original Rolling Capital Investment Plan comprises 10 Transmission Schemes including 4 x 220 kV Sub-stations, 6 x 132 kV Sub-stations, and 750 km of 220 kV/132 kV transmission lines; due to re-routing and land acquisition issues, the revised Rolling Capital Investment Plan may factor changes to length of transmission lines; however, revision in the number of 220 kV and 132 kV Sub-stations or location changes are not envisaged.*

7.6 The Rolling Capital Investment Plan shall bear in mind the previous trend in capital investment.

7.7 The Rolling Capital Investment Plan shall neither be approved in-principle by the Commission, nor shall it be construed as approved by the Commission.

7.8 Adverse inference may be drawn regarding the Capital Investment Schemes of the Applicant in case of non-submission of Rolling Capital Investment Plan as per the above schedule:

Provided that the Rolling Capital Investment Plan shall be submitted with zero Schemes in case there are no DPR Schemes envisaged."

3.17 Technical Evaluation Criteria

3.17.1 Proposed in Draft Regulations, 2022

"8.2 The Prudence Check for in-principle approval of DPR Schemes shall comprise detailed scrutiny of the following parameters inter-alia:

(1) Whether the Applicant has submitted all the essential data, justification and documentary evidence, as specified in Regulation 5;

(2) Technical Evaluation criteria

a. Whether the proposed Capex falls under the Categorisation of DPR Schemes specified in Regulation 3;

b. Background, necessity, objectives, and overall suitability of proposed Capex;

c. Whether the Scheme will result in quantifiable and verifiable benefits;

d. Approval of authorised representative of the Company;

e. The Single Line Diagram (SLD) for the proposed Schemes and Grid maps of relevant areas, duly differentiating with the existing Schemes;

f. The in-feed arrangements for various Schemes along with the letter of confirmation for the in-feed from the concerned agencies;

g. The feasibility of availability of land and/or right of way approvals for the Scheme and methodology proposed for acquiring the same;

h. The Bill of Quantity estimated by the Applicant;

i. PERT Chart showing completion stages and alternative plan for delays;

j. Whether proposed Transmission Scheme fits into CEA's overall system planning study for the State of Maharashtra and is included in the Rolling capital Investment Plan of the Applicant and the five-year STU Plan;

k. Whether it meets the demand projections for the period of five years from the date of commissioning of the scheme;

l. Whether the Scheme is necessary to discharge the duties and obligations of the Applicant as per the Act or to meet any other statutory or safety requirement;

m. Whether all possible alternatives to the proposed Capex have been submitted by the Applicant including assessment whether such works can be carried out under Opex Scheme or O&M budget;

n. Efforts taken by the Applicant to optimise the project cost;

o. *In case proposed DPR is for asset replacement after completion of regulatory Useful Life, the Commission shall scrutinise the following aspects before according approval:*

   i. *Whether the completion of regulatory Useful Life has adversely affected the performance of the asset;*

   ii. *Whether the assets are beyond repair;*

   iii. *Whether performance of the asset can be brought to the desired level through repairs or Renovation and Modernisation;*

   iv. *Residual Life Test to assess the real residual life of the asset parameters;*

   v. *Interruptions/faults/issues that have occurred in the last five years on the asset;*

   vi. *Results of the diagnostic testing of the equipment/material and their analysis;*

   vii. *Past major R&M of the asset;*

p. *Structural audit report of existing civil structure in case of replacement of civil structure;*

q. *Load flow study report in case of setting up of Sub-stations, Transmission Lines, Distribution network;*

r. *Whether all possible constraints have been realistically envisaged and mitigation measures proposed;*

s. *Impact if the proposed Capex is either not carried out or is deferred for some period;*

t. *Proposed framework for implementation and periodic monitoring of the Scheme;*

u. *Requirement of third-party verification on case-to-case basis, if considered appropriate by the Commission.*

v. *Demand/Requirement of the Distribution Business/Licensees/consumers in case of Transmission Schemes."*

3.17.2 Comments Received

Prayas submitted that there is reference to a third-party for certification and verification in Regulation 8.2(2)(u). Hence, an indicative list of who qualifies to be a third party would be more effective.

As regards Regulation 8.2(2)(o), AEML-D submitted that Technical Evaluation Criteria should also include cases where pre-mature replacement of a given asset is proposed by the Applicant. As soon as the cumulative envisaged maintenance / repair cost of the existing asset exceeds the cost of replacement, it would make no sense to continue with the asset, irrespective of whether Useful Life is completed or not. Also, there can be many other technical reasons, such as frequency of equipment failure or safety issues or technological obsolescence, which would require premature replacement of the asset. The criteria for evaluation of the same should also be included in this Regulation.

3.17.3 Analysis and Commission's Decision

The Commission has already clarified in the EM that the Commission, if not satisfied with the scrutiny of documents/submissions of the Company/Licensee, can conduct third party verification of the proposed Capital Investment Scheme before providing in-principle approval. On the suggestion to provide an indicative list of who qualifies to be a third party, it is to be noted that this is an enabling clause for third-party certification/ verification to be undertaken on case-to-case basis. The Commission shall identify the third-party on case-to-case basis.

As regards the suggestion that Technical Evaluation Criteria should also include cases where pre-mature replacement of a given asset is proposed by the Applicant, the same is already addressed in Regulations 3.20 to 3.23, as elaborated earlier.

The Commission has incorporated the terms '/Gantt Chart/ Project Monitoring mechanism' in Clause 8.2(2)(i), in order to ensure consistency with changes made in otherer clauses.

In view of the above, **the Commission has modified the Regulation 8.2 as under:**

"8.2 The Prudence Check for in-principle approval of DPR Schemes shall comprise detailed scrutiny of the following parameters inter-alia:

(1) Whether the Applicant has submitted all the essential data, justification and documentary evidence, as specified in Regulation 5;

(2) Technical Evaluation criteria

a. Whether the proposed Capex falls under the Categorisation of DPR Schemes specified in Regulation 3;

b. Background, necessity, objectives, and overall suitability of proposed Capex;

c. Whether the Scheme will result in quantifiable and verifiable benefits;

d. Approval of authorised representative of the Company;

e. The Single Line Diagram (SLD) for the proposed Schemes and Grid maps of relevant areas, duly differentiating with the existing Schemes;

f. The in-feed arrangements for various Schemes along with the letter of confirmation for the in-feed from the concerned agencies;

g. The feasibility of availability of land and/or right of way approvals for the Scheme and methodology proposed for acquiring the same;

h. The Bill of Quantity estimated by the Applicant;

i. PERT Chart/Gantt Chart/ Project Monitoring mechanism showing completion stages and alternative plan for delays;

j. Whether proposed Transmission Scheme fits into CEA's overall system planning study for the State of Maharashtra and is included in the Rolling capital Investment Plan of the Applicant and the five-year STU Plan;

k. Whether it meets the demand projections for the period of five years from the date of commissioning of the scheme;

l. Whether the Scheme is necessary to discharge the duties and obligations of the Applicant as per the Act or to meet any other statutory or safety requirement;

m. Whether all possible alternatives to the proposed Capex have been submitted by the Applicant including assessment whether such works can be carried out under Opex Scheme or O&M budget;

n. Efforts taken by the Applicant to optimise the project cost;

o. In case proposed DPR is for asset replacement after completion of regulatory Useful Life, the Commission shall scrutinise the following aspects before according approval:

i. Whether the completion of regulatory Useful Life has adversely affected the performance of the asset;

ii. Whether the assets are beyond repair;

iii. Whether performance of the asset can be brought to the desired level through repairs or Renovation and Modernisation;

iv. Residual Life Test to assess the real residual life of the asset parameters;

v. Interruptions/faults/issues that have occurred in the last five years on the asset;

vi. Results of the diagnostic testing of the equipment/material and their analysis;

vii. Past major R&M of the asset;

p. Structural audit report of existing civil structure in case of replacement of civil structure;

q. Load flow study report in case of setting up of Sub-stations, Transmission Lines, Distribution network;

r. Whether all possible constraints have been realistically envisaged and mitigation measures proposed;

s. Impact if the proposed Capex is either not carried out or is deferred for some period;

t. Proposed framework for implementation and periodic monitoring of the Scheme;

u. Requirement of third-party verification on case-to-case basis, if considered appropriate by the Commission.

v. Demand/Requirement of the Distribution Business/Licensees/consumers in case of Transmission Schemes."

3.18 Prudence Check of Completed Cost

3.18.1 Proposed in Draft Regulations, 2022

"9.2 The Prudence Check for approval of the completed cost of DPR Schemes shall

comprise detailed scrutiny of the following parameters inter-alia:

(1) *Whether the Applicant has submitted all the essential data, justification and documentary evidence, as specified in Regulation 6;*

(2) *Whether the DPR Scheme has received the Commission's in-principle approval or is exempted from obtaining in-principle approval on account of being a 100 percent Grant funded Schemes;*

(3) *Whether the stated objectives of the Scheme as submitted in the Application for in-principle approval have been achieved;*

(4) *Whether the asset has been 'put to use' and is benefiting the consumers/system;*

(5) *Variation in the scope of work with respect to the original scope of work approved in-principle by the Commission*

(6) *Variation in the quantities actually used with respect to the quantities considered in the DPR Scheme;*

(7) *Variation between approved equipment cost and completed cost, and phasing of capital investment;*

(8) *Whether the Applicant has adopted industry best practices for minimising the incidence of income tax while executing the capital expenditure;*

(9) *Variation with respect to scheduled completion date and justification thereof, and impact of delay in completion, if any, including impact on Interest During Construction (IDC) and inflation on the cost of the entire project;*

(10) *Date of asset capitalisation in the annual accounts of the entity;*

(11) *Variation in the funding of the capital investment;*

(12) *Whether the stated objectives of the Scheme as submitted in the Application for in-principle approval have been achieved;*

(13) *Actual cost benefit analysis, utilisation index of the assets;*

(14) *Impact of commissioning of asset on retail tariff after considering actual completed cost;*

(15) *Study of Cost Audit Report for selected Capex Schemes, as desired by the Commission;*

(16) *Requirement of third-party verification on case-to-case basis, if considered appropriate by the Commission."*

3.18.2 Analysis and Commission's Decision

No specific comments have been received on this aspect.

The National Financial Reporting Authority (NFRA) was constituted on 1st October, 2018 by the Government of India under Sub Section (1) of Section 132 of the Companies Act, 2013, for inter-alia monitoring and enforcing compliance with accounting standards and auditing

standards. NFRA has the mandate to establish high quality standards of accounting and auditing and exercise effective oversight of accounting functions performed by the companies and bodies corporate and auditing functions performed by auditors.

Hence, the Commission has incorporated the term 'including making reference to the NFRA in clause 9.2(16) for additional clarity on the issue of third-party verification.

In view of the above, **the Commission has modified the Regulation 9.2 as under:**

"9.2 The Prudence Check for approval of the completed cost of DPR Schemes shall comprise detailed scrutiny of the following parameters inter-alia:

(1) *Whether the Applicant has submitted all the essential data, justification and documentary evidence, as specified in Regulation 6;*

(2) *Whether the DPR Scheme has received the Commission's in-principle approval or is exempted from obtaining in-principle approval on account of being a 100 percent Grant funded Schemes;*

(3) *Whether the stated objectives of the Scheme as submitted in the Application for in-principle approval have been achieved;*

(4) *Whether the asset has been 'put to use' and is benefiting the consumers/system;*

(5) *Variation in the scope of work with respect to the original scope of work approved in-principle by the Commission*

(6) *Variation in the quantities actually used with respect to the quantities considered in the DPR Scheme;*

(7) *Variation between approved equipment cost and completed cost, and phasing of capital investment;*

(8) *Whether the Applicant has adopted industry best practices for minimising the incidence of income tax while executing the capital expenditure;*

(9) *Variation with respect to scheduled completion date and justification thereof, and impact of delay in completion, if any, including impact on Interest During Construction (IDC) and inflation on the cost of the entire project;*

(10) *Date of asset capitalisation in the annual accounts of the entity;*

(11) *Variation in the funding of the capital investment;*

(12) *Whether the stated objectives of the Scheme as submitted in the Application for in-principle approval have been achieved;*

(13) *Actual cost benefit analysis, utilisation index of the assets;*

(14) *Impact of commissioning of asset on retail tariff after considering actual completed cost;*

(15) *Study of Cost Audit Report for selected Capex Schemes, as desired by the Commission;*

(16) *Requirement of third-party verification including making reference to the National Financial Reporting Authority (NFRA) on case-to-case basis, if considered appropriate by the Commission."*

3.19 Lower Return on Equity

3.19.1 Proposed in Draft Regulations, 2022

"9.3 If the in-principle approval has not been obtained for the Capex Scheme in accordance with Regulation 4.3 or if the Applicant is unable to establish the benefits as submitted in the Application for in-principle approval either fully or partly, the Commission may either disallow the capitalisation claimed against the respective DPR Scheme, in part or in full, as appropriate, or allow lower Return on Equity on such investment, as may be specified in the applicable MERC (Multi-Year Tariff) Regulations:

Provided that in case the actual benefits of the Scheme are greater than the benefits considered at the time of in-principle approval, no sharing of gains shall be allowed to the Applicant."

3.19.2 Comments Received

MSEDCL submitted that while regulating distribution and retail tariff of electricity for this Control Period, the Commission guaranteed the RoE. Introduction of the provision of Regulation 9.3 of Draft Regulations, 2022 and effectuating it in present form in the middle of Control Period may not be in the right spirit of MYT framework. Further, the proposed provision in a way completely disregards hurdles and delays faced by the Distribution Licensee on almost all fronts due to COVID-19 situation, which has further aggravated the precarious financial situation of MSEDCL. Therefore, MSEDCL requested to remove the following terms/ clause:

"or allow lower Return on Equity on such investment, as may be specified in the applicable MERC (Multi-Year Tariff) Regulations:

Provided that in case the actual benefits of the Scheme are greater than the benefits considered at the time of in-principle approval, no sharing of gains shall be allowed to the Applicant."

AEML-D submitted that the proviso of Regulation 9.3 of draft Capex Approval Regulations, 2022 is unclear. All the outcomes of capital investment whether more or less than anticipated ultimately reflect in the overall performance of the Applicant. For example, in case of DPRs for commissioning of new transformers or improvement of HT or LT mains, etc., the ultimate benefit will be in terms of achieving optimal loading of the existing and newly commissioned assets, due to which there shall be improvement in reliability and possibly reduction in technical losses. The reduction in losses will reflect in the overall loss reduction of the Company, which is recognized as Efficiency Gains as per MERC MYT Regulations and Orders thereon and part of the same is retained by the Company. Therefore, to state that "no sharing of gains shall be allowed to the Applicant" is both principally incorrect as well as inconsistent with MERC MYT Regulations.

In any case, gains from a particular scheme cannot be isolated in financial terms and hence, whether more or less than approved, it ultimately gets merged with the overall performance of the Company only. Therefore AEML-D suggested to delete Regulation 9.3 from the final Regulations.

3.19.3 Analysis and Commission's Decision

It is essential for the Capital Investment Scheme to obtain the in-principle approval as well as to achieve the objective as proposed by the Applicant at the time of in-principle approval. In the EM, the Commission has clarified that partly/fully disallowing the Capital expenditure or reducing the rate of Return on Equity on this particular asset would be a suitable disincentive to the Applicants, which would make sure promised benefits of the Capital Investment Schemes fructify. Accordingly, the Commission has proposed Regulation 9.3 in the draft Regulations.

The Commission is of the opinion that the clause of allowing reduced RoE if intended benefits are not achieved is only an enabling clause and will be implemented only if and when the MYT Regulations are amended accordingly. Further, this clause seeks to reduce RoE only if the claimed benefits are not achieved, which has no linkage to the difficulties faced due to COVID-19.

Further, it is clarified that gains due to overall efficiency improvement shall be allowed in accordance with the MERC MYT Regulations, and there is no impact due to this proviso Regulation 9.3.

Hence, the Commission has retained the Regulation 9.3 as per the Draft Regulations, 2022.

3.20 Cost-Benefit Monitoring Framework

3.20.1 Proposed in Draft Regulations, 2022

"9.4 The Cost Benefit Monitoring of selected Capital Investment Schemes shall be done by the Commission on an on-going basis as considered appropriate by the Commission."

3.20.2 Comments Received

MSEDCL submitted that as per Regulation 74.5 of the MERC MYT Regulations, 2019, the details showing the progress of capital expenditure projects are required to be submitted. Also, monitoring of schemes has already been envisaged in the Draft Regulations, 2022 vide Regulation 3.17, Regulation 6(4)(g), Regulation 16(d) and 16(e), and Regulation 19.2 through web-based portal on half-yearly basis. Therefore, Regulation 9.4 is redundant and it should be removed in the final Regulations.

Prayas submitted that while 'cost benefit' monitoring is defined as the process of periodic comparison of actual cost benefit, considering both tangible and intangible benefits; it is not clear how such costs and benefits would be computed on a post-facto basis. Better guidance is needed here, perhaps in terms of an explicit format. The draft Regulation 9.4 states that cost-benefit monitoring of 'selected' Capital Investment schemes shall be done by the Commission on an on-going basis. This is certainly a good measure, especially for very large Capex

schemes undertaken, but the Regulations should clearly specify the basis on which certain schemes would be selected for on-going monitoring. Further, how this on-going monitoring would be carried out remains unclear.

Prayas also submitted that a framework for post-facto monitoring should be submitted along with the DPR by the Applicant, which should be approved by the Commission. Implementation and measure of benefits can be submitted to the Commission on a periodic basis. The submissions and Commission's observations on implementation benefits should be recorded in a separate Order for 'select' projects.

3.20.3 Analysis and Commission's Decision

Regulation 9.4 is only an enabling clause and hence, the Commission has retained it. Schemes for on-going monitoring shall be identified on a case-to-case basis, as considered appropriate and if felt necessary, and based on the nature of the Scheme. The Commission is of the view that the general framework cannot be specified for Cost Benefit Monitoring of schemes. However, for more clarity, **the Commission has modified the Regulation 9.4 as under**:

"9.4 The Cost Benefit Monitoring of selected Capital Investment Schemes shall be done by the Commission, if felt necessary, on an on-going basis as considered appropriate by the Commission."

3.21 Mismatch in the Capitalization

3.21.1 Proposed in Draft Regulations, 2022

"9.5 The amount of capitalisation claimed in the True-up Petition against DPR Schemes shall match with the respective Completion Reports submitted by the Applicant in accordance with Regulation 16:

Provided that mismatch between amount of capitalisation claimed in the True-up Petition with the capitalisation reported in the Completion Reports may lead to disallowance of part or complete capitalisation."

3.21.2 Comments Received

TPC-T submitted that the completion report is submitted post completion of scheme wherein cost audit may be pending and the Licensee would be submitting the provisional data. Hence, the Commission is requested to consider the amount of capitalisation claimed in the True-up Petition as final. Further, an opportunity to correct the mismatch should be made available before rejecting any application as the same is based on the audited accounts. Accordingly, Regulation 9.5 should be modified.

MSEDCL submitted that Regulation 9.5 requires the Distribution Licensee to submit Completion Reports as stated in Regulation 16(e). Further, as per the draft Regulation 9.5, mismatch between amount of capitalization claimed in the True-up Petition with capitalization reported in the Completion Report has been penalized with disallowance of part or complete capitalization. Further, it is observed that draft Regulations have not mentioned apart from knowing the status of 'schemes put to use' what shall be done with/use of

Completion Report (in terms of approval, etc.) as any way, the approval of completed cost of DPR schemes under Regulation (which also requires Completion report) is to be sought only with True-up Petition.

MSEDCL also submitted that Regulation 9.5 ignores the audited accounts, thereby, depriving the utility to claim actual cost as per the statutory audit conducted as per set auditing procedure, as the Capex schemes are progressive. Therefore, the Regulations 9.5 and 16(e) should be removed.

AEML-D submitted that wherever schemes are funded internally for whole or part of the debt portion, normative interest cost is claimed as IDC and normative IDC is not known at the time of submission of scheme Completion Report. It is evaluated only at the time of Tariff Petition as, being normative, it is not considered in accounts. The actual rates of interest of the Company's portfolio are worked out for the year as a whole only at the time of submission of Tariff Petition and that is when normative IDC is determined. Therefore, to the extent of IDC, there shall always be variation in capitalization between scheme Completion Report and the completed cost submitted with True-up Petition.

Even if actual borrowing is done, there is no tagging of loans to individual assets or schemes and the borrowing is done for the Company's capex plan as a whole. Therefore, even in case of actual borrowing, the IDC claimed by the Company could be based on normative principles only.

AEML-D submitted that scheme Completion Reports are not submitted after Financial Audit of the Company. They are submitted as and when a scheme gets completed. Therefore, based on cost audit and statutory audit results, there could be variations in completed cost as submitted in True-up vis-à-vis that submitted in Completion Report. As submitted earlier, most Completion Reports are submitted after Technical Completion of the scheme, without waiting for minor civil works or outstanding payments to vendors as may be remaining. This factor will also cause variation between cost submitted in scheme Completion Report vs. that submitted for True-up.

In any case and without prejudice to the above, AEML-D submitted that mismatch can, at best lead to disallowance of excess capitalization, if any, claimed in true-up vis-à-vis completion report, but not disallow whole or part of the total scheme capitalization, as the Regulation seems to suggest. Therefore, Proviso of Regulation 9.5 should be modified as below:

"Provided that mismatch between amount of capitalisation claimed in the True-up Petition with the capitalisation reported in the Completion Reports ~~*may lead to disallowance of part or complete capitalization*~~ ***will require the Applicant to justify the variance in its True-up Petition and the Commission may allow the variation, subject to prudence check****.*

3.21.3 Analysis and Commission's Decision

The Commission has accepted the submission of the stakeholders in this regard, as audited data would not be available at the time of submitting the Completion Report. Further, the

Commission agrees with the view that the Applicant should be given an opportunity to justify the mismatch between the amount of capitalisation claimed in the True-up Petition with the amount of capitalisation reported in the Completion Report. Further, the Commission agrees that in case the mismatch is found to be unjustified, then only the excess capitalisation may be disallowed.

Therefore, **the Commission has modified Regulation 9.5 as under**:

"9.5 The Applicant shall submit necessary justification for any mismatch between the amount of capitalisation claimed in the True-up Petition against DPR Schemes with the capitalisation reported in the respective Completion Reports submitted by the Applicant in accordance with Regulation 16:

Provided that mismatch between amount of capitalisation claimed in the True-up Petition with the capitalisation reported in the Completion Reports may lead to disallowance of the excess capitalisation, unless found justified after prudence check."

3.22 Approval of Completed Cost of Non-DPR Schemes

3.22.1 Proposed in Draft Regulations, 2022

"10.1 The Final approval of completed cost of Non-DPR Schemes after asset is put to use shall be sought along with the claim for true-up for any financial year filed along with the appropriate Petition for approval of Multi-Year Tariff or Mid-Term Review, in accordance with the MERC (Multi-Year Tariff) Regulations applicable at that point in time."

3.22.2 Comments Received

MSEDCL submitted that it understood that "an application for approval of completed cost of DPR schemes" is different from the "application of true-up for any financial year filed along with the appropriate Petition for approval of Multi-Year Tariff or Mid-Term Review" and the same needs to be treated, filed and dealt with separately and not to be clubbed with the Tariff Petition, as it may unnecessarily delay admission of Tariff Petition and hence, issuance of Tariff Order. Therefore, both the processes need to be separated. Thus, "Approval of completed cost of Non-DPR schemes" needs to be separated and not to be clubbed with the Tariff Petition. Hence, draft Regulation 10.1 should be modified.

MSPGCL submitted that this is a positive step taken by the Commission as with the set procedure; it will be easier for the utilities to claim cost/time overrun for genuine reasons. Previously, the Commission has generally not allowed any cost overrun and restricted capitalisation up to in-principle approved limit.

MSEDCL submitted that the Commission should clarify if in cases involving acquisition/takeover of assets created under DDF by Distribution Licensee, open competitive bidding is applicable or not.

BEST submitted that specific format for submission of Non-DPR Schemes should be specified in the Regulations.

3.22.3 Analysis and Commission's Decision

The Commission is of the view that the completed cost approval for Non-DPR Schemes has to be sought along with the Tariff Petition, hence, there is no need to modify the said Regulation.

It is clarified that the competitive bidding requirement is not applicable in cases involving acquisition/takeover of assets created under DDF by Distribution Licensee.

The Commission has already incorporated in the newly added Regulation 10.1 that the same DPR Format shall be applicable to Non-DPR Schemes also, to be filled-up as applicable/relevant.

Hence, the Commission has retained the said Regulation as per the Draft Regulations, 2022, except for the Regulation number modification due to the incorporation of new Regulation 10.1.

3.23 Non-DPR Capitalisation

3.23.1 Proposed in Draft Regulations, 2022

"10.3 The Commission shall allow Non-DPR capitalisation based on the prudence check, subject to the cap against Non-DPR capitalisation specified in the MERC (Multi-Year Tariff) Regulations, 2019, as amended from time to time:

Provided that if the Non-DPR capitalisation does not meet the specified criteria then the Commission shall not allow the capitalisation of such scheme."

3.23.2 Comments Received

KRC DISCOMs submitted that the major infrastructure portion of the capex was carried out at an initial stage in case of Deemed Distribution Licensee. In absence of any approved DPR schemes for any particular year of the Control Period, the Commission should allow Non-DPR capitalization for a particular year after verification of the documentary evidence such as various quotes from vendors, purchase orders etc. The said methodology is approved by the Commission in recent MYT Orders for KRC DISCOMs.

TPC-G submitted that DPR – Non DPR ratio should be eliminated as both the proposals are already going to be scrutinised.

3.23.3 Analysis and Commission's Decision

The Draft Regulations, 2022 already refer to the MERC MYT Regulations. Further, the requirements for prudence check of Non-DPR Schemes are much less stringent and bare minimum, as specified in revised Regulation 10.3.

The concern of Small SEZ DDLs has been addressed, as discussed earlier with provision for one-time submission of capex within 6 months of operationalisation of SEZ.

The issue of computation of Non-DPR Schemes as percentage of DPR Schemes is a subject matter of the MERC MYT Regulations.

Hence, the Commission has retained the said Regulation as per the Draft Regulations, 2022, except for the Regulation number modification due to the incorporation of new Regulation 10.1.

3.24 Capex under Parallel Licensee Scenario

3.24.1 Proposed in Draft Regulations, 2022

"11.1 In the Mumbai suburban distribution licence area supplied electricity by Adani Electricity Mumbai Limited and The Tata Power Company Limited, and where both Distribution Business/Licensees have existing distribution network either partly or fully covering the licence area through Distribution Mains, the capital investment required for connecting to new consumer shall be optimised in the manner specified in these Regulations."

3.24.2 Comments Received

BEST submitted that to avoid the duplication of network, wastage of national resource, burden on Mumbai city consumers and difficulties for development of network in Local Authority (i.e., BEST) Licence area of supply, following additional Proviso should be added in Regulation 11.1:

"DPR and Non-DPR Schemes excluding Local Authority (i.e. BEST Licensee) should not be approved for New connections / infrastructure development in Local Authority (i.e. BEST) License area of supply as the litigation are pending at Hon'ble Supreme Court and APTEL against MERC Order in TPC-D matters."

EON SEZ submitted that the consumers in SEZ area are having the option to switch from MSEDCL to the DDL and vice-versa. Hence, MSEDCL as well as DDL should lay their own network to supply the power as per consumers requirement. The requirement of separate distribution network is as per the sixth proviso to Section 14 of the Act.

EON SEZ submitted that the following additional Proviso should be added in Regulation 11.1:

"The manner specified herein shall not be applicable to the SEZ which are Deemed Distribution Licensee and such Deemed Distribution licensees may lay their own network as per consumers requirement."

3.24.3 Analysis and Commission's Decision

The Commission does not agree with the suggestion that Capex Schemes should not be approved for the parallel licensee in the BEST licence area, on account of the pending litigation before Hon'ble APTEL and Hon'ble Supreme Court. There is no stay on Capex by parallel licensee in the licence area overlapping with BEST. The Commission has already directed BEST to come up with a concrete plan to share the distribution network assets with the parallel licensee within the extant regulatory framework.

Further, Regulation 11 is applicable to very specific case of Mumbai suburban licence area having parallel licensees, viz., AEML-D and TPC-D, and there is no need to incorporate a clause to the effect that parallel licensees shall set up their own network, which is stipulated in the Act itself.

Hence, the Commission has retained Regulation 11.1 as per the Draft Regulations, 2022.

3.25 Preferred Distribution Business/Licensee

3.25.1 Proposed in Draft Regulations, 2022

"11.2 The preferred Distribution Business/Licensee for setting up distribution network to connect to the consumer shall be identified in accordance with the following four (4) Scenarios as well as Levels specified in Regulation 11.3:

Scenario	*Spread of Distribution Network of Respective Distribution Business/Licensee*	*Preferred Distribution Business/Licensee for setting up distribution network to connect to the consumer*
Scenario 1	*Licensee A completely covers the locality with Distribution Mains and Licensee B does not completely cover with Distribution Mains*	*Licensee A*
Scenario 2	*Licensee A and Licensee B both completely cover the locality with Distribution Mains*	*Licensee A or Licensee B shall connect by extending service lines, depending on choice of new consumer*
Scenario 3	*Licensee A and Licensee B both do not have distribution network in the locality*	*Network development by Licensee A or Licensee B, depending on choice of new consumer*
Scenario 4	*Licensee A and Licensee B both have distribution network in the locality but have not completely covered with Distribution Mains*	*Network development by Licensee A or Licensee B, depending on comparative capital cost to connect to new consumer*

"

3.25.2 Comments Received

AEML-D submitted that Scenarios (1) to (4) are, apparently, Scenarios 53(a) to 53(d) of the Order dated 12 June 2017. However, the definition of Scenarios and the subsequent interpretation given by the Commission through various cases of Scenario 53(a) referred to the Commission and to the M-DNAC have not been properly captured in the definitions in Regulation 11.2. The EM has referred the Hon'ble APTEL Judgment in Jagdeo Mhatre case and has acknowledged the need for clarity w.r.t various scenarios and levels as per Order

dated 12 June 2017, in line with the said Judgment and it is for this reason that Level 1 definition is expanded to include extension of DSS, as well from existing mains. Also, the terms "distance", "presence", proximity" and "vicinity" have been introduced, for the same reason.

AEML-D submitted that it welcomes the intent of making the changes, however, changes per se need more clarity, so as to completely avoid any ambiguity with respect to interpretation of Scenarios and Levels and also avoid the possibility of any Licensee indulging in sub-optimal planning of network solely to acquire customers, by bypassing the hurdle of Scenarios, Levels and M-DNAC.

It is noticed that Regulation 11.3 has changed the definition of Level 1, by introducing extension of DSS as well. As explained in the EM, this is perhaps done to provide clarity that the Licensee whose network is present in Scenario 1 (53(a)) can also carry out works at Levels 2 or higher. However, in the process, this definition has become more difficult to interpret as situation of extension of DSS will never exist. Based on the Commission's clarificatory Order in Case No. 345 of 2018 and the Hon'ble APTEL Judgment, it is the definition of Scenario 1, which is required to be expanded and clarified, instead of the definition of Level 1. For absolute clarity, the Scenario (1), which is Scenario 53(a), should be defined as the one where Licensee B network is non-existent in the locality or area and Licensee A can therefore extend the network for any level from Level 1 to Level 5. In the proposed definition, it would appear that Licensee A completely covers the locality with Distribution Mains, thereby only Service Line laying will be left for any new consumer. However, Scenario 53(a)'s scope includes network extension by Licensee A not just limited to Level 1 (i.e., service line), but also at Level 2 to Level 5, to serve new load or enhanced load of its existing consumers.

AEML-D submitted that over the course of various Orders of M-DNAC and the Commission as also the Hon'ble APTEL (Jagdeo Mhatre case), it has been held that network spread is the criterion on the basis of which Scenario 53(a) shall be decided. In this regard, therefore, AEML-D requested the Commission to now decide the meaning of the term "network spread" i.e., specify the relative distance of Distribution Mains of both Licensees from the concerned consumer, so as to be able to decide Scenario (1) (Scenario 53(a)) in favour of either one of the Licensees. The Commission would appreciate that this being a capital investment related issue, this clarity of distance of Distribution Mains can be provided through the instant Regulations. Further, upon receipt of an application for supply, both Licensees shall be able to assess the Scenario using the defined criterion, thereby minimising disputes before M-DNAC.

Further, it is also important that the Scenarios are defined with respect to new consumer's premises, rather than in reference to an area or locality. The Order dated 12 June, 2017 also provides that reference point ought to be a consumer's premises in order to define Scenario.

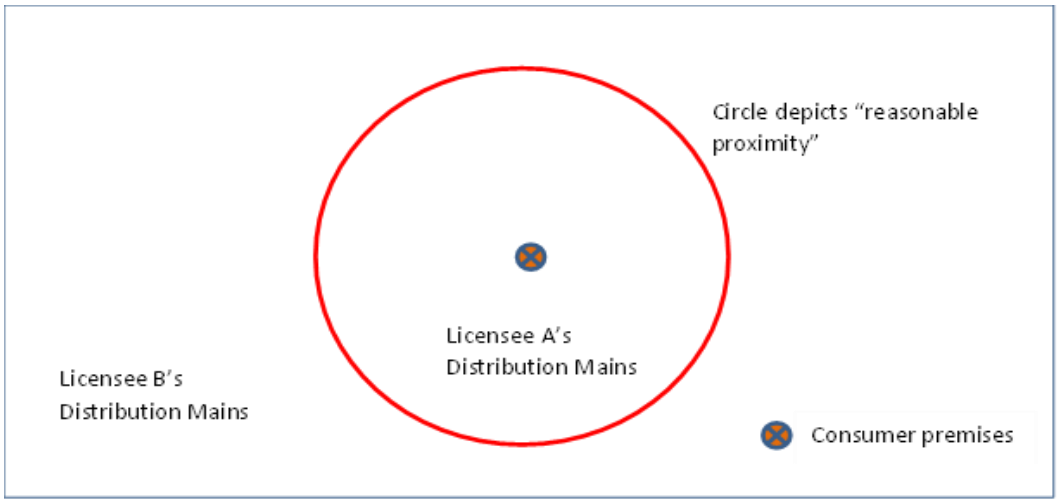
Accordingly, AEML-D proposed the following definitions of Scenarios of relative network spread:

Scenario	Spread of Distribution Network of Respective Distribution Business/Licensee		Preferred Distribution Business/Licensee for setting up distribution network to connect to the consumer
	Existing definition as per draft Regulations	**Definition proposed by AEML**	
Scenario 1	Licensee A completely covers the locality with Distribution Mains and Licensee B does not completely cover with Distribution Mains	Licensee A's Distribution Mains is present within a reasonable proximity of the consumer's premises, while Licensee B's Distribution Mains is not	Licensee A can connect new consumers by laying service or extension of mains, CSS, etc.
Scenario 2	Licensee A and Licensee B both completely cover the locality with Distribution Mains	Distribution Mains of both Licensee A and Licensee B are present within a reasonable proximity of the consumer's premises and both completely cover the consumer's premises	Licensee A or Licensee B shall connect by extending service lines only, depending on choice of new consumer
Scenario 3	Licensee A and Licensee B both do not have distribution network in the locality	Both Licensee A and Licensee B have distribution mains outside of a reasonable proximity of the premises	Network development by Licensee A or Licensee B, depending on choice of new consumer
Scenario 4	Licensee A and Licensee B both have distribution network in the locality but have not completely covered with Distribution Mains	The distribution mains of both Licensee A and Licensee B is present within a reasonable proximity of the consumer's premises, but neither completely covers the consumer's premises, thereby requiring extension of Distribution Mains by both Licensees	Network development by Licensee A or Licensee B, depending on comparative capital cost to connect to new consumer

AEML-D submitted that for the purpose of operationalising the above, without the scope for any disputes or possibility of any misinterpretations, the terms "reasonable proximity" for distribution mains and "complete coverage by distribution mains" (i.e., reasonable distance for laying of service line to consumer's premises, without extension of Distribution Mains)

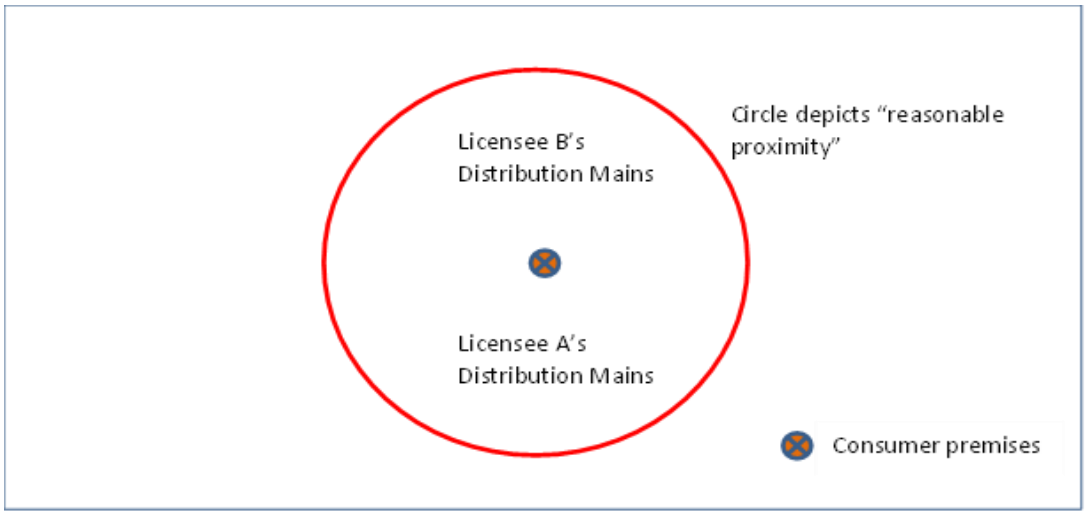
should also be defined or standardised. AEML-D submitted that there could be a situation where a Licensee, in order to acquire a customer, lays down a service cable from far away location, without extending mains (i.e., construction of substation) so as to avoid falling in Level 3 (which requires referring the application to the other Licensee/M-DNAC as per the protocol). In such situations, there will be significant un-necessary capex as RI charges for laying long-length cables will be very high and there will be no oversight of M-DNAC as the said Licensee will term the application as being under Level 1 or 2, hence, not requiring referral to M-DNAC. As the instant Regulations are for regulating capital expenditure, the Regulations ought to improve upon the Order dated 12 June 2017 by providing clear directions regarding presence of distribution mains of either Licensee w.r.t. the new consumer premises. In this regard, following situations will emerge:

Case 1 (Scenario 1):



In the above Scenario 1, only Licensee A's distribution mains is present within a reasonable proximity to the consumer's premises and hence, only Licensee A is allowed to connect the consumer. The connection to the consumer could be at any level from Level 1 to level 5.

Case 2 (Scenario 2/ Scenario 4):



In the above case, both Scenarios 2 and 4 are possible as follows:

Scenario 2: Where both Licensee A and Licensee B can connect the consumer using Service Lines from existing mains and neither needs to extend mains or create substation.

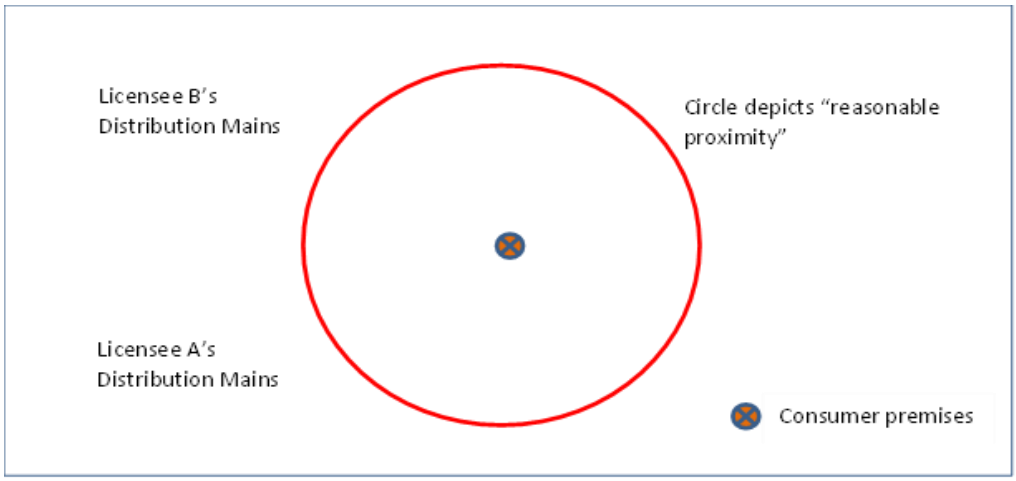
Scenario 4: Following cases will exist:

(a) Where both Licensee A and Licensee B can connect the consumer at Levels 1 or 2, i.e., by laying service lines from existing LT mains or by augmenting LT mains – in this case, whichever Licensee the consumer approaches, will lay the network. Information shall be submitted to M-DNAC about all such connections released at Levels 1 and 2.

(b) Where Licensee A can connect the consumer at Levels 1 or 2, i.e., by laying service lines from existing LT mains or by augmenting LT mains, while Licensee B needs network extension of Level 3 or higher – In this case, Licensee A shall connect the consumer.

(c) Where both Licensee A and B need network extension of Level 3 or higher (i.e., CSS or higher) – in this case, both shall submit cost proposals to M-DNAC and M-DNAC, based on standard technical criterion of load and demand estimation, shall decide on the basis of least cost.

Case 3 (Scenario 3):



In the above Scenario 3, both Licensees will require network extension of Level 3 or higher (as there is no complete coverage as both are outside reasonable proximity, hence, Level 1 and 2 is technically infeasible). In this case, whichever Licensee receives application, will submit the case to M-DNAC with claim of Scenario 3 and M-DNAC shall verify the scenario and proceed as per Order dated 12 June, 2017.

The Commission will appreciate that it is absolutely essential to define what is "reasonable proximity", because without this, neither Licensee is in a position to decide on its own, as to which Scenario the application falls in. If "reasonable proximity" is defined and hence, known to both Licensees, the process will be smooth and without disputes.

AEML-D submitted that the above dispensation should be suitably brought in the Regulations for complete clarity on this subject.

As regards Regulations 11.1 to 11.16, TPC-D submitted that the entire Regulation 11 should be deleted, as the modalities are already defined and stipulated in the Order dated 12.06.2017 in Case No. 182 of 2014 and same needs to be followed. Should the Commission wish to retain the M-DNAC procedure in the instant Regulations, the same should be in line with the already defined procedure and no deviations from the same should be made in the instant Regulations. This will avoid ambiguity between the Order passed in Case No. 182 of 2014 and the Draft Regulations, 2022. Therefore, new words such as distance, proximity, and vicinity should not be included in the Regulations.

Further, no new words/terminologies should be introduced by way of the said Regulations as it will amount to amendment/ modification/ review of the existing protocol approved by the Commission in Case No. 182 of 2014 dated 12.06.2017.

3.25.3 Analysis and Commission's Decision

It is clarified that no new term or modification has been introduced, that is contrary to earlier Orders of the Commission ad Judgments of Hon'ble APTEL in this regard.

The Commission's earlier Order in this regard defines "completely covered" as "presence of Distribution Mains", hence, the Scenarios defined under Regulation 11.2 have been modified accordingly. The Commission has incorporated new Regulation 11.3 to the effect that "for

determining whether an area or location falls in one Scenario or another, the reference point would be the consumer to whom a connection is to be provided".

However, it is not feasible to define network spread/reasonable proximity as sought by AEML-D. These issues shall be taken up as per the findings of the "Switchover Enquiry Committee" constituted by the Commission in Case No. 82 of 2021.

Accordingly, **the Commission has modified the Regulation 11.2 as under**:

"11.2 The preferred Distribution Business/Licensee for setting up distribution network to connect to the consumer shall be identified in accordance with the following four (4) Scenarios as well as Levels specified in Regulation 11.4:

Scenario	*Spread of Distribution Network of Respective Distribution Business/Licensee*	*Preferred Distribution Business/Licensee for setting up distribution network to connect to the consumer*
Scenario 1	*Licensee A's Distribution Mains are present within a reasonable proximity of the consumer's premises, while Licensee B's Distribution Mains are not within a reasonable proximity of the consumer's premises*	*Licensee A shall connect new consumers by extending service lines*
Scenario 2	*Distribution Mains of both, Licensee A and Licensee B are present within a reasonable proximity of the consumer's premises*	*Licensee A or Licensee B shall connect by extending service lines, depending on choice of new consumer*
Scenario 3	*Distribution Mains of both, Licensee A and Licensee B are not present within a reasonable proximity of the consumer's premises*	*Network development by Licensee A or Licensee B, depending on comparative capital cost to connect new consumer*
Scenario 4	*Distribution Mains of both, Licensee A and Licensee B are present within a reasonable proximity of the consumer's premises, but require extension of Distribution Mains by both Licensees*	*Network development by Licensee A or Licensee B, depending on comparative capital cost to connect to new consumer*

11.3 For determining whether an area or location falls in a certain Scenario, the reference point would be the consumer to whom the connection is to be provided."

3.26 Levels for selecting Preferred Distribution Business/ Licensee

3.26.1 Proposed in Draft Regulations, 2022

"11.3 The various Levels to be considered for selecting the preferred Distribution Business/Licensee for setting up distribution network to connect to the consumer to be considered under Scenario 4 specified in Regulation 11.2 are as under:

a. ***Level 1****: Connection to LT consumer or HT consumer is possible by extending the service line and/or Distribution Sub-Station from the existing LT or HT Distribution Mains, respectively, without any extension or augmentation, considering the distance, presence, proximity, and vicinity of both the Distribution Business/Licensees;*

b. ***Level 2:*** *Connection to LT consumer is possible only after augmentation or extension of the nearest LT Distribution Mains considering the network spread, distance, presence, proximity, and vicinity of both the Distribution Business/Licensees;*

c. ***Level 3:*** *Connection to LT consumer is possible only after providing new Consumer Sub-station (CSS) or augmenting the existing CSS;*

d. ***Level 4:*** *Connection to LT consumer or HT consumer is possible only after laying or augmenting HT cable or HT mains and associated switchgear;*

e. ***Level 5:*** *Connection to LT consumer or HT consumer is possible only after laying or augmenting the HT cable or HT mains and associated switchgear, and commissioning of new or augmentation of the existing Distribution Sub-Station (DSS) or Receiving Station in the area."*

3.26.2 Comments Received

AEML-D submitted that as per the EM, the definition of Level 1 has been modified to include Distribution Sub-station, but if the above submissions about Scenarios and Levels are accepted, this is not required and the existing definition of Level 1 as per Order dated 12 June, 2017 can continue. Therefore, definition of Level 1 as given in draft Regulation 11.3 may be corrected as below:

"a. ***Level 1:*** *Connection to LT consumer or HT consumer is possible by extending the service line ~~and/or Distribution Sub-Station~~ from the existing LT or HT Distribution Mains, respectively, without any extension or augmentation* ***of such LT or HT Distribution Mains****, considering the distance, presence, proximity, and vicinity of both the Distribution Business/Licensees;"*

3.26.3 Analysis and Commission's Decision

The Commission has deleted the terms 'and/or Distribution Sub-Station' from Regulation 11.4 (revised Regulation number), as the same in line with the Commission's decisions/ interpretations in the past. Therefore, **the Commission has modified the Regulation 11.4 as below:**

"11.4 The various Levels to be considered for selecting the preferred Distribution Business/Licensee for setting up distribution network to connect to the consumer to be considered under Scenario 4 specified in Regulation 11.2 are as under:

a. ***Level 1****: Connection to LT consumer or HT consumer is possible by extending the service line from the existing LT or HT Distribution Mains, respectively, without any extension or augmentation, considering the distance, presence, proximity, and vicinity of both the Distribution Business/Licensees;*

b. ***Level 2:*** *Connection to LT consumer is possible only after augmentation or extension of the nearest LT Distribution Mains considering the network spread, distance, presence, proximity, and vicinity of both the Distribution Business/Licensees;*

c. ***Level 3:*** *Connection to LT consumer is possible only after providing new Consumer Sub-station (CSS) or augmenting the existing CSS;*

d. ***Level 4:*** *Connection to LT consumer or HT consumer is possible only after laying or augmenting HT cable or HT mains and associated switchgear;*

e. ***Level 5:*** *Connection to LT consumer or HT consumer is possible only after laying or augmenting the HT cable or HT mains and associated switchgear, and commissioning of new or augmentation of the existing Distribution Sub-Station (DSS) or Receiving Station in the area."*

3.27 Capital Investment Approval for Section 63 Projects

3.27.1 Proposed in Draft Regulations, 2022

"12.1 These Regulations shall not normally be applicable for capital investment undertaken in Projects set up through Competitive Bidding under Section 63 of the Act:

Provided that Final approval may be sought for capital investment undertaken in such projects only in cases where the capital investment has been undertaken under specific conditions of Force Majeure Event or Change in Law and there is a dispute between the beneficiary and the Project Developer on the same:"

3.27.2 Comments Received

Prayas submitted that investments for compliance with environmental norms, though necessary in many cases, will increase the cost of operation for the developer and the cost of power for the procurer. Thus, there will seldom be disputes and thus, no scrutiny of such crucial investments by the Commission. Therefore, Proviso to draft Regulation 12.1 should be replaced by following:

"Provided that where capital investment has been undertaken under force majeure or change in law, cost passthrough by beneficiaries should be allowed only after prudence check and investment approval by Commission"

3.27.3 Analysis and Commission's Decision

The Commission has removed the words "and there is a dispute between the beneficiary and the Project Developer on the same" from Proviso of Regulation 12.1, as approval of the Commission is required for the additional tariff stream for recovery of additional cost, irrespective of whether there is dispute or not between Developer and Beneficiary.

Accordingly, **the revised Regulation 12.1 is as below:**

"12.1 These Regulations shall not normally be applicable for capital investment undertaken in Projects set up through Competitive Bidding under Section 63 of the Act:

Provided that Final approval may be sought for capital investment undertaken in such projects only in cases where the capital investment has been undertaken under specific conditions of Force Majeure Event or Change in Law."

3.28 Recovery of Additional Expenditure

3.28.1 Proposed in Draft Regulations, 2022

"12.3 The additional expenditure approved for such capital investment shall be appropriately allowed to be recovered as additional Tariff over and above the Tariff discovered through competitive bidding, and shall not be added to the capital cost of the Project:

Provided further that the above recovery of approved additional expenditure through tariff shall be proportionately allowed only for the balance period of Power Purchase Agreement or Transmission Service Agreement as applicable and not for the entire Useful Life of the concerned asset."

3.28.2 Comments Received

MSEDCL submitted that the Capital Investment Schemes submitted by Generating Companies or Transmission Licensee should be correlated to entire balance life of the concerned asset only.

3.28.3 Analysis and Commission's Decision

The Draft Regulations, 2022 specify that proportionate recovery from beneficiaries shall be allowed only for balance period of PPA or TSA, which is intended to protect the interest of the beneficiaries. The proportionate recovery of such additional tariff will not be passed on to the beneficiaries beyond the tenure of the PPA or TSA. The Commission has therefore, not made any modifications in the Draft Regulations, 2022 in this regard.

3.29 Overhead Charges

3.29.1 Proposed in Draft Regulations, 2022

"13.1 In the in-principle approval of DPR Schemes, the Commission may allow Contingency expenses of maximum 3 per cent of capital cost, which shall be subject to true-up at the time

of approval of completed cost based on head-wise justification to be submitted by the Applicant.

13.2 The Commission shall not normally consider any other Overheads beyond the ceiling allowed for Contingency expenses:

Provided that the Applicant may claim other Overheads beyond the above-specified ceiling with adequate justification along with the necessary supporting documents for the consideration of the Commission."

3.29.2 Comments Received

TPC-T submitted that as seen from the EM, the overhead charges (5% Staff Cost + 3% Contingency) claimed by TPC-T are amongst the lowest of all Transmission Licensees in Maharashtra. Further, the Government Resolution (GR) of the Government of Maharashtra dated 20 October, 2003 referred by the Commission also allows 8% as overhead charges for electrical works. Further, as per TPC-T's experience, the overhead charges are coming out to be more than 8% on actual basis. Therefore, Regulation 13.1 should be modified as follows:

"13.1 In the in-principle approval of DPR Schemes, the Commission may allow Overhead expenses (including staff cost) of ***maximum 8% per cent of capital cost****, which shall be subject to true-up at the time of approval of completed cost based on head-wise justification to be submitted by the Applicant."*

TPC-G submitted that the known overheads like Staff Costs and construction power supply should be allowed as an overhead, and proposed the same modification to Regulation 13.1, as proposed by TPC-T above.

AEML-D submitted that there's a confusion between what is 'overhead' and what is 'capitalized O&M cost'. It is important to understand that Overheads are defined as 'the ongoing business expenses not directly attributed to creating a product or service'. This is not same as staff / labour / supervision cost, because these costs are directly attributable to creating the product or service. Indirect and Supervision cost considered in its DPRs refers to the staff and supervisory expenses, pertaining to the staff that is employed for execution of project – direct and direct employees that actually execute the construction and the supervisors who supervise their work. Such manpower is directly involved in creation of project and spends time on the same and its cost is therefore chargeable to the project. This is as per extant accounting rules. Indirect and Supervision charges are not same as Contingency Charges. AEML has so far not included any Contingency Charges in its DPRs. Contingency charges only refer to the cost of risk or variance, which is built in at the time of seeking approval. It is not an overhead.

Therefore, the Commission may very well allow Contingency Charges at a defined percentage, but that is not a replacement of project-related manpower cost in the form of Indirect and Supervision charges. Those are capitalizable staff expenses. To the extent of expense capitalized, the O&M cost is reduced, and net O&M is claimed in ARR. If these expenses are not allowed to be added to project cost, they will become part of O&M cost. It is

important to understand that all O&M norms are framed considering actual Net expenses of the past and hence, going forward, if Indirect and Supervision cost is not permitted in DPRs, it will increase actual O&M cost, which will not be comparable with norms as norms are based on past Net expenses. So, either the additional O&M costs will have to be allowed over and above normative expenses or capitalization will have to be permitted through Indirect and Supervision charges.

AEML-D submitted that capitalization of O&M costs is an accepted accounting principle. It recognizes the fact that staff expenses, to the extent related to capital project execution, are chargeable to capital. Therefore, Indirect and Supervision charges need to be permitted to be added to DPRs. Also, any changes to the present percentages will disturb O&M expenses because if these expenses are not charged to capital, they will go to revenue and hence, either O&M norms have to be revised or additional expenses allowed as per actuals. AEML-D suggested that the contingency charges should be allowed @ 5% of the cost of the project.

3.29.3 Analysis and Commission's Decision

The Commission agrees with the stakeholders' submission that Contingency expenses are different from Capitalisation of O&M expenses. The intention is to allow Capitalisation of O&M expenses, rather than build in any Contingency Expenses. Hence, in line with the GoM GR dated 20 October, 2003 (i.e., Establishment Expenses @7%), the Commission has allowed Establishment Expenses of maximum 7% of Capital Cost. Accordingly, **the revised Regulations 13.1 and 13.2 are as below:**

"13.1 In the in-principle approval of DPR Schemes, the Commission may allow Establishment expenses of maximum 7 per cent of capital cost, which shall be subject to true-up at the time of approval of completed cost based on head-wise justification to be submitted by the Applicant:

13.2 The Commission shall not normally consider any other Overheads beyond the ceiling allowed for Establishment expenses:

Provided that the Applicant may claim other Overheads beyond the above-specified ceiling with adequate justification along with the necessary supporting documents for the consideration of the Commission."

4 Treatment of Time and Cost Overrun of Capital Investment Schemes

4.1 Delay in Execution of the Scheme

4.1.1 Proposed in Draft Regulations, 2022

"14.3 At the time of approval of completed cost, the Commission shall consider only those delays identified in the DPR Scheme by the Applicant:

Provided that the Commission may consider any delay in execution of the Scheme for reasons attributable to Force Majeure or Change in Law."

4.1.2 Comments Received

MSEDCL submitted that there may be instances of delays that may be due to reasons beyond the control of the Applicant/Utility such as delays attributable to contractor, permissions for Road Trenching, land acquisition from government or private authority. Therefore, MSEDCL suggested to modify the Proviso to Regulation 14.3 as below:

"Provided that the Commission may consider any delay in execution of the Scheme for reasons attributable to Force Majeure or Change in Law ***or beyond the control of Applicant/ utility****"*

4.1.3 Analysis and Commission's Decision

In the Draft Regulations, 2022, the Commission has provided for delays due to Force-majeure or Change in Law conditions, which are unanticipated. In the EM, the Commission has already clarified that the delays due to Force Majeure or Change in Law shall be considered by the Commission even if they are not cited by the Applicants in their application for in principle approval as the same are unforeseen delays and cannot be envisaged earlier. The protection under Force Majeure and Change in Law are provided specifically to address specific situations that would be considered as beyond the control of the Applicant. Hence, the provisions of Regulation 14.3 have been retained as proposed in the Draft Regulations, 2022.

4.2 Disallowance of Excess IDC

4.2.1 Proposed in Draft Regulations, 2022

"14.4 In case of delay in completion of the Capex Scheme beyond the schedule considered in the in-principle approval, the Commission shall adopt the following methodology for allowing excess Interest During Construction (IDC) on account of delay in completion of the Scheme, at the time of approval of completed cost:

Period of Delay (Percentage of original Scheduled Completion Period)	*Percentage Disallowance of excess IDC*
1% - 20%	*10%*
21% - 40%	*25%*
41-60%	*40%*
60%-80%	*75%*
Above 80%	*100%*

"

4.2.2 Comments Received

AEML-D submitted that the disallowance of IDC for even 1% delay in completion period will be 10% as per Regulation 14.4. This will be unjust as most of the increase in completion period is due to reasons not attributable to the Utility. In order to avoid this, delay up to a certain period may be considered without any disallowance of IDC. Further, assessment of IDC should be done at actuals only, i.e., considering the actual rate of interest that prevailed at different times during the course of the scheme. The assessed IDC, if any, at the time of in-principle approval should not be compared with actuals as IDC assumed at the time of in-principle approval is only estimated normatively based on overall phasing of capitalization, instead of determining individual duration of each scheme component. For example, in case of Distribution scheme of installation of transformers, the DPR will be a clubbed scheme for the entire zone or distribution area, covering, maybe hundreds of DTs. However, each DT is itself a work or a scheme. The IDC computation on completion of scheme will be determined based on the duration for which each such scheme or component was in progress, however, that estimated at the time of DPR presentation, is only based on total capitalization phasing for the whole DPR and not for each scheme. Therefore, estimated IDC will always be different than the IDC worked out at the time of actuals.

AEML-D submitted that for delay from 1% to 10% of period of completion, disallowance of IDC should be "Nil" and only for 11% to 20%, the first slab of 10% disallowance should start. This will send out a positive signal and recognize that minor delays are acceptable and natural while executing large schemes, with a number of moving parts and possibility of variances. Also, Regulation may state that "excess IDC" implies the actual IDC attributable to the period for which scheme was delayed vis-à-vis its approved schedule. Time period of the scheme should be considered as commencing from the date of award of in-principle approval, regardless of the phasing mentioned in the DPR. To this extent, the Regulation should provide that, wherever required, revised scheme phasing shall be sought from the Applicant before issuing in-principle approval to a capex scheme and the same shall be considered in the approval letter / Order. This is essential as delays in completion due to delay in approval should not be considered as time overrun.

MSEDCL submitted that the draft Regulation 14.4, which specifies percentage disallowance of excess IDC in present form is onerous. Introduction of this provision and effectuating it in present form in the middle of the Control Period may not be in the right spirit of the MYT framework. Further, the proposed provision in a way completely disregards hurdles and delays faced by the Distribution Licensee on almost all fronts due to COVID-19 situation, which has further aggravated the precarious financial situation of MSEDCL. Therefore, such penalty need not be levied and Regulation 14.8 also should be deleted.

TPC-D submitted that the delays in completion of the Capex scheme can happen due to the reasons beyond the control of Distribution Licensee, i.e., consumer side delays or readiness.

4.2.3 Analysis and Commission's Decision

Regulation 30.9 of the MERC MYT Regulations, 2019 specifies that IDC incurred on account of excess drawal of debts shall be allowed or disallowed, partly or fully, subject to prudence check. As mentioned in the EM, the Commission has analysed IDC claimed by Companies / Licensees and discovered that IDC comprises a significant portion of the Capitalization claimed by the Licensees. IDC comprises a major component of Capitalization, and IDC due to time overrun of the Scheme on account of factors for which the entity is responsible, should not be passed on to the consumer/beneficiary. The Commission has also observed that despite repeated urgings, some Utilities are still incurring delays in ongoing projects due to mundane issues and inefficiencies. The Commission is of the opinion that the Utility must ensure timely completion of the projects and has therefore, proposed a disincentive in the draft Regulations against delay in completion of the projects. The Commission is of the opinion that the percentage disallowance of excess IDC cannot be deleted, as it will ensure greater discipline in capex implementation. However, the Commission has modified structuring considering the comments received from the stakeholders' and has specified 'Nil' disallowance of IDC for delay from 1% to 10% of period of completion, and specified different slabs of disallowance for higher periods of delay.

Further, the Commission has explained the computation of IDC in the Regulations itself, in order to avoid ambiguity in the same. The Commission has also clarified that the time period for project completion shall be considered from the date of in-principle approval.

The Applicant will get the opportunity to justify the period of delay, during the process of final completed cost approval, hence, the concern regarding delays due to consumer delay is addressed.

In view of the above, **the Commission has modified Regulation 14.4 as below:**

"14.4 In case of delay in completion of the Capex Scheme beyond the schedule considered in the in-principle approval, the Commission shall adopt the following methodology for

allowing excess Interest During Construction (IDC) on account of delay in completion of the Scheme, at the time of approval of completed cost:

Period of Delay (Percentage of original Scheduled Completion Period)	*Percentage Disallowance of excess IDC*
1% - 10%	*0%*
11% - 25%	*10%*
26%-40%	*20%*
41%-60%	*40%*
60%-80%	*75%*
Above 80%	*100%*

Explanation: *Excess IDC shall be computed as the difference between the IDC as per originally envisaged and approved project schedule and the actual IDC as per actual schedule of completion, while keeping the actual hard cost and interest rate constant. Further, the time period for project completion shall be considered from date of in-principle approval."*

4.3 Applicability of Regulation on Disallowance of Excess IDC

4.3.1 Proposed in Draft Regulations, 2022

"14.5 The matrix specified in Regulation 14.4 shall be applicable for all Schemes that achieve completion after the notification of these Regulations, irrespective of whether the Scheme commenced before the notification of these Regulations:

Provided that the total time taken for completion shall not normally exceed the maximum time horizon for Capex Schemes specified in Regulation 14.1:"

4.3.2 Comments Received

MSEDCL submitted that the draft Regulation 14.5 is onerous, and it should not be made applicable retrospectively and requested that the particular provision may be made prospectively applicable such that it is co-terminus with the new Control Period. Alternatively, the percentage of delay may be considered in terms of delay from specified horizon time, i.e., 4 years. The penalty may be applicable after exceeding the horizon period and to the extent of the period delayed after horizon period. As such, the schemes of shorter duration i.e., less than 4 years should be exempted from such penalty.

TPC-T submitted that the schemes in progress should be strictly evaluated as per Capex Guidelines issued by the Commission in 2005, which are in force till the notification of the proposed Draft Regulations, 2022. Further, the Draft Regulations, 2022 are quite elaborative on various aspects and are laying various stipulations, which were neither notified nor known

to Transmission Licensees and should not be applied to the schemes in progress. TPC-T suggested that the draft Regulation 14.5 should be deleted from the final Regulations.

AEML-D submitted that it should be clarified in the Regulations that this Proviso shall not be applicable to schemes that have already been submitted or in-principle approved before the notification of these Regulations, as they will have their own phasing plan as per the works envisaged therein.

4.3.3 Analysis and Commission's Decision

The Commission is of the opinion that the point about retrospective applicability has merit. Therefore, the Commission has made this clause applicable to all Schemes approved under these Regulations, thereby exempting Schemes approved under Capex Guidelines, 2005. However, there is no need to make it co-terminus with the MYT Regulations.

In view of the above, **the Commission has modified Regulation 14.5 as below:**

"14.5 The matrix specified in Regulation 14.4 shall be applicable for all Schemes that are approved under these Regulations:

Provided that the total time taken for completion shall not normally exceed the maximum time horizon for Capex Schemes specified in Regulation 14.1:"

4.4 Treatment of Cost Overrun

4.4.1 Proposed in Draft Regulations, 2022

"15.1 The capital cost of the DPR Scheme, as approved in-principle by the Commission in accordance with these Regulations, shall act as ceiling capital cost and the Generating Business/Company or Transmission Business/Licensee or Distribution Business/Licensee or MSLDC shall accordingly execute the works proposed in the DPR Scheme.

….

15.5 The Commission shall not allow cost overrun in the equipment cost over and above the award cost, as the treatment of cost deviation with respect to the award cost shall be addressed under the execution contract with the equipment supplier or EPC contractor, as applicable:

Provided that the Commission may consider cost overrun in the following cases:

a. Change in scope of work due to circumstances beyond the control of the Applicant;
b. Quantity variation depending on adequate justification being provided by the Applicant.
….

15.8 The negligence of the Applicant, failure of the contractor to execute the work, or bankruptcy of the contactor of the Applicant or project implementing agency shall not be treated as circumstances beyond the control of the Applicant.

….

15.10 The Generating Company or Licensee shall follow prudent contract practice by incorporating necessary safeguard clauses against risk of price increment on account of Foreign Exchange Rate Variation (FERV) on imported material.

15.11 Any extra rupee liability towards FERV on import of material may be disallowed as may be specified in the applicable MERC (Multi-Year Tariff) Regulations."

4.4.2 Comments Received

AEML-D submitted that Regulation 14.3 on Time over-run provides following general clause:

"Provided that the Commission may consider any delay in execution of the Scheme for reasons attributable to Force Majeure or Change in Law."

The application of the above, in case of Force Majeure situations, will result in allowance of IDC. By the same logic, any cost over-run due to reasons attributable to Force Majeure or Change in Law, including change in statutory levies, duties or taxes, should be permitted.

AEML-D suggested insertion of the following appropriately in this Regulation:

"Provided that the Commission may consider any cost over-run in execution of the Scheme for reasons attributable to Force Majeure or Change in Law or changes in statutory levies, duties or taxes, as the case may be"

As regards Regulation 15.8, AEML-D submitted that Bankruptcy of Contractor is not something that an Applicant can be assumed to have reasonable control on or could be reasonably foreseen by the Applicant. Hence, "Bankruptcy of Contractor" may be removed from this Regulation. Further, as regards Regulations 15.10 and 15.11, AEML-D submitted that FERV should be permitted in case of imported material. The management of FERV in terms of hedging or other safeguards have associated cost and in many cases (particularly where quantity of material is less), it is economically unviable to have such safeguards.

MSEDCL suggested to add the term "price escalation" to Proviso to Regulation 15.5 as follows:

"Provided that the Commission may consider cost overrun in the following cases:

a. Change in scope of work due to circumstances beyond the control of the Applicant;
b. Quantity variation depending on adequate justification being provided by the Applicant;
c. Price Escalation."

4.4.3 Analysis and Commission's Decision

The Commission is of the opinion that Force Majeure and Change-in-Law are by nature uncontrollable, and the Utility would be able to claim the impact and justify cost-overrun on this account. There is no need to specifically so mention.

As regards bankruptcy of contractor, the Commission is of the opinion that the Utility cannot be held responsible for Contractor's bankruptcy, as long as the Utility has followed due procedure and diligence in appointment of Contractor, and has also initiated the due process after declaration of bankruptcy or non-performance of the contactor of the Applicant or project implementing agency, well within prescribed timelines. Hence, the Commission has modified Regulation 15.8 accordingly.

As regards the suggestions w.r.t. FERV, Regulation 15.11 is an enabling clause, which shall be applicable only if the MYT Regulations specify accordingly.

On the suggestion to add price escalation, it is clarified that price escalation would be addressed under Regulations 15.3 and 15.4, as the Contract would itself provide for the same.

In view of the above, **the Commission has modified Regulation 15.8 as below:**

"15.8 The negligence of the Applicant or failure of the contractor to execute the work, or bankruptcy of the contactor of the Applicant or project implementing agency shall not be treated as circumstances beyond the control of the Applicant:

Provided that if due process has been initiated by the Applicant after declaration of bankruptcy of the contactor of the Applicant or project implementing agency, well within prescribed timelines, the same shall be treated as circumstances beyond the control of the Applicant."

5 Necessary Conditions for Capital Investment Schemes

5.1 Pre-requisites for undertaking Capex Schemes

5.1.1 Proposed in Draft Regulations, 2022

*"**16. Pre-requisites for undertaking Capex Schemes***

All Capex Schemes shall fulfil the below specified pre-requisites for being considered at the time of approval of completed cost:

a. *Procurement of equipment or turnkey contracts shall be done through open Competitive Bidding only, in accordance with the Guidelines specified at **Appendix 2**, and the Applicant shall be required to submit documentary evidence of the same at the time of submission of completed cost;*

b. *In case the winning bidder in the competitive bidding process is a Sister Concern or Group Company of the Generating Business/Company or Transmission Business/Licensee or Distribution Business/Licensee, prior approval of the Commission shall be taken before awarding the project;*

c. *If the Applicant fails to initiate the work, including tendering process, within a period of one year or as stipulated by the Commission, from the date of receipt of in-principle approval, the in-principle approval shall be deemed to be cancelled;*

d. *The Applicant shall provide regular updates on half-yearly basis on status of implementation of all Capex Schemes that have received the in-principle approval of the Commission with respect to the PERT Chart submitted along with the Application for in-principle approval, at the end of the month of September and March of every year, through the web-based portal being developed by the Commission for this purpose and in physical form and email till the web-based portal is operationalised as well as if the web-based portal is not functional for any reason;*

e. *Along with the half-yearly update, the Applicant shall furnish to the Commission the Completion Report of the Schemes put to use in the latest six months with details of item-wise actual cost incurred, escalation in cost, if any, with reasons, the scope and objectives of the Scheme and to extent to which these have been achieved, etc., in accordance with the Format specified in **Appendix 1**;*

f. *Assets put to use after execution of the Capex Scheme shall be added to the Asset Register of the entity;*

g. *The Applicant shall utilise spares as per availability with a view to optimise the capital cost;*

h. *The inter-connected entities should ensure that the upstream/downstream network is created as per the optimised scheduled to avoid stranding of assets:*

Provided that the onus of compliance with above pre-requisites lies on the Applicant and non-compliance may lead to partial/full disallowance of capital cost, as considered appropriate by the Commission"

5.1.2 Comments Received

MSPGCL submitted that it being a Government Organisation follows CVC Guidelines during the procurement process. Also, internal audit and Government Audit are also carried out, which ensures transparent, fair and reasonable procedure. The Guidelines specified in Appendix-2 can be followed for completely new schemes like installation of FGD System, etc. However, in some cases of procurement and replacement of existing assets like DCS, etc., the compatibility of the spares is very important, which forces the procurement through OEM. Hence, MSPGCL requested to relax the Guidelines in such cases where procurement through OEM is necessary.

TPC-T and TPC-D submitted that it is following Open Tender process for all high value procurement with no restriction in participation. For other procurement, limited tender is followed. Cost and effort from Utility as well as bidder side for Open Tender Participation in low value procurement may offset the benefit sought. TPC-T, TPC-D, and TPC-G submitted that Regulation 16 a should be modified as under:

"16 a.

1) Following process shall be adopted for Capex procurement for repetitive and routine kind of Capex procurements,

i) For Capex procurement> Rs 1 Crore: Open Tender Process as per Appendix 2

ii) For Capex Procurement < Rs 1 Crore : Limited Tender Process (Multiparty)

2) In case of any deviation to above to address any Specific cases / special solutions approval from the competent authority of the applicant shall be taken.

Applicant shall be required to submit documentary evidence of the same at the time of submission of completed cost."

As regards Regulation 16 b, TPC-T, TPC-D, and TPC-G submitted that in case winning bidder is Sister Concern or Group Company after following a Competitive Bidding process (which ensures arm's length transaction), no separate approval should be required. Such condition will delay process /execution of works. There are price validity constraints also. TPC-T and TPC-D suggested that this Regulation should be dropped since winning bidder is selected through a competitive bidding process.

KRC DISCOMs submitted that they are Deemed Distribution Licensees in their Special Economic Zone (IT & ITeS SEZs) notified area, catering to the demand of their consumers within SEZ notified area. As per SEZ Policy and the conditions thereof, most of the infrastructure activities were carried out at the initial stage only and thereby having less scope for major DPR Schemes as compared to other Licensees. MBPPL, GEPL and KRCIPPL are mostly executing certain Non-DPR schemes under Wires Business and Retail Supply Business, for enhancing their efficiency on the operational and commercial front for each of the years of the Control Period. Publication of advertisement for marginal value items is not economically viable for small distribution licensee such as MBPPL, GEPL and KRCIPPL.

Therefore, there should be a defined limit in terms of order value above which advertisement may be made compulsory.

As regards Regulation 16 c, AEML-D submitted that in case of complex projects and particularly in case of EHV station projects, land acquisition is necessary to commence work. However, land acquisition is a complex process and gets delayed for various reasons, all of which cannot possibly be foreseen. Further, re-tendering may also be required in case quotations are much above estimated cost and negotiations have not been fruitful. Re-tendering is also mentioned in Appendix 2, S. No. 14. AEML-D submitted that in all complex projects (such as those for new technology implementation) and particularly those requiring land acquisition and wherever retendering had to be resorted to, the Applicant should have the liberty to approach the Commission to seek extension of timeline, in case it is unable to commence the project within one year from date of in-principle approval on account of such reasons.

MSEDCL submitted that the draft Regulations 9.5 and 16e, requiring submission of Completion Report, should be removed.

5.1.3 Analysis and Commission's Decision

The Commission has modified the requirement for procurement only through competitive bidding, as there could be certain circumstances under which, competitive bidding would neither be required nor be economically viable. Further, the Commission has also modified the **Appendix 3** for Procurement Guidelines, as discussed subsequently.

The reference to 'Gantt Chart/ Project Monitoring mechanism' has been added in Regulation 16 d, in order to ensure consistency with the requirements specified elsewhere in these Regulations.

As regards the suggestion that in case of any deviation to address any Specific cases / special solutions, approval from the competent authority of the Applicant shall be taken, the Commission is of the opinion that internal approval for deviation to process would defeat the objective. Further, the Commission has not accepted the suggestion to remove Regulation 16 b since the clause regarding sister/Group concern is required.

The purpose of the Completion Reports is specified in Regulation 16 e, and has not been deleted, in view of its importance to ensure whether the objectives of the project are being achieved or not

The suggestion that the Utility should be allowed to approach the Commission for revised timelines is not relevant, as the clause specifies situations where even tendering has not been initiated, whereas the scenario suggested by AEML-D is considering situations requiring re-tendering, which would not come under Regulation 16 c.

However, in order to give greater comfort to the Utilities, the Commission has added Proviso to Regulation 16 c as below:

"Provided that if the Applicant feels for any reason that the work cannot be initiated within a period of one year from the date of receipt of in-principle approval, the Applicant should clearly say so in its Application along with the reasons for the same and also state the additional time required in the Application. "

Further, the Commission has incorporated a new requirement to the effect that the Applicant shall authenticate that the Scheme has been undertaken as per the specifications proposed and approved and that standard equipment has been used. This will ensure against use of sub-standard material and consequential requirement to replace the asset before completion of prescribed Useful Life.

In view of the above, **the Commission has modified Regulation 16 as below:**

*"**16. Pre-requisites for undertaking Capex Schemes***

All Capex Schemes shall fulfil the below specified pre-requisites for being considered at the time of approval of completed cost:

a. *Procurement of equipment or turnkey contracts shall be done in accordance with the Guidelines specified at **Appendix 3**, and the Applicant shall be required to submit documentary evidence of the same at the time of submission of completed cost;*
b. *In case the winning bidder in the competitive bidding process is a Sister Concern or Group Company of the Generating Business/Company or Transmission Business/Licensee or Distribution Business/Licensee, prior approval of the Commission shall be taken before awarding the project;*
c. *If the Applicant fails to initiate the work, including tendering process, within a period of one year or as stipulated by the Commission, from the date of receipt of in-principle approval, the in-principle approval shall be deemed to be cancelled;*
d. *The Applicant shall provide regular updates on half-yearly basis on status of implementation of all Capex Schemes that have received the in-principle approval of the Commission with respect to the PERT Chart/Gantt Chart/ Project Monitoring mechanism submitted along with the Application for in-principle approval, at the end of the month of September and March of every year, through the web-based portal being developed by the Commission for this purpose and in physical form and email till the web-based portal is operationalised as well as if the web-based portal is not functional for any reason;*
e. *Along with the half-yearly update, the Applicant shall furnish to the Commission the Completion Report of the Schemes put to use in the latest six months with details of item-wise actual cost incurred, escalation in cost, if any, with reasons, the scope and objectives of the Scheme and to extent to which these have been achieved, etc., in accordance with the Format specified in **Appendix 1**;*

f. The Applicant shall authenticate that the Scheme has been undertaken as per the specifications proposed and approved and that standard equipment has been used;

g. *Assets put to use after execution of the Capex Scheme shall be added to the Asset Register of the entity;*

h. *The Applicant shall utilise spares as per availability with a view to optimise the capital cost;*

i. *The inter-connected entities should ensure that the upstream/downstream network is created as per the optimised scheduled to avoid stranding of assets:*

Provided that if the Applicant feels for any reason that the work cannot be initiated within a period of one year from the date of receipt of in-principle approval, the Applicant should clearly state accordingly in its Application along with the reasons for the same and also state the additional time required in the Application.:

Provided further that the onus of compliance with above pre-requisites lies on the Applicant and non-compliance may lead to partial/full disallowance of capital cost, as considered appropriate by the Commission"

5.2 Standard Cost Sheet

5.2.1 Proposed in Draft Regulations, 2022

"17.1 Distribution Business/Licensees shall prepare and submit the Standard Cost Sheet to the Commission within three (3) months of notification of these Regulations, for all capital items procured by them based on latest rates discovered through competitive bidding with the supporting documents, which may be validated by Officers of the Commission.

17.2 Transmission Business/Licensees shall submit the Standard Cost Sheet for all capital items procured by them based on latest rates discovered through competitive bidding, to the State Transmission Utility (STU) for validation within two (2) months of notification of these Regulations.

17.3 STU shall forward the validated Standard Cost Sheet for each Transmission Business/Licensee to the Commission within three (3) months of notification of these Regulations.

17.4 Transmission Business/Licensees and Distribution Business/Licensees shall update the Standard Cost Sheet annually by 31st May based on the latest discovered rates and submit the same to the STU and Commission, respectively:

Provided that the STU shall validate the periodic submissions of the Transmission Business/Licensees and forward validated Standard Cost Sheet to the Commission within one (1) month of receipt of the updated Standard Cost Sheet from the Transmission Business/Licensees.

17.5 The Standard Cost Sheet shall be the reference document for estimation of item-wise capital cost by the Applicant while seeking in-principle approval of DPR Scheme."

5.2.2 Comments Received

TPC-T submitted that the Cost Sheet should be applicable for repetitive, routine and standard supply items. Cost Sheet should be for reference purpose only, and actual cost for any scheme shall be as discovered through competitive bidding process. Hence, words 'repetitive, routine and standard supply items' should be appropriately used in Regulation 17.1, 17.2 and 17.3. TPC-T also suggested to modify Regulation 17.5 as below:

"17.5 The Standard Cost Sheet shall be the reference document for estimation of item-wise capital cost by the Applicant while seeking in-principle approval of DPR Scheme.

Provided that the STU shall validate the periodic submissions of the Transmission Business/Licensees and forward validated Standard Cost Sheet to the Commission within one (1) month of receipt of the updated Standard Cost Sheet from the Transmission Business/Licensees.

The standard cost sheet shall factor the Price Variation clause (PVC) to take care of Price Variation Provisions and fluctuations in the Raw Material Prices. The Scheme shall be executed as per the price determined through the competitive bidding process as stipulated in the above."

KRC DISCOMs submitted that the capital items are procured for specific requirements, therefore, the requirement for maintaining standard Cost Sheet may be exempted for Deemed Distribution Licensees like KRC DISCOMs.

5.2.3 Analysis and Commission's Decision

As regards the submission that the Cost *S*heet should be applicable only for repetitive, routine and standard supply items, the Commission is of the opinion that the Standard Cost Sheet is required for maximum possible items and not only for repetitive, routine and standard supply items. Further, Price Variation is not required to be factored in the Standard Cost Sheet. The factoring of the price variation can be done by the Utility for justifying any variation w.r.t. Standard Cost Sheet. The Commission has accepted the suggestion that the Scheme shall be executed as per the price determined through the specified procurement process, as that is the intention of the Commission, and the Standard Cost Sheet is only a reference for comparison and analysis.

The Commission has also incorporation the option that the Standard Cost Sheet may be based on the latest Board approved standard rates, as applicable. Further, the onus of updating the Standard Cost Sheet rests on the Utility, hence, the Commission has specified that increase in cost with respect to the approved cost on account of referring old Standard Cost data shall neither be entertained nor revised approval granted on this account.

It is clarified that SEZ DDLs cannot be exempted from maintaining Standard Cost Sheet.

In view of the above, **the Commission has modified Regulation 17 as below**:

"17.1 Distribution Business/Licensees shall prepare and submit the Standard Cost Sheet to

the Commission within three (3) months of notification of these Regulations, for all capital items procured by them based on latest rates discovered through competitive bidding with the supporting documents or latest Board approved standard rates, as applicable, which may be validated by Officers of the Commission.

17.2 Transmission Business/Licensees shall submit the Standard Cost Sheet for all capital items procured by them based on latest rates discovered through competitive bidding, to the State Transmission Utility (STU) for validation within two (2) months of notification of these Regulations.

17.3 STU shall forward the validated Standard Cost Sheet for each Transmission Business/Licensee to the Commission within three (3) months of notification of these Regulations.

17.4 Transmission Business/Licensees and Distribution Business/Licensees shall update the Standard Cost Sheet annually by 31st May based on the latest discovered rates and submit the same to the STU and Commission, respectively:

Provided that the STU shall validate the periodic submissions of the Transmission Business/Licensees and forward validated Standard Cost Sheet to the Commission within one (1) month of receipt of the updated Standard Cost Sheet from the Transmission Business/Licensees.

17.5 The Standard Cost Sheet shall be the reference document for estimation of item-wise capital cost by the Applicant while seeking in-principle approval of DPR Scheme:

Provided that Scheme shall be executed as per the price determined through the procurement process in accordance with ***Appendix 3****.*

17.6 For items not listed in Standard Cost Sheet, the Applicant shall provide budgetary quotations from multiple vendors for estimation of capital cost of such items or procurement costs for earlier periods as a reference.

17.7 The Applicants shall ensure that Standard Cost Sheet is maintained for the major equipment contributing to around 60 percent to 70 percent of the total Scheme cost, comprising inter-alia, cables, conductors, transformers, meters, transmission towers, switchgears, GIS, SCADA, Protection Systems, etc.

17.8 If the Applicants do not submit the updated Standard Cost Sheet, the Commission shall approve the Scheme as per the available Standard Cost Sheet without any escalation. :

Provided that the cost data in the Standard Cost Sheet shall not be more than two years old:

5.3 Role of STU in Capex for Transmission

5.3.1 Proposed in Draft Regulations, 2022

"18.4 The Transmission Business/Licensees, viz., Maharashtra State Electricity Transmission Company Limited (MSETCL), The Tata Power Company Limited – Transmission (TPC-T), and Adani Electricity Mumbai Limited - Transmission (AEML-T) shall send capital cost estimates to STU for the Capex Schemes that they desire to take up, out of the Capex Schemes proposed in the STU Plan.

18.5 The STU may either permit the Transmission Business/Licensee with the lowest capital cost to take up the concerned Capex Scheme under Section 62 of the Act or recommend the Capex Scheme to be taken up through Tariff Based Competitive Bidding (TBCB) under Section 63 of the Act."

5.3.2 Comments Received

TPC-T submitted that the Commission has to either follow Section 62 or Section 63 of the Act as per Threshold Limit approved by the Commission. The provisions of Regulation 18.4 of draft Capex Approval Regulations are neither as per Section 62 nor as per Section 63 of the Act. The schemes below Threshold Limit are to be executed by the concerned Licensee who has put up the scheme under Section 62. Also, the capex schemes put up by existing Licensee for upgradation / augmentation / replacement of its assets shall be taken by the concerned Licensee as the Land, RoW are already available with the proposing Licensee. TPC-T suggested to delete Regulations 18.4 and 18.5, since they are inconsistent with the Act.

Prayas submitted that as specified in the Grid Code, the role of the STU may be limited to providing suggestions for projects, which could be considered under Section 62 or Section 63 of the Act for the Commission's consideration. However, in the interest of consumers, cost-optimal planning and timely completion, it is the Commission's responsibility to take the recommendation under due consideration and approve TBCB for projects. The Commission should specify the investment Threshold Limit above which projects shall be developed through TBCB. This will be in line with the regulatory actions of SERCs in Haryana, Punjab, Telangana, Assam, Bihar, etc. This is also in line with the recommendation in Para 5.3 of the Tariff Policy, 2016, which stipulates as under:

"The tariff of all new generation and transmission projects of company owned or controlled by the Central Government shall continue to be determined on the basis of competitive bidding as per the Tariff Policy notified on 6thJanuary, 2006 unless otherwise specified by the Central Government on case to case basis. Further, intra-state transmission projects shall be developed by State Government through competitive bidding process for projects costing above a threshold limit which ***shall be decided by the SERCs (emphasis added****)."*

Additionally, it is also consistent with the Commission's following observations in Order in Case 190 of 2020:

"The Commission will be separately deciding on the Threshold Limit to be considered for undertaking projects through the TBCB route, after seeking inputs from the stakeholders. The

Commission will also have to decide on the conditions/exceptions to the Threshold Limit, keeping the requirements of the State in mind, as well as factors such as delineability of the Project, scope for fixing clear responsibility for project execution, applicability to new Projects vs. system strengthening or augmentation Projects, etc., based on objective criteria, so that the scope for subjectivity in decision making is minimised. Timely completion of projects is also one of the important criteria which needs to be considered. In the meantime, in the absence of any defined Threshold Limit decided by the Commission, the Tariff Policy provisions in this regard cannot be given effect."

Prayas submitted that the draft Regulation 18.5 should be deleted. Instead, the Commission should specify that all transmission projects with investment value more than Rs. 100 Crore will be through TBCB. The Commission should also stipulate objective criteria to determine exceptions to the Threshold Limit in the Regulations.

5.3.3 Analysis and Commission's Decision

The Commission is of the opinion that Regulations 18.4 and 18.5 are completely in accordance with the Act. The STU has to prepare the Plan and decide which Licensee shall undertake the Scheme, rather than the Transmission Licensee deciding the Schemes. The Scheme may be proposed by STU or any Transmission Licensee, but it has to be part of the STU Plan and it can be taken up by any Licensee.

Further, the aspect of threshold value for TBCB is being dealt with separately under TBCB Guidelines/MYT Regulations amendment. The Commission has therefore, not made any modifications in the Draft Regulations, 2022 in this regard.

5.4 Web-based Portal

5.4.1 Proposed in Draft Regulations, 2022

"19.1 The Applicant shall submit the DPR Schemes with all supporting documents in the formats specified in ***Appendix 1*** *for the Commission's approval through the web-based portal being developed by the Commission for this purpose and in physical form till the web-based portal is operationalised:*

Provided that one physical copy shall always be submitted for the Commission's records.

19.2 In accordance with Regulation 16 of these Regulations, the Applicant shall provide regular updates on half-yearly basis on status of implementation of all Capex Schemes that have received the in-principle approval of the Commission, at the end of the month of September and March of every year, through the web-based portal being developed by the Commission for this purpose and in physical form till the web-based portal is operationalised as well as if the web-based portal is not functional for any reason."

5.4.2 Comments Received

Prayas submitted that it is notable that the Commission will now have a web-based portal for submission and periodic updates of DPR schemes. This is a welcome step. Regulation 19.2 mentions that all applicants are required to provide regular updates on a half-yearly basis on

status of implementation of all Capex schemes. Prayas suggested that the portal should publish a summary report, with the status of implementation of all approved DPR schemes, bi-annually. This report should also be made available in the public domain.

5.4.3 Analysis and Commission's Decision

It is clarified that the Half-yearly Status Reports shall be published on the respective utility's website, as well as the Commission's web-portal. Further, the five-year STU Plan and Rolling Plan of all Utilities shall be published on web portal. Access to web portal shall be decided at a later date, while operationalizing the web portal. Further, the copies of the in-principle approval granted by the Commission for different Schemes shall be uploaded on the Commission's main website as well as the web-based portal. Also, the requirement for submission of one physical copy has been deleted.

In view of the above, **the Commission has modified Regulation 19 as below**:

*"19.1 The Applicant shall submit the DPR Schemes with all supporting documents in the formats specified in **Appendix 1** for the Commission's approval through the web-based portal being developed by the Commission for this purpose and in physical form till the web-based portal is operationalised.*

19.2 In accordance with Regulation 16 of these Regulations, the Applicant shall provide regular updates on half-yearly basis on status of implementation of all Capex Schemes that have received the in-principle approval of the Commission, at the end of the month of September and March of every year, through the Applicant's website and the web-based portal being developed by the Commission for this purpose and in physical form till the web-based portal is operationalised as well as if the web-based portal is not functional for any reason.

19.3 The five-year STU Rolling Plan and Rolling Capital Investment Plan of all Utilities shall be uploaded on the web-based portal.

19.4 The copies of the in-principle approval granted by the Commission for different Schemes shall be uploaded on the Commission's main website as well as the web-based portal."

5.5 APPENDIX 1: Format for Filing of Capital Investment Scheme for In-Principle Approval- Format Part I

5.5.1 Proposed in Draft Regulations, 2022

*"**1. PART I (Particulars to be furnished in the Overview of the DPR)***

10. List of Identical schemes previously approved by the Commission and their progress report (5 years data)."

5.5.2 Comments Received

MSEDCL submitted that information sought vide Sr. No. 10 of Format Part I on progress report may be removed as the progress reports are being submitted to the Commission from time to time. Only list of identical schemes previously approved by the Commission may be mentioned.

5.5.3 Analysis and Commission's Decision

The Progress Report has been included in Format Part I, so as to get an idea of status of identical schemes approved for the Utility. Therefore, the Commission has retained the Format Part I as per the Draft Regulations, 2022.

5.6 APPENDIX 2: Guidelines for Procurement of material through Competitive Bidding

5.6.1 Proposed in Draft Regulations, 2022

*"**Guidelines for Procurement of material through Competitive Bidding***

1. *The Applicant shall invite and finalise tenders for procurement of equipment, material and/or services with a transparent, competitive, fair and reasonable procedure. Applicant to resort to open tendering for all types of procurement and shall not resort to procuring it only from the registered vendors.*
2. *Advertisement in the form of Tender Notice should be given in at least two national dailies having wide circulation and be posted on the Applicant's website and reputed Tendering website.*
3. *Minimum time to be allowed for submission of Bids should be three weeks (four weeks in case of Global Tender enquiry). Deadline may be extended if less than 3 bids are received.*
4. *Tender Notice should contain description, specification and ceiling price of the goods and quantity; period and terms of delivery; cost of the tender/bidding document; place(s) and timing of sale of tender documents; place and deadline for receipt of tenders; place, time and date for opening of tenders; amount and Form of bid security / earnest money deposit; any other important information.*
5. *Tender document should clearly mention the eligibility criteria such as qualifications, minimum experience, past performance, technical capability, manufacturing facilities, financial position, ownership or any legal restriction, etc., as applicable.*
6. *The procedure for preparing and submitting the tenders; deadline for submission of tenders; date, time and place of public opening of tenders; requirement of earnest money and performance security guarantee; parameters for determining responsiveness of tenders; evaluating and ranking of tenders and criteria for full or partial acceptance of tender and conclusion of contract should be incorporated in the tender enquiry in clear terms.*
7. *Tender document shall be issued with bifurcation of receipt of quotations in two parts. The first part is to contain the relevant technical specifications and allied commercial details as required in terms of the tender documents and the second part should contain only the price quotation. The first part is commonly known as "Technical Bid" and the second part "Financial Bid." The Technical Bid and the Financial Bid should be sealed by the tenderer in separate covers duly superscribed and both these sealed covers are to be put in a bigger cover, which should also be sealed and duly superscribed as explained above. First, the technical bids are to be opened at the prescribed time and date and the same will be scrutinized and evaluated by the committee of officers/competent authority of the Applicant with reference to parameters prescribed in the tender documents and the offers received from the tenderers. Thereafter, in the second stage, the financial bids of only the technically qualified bidders are to be opened for further scrutiny, evaluation, ranking and placement of contract.*

8. *Where the price has several components like price of the goods, costs for installation and commissioning, operators' training, etc., the tenderers should be asked to furnish the cost break-up indicating the applicable prices for each such component (as specified and desired in the tender document) along with overall price. The tender documents are to specify the currency (currencies) in which the tenders are to be quoted (priced).*

9. *In order to obviate delays, a committee of officers of the Applicant representing finance, Stores, Purchase, indenting department, etc., may be constituted at levels appropriate to the value of the procurement, which will open, process, evaluate and give its detailed recommendations to the competent authority within the Applicant.*

10. *Tenders should be opened immediately after the deadline of receipt of tenders with minimum time gap in between in the presence of the representatives of the tenderers if they present themselves. Quotations sent by e-mail, telex, cable or facsimile are to be ignored and rejected. Minimum three bids should be considered for the purposes of technical evaluation.*

11. *All the tenders are to be evaluated strictly on the basis of the terms and conditions incorporated in the tender enquiry document (based on which offers have been received) and the terms, conditions etc. stipulated by the tenderers in their tenders. No new condition should be brought in while evaluating the tenders.*

12. *Important events connected with the tendering process and the selection of the bidder shall be immediately uploaded on the notice board/web site, for eg, the bidders who qualify in Part – 1 (i.e., technical bid in case of two-part bid), the successful tenderer to whom the contract is awarded, etc. After placing the Order with the successful bidder, the Purchase Order shall be posted on the web site of the Applicant.*

13. *Negotiations with the tenderers are to be avoided. However, where considered necessary, price negotiations may be resorted to, but only with the lowest evaluated responsive tenderer, and that too with the approval of the competent authority of the Applicant, after duly recording the reasons for such action.*

14. *Retendering may be resorted to if there is no adequate response to the Tender advertisement or the L1 prices are substantially higher in comparison to the estimated cost and negotiations have not met with positive results and/or in case of suspicion of cartel formation after receipt of quotations.*

15. *Single Tender Enquiry should be resorted to only in unavoidable situations with the approval of the competent authority of the Applicant and the reasons for arriving at such decision are to be recorded in cases where:*

    a. *It is known that only a particular firm is the manufacturer of the required goods.*

    b. *A Proprietary Article Certificate may be provided before procuring the goods from a single source indicating the reasons for resorting to such type of purchase, the financial concurrence and approval of competent authority of the Applicant obtained etc."*

5.6.2 Comments Received

TPC-T and TPC-D submitted that it is following Open Tender Process for all high value procurement with no restriction in participation. For other procurement, limited tender is followed. Cost and effort from Utility as well as bidder side for Open Tender Participation in low value procurement may offset the benefit sought. TPC-T and TPC-D also submitted that reputed Tendering websites charge significantly, which will be additional cost over and above cost of publishing in Newspapers. The provision for advertisement on reputed Tendering website specified at clause 2 of Guidelines may be dropped.

TPC-T and TPC-D submitted that Clause 3 of the Guidelines should be modified as below:

"3. Minimum time to be allowed for submission of Bids should be three weeks (four weeks in case of Global Tender enquiry). Deadline may be extended if less than 3 bids are received. ***However, even after bid submission date extension if less than 3 bids are received Applicant shall process the tender accordingly****."*

TPC-T and TPC-D submitted that declaring ceiling price can limit possibility of competitive price, which can be obtained from new bidder. Therefore, this aspect should be dropped from the Guidelines. The clause 4 of the Guidelines should be modified as below:

"4. Tender Notice should contain description, specification ~~and ceiling price~~ of the goods and quantity; period and terms of delivery; cost of the tender/bidding document; place(s) and timing of sale of tender documents; place ***(including E-tender portal)*** *and deadline for receipt of tenders; place* ***(including E-tender portal)****, time and date for opening of tenders; amount and Form of bid security / earnest money deposit; any other important information."*

TPC-T and TPC-D submitted that it follows E-tender system with full traceability and Clause 6 of the Guidelines should have provision for E-tender system. TPC-T therefore suggested to modify the Clause 6 of the Guidelines as below:

"6. The procedure for preparing and submitting the tenders; deadline for submission of tenders; date, time and place of public opening of tenders; ***or, in case of E-tender, system generated real time notification shall be sent to all the bidder at the time of bid opening****; requirement of earnest money and performance security guarantee; parameters for determining responsiveness of tenders; evaluating and ranking of tenders and criteria for full or partial acceptance of tender and conclusion of contract should be incorporated in the tender enquiry in clear terms."*

TPC-T and TPC-D further submitted that the procedure detailed in Clause 7 of guidelines is for paper-based sealed bids. However, TPC-T is using E-tendering system (Ariba), which is designed to take care of governance and procurement aspects. Hence, this aspect needs to be incorporated suitably in Clause 7. Therefore, Clause 7 of the Guidelines should be modified as under:

"7. Tender document shall be issued with bifurcation of receipt of quotations in two parts. The first part is to contain the relevant technical specifications and allied commercial details as required in terms of the tender documents and the second part should contain only the

price quotation. The first part is commonly known as "Technical Bid" and the second part "Financial Bid." The Technical Bid and the Financial Bid should be sealed by the tenderer in separate covers duly superscribed and both these sealed covers are to be put in a bigger cover, which should also be sealed and duly superscribed as explained above. First, the technical bids are to be opened at the prescribed time and date and the same will be scrutinized and evaluated by the committee of officers/competent authority of the Applicant with reference to parameters prescribed in the tender documents and the offers received from the tenderers. Thereafter, in the second stage, the financial bids of only the technically qualified bidders are to be opened for further scrutiny, evaluation, ranking and placement of contract

***In case of e-Tender, Electronically Sealed bids shall be taken in E-Tender system in line with the said concept**."*

TPC-T and TPC-D submitted that Clause 9 of the Guidelines should be modified as under:

"9. In order to obviate delays, a committee of officers of the Applicant representing finance, Stores, Purchase, indenting department, etc., may be constituted at levels appropriate to the value of the procurement, which will open, process, evaluate and give its detailed recommendations to the competent authority within the Applicant.

***Alternatively, in case of e-tendering, bid shall be opened in the system with full traceability and further bid evaluation/processing as per the policy approved by the competent authority of the Applicant**."*

TPC-T and TPC-D submitted that Clause 10 of the Guidelines should be modified as under:

"10. Tenders should be opened immediately after the deadline of receipt of tenders with minimum time gap in between in the presence of the representatives of the tenderers if they present themselves, ***or, in case of E-tender, system generated real time notification shall be sent to all the bidder at the time of bid opening.*** *Quotations sent by e-mail, telex, cable or facsimile are to be ignored and rejected. Minimum three bids should be considered for the purposes of technical evaluation.* ***In case of less than three bids for specific cases, specific approval from the competent authority of the Applicant shall be obtained**."*

TPC-T and TPC-D submitted that Clause 11 of the Guidelines should be modified as below:

"11. All the tenders are to be evaluated strictly on the basis of the terms and conditions incorporated in the tender enquiry document (based on which offers have been received) and the terms, conditions etc. stipulated by the tenderers in their tenders. ***Generally****, no new condition should be brought in while evaluating the tenders* ***which has potential to affect the tender participation**."*

As regards Clause 12 of the Guidelines, TPC-T and TPC-D submitted that putting confidential details such as Purchase Order (PO) copy and bid rejection details on the website will be challenging. Also, some bidders may not participate if all information is made public. However, list of techno-commercially qualified bidders and successful bidders can be

published on the website as these are specific to the project. Therefore, Clause 12 of the Guidelines should be modified as below:

"12. ***Applicant shall publish list of Techno-commercially qualified bidders and final successful bidder, for all open tenders for capex procurement, as a part of completion report of the scheme."***

TPC-T and TPC-D submitted that the provision of doing e-auction should be allowed in Clause 13 of the Guidelines to get better prices. Accordingly, Clause 13 should be modified as under:

"13. Negotiations with the tenderers are to be avoided. However, where considered necessary, price negotiations may be resorted to, but only with the lowest evaluated responsive tenderer, and that too with the approval of the competent authority of the Applicant, after duly recording the reasons for such action.

Applicant shall also consider e-auction/reverse auction process for determination of most competitive price*."*

TPC-T and TPC-D submitted that Clause 14 of the Guidelines should be modified as under:

"14. Retendering may be resorted to if there is no adequate response to the Tender advertisement or the L1 prices are substantially higher in comparison to the estimated cost and negotiations have not met with positive results and/or in case of suspicion of cartel formation after receipt of quotations.

However, for such cases where adequate and reasonable efforts have been made by the Applicant and still tender determined price is higher than the internal estimate and it is reasonably assessed that re-tendering may not yield the desired results and outcome of the re-tender will most likely remain the same, under such scenario case shall be processed after taking approval from Applicant's competent authority.*"*

TPC-T and TPC-D submitted that Clause 15 of the Guidelines should be modified as below:

"15. Single Tender Enquiry should be resorted to only in unavoidable situations with the approval of the competent authority of the Applicant and the reasons for arriving at such decision are to be recorded in cases where:

a. It is known that only a particular firm is the manufacturer of the required goods ***and provider of the service.***

b. A Proprietary Article Certificate ***(or Propriety Service Provider/certificate)*** *may be provided before procuring the goods from a single source indicating the reasons for resorting to such type of purchase, the financial concurrence and approval of competent authority of the Applicant obtained, etc."*

AEML-D submitted that the process given in **Appendix 2** of the Draft Regulations, 2022 is for physical bidding and bid submission, whereas in most cases online competitive bidding is now carried out. Online bidding is also used by most Government entities. Hence, process for

online bidding should also be specified in the Guidelines for procurement of material through Competitive Bidding. Process for reverse auction may also be included.

AEML-D submitted that Clause 12 of the Guidelines requires the Purchase Order (PO) to be posted on the website of the Applicant. This condition may be removed as PO is a commercially sensitive and classified document and posting it on website will make it public.

As regards Clause 13 of the Guidelines, AEML-D submitted that in many situations, more than one supplier is required to meet the quantity required for the same or to mitigate supply risk. Same is mentioned in the Tender Document as basis of allocation. In such case, negotiation with more than one bidder may be required. The same may be appropriately included in the Guidelines.

KRC DISCOMs submitted that the publication of advertisement for marginal value items is not economically viable for small Distribution Licensees such as MBPPL, GEPL and KRCIPPL. Therefore, there should be a defined limit in terms of order value above which advertisement may be made compulsory as specified at Clause 2 of the Guidelines.

As regards Clause 8 of the Guidelines, MSEDCL submitted that in overall Percentage Rate (%) tenders, break-up of all individual items with ex-works price is not asked for in Works Contract. Hence, the Guidelines may be amended suitably.

5.6.3 Analysis and Commission's Decision

The Commission has modified the Guidelines to allow Online bidding with the necessary process, including reverse auction (e-RA).

The suggestion regarding provision for advertisement on reputed Tendering website has been accepted by the Commission, and Clause 2 of the Guidelines has been modified accordingly. The Commission has retained the requirement of re-tendering in case less than 3 bids are received even after bid submission date extension, in order to ensure that the competitive bidding principles are followed.

As regards the suggestion to remove declaration of ceiling price specified in Clause 4 of the Guidelines, there are both merits/demerits of declaring ceiling price. However, the Utility may decide on this issue, as appropriate, and the necessary flexibility has been provided in the Guidelines.

The Commission has retained the requirement that no new condition may be introduced at tender evaluation stage, as such a practice would vitiate the tendering process.

The Commission accepts the suggestion that the PO and other commercially sensitive documents should not be uploaded on website, and Clause 12 of the Guidelines has been modified accordingly. Further, the suggestion for allowing negotiations with more than one bidder in specific cases has been accepted, and Clause 13 of the Guidelines has been modified accordingly. Clause 15 of the Guidelines has been modified to incorporate situations of single-tendering in case of proprietary technology.

The issue of tender value limits raised by the stakeholders has been addressed by incorporating relevant Clauses in the Guidelines, based on the GFR.

The Commission has also added an omnibus requirement that the procurement of equipment, material and/or services should be technology neutral and ensure optimum life-cycle cost.

In view of the above, **the Commission has modified the Guidelines for Procurement of material as under:**

*"**Guidelines for Procurement of material***

1. The procurement of equipment, material and/or services should be technology neutral and ensure optimum life-cycle cost.
2. The Applicant shall invite and finalise tenders for procurement of equipment, material and/or services with a transparent, competitive, fair and reasonable procedure.
3. Applicant can procure from any of the available suppliers on Government e-Market place (GeM) or any other E-tender Portal for upto Rs. 50,000/-.
4. For procurement of goods and services above Rs. 50,000/- and upto Rs. 30,00,000/- Applicant can adopt Limited tendering among the available sellers/suppliers of applicable E-tender Portal. Applicant must invite and evaluate proposals of at least three different supplier/ manufacturers/ service providers, on the E-tender Portal, meeting the requisite quality, specification and delivery period. The tools for online bidding and online reverse auction available on E-tender Portal can be used by the Applicant.
5. Applicant to resort to open tendering on the E-tender Portal for all types of procurement beyond Rs. 30,00,000/- procurement value and shall not resort to procuring it only from the registered vendors. Applicants can use online Bidding and Electronic Reverse Auction (e-RA) tool provided on E-tender Portal for conducting such tender procurement.
6. Notwithstanding the value limits prescribed in Clauses 3, 4 and 5 above, if the Applicant has different value limits for procurement of Goods/Services through registered vendors, limited tendering or open tendering, duly approved by its competent Authority, the Applicant may continue to follow the same keeping in mind the spirit of these Guidelines.
7. Advertisement in the form of Tender Notice should be given in at least two national dailies having wide circulation and be posted on the Applicant's website and E-tender Portal (if Electronic Tender route is used) for open tenders.
8. Minimum time to be allowed for submission of Bids should be three weeks (four weeks in case of Global Tender enquiry). Deadline may be extended if less than 3 bids are received.
9. Tender Notice should contain description, specification and ceiling price (if any applicable) of the goods and quantity; period and terms of delivery; cost of the tender/bidding document; place(s) and timing of sale of tender documents; place

(including E-tender Portal) and deadline for receipt of tenders; place (including E-tender Portal), time and date for opening of tenders; amount and Form of bid security / earnest money deposit; and any other important information.

10. Tender document should clearly mention the eligibility criteria such as qualifications, minimum experience, past performance, technical capability, manufacturing facilities, financial position, ownership or any legal restriction, etc., as applicable.

11. The procedure for preparing and submitting the tenders; deadline for submission of tenders; date, time and place of public opening of tenders; or, in case of E-tender, system generated real time notification shall be sent to all the bidder at the time of bid opening; requirement of earnest money and performance security guarantee; parameters for determining responsiveness of tenders; evaluating and ranking of tenders and criteria for full or partial acceptance of tender and conclusion of contract should be incorporated in the tender enquiry in clear terms.

12. Tender document shall be issued with bifurcation of receipt of quotations in two parts. The first part is to contain the relevant technical specifications and allied commercial details as required in terms of the tender documents and the second part should contain only the price quotation. The first part is commonly known as "Technical Bid" and the second part "Financial Bid." The Technical Bid and the Financial Bid should be sealed by the tenderer in separate covers duly superscribed and both these sealed covers are to be put in a bigger cover, which should also be sealed and duly superscribed as explained above. First, the technical bids are to be opened at the prescribed time and date and the same will be scrutinized and evaluated by the Committee of officers/competent authority of the Applicant with reference to parameters prescribed in the tender documents and the offers received from the tenderers. Thereafter, in the second stage, the financial bids of only the technically qualified bidders are to be opened for further scrutiny, evaluation, ranking and placement of contract.

    In case of e-Tender, Electronically Sealed bids shall be taken in E-Tender system in line with the said concept.

13. Where the price has several components like price of the goods, costs for installation and commissioning, operators' training, etc., the tenderers should be asked to furnish the cost break-up indicating the applicable prices for each such component (as specified and desired in the tender document) along with overall price. The tender documents are to specify the currency/ies in which the tenders are to be quoted (priced).

14. In order to obviate delays, a Committee of officers of the Applicant representing finance, Stores, Purchase, indenting department, etc., may be constituted at levels appropriate to the value of the procurement, which will open, process, evaluate and give its detailed recommendations to the competent authority within the Applicant.

    In case of e-tendering, bid shall be opened in the system with full traceability and further bid evaluation/processing as per the policy approved by the competent authority of the Applicant.

15. Tenders should be opened immediately after the deadline of receipt of tenders with minimum time gap in between in the presence of the representatives of the tenderers if they present themselves, or, in case of E-tender, system generated real time notification shall be sent to all the bidders at the time of bid opening. Quotations sent by e-mail, telex, cable or facsimile are to be ignored and rejected. Minimum three bids should be considered for the purposes of technical evaluation.

16. All the tenders are to be evaluated strictly on the basis of the terms and conditions incorporated in the tender enquiry document (based on which offers have been received) and the terms, conditions etc. stipulated by the tenderers in their tenders. No new condition should be brought in while evaluating the tenders.

17. Important events connected with the tendering process and the selection of the bidder shall be immediately uploaded on the notice board/web site, for eg, the bidders who qualify in Part - 1, i.e., Technical Bid, the successful tenderer to whom the contract is awarded, etc.

18. Negotiations with the tenderers are to be avoided. However, where considered necessary, price negotiations may be resorted to, but only with the lowest evaluated responsive tenderer, and that too with the approval of the competent authority of the Applicant, after duly recording the reasons for such action. However, in case more than one supplier is required to meet the quantity required, price negotiation with multiple bidders may be resorted to.

19. Applicant shall also consider e-auction/reverse auction process for determination of most competitive price.

20. Retendering may be resorted to if there is no adequate response to the Tender advertisement or the L1 prices are substantially higher in comparison to the estimated cost and negotiations have not met with positive results and/or in case of suspicion of cartel formation after receipt of quotations.

21. Single Tender Enquiry should be resorted to only in unavoidable situations with the approval of the competent authority of the Applicant and the reasons for arriving at such decision are to be recorded in cases where:

    a. It is known that only a particular firm is the manufacturer of the required goods and provider of the service.

    b. A Proprietary Article Certificate (or Proprietary Service Provider/Certificate) may be provided before procuring the goods from a single source indicating the reasons for resorting to such type of purchase, the financial concurrence and approval of competent authority of the Applicant obtained, etc.

6 Additional Points

6.1 Empanelment of Experts for DPR Scrutiny

6.1.1 Comments Received

Prayas submitted that for in-principle approval, the establishment of CISC and the process specified for approval would help in better scrutiny. To assist the Commission as well as the CISC, Prayas suggested the Commission to empanel a set of independent experts to aid detailed scrutiny of projects. The process of empanelment and appointment should be specified in these Regulations.

6.1.2 Analysis and Commission's Decision

The Commission intends to co-opt experts as and when required, on case-to-case basis. The Commission has therefore, not made any modifications in the Draft Regulations, 2022 in this regard.

6.2 Availability of Approved DPRs in Public Domain

6.2.1 Comments Received

Prayas submitted that given critical nature of projects, substantial investments, potential cost impact and need for increased accountability. All approved DPRs should be made available in the public domain on the Commission's website, along with the presentations by the application to the CISC or the Commission.

6.2.2 Analysis and Commission's Decision

The Capex approval letters shall be uploaded on the website of the Commission and the web-portal.

6.3 Public Process for In-principle Approval

6.3.1 Comments Received

Prayas submitted that as the DPR schemes would be filed for in-principle approval every April and October, it is necessary to create a space for public consultation, before granting the approval to these schemes. The Commission should also come out with an Order while providing approval that includes the purpose, details and relevant data of the approved DPR schemes.

6.3.2 Analysis and Commission's Decision

The Commission does not find any requirement for undertaking the public process, as suggested, and has therefore, not made any modifications in the Draft Regulations, 2022 in this regard.

6.4 Capital Investment Information to be available in Public Domain

6.4.1 Comments Received

Prayas urged the Commission to take steps towards better planning, scrutiny of investments, monitoring implementation and set up processes in these Regulations such that detailed scrutiny of utility performance in this crucial area is possible. Prayas submitted that the data sought from the Applicant during in-principle and final approval by the Commission should be available in the public domain along with the Petition of the applicant before the Commission. Additionally, for all new investments, the GIS co-ordinates of the assets (including for each DT, sub-station, 11 kV feeder, HT/LT poles) should be made available in the public domain. This will aid physical verification of assets, at least for new infrastructure. This is a reasonable expectation for new assets given that the Commission has already directed MSEDCL to provide a detailed action plan in Case No. 322 of 2019, which also included Feeder-wise mapping of consumers (AG and Non-AG) and indexing/geo-tagging of consumer data to DTC and feeder and regularly updating (not later than one month) it in case of shifting of load from one DTC/feeder to another.

6.4.2 Analysis and Commission's Decision

GPS co-ordinates have already been specified as required to be submitted, under Regulation 5.1 (1) (d) of the Draft Regulations, 2022. All the DPRs and information submitted by the Applicants are available with the Commission, and the Commission does not intend that the same be published on the website of the Commission.

6.5 Applicability of Guidelines for In-Principle Clearance of Proposed Investment Schemes

6.5.1 Comments Received

MSEDCL submitted that the draft Regulations as well as EM do not explicitly provide that the proposed/Draft Regulations shall supersede the existing 'Guidelines for In-Principle Clearance of Proposed Investment Schemes'. Hence, suitable clause may be added in the Regulations.

6.5.2 Analysis and Commission's Decision

The Commission has accepted the suggestion, as the same is in line with the intention of the Commission in framing the Capital Investment Approval Regulations, 2022. The Commission has added new clause on Repeal and Savings as Regulation 20 of the Capital Investment Approval Regulations, 2022, under which it is clarified that the Capex Guidelines shall no longer be in force, as shown below:

"20. Repeal and Savings

20.1 Save as otherwise provided in these Regulations, these Regulations supersede the "Guidelines for In-Principle Clearance of Proposed Investment Schemes" as amended from time to time.

20.2 Notwithstanding Regulation 20.1, the provisions of "Guidelines for In-Principle Clearance of Proposed Investment Schemes" shall continue to apply to all proceedings pending under it as if the said Guidelines have not been superseded."

6.6 Mismatch in Draft Regulations

6.6.1 Comments Received

MSEDCL submitted that the clauses proposed under the Draft Regulations, 2022 and clauses (draft Regulations) reproduced under EM do not match for following draft Regulations: Definition of Prudence check, Regulation 3.1 (g), 3.5 (d), 3.8 (e), 3.8 (h), 3.8 (k), 3.8(l), 3.10, 3.11(d), 3.11(l), 3.11(m), 3.11(p), 3.13, proviso to 3.20, 4.8, 4.26, 5.1(2)(f)(ii), 5.1(2)(f)(v), 5.13, 8.2(2)(o)(iv), 8.2(2)(o)(vii), 14.7, 15.1, proviso to Regulation 16 and 18.8.

6.6.2 Analysis and Commission's Decision

The Commission has noted that there are some differences in Regulations referred in EM as compared to the Draft Regulations, 2022. It is clarified that the Regulation numbers as per the Draft/Final Regulations are to be referred.

6.7 Introduction of Capex Regulations in middle of 4th Control Period

6.7.1 Comments Received

MSEDCL submitted that introduction of Draft Regulations, 2022 on such an important subject and effectuating it in present form in the middle of current (4") Control Period may not be in the right spirit of MYT framework. In the Draft Regulations, 2022, MYT Regulations, 2019 for 4th Control Period have been referred at many places. Also, the new MYT Regulations are expected in the next two years. Hence, the proposed Draft Regulations, 2022, should be made co-terminus with new (i.e., 5th) Control Period of next MYT.

6.7.2 Analysis and Commission's Decision

The Commission is of the opinion that there is no need to make the Capital Investment Approval Regulations co-terminus with the MYT Regulations. The Capital Investment Approval Regulations shall be in force till amended, and do not have a specific Control Period. The Commission has therefore, not made any modifications in the Draft Regulations, 2022 in this regard.

6.8 Leased Assets

6.8.1 Comments Received

AEML-D submitted that Ind AS 116, which was notified by the Ministry of Corporate Affairs on 30th March 2019, results in recognition of all leases on the Balance Sheet of the Company. The leased asset is recognized under Right of Use (ROU) and the corresponding depreciation

and interest expenses on the lease liability is provided in the Profit and Loss Account. The asset is capitalized under ROU.

AEML-D submitted that the Capital Investment Approval Regulations should address leased assets, since going forward, several high value assets, particularly land can and will be acquired under ROU arrangement. It would be better and more in consumer interest by recognizing such assets under capex, instead of allowing lease liability (lease rentals) in opex, as the tariff impact by considering these assets under capex would be lower.

6.8.2 Analysis and Commission's Decision

IndAS 116 clearly provides the accounting treatment in the Balance Sheet and Profit & Loss statement of the Utility. Land is part of the Scheme and not a separate asset. Land may be procured on lease, hence, it has been specified under Regulation 5.1(2)(g)(iii) that "*land/assets taken on lease under 'right of use' shall be included in the capital cost as per the applicable Accounting Standards under IND-AS*".

Sd/	**Sd/-**	**Sd/-**
(Mukesh Khullar)	**(I.M. Bohari)**	**(Sanjay Kumar)**
Member	**Member**	**Chairperson**

Annexure I

Sl. No.	Name of Stakeholders
1.	BEST
2.	Maharashtra State Electricity Transmission Company Limited (MSETCL)
3.	The Tata Power Company Ltd.- Transmission Business (TPC-T)
4.	The Tata Power Company Ltd.- Generation Business (TPC-G)
5.	The Tata Power Company Ltd.- Distribution Business (TPC-D)
6.	Adani Electricity Mumbai Limited- Distribution Business (AEML-D)
7.	Maharashtra State Electricity Distribution Company Limited (MSEDCL)
8.	Maharashtra State Power Generation Company Limited (MSPGCL)
9.	Prayas (Energy Group)
10.	EON Kharadi Infrastructure Pvt. Ltd.
11.	Mindspace Business Parks Private Limited (MBPPL)
12.	Gigaplex Estate Private Limited (GEPL)
13.	KRC Infrastructure and Projects Private Limited (KRCIPPL)
14.	Quadron Business Parks Private Limited (QBPPL)